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County of Orange
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Attorneys for Plaintiff
Environmental Research Center

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

| | | |
|---|---|--|
| ENVIRONMENTAL RESEARCH CENTER, a California non-profit corporation, |) | Case No.: 30-2012-00806434-CU-MC-CJC |
| Plaintiffs, |) | |
| vs. |) | COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES |
| ECONET, INC., UNIVERA, INC., and DOES 1-50, Inclusive, |) | [Health & Safety Code § 25249.5, et seq.] |
| Defendants. |) | [UNLIMITED CIVIL CASE - AMOUNT DEMANDED EXCEEDS \$25,000)] |
| |) | Judge David T. McEachen |
| |) | C-21 |

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

1 following ingestible products, which contain the chemical lead and which have been and
2 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to
3 individuals in California:

- 4 a. Solanyx Night
- 5 b. Solanyx Day
- 6 c. Univera Inc. Bone & Joint
- 7 d. Univera Inc. Super Immune
- 8 e. Univera Inc. MetaGreens (Capsule)
- 9 f. Univera Inc. Florasterol
- 10 g. Univera Inc. MetaGreens (Powder)
- 11 h. Univera Inc. RegeniCARE Ultimate Joint Care Formula Lemon Flavored

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

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

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

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

1 Code §25249.11(a).

2 13. Plaintiff alleges on information and belief that Defendant UNIVERA, INC. is a
3 Washington Corporation. Defendant UNIVERA, INC. is a person within the meaning of H&S
4 Code §25249.11(a).

5 14. Each defendant has manufactured, packaged, distributed, marketed, sold and/or
6 have otherwise been involved in the chain of commerce, and continues to manufacture, package,
7 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of
8 THE PRODUCTS for sale or use in California. Defendants employ ten or more persons, and are
9 thus each a “person in the course of doing 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 to Plaintiffs 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 INC. (“Notice of Violations”). THE PRODUCTS were identified in the Notice of Violations as
2 containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to, and
3 in compliance with, the requirements of H&S Code §25249.7(d) and the statute’s implementing
4 regulations regarding the notices of violations to be given to certain public enforcement agencies
5 and to the violator. The Notice of Violations was issued as follows:

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

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

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

1 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
2 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of
3 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise
4 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
5 and will be used and/or handled by individuals in California, without Defendants providing clear
6 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
7 birth defects and other reproductive harm posed by exposure to lead through the use and/or
8 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
9 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
10 for use and/or handling to individuals in California.

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

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

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

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

21 **SECOND CAUSE OF ACTION**

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

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

25 38. On January 6, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations to
26 the requisite public enforcement agencies and to Defendants ECONET, INC. and UNIVERA,
27 INC. (“Notice of Violations”). THE PRODUCTS were identified in the Notice of Violations as
28 containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to, and

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

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

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

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

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

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

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

13 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

21 **PRAYER FOR RELIEF**

22 Wherefore, Plaintiff prays for the following relief against Defendants ECONET, INC and
23 UNIVERA, INC.:

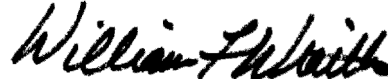
24 A. A preliminary and permanent injunction enjoining each Defendant, its agents,
25 employees, assigns and all persons acting in concert or participating with each Defendant, from
26 manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or
27 use in California without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

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