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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**06/13/2012 at 10:28:40 AM**  
Clerk of the Superior Court  
By Sonya Wilson, Deputy Clerk

5 Attorneys for Plaintiff  
Environmental Research Center  
6

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8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER  
10

11  
12 ENVIRONMENTAL RESEARCH ) **Case No.:** 30-2012-00578544-CU-MC-CJC  
CENTER, a California non-profit )  
13 corporation, )  
14 Plaintiffs, ) **Judge Franz E. Miller**  
15 vs. ) **COMPLAINT FOR INJUNCTIVE**  
16 FOREVERGREEN WORLDWIDE ) **RELIEF AND CIVIL PENALTIES**  
CORPORATION, FOREVERGREEN )  
17 INTERNATIONAL, LLC, ) **[Health & Safety Code § 25249.5, et seq.]**  
18 FOREVERGREEN IP, LLC and DOES 1- ) **[UNLIMITED CIVIL CASE - AMOUNT**  
25, Inclusive, ) **DEMANDED EXCEEDS \$25,000]**  
19 Defendants.  
20

21  
22 Plaintiff Environmental Research Center, Inc. brings this action in the interests of the  
23 general public and, on information and belief, hereby alleges:

24 **INTRODUCTION**

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

28 2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have

1 otherwise been involved in the chain of commerce of, and continue to manufacture, package,  
2 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the  
3 following ingestible products, which contain the chemical lead and which have been and  
4 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to  
5 individuals in California:

- 6 a. ForeverGreen O3 World FIXX Meal Replacement Shake
- 7 b. ForeverGreen International SmartFood Thunder 24 Karat Chocolate Meal  
8 Replacement Shake
- 9 c. ForeverGreen International LLC LegaSea Azul 40
- 10 d. Forevergreen International Smartfood Pulse-8

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

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

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

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

1 purchased the PRODUCTS, and to provide to each such purchaser a clear and reasonable  
2 warning that the use of the PRODUCTS will cause exposures to Lead.

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

6 **JURISDICTION AND VENUE**

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

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

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

22 **PARTIES**

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

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

1           12. Defendant FOREVERGREEN WORLDWIDE CORPORATION is a business of  
2 unknown form that is a person within the meaning of H&S Code §25249.11(a).

3           13. Plaintiff alleges on information and belief that Defendant FOREVERGREEN  
4 INTERNATIONAL, LLC is a Utah Limited Liability Company that is a person within the  
5 meaning of H&S Code §25249.11(a).

6           14. Plaintiff alleges on information and belief that Defendant FOREVERGREEN IP,  
7 LLC is a Utah Limited Liability Company that is a person within the meaning of H&S Code  
8 §25249.11(a).

9           15. Each defendant has manufactured, packaged, distributed, marketed, sold and/or  
10 have otherwise been involved in the chain of commerce, and continues to manufacture, package,  
11 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of  
12 THE PRODUCTS for sale or use in California. Defendants employ ten or more persons, and are  
13 thus each a “person in the course of doing business” within the meaning of Proposition 65.

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

24           17. Plaintiffs are informed and believe and thereon allege that each of the defendants  
25 is in some manner responsible for the events set forth in this Complaint and proximately caused  
26 the injuries and damages to Plaintiffs as alleged in this Complaint.

27           18. Plaintiff is informed and believes and thereon alleges that at all material times,  
28 defendants, and each of them, were the agents, servants, and employees of the other defendants,

1 and each of them in such a way as to cause each defendant to be jointly and severally liable and  
2 responsible for the conduct of one another. The conduct of each defendant was within the course  
3 and scope of the authority granted each defendant by the other defendants. Each defendant  
4 ratified and approved of the acts or omissions of each other such as to cause each to be jointly  
5 and severally liable for the conduct of each other defendant.

6 **STATUTORY BACKGROUND**

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

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

14 No person in the course of doing business shall knowingly and  
15 intentionally expose any individual to a chemical known to the state to  
16 cause cancer or reproductive toxicity without first giving clear and  
17 reasonable warning to such individual....

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

23 **FACTUAL BACKGROUND**

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

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

5           24.     Plaintiff is informed and believes, and based on such information and belief,  
6 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in  
7 California without the requisite clear and reasonable warnings before, on, and after September  
8 13, 2009. THE PRODUCTS continue to be marketed, distributed and sold in California without  
9 the requisite warning information.

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

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

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

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

25          29.     THE PRODUCTS continue to be marketed, distributed, and/or sold in California  
26 without the requisite clear and reasonable warnings.

