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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**10/19/2012** at 12:22:47 PM  
Clerk of the Superior Court  
By Fidel Ibarra, Deputy Clerk

Attorneys for Plaintiff  
Environmental Research Center

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ENVIRONMENTAL RESEARCH CENTER, a California non-profit corporation,	)	<b>Case No.:</b> 30-2012-00608441-CU-MC-CJC
	)	
Plaintiffs,	)	<b>COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES</b>
	)	
vs.	)	<b>[Health &amp; Safety Code § 25249.5, et seq.]</b>
	)	
ASPEN GROUP, INC. and DOES 1-50, Inclusive,	)	<b>[UNLIMITED CIVIL CASE - AMOUNT DEMANDED EXCEEDS \$25,000)]</b>
	)	
Defendants,	)	<b>Judge Francisco F. Firmat C-09</b>

Plaintiff Environmental Research Center, Inc. brings this action in the interests of the  
general public and, on information and belief, hereby alleges:

**INTRODUCTION**

1. This action seeks to remedy Defendants' continuing failure to warn consumers in  
California that they are being exposed to lead, a substance known to the State of California to  
cause cancer, birth defects and other reproductive harm.

2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have  
otherwise been involved in the chain of commerce of, and continue to manufacture, package,  
distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the  
following ingestible products, which contain the chemical lead and which have been and

1 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to  
2 individuals in California:

- 3 a. Aspen Group Inc. Aspen Aqua-Lim
- 4 b. Aspen Group Inc. Aspen-PMS
- 5 c. Aspen Group Inc. Aspen Siberian Ginseng
- 6 d. Aspen Group Inc. Aspen Enviro-Gard
- 7 e. Aspen Group Inc. Aspen Parasit-X
- 8 f. Aspen Group Inc. Aspen Chit-O-Slim Plus
- 9 g. Aspen Group Inc. Aspen Nerv
- 10 h. Aspen Group Inc. Aspen Chit-O-Slim HD Plus
- 11 i. Aspen Group Inc. Aspen Lung Maintenance
- 12 j. Aspen Group Inc. Aspen Glucosync

13 These listed products are hereinafter referred to together as “THE PRODUCTS”.

14 3. The use and/or handling of THE PRODUCTS causes exposures to lead at levels  
15 requiring a “clear and reasonable warning” under California’s Safe Drinking Water and Toxic  
16 Enforcement Act of 1986, Health & Safety Code (“H&S Code”) §25249.5, *et. seq.* (also known  
17 as “Proposition 65”). Defendants have failed to provide the health hazard warnings required by  
18 Proposition 65.

19 4. The continued manufacturing, packaging, distributing, marketing and/or sales of  
20 THE PRODUCTS without the required health hazard warnings, causes individuals to be  
21 involuntarily and unwittingly exposed to levels of lead that violate Proposition 65.

22 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued  
23 manufacturing, packaging, distributing, marketing and/or selling of THE PRODUCTS for sale or  
24 use in California without first providing clear and reasonable warnings, within the meaning of  
25 Proposition 65, regarding the risks of cancer, birth defects and other reproductive harm posed by  
26 exposure to lead through the use and/or handling of THE PRODUCTS. Plaintiff seeks an  
27 injunctive order compelling Defendants to bring each of its business practices into compliance  
28 with Proposition 65 by providing clear and reasonable warnings to each individual who may be

1 exposed to lead from the use and/or handling of THE PRODUCTS.

2 6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to  
3 remedy Defendants' failure to provide clear and reasonable warnings regarding exposures to the  
4 lead.

5 **JURISDICTION AND VENUE**

6 7. This Court has jurisdiction over this action pursuant to California Constitution  
7 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except  
8 those given by statute to other trial courts." The statute under which this action is brought does  
9 not specify any other basis for jurisdiction.

10 8. This Court has jurisdiction over Defendants because, based on information and  
11 belief, each Defendant is a business having sufficient minimum contacts with California, or  
12 otherwise intentionally availing itself of the California market through the marketing,  
13 distribution and/or sale of THE PRODUCTS in the State of California to render the exercise of  
14 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
15 substantial justice.

