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5 Attorneys for Plaintiff
6 Environmental Research Center

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

12 ENVIRONMENTAL RESEARCH)	Case No.: 30-2013-00667616-CU-MC-CJC
13 CENTER, a California non-profit)	
14 corporation,)	
15)	
16 Plaintiff,)	COMPLAINT FOR INJUNCTIVE
17)	RELIEF AND CIVIL PENALTIES
18 vs.)	[Health & Safety Code § 25249.5, <i>et seq.</i>]
19)	
20 GENESIS TODAY, INC., and DOES 1-)	[UNLIMITED CIVIL CASE - AMOUNT
21 25, Inclusive,)	DEMANDED EXCEEDS \$25,000)]
22)	
23 Defendants.)	Judge Franz E. Miller

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

22 **INTRODUCTION**

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

26 2. Defendant has manufactured, packaged, distributed, marketed, sold and/or have
27 otherwise been involved in the chain of commerce of, and continues to manufacture, package,
28 distribute, market, sell and/or otherwise continues 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. Genesis Today Inc. GenEssentials Greens
- 5 b. Genesis Today Inc. GenEssentials Fiber
- 6 c. Genesis Today Inc. Sea Buckthorn
- 7 d. Genesis Today Inc. 4Heart
- 8 e. Genesis Today Inc. 4Energy
- 9 f. Genesis Today Inc. 4Blood Sugar
- 10 g. Genesis Today Inc. 4Weight Control
- 11 h. Genesis Today Inc. 4Total Cleanse Part 1 Whole Body Cleanser
- 12 i. Genesis Today Inc. 4Total Cleanse Part 2 Intestinal Cleanser

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”). Defendant has 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 Defendant 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 Defendant 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 is a Corporation that is a person within the meaning of H&S Code §25249.11(a).

2 13. Defendant manufactured, packaged, distributed, marketed, sold and/or has
3 otherwise been involved in the chain of commerce, and continues to manufacture, package,
4 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of
5 THE PRODUCTS for sale or use in California. Defendant employs ten or more persons, and is
6 thus a “person in the course of doing business” within the meaning of Proposition 65.

7 14. Defendants DOES 1-25 are named herein under fictitious names, as their true
8 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
9 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or
10 has otherwise been involved in the chain of commerce of, and continues to manufacture,
11 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of
12 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some
13 actionable manner, for the events and happenings referred to herein, either through its conduct or
14 through the conduct of its agents, servants or employees, or in some other manner, causing the
15 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true
16 names and capacities of DOES when ascertained.

17 15. Plaintiff is informed and believes and thereon alleges that each of the defendants
18 is in some manner responsible for the events set forth in this Complaint and proximately caused
19 the injuries and damages to Plaintiffs as alleged in this Complaint.

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

27 **STATUTORY BACKGROUND**

28 17. The People of the State of California have declared in Proposition 65 their right

1 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
2 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

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

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

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

16 **FACTUAL BACKGROUND**

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

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

26 22. Plaintiff is informed and believes, and based on such information and belief,
27 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in
28 California without the requisite clear and reasonable warnings before, on, and after January 6,

1 2009. THE PRODUCTS continue to be marketed, distributed and sold in California without the
2 requisite warning information.

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

9 24. At all times relevant to this action, Defendant has knowingly and intentionally
10 exposed the users and/or handlers of THE PRODUCTS to lead without first giving clear and
11 reasonable warnings to such individuals.

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

15 26. At all times relevant to this action, Defendant has, in the course of doing business,
16 failed to provide individuals using and/or handling THE PRODUCTS with clear and reasonable
17 warnings that THE PRODUCTS expose individuals to lead.

18 27. Upon information and belief, Plaintiff alleges THE PRODUCTS continue to be
19 marketed, distributed, and/or sold in California without the requisite clear and reasonable
20 warnings.

21 **FIRST CAUSE OF ACTION**

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

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

25 29. On January 6, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations to
26 the requisite public enforcement agencies and to defendant GENESIS TODAY, INC. (“Notice of
27 Violations”). The Notice of Violations was issued pursuant to, and in compliance with, the
28 requirements of H&S Code §25249.7(d) and the statute’s implementing regulations regarding the

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

- 3 a. Defendant GENESIS TODAY, INC. and the California Attorney General were
4 provided copies by Priority Mail of the Notice 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 GENESIS TODAY, INC. was provided, with the Notice of Violations,
10 a 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 30. 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 Defendant
20 based on the allegations herein.

21 31. By committing the acts alleged in this Complaint, Defendant at all times relevant
22 to this action, and continuing through the present, has violated and continues 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 Defendant first giving clear and reasonable warnings to such
26 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendant has manufactured,
27 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of
28 commerce of, and continues to manufacture, package, distribute, market, sell and/or otherwise

1 provided copies by Priority Mail of the Notice of Violations, along with a
2 Certificate of Merit by the attorney for the noticing party stating that there is a
3 reasonable and meritorious cause for this action. The requisite county district
4 attorneys and city attorneys were provided copies by Priority Mail of the Notices
5 of Violations and Certificate of Merit.

6 b. Defendant GENESIS TODAY, INC. was provided, with the Notice of Violations,
7 a copy of a document entitled “The Safe Drinking Water and Toxic Enforcement
8 Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A
9 to Title 27 of CCR § 25903.

10 c. The California Attorney General was provided, with the Notice of Violations,
11 additional factual information sufficient to establish a basis for the Certificate of
12 Merit, including the identity of the persons consulted with and relied on by the
13 certifier, and the facts, studies, or other data reviewed by those persons, pursuant
14 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

15 38. The appropriate public enforcement agencies have failed to commence and
16 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendant
17 based on the allegations herein.

18 39. By committing the acts alleged in this Complaint, Defendant at all times relevant
19 to this action, and continuing through the present, has violated and continues to violate H&S
20 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
21 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
22 allowable exposure levels without Defendant first giving clear and reasonable warnings to such
23 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendant has manufactured,
24 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of
25 commerce of, and continues to manufacture, package, distribute, market, sell and/or otherwise
26 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
27 and will be used and/or handled by individuals in California, without Defendant providing clear
28 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,

1 birth defects and other reproductive harm posed by exposure to lead through the use and/or
2 handling of THE PRODUCTS. Furthermore, Defendant have threatened to violate H&S Code
3 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
4 for use and/or handling to individuals in California.

5 40. By the above-described acts, Defendant is liable, pursuant to H&S Code
6 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
7 relating to THE PRODUCTS.

8 41. Wherefore, Plaintiff prays judgment against Defendant, as set forth hereafter.

9 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiff prays for the following relief against Defendant GENESIS TODAY,
19 INC.:

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

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

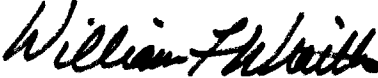
27 C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code
28 of Civil Procedure §1021.5 or the substantial benefit theory;

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- D. An award of costs of suit herein; and
- E. Such other and further relief as may be just and proper.

Dated: August 7, 2013

WRAITH LAW



By: _____
WILLIAM F. WRAITH
Attorney for Plaintiff Environmental
Research Center

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