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28 ///

**FIRST CAUSE OF ACTION**

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

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

31. On December 19, 2011, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies and to Defendants FOREVERGREEN WORLDWIDE CORPORATION, FOREVERGREEN INTERNATIONAL, LLC, and FOREVERGREEN IP, LLC (“Notice of Violations”). THE PRODUCTS were identified in the Notice of Violations as containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute’s implementing regulations regarding the notices of violations to be given to certain public enforcement agencies and to the violator. The Notice of Violations was issued as follows:

- a. Defendants FOREVERGREEN WORLDWIDE CORPORATION, FOREVERGREEN INTERNATIONAL, LLC, and FOREVERGREEN IP, LLC and the California Attorney General were provided copies by Priority Mail of the Notices of Violations, along with a Certificate of Merit by the attorney for the noticing party stating that there is a reasonable and meritorious cause for this action. The requisite county district attorneys and city attorneys were provided copies by Priority Mail of the Notices of Violations and Certificate of Merit.
- b. Defendants FOREVERGREEN WORLDWIDE CORPORATION, FOREVERGREEN INTERNATIONAL, LLC, and FOREVERGREEN IP, LLC were provided, with the Notice of Violations, a copy of a document entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A to Title 27 of CCR § 25903.
- c. The California Attorney General was provided, with the Notice of Violations, additional factual information sufficient to establish a basis for the Certificate of Merit, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, pursuant

1 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

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

5 33. By committing the acts alleged in this Complaint, Defendants at all times relevant  
6 to this action, and continuing through the present, have violated and continue to violate H&S  
7 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing  
8 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding  
9 allowable exposure levels without Defendants first giving clear and reasonable warnings to such  
10 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,  
11 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of  
12 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise  
13 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,  
14 and will be used and/or handled by individuals in California, without Defendants providing clear  
15 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,  
16 birth defects and other reproductive harm posed by exposure to lead through the use and/or  
17 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code  
18 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided  
19 for use and/or handling to individuals in California.

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

24 35. An action for injunctive relief under Proposition 65 is specifically authorized by  
25 Health & Safety Code §25249.7(a).

26 36. Continuing commission by Defendants of the acts alleged above will irreparably  
27 harm the citizens of the State of California, for which harm they have no plain, speedy, or  
28 adequate remedy at law.





1 certifier, and the facts, studies, or other data reviewed by those persons, pursuant  
2 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

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

6 41. By committing the acts alleged in this Complaint, Defendants at all times relevant  
7 to this action, and continuing through the present, have violated and continue to violate H&S  
8 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing  
9 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding  
10 allowable exposure levels without Defendants first giving clear and reasonable warnings to such  
11 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,  
12 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of  
13 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise  
14 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,  
15 and will be used and/or handled by individuals in California, without Defendants providing clear  
16 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,  
17 birth defects and other reproductive harm posed by exposure to lead through the use and/or  
18 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code  
19 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided  
20 for use and/or handling to individuals in California.

21 42. By the above-described acts, Defendants are liable, pursuant to H&S Code  
22 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6  
23 relating to THE PRODUCTS.

24 43. Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

25 **THE NEED FOR INJUNCTIVE RELIEF**

26 44. Plaintiff hereby incorporates by reference each and every preceding allegation and  
27 paragraph as though fully set forth in this cause of action.

28 45. By committing the acts alleged in this Complaint, Defendants have caused

1 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence of  
2 equitable relief, Defendant will continue to create a substantial risk of irreparable injury by  
3 continuing to cause consumers to be involuntarily and unwittingly exposed to lead through the  
4 use and/or handling of THE PRODUCTS.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff prays for the following relief against Defendants FOREVERGREEN  
7 WORLDWIDE CORPORATION, FOREVERGREEN INTERNATIONAL, LLC, and  
8 FOREVERGREEN IP, LLC:

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

14 B. An injunctive order, pursuant to H&S Code §25249.7(b), compelling Defendants  
15 to identify and locate each individual who has purchased the PRODUCTS, and to provide a  
16 warning to such person that the use of the PRODUCTS will expose the user to chemicals known  
17 to cause cancer, birth defects, and other reproductive harm.

18 C. An assessment of civil penalties against Defendant, pursuant to Health & Safety  
19 Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;

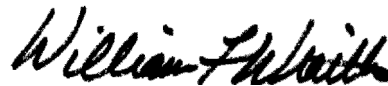
20 D. An award to Plaintiff of its reasonable attorney fees pursuant to California Code  
21 of Civil Procedure §1021.5 or the substantial benefit theory;

22 E. An award of costs of suit herein; and

23 F. Such other and further relief as may be just and proper.

24  
25 Dated: June 13, 2012

WRAITH LAW



26  
27 By: \_\_\_\_\_  
WILLIAM F. WRAITH  
28 Attorney for Plaintiff Environmental  
Research Center