16 9. This Court is the proper venue for this action because each Defendant has violated  
17 California law in the County of Orange. Furthermore, this Court is the proper venue under Code  
18 of Civil Procedure §395.5 and H&S Code §25249.7(a), which provides that any person who  
19 violates or threatens to violate H&S Code §§25249.5 or 25249.6 may be enjoined in any court of  
20 competent jurisdiction.

21 **PARTIES**

22 10. Plaintiff Environmental Research Center, Inc. ("ERC") is a non-profit corporation  
23 organized under California's Non-Profit Benefit Corporation Law. ERC is dedicated to, among  
24 other causes, reducing the use and misuse of hazardous and toxic substances, consumer  
25 protection, worker safety and corporate responsibility.

26 11. ERC is a person within the meaning of H&S Code §25118 and brings this  
27 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

28 12. Plaintiff alleges on information and belief that Defendant ASPEN GROUP, INC.

1 is a Wisconsin Corporation.

2 13. Defendant ASPEN GROUP, INC. is a person within the meaning of H&S Code  
3 §25249.11(a).

4 14. Each defendant has manufactured, packaged, distributed, marketed, sold and/or  
5 have otherwise been involved in the chain of commerce, and continues to manufacture, package,  
6 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of  
7 THE PRODUCTS for sale or use in California. Plaintiff alleges on information and belief that  
8 Defendants employ ten or more persons, and are thus each a “person in the course of doing  
9 business” within the meaning of Proposition 65.

10 15. Defendants DOES 1-50 are named herein under fictitious names, as their true  
11 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon  
12 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or  
13 has otherwise been involved in the chain of commerce of, and continues to manufacture,  
14 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of  
15 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some  
16 actionable manner, for the events and happenings referred to herein, either through its conduct or  
17 through the conduct of its agents, servants or employees, or in some other manner, causing the  
18 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true  
19 names and capacities of DOES when ascertained.

20 16. Plaintiffs are informed and believe and thereon allege that each of the defendants  
21 is in some manner responsible for the events set forth in this Complaint and proximately caused  
22 the injuries and damages as alleged in this Complaint.

23 17. Plaintiff is informed and believes and thereon alleges that at all material times,  
24 defendants, and each of them, were the agents, servants, and employees of the other defendants,  
25 and each of them in such a way as to cause each defendant to be jointly and severally liable and  
26 responsible for the conduct of one another. The conduct of each defendant was within the course  
27 and scope of the authority granted each defendant by the other defendants. Each defendant  
28 ratified and approved of the acts or omissions of each other such as to cause each to be jointly

1 and severally liable for the conduct of each other defendant.

2 **STATUTORY BACKGROUND**

3 18. The People of the State of California have declared in Proposition 65 their right  
4 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other  
5 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

6 19. To effect this goal, Proposition 65 requires that individuals be provided with a  
7 “clear and reasonable warning” before being exposed to substances listed by the State of  
8 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent  
9 part:

10 “No person in the course of doing business shall knowingly and  
11 intentionally expose any individual to a chemical known to the state to  
12 cause cancer or reproductive toxicity without first giving clear and  
13 reasonable warning to such individual....

14 20. Proposition 65 provides that any person who “violates or threatens to violate” the  
15 statute “may be enjoined in any court of competent jurisdiction.” (H&S Code §25249.7(a).)  
16 “Threaten to violate” is defined to mean creating “a condition in which there is a substantial  
17 probability that a violation will occur.” (H&S Code §25249.11(e).) Violators are liable for civil  
18 penalties of up to \$2,500 per day for each violation of Proposition 65. (H&S Code §25249.7(b).)

19 **FACTUAL BACKGROUND**

20 21. On February 27, 1987, the State of California officially listed the chemical lead as  
21 a chemical known to cause developmental and reproductive toxicity. Lead became subject to the  
22 warning requirement one year later and was therefore subject to the “clear and reasonable”  
23 warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of  
24 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

25 22. On October 1, 1992, the State of California officially listed the chemical lead as a  
26 chemical known to cause cancer. Lead became subject to the warning requirement one year later  
27 and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65  
28 beginning on October 1, 1993. (27 CCR §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

1           23. Plaintiff is informed and believes, and based on such information and belief,  
2 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in  
3 California without the requisite clear and reasonable warnings. THE PRODUCTS continue to be  
4 marketed, distributed and sold in California without the requisite warning information.

