

1 WILLIAM F. WRAITH, SBN 185927  
2 WRAITH LAW  
3 16485 Laguna Canyon Rd., Suite 250  
4 Irvine, California 92618  
5 Tel: (949) 251-9977  
6 Fax: (949) 251-9978

7  
8 Attorney for Plaintiff  
9 Environmental Research Center

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**07/01/2013** at 08:13:23 AM  
Clerk of the Superior Court  
By Emma Castle, Deputy Clerk

10  
11  
12 SUPERIOR COURT OF CALIFORNIA  
13 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

14 ENVIRONMENTAL RESEARCH  
15 CENTER, a California non-profit  
16 corporation,

17 Plaintiff,

18 vs.

19 MOUNTAIN ROSE, INC. dba  
20 MOUNTAIN ROSE HERBS and DOES 1-  
21 50, Inclusive,

22 Defendants,

Case No.: 30-2013-00660148-CU-MC-CJC

Judge Gregory H. Lewis

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

**[Health & Safety Code § 25249.5, et seq.]**

**[UNLIMITED CIVIL CASE - AMOUNT  
DEMANDED EXCEEDS \$25,000]**

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

25 **INTRODUCTION**

26 1. This action seeks to remedy Defendants' continuing failure to warn consumers in  
27 California that they are being exposed to lead, a substance known to the State of California to  
28 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. Mountain Rose Herbs Shatavari Root
- 5 b. Mountain Rose Herbs Schisandra Berry
- 6 c. Mountain Rose Herbs Fo-Ti Root
- 7 d. Mountain Rose Herbs Valerian Root
- 8 e. Mountain Rose Herbs Gotu Kola Leaf
- 9 f. Mountain Rose Herbs Cramp Bark
- 10 g. Mountain Rose Herbs Triphala
- 11 h. Mountain Rose Herbs Dong Quai Root
- 12 i. Mountain Rose Herbs Epimedium Leaf
- 13 j. Mountain Rose Herbs Meno Care
- 14 k. Mountain Rose Herbs Liver Care
- 15 l. Mountain Rose Herbs Memory Care
- 16 m. Mountain Rose Herbs Fo-Ti Root Powder
- 17 n. Mountain Rose Herbs Cleanse Care

18 These listed products are hereinafter referred to together as the “Covered Products”.

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

24 4. The continued manufacturing, packaging, distributing, marketing and/or sales of  
25 the Covered Products without the required health hazard warnings, causes individuals to be  
26 involuntarily and unwittingly exposed to levels of lead that violate Proposition 65.

27 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued  
28 manufacturing, packaging, distributing, marketing and/or selling of the Covered Products for sale

1 or use in California without first providing clear and reasonable warnings, within the meaning of  
2 Proposition 65, regarding the risks of cancer, birth defects and other reproductive harm posed by  
3 exposure to lead through the use and/or handling of the Covered Products. Plaintiff seeks an  
4 injunctive order compelling Defendants to bring each of its business practices into compliance  
5 with Proposition 65 by providing clear and reasonable warnings to each individual who may be  
6 exposed to lead from the use and/or handling of the Covered Products.

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

### 10 JURISDICTION AND VENUE

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

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

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

### 26 PARTIES

27 10. Plaintiff Environmental Research Center, Inc. ("ERC") is a non-profit corporation  
28 organized under California's Non-Profit Benefit Corporation Law. ERC is dedicated to, among

1 other causes, reducing the use and misuse of hazardous and toxic substances, consumer  
2 protection, worker safety and corporate responsibility.

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

5 12. Plaintiff alleges on information and belief that Defendant MOUNTAIN ROSE,  
6 INC. is an Oregon Corporation doing business as MOUNTAIN ROSE HERBS (collectively  
7 referred to hereinafter as “MOUNTAIN ROSE”).

8 13. Defendant MOUNTAIN ROSE is a person within the meaning of H&S Code  
9 §25249.11(a).

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

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

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



1 warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of  
2 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

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

7 23. Plaintiff is informed and believes, and based on such information and belief,  
8 alleges the Covered Products have been marketed, distributed and/or sold to individuals in  
9 California without the requisite clear and reasonable warnings. the Covered Products continue to  
10 be marketed, distributed and sold in California without the requisite warning information.

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

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

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

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

26 28. the Covered Products continue to be marketed, distributed, and/or sold in  
27 California without the requisite clear and reasonable warnings.

28 ///

**FIRST CAUSE OF ACTION**

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

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

30. On March 8, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies and to Defendant MOUNTAIN ROSE (“Notice of Violations”). The Covered 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. Defendant MOUNTAIN ROSE 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. Defendant MOUNTAIN ROSE was 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 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

31. The appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants

1 based on the allegations herein.

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

17           33. By the above-described acts, Defendants have violated H&S Code §25249.6 and  
18 are therefore subject to an injunction ordering Defendant to stop violating Proposition 65, and to  
19 provide required warnings to consumers and other individuals who will purchase, use and/or  
20 handle the Covered Products.

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

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

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

27 ///

28 ///



1 **SECOND CAUSE OF ACTION**

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

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

5 38. On March 8, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations to  
6 the requisite public enforcement agencies and to Defendant MOUNTAIN ROSE (“Notice of  
7 Violations”). The Covered Products were identified in the Notice of Violations as containing lead  
8 exceeding allowable levels. The Notice of Violations was issued pursuant to, and in compliance  
9 with, the requirements of H&S Code §25249.7(d) and the statute’s implementing regulations  
10 regarding the notices of violations to be given to certain public enforcement agencies and to the  
11 violator. The Notice of Violations was issued as follows:

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

27 39. The appropriate public enforcement agencies have failed to commence and  
28 diligently prosecute a cause of action under H&S Code §25249.5, et seq. against Defendants



**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for the following relief against Defendant MOUNTAIN ROSE, INC., an Oregon Corporation, doing business as MOUNTAIN ROSE HERBS:

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

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;

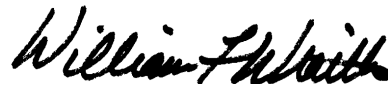
C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code of Civil Procedure §1021.5 or the substantial benefit theory;

D. An award of costs of suit herein; and

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

Dated: July 1, 2013

WRAITH LAW



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