5           24. As a proximate result of acts by Defendants, as a person in the course of doing  
6 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of  
7 California, including in the County of Orange, have been exposed to lead without clear and  
8 reasonable warnings. The individuals subject to exposures to lead include normal and  
9 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE  
10 PRODUCTS.

11           25. At all times relevant to this action, Defendants have knowingly and intentionally  
12 exposed the users and/or handlers of THE PRODUCTS to lead without first giving clear and  
13 reasonable warnings to such individuals.

14           26. Individuals using or handling THE PRODUCTS are exposed to lead in excess of  
15 the “maximum allowable daily” and “no significant risk” levels determined by the State of  
16 California, as applicable.

17           27. At all times relevant to this action, Defendants have, in the course of doing  
18 business, failed to provide individuals using and/or handling THE PRODUCTS with clear and  
19 reasonable warnings that THE PRODUCTS expose individuals to lead.

20           28. THE PRODUCTS continue to be marketed, distributed, and/or sold in California  
21 without the requisite clear and reasonable warnings.

22   **FIRST CAUSE OF ACTION**

23           **(Injunctive Relief for Violations of Health and Safety Code §25249.5, *et seq.*)**

24           29. Plaintiff hereby incorporates by reference each and every preceding allegation and  
25 paragraph as though fully set forth in this cause of action.

26           30. On October 21, 2011, Plaintiff sent a 60-Day Notice of Proposition 65 violations  
27 to the requisite public enforcement agencies and to Defendant ASPEN GROUP, INC. (“Notice  
28 of Violations”). THE PRODUCTS were identified in the Notice of Violations as containing lead

1 exceeding allowable levels. The Notice of Violations was issued pursuant to, and in compliance  
2 with, the requirements of H&S Code §25249.7(d) and the statute’s implementing regulations  
3 regarding the notices of violations to be given to certain public enforcement agencies and to the  
4 violator. The Notice of Violations was issued as follows:

- 5 a. Defendant ASPEN GROUP, INC. and the California Attorney General were  
6 provided copies by Priority Mail of the Notices of Violations, along with a  
7 Certificate of Merit by the attorney for the noticing party stating that there is a  
8 reasonable and meritorious cause for this action. The requisite county district  
9 attorneys and city attorneys were provided copies by Priority Mail of the Notices  
10 of Violations and Certificate of Merit.
- 11 b. Defendant ASPEN GROUP, INC. was provided, with the Notice of Violations, a  
12 copy of a document entitled “The Safe Drinking Water and Toxic Enforcement  
13 Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A  
14 to Title 27 of CCR § 25903.
- 15 c. The California Attorney General was provided, with the Notice of Violations,  
16 additional factual information sufficient to establish a basis for the Certificate of  
17 Merit, including the identity of the persons consulted with and relied on by the  
18 certifier, and the facts, studies, or other data reviewed by those persons, pursuant  
19 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

20 31. The appropriate public enforcement agencies have failed to commence and  
21 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants  
22 based on the allegations herein.

23 32. By committing the acts alleged in this Complaint, Defendants at all times relevant  
24 to this action, and continuing through the present, have violated and continue to violate H&S  
25 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing  
26 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding  
27 allowable exposure levels without Defendants first giving clear and reasonable warnings to such  
28 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,

1 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of  
2 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise  
3 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,  
4 and will be used and/or handled by individuals in California, without Defendants providing clear  
5 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,  
6 birth defects and other reproductive harm posed by exposure to lead through the use and/or  
7 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code  
8 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided  
9 for use and/or handling to individuals in California.

10 33. By the above-described acts, Defendants have violated H&S Code §25249.6 and  
11 is therefore subject to an injunction ordering Defendant to stop violating Proposition 65, and to  
12 provide required warnings to consumers and other individuals who will purchase, use and/or  
13 handle THE PRODUCTS.

14 34. An action for injunctive relief under Proposition 65 is specifically authorized by  
15 Health & Safety Code §25249.7(a).

16 35. Continuing commission by Defendants of the acts alleged above will irreparably  
17 harm the citizens of the State of California, for which harm they have no plain, speedy, or  
18 adequate remedy at law.

19 36. Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

20 **SECOND CAUSE OF ACTION**

21 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq.)**

22 37. Plaintiff hereby incorporates by reference each and every preceding allegation and  
23 paragraph as though fully set forth in this cause of action.

24 38. On October 21, 2011, Plaintiff sent a 60-Day Notice of Proposition 65 violations  
25 to the requisite public enforcement agencies and to Defendant ASPEN GROUP, INC. (“Notice  
26 of Violations”). THE PRODUCTS were identified in the Notice of Violations as containing lead  
27 exceeding allowable levels. The Notice of Violations was issued pursuant to, and in compliance  
28 with, the requirements of H&S Code §25249.7(d) and the statute’s implementing regulations



1 regarding the notices of violations to be given to certain public enforcement agencies and to the  
2 violator. The Notice of Violations was issued as follows:

- 3 a. Defendant ASPEN GROUP, INC. and the California Attorney General were  
4 provided copies by Priority Mail of the Notices of Violations, along with a  
5 Certificate of Merit by the attorney for the noticing party stating that there is a  
6 reasonable and meritorious cause for this action. The requisite county district  
7 attorneys and city attorneys were provided copies by Priority Mail of the Notices  
8 of Violations and Certificate of Merit.
- 9 b. Defendant ASPEN GROUP, INC. was provided, with the Notice of Violations, a  
10 copy of a document entitled “The Safe Drinking Water and Toxic Enforcement  
11 Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A  
12 to Title 27 of CCR § 25903.
- 13 c. The California Attorney General was provided, with the Notice of Violations,  
14 additional factual information sufficient to establish a basis for the Certificate of  
15 Merit, including the identity of the persons consulted with and relied on by the  
16 certifier, and the facts, studies, or other data reviewed by those persons, pursuant  
17 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

18 39. The appropriate public enforcement agencies have failed to commence and  
19 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants  
20 based on the allegations herein.

21 40. By committing the acts alleged in this Complaint, Defendants at all times relevant  
22 to this action, and continuing through the present, have violated and continue to violate H&S  
23 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing  
24 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding  
25 allowable exposure levels without Defendants first giving clear and reasonable warnings to such  
26 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,  
27 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of  
28 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise

1 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,  
2 and will be used and/or handled by individuals in California, without Defendants providing clear  
3 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,  
4 birth defects and other reproductive harm posed by exposure to lead through the use and/or  
5 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code  
6 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided  
7 for use and/or handling to individuals in California.

8 41. By the above-described acts, Defendants are liable, pursuant to H&S Code  
9 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6  
10 relating to THE PRODUCTS.

11 42. Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

12 **THE NEED FOR INJUNCTIVE RELIEF**

13 43. Plaintiff hereby incorporates by reference each and every preceding allegation and  
14 paragraph as though fully set forth in this cause of action.

15 44. By committing the acts alleged in this Complaint, Defendants have caused  
16 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence of  
17 equitable relief, Defendant will continue to create a substantial risk of irreparable injury by  
18 continuing to cause consumers to be involuntarily and unwittingly exposed to lead through the  
19 use and/or handling of THE PRODUCTS.

20 **PRAYER FOR RELIEF**

21 Wherefore, Plaintiff prays for the following relief against Defendant ASPEN GROUP,  
22 INC.:

23 A. A preliminary and permanent injunction enjoining each Defendant, its agents,  
24 employees, assigns and all persons acting in concert or participating with each Defendant, from  
25 manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or  
26 use in California without first providing clear and reasonable warnings, within the meaning of  
27 Proposition 65, that the users and/or handlers of THE PRODUCTS are exposed to the lead;

28 B. An assessment of civil penalties against Defendant, pursuant to Health & Safety

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Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;

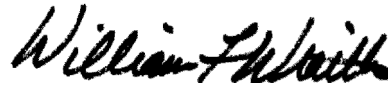
C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code of Civil Procedure §1021.5 or the substantial benefit theory;

D. An award of costs of suit herein; and

E. Such other and further relief as may be just and proper.

Dated: October 19, 2012

WRAITH LAW



By: \_\_\_\_\_

WILLIAM F. WRAITH  
Attorney for Plaintiff Environmental  
Research Center