

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 Attorneys for Plaintiff
8 Environmental Research Center

ELECTRONICALLY FILED
Superior Court of California,
County of Orange
02/22/2013 at 08:02:30 AM
Clerk of the Superior Court
By Giovanni Galon, Deputy Clerk

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ENVIRONMENTAL RESEARCH
CENTER, a California non-profit
corporation,

Plaintiffs,

vs.

ARBONNE INTERNATIONAL, LLC.
and DOES 1-25, Inclusive,

Defendants,

Case No.:

30-2013-00632540-CU-NP-CJC

Judge Andrew P. Banks

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

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

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' past and 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. Arbonne International LLC Arbonne Essentials Herbal Colon Cleanse
- 4 b. Arbonne International LLC Arbonne Essentials Metabolism Boost
- 5 c. Arbonne International LLC Arbonne Essentials 7-Day Body Cleanse

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

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

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

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

23 6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to
24 remedy Defendants’ failure to provide clear and reasonable warnings regarding exposures to the
25 lead.

26 ///

27 ///

28 ///

1 **JURISDICTION AND VENUE**

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

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

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

17 **PARTIES**

18 10. Plaintiff Environmental Research Center, Inc. (“ERC”) is a non-profit corporation
19 organized under California’s Non-Profit Benefit Corporation Law. ERC is dedicated to, among
20 other causes, reducing the use and misuse of hazardous and toxic substances, consumer
21 protection, worker safety, and corporate responsibility.

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

24 12. Plaintiff alleges on information and belief that Defendant ARBONNE
25 INTERNATIONAL, LLC is a California Corporation.

26 13. Defendant ARBONNE INTERNATIONAL, LLC is a person within the meaning
27 of H&S Code §25249.11(a).

28 14. Each defendant has manufactured, packaged, distributed, marketed, sold and/or

1 have otherwise been involved in the chain of commerce, and continues to manufacture, package,
2 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of
3 THE PRODUCTS for sale or use in California. Plaintiff alleges on information and belief that
4 Defendants employ ten or more persons, and are thus each a “person in the course of doing
5 business” within the meaning of Proposition 65.

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

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

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

26 **STATUTORY BACKGROUND**

27 18. The People of the State of California have declared in Proposition 65 their right
28 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other

1 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

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

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

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

15 **FACTUAL BACKGROUND**

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

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

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

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

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

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

1 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
2 birth defects and other reproductive harm posed by exposure to lead through the use and/or
3 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
4 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
5 for use and/or handling to individuals in California.

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

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

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

15 36. Wherefore, Plaintiff prays judgment against Defendants, as set forth hereafter.

16 **SECOND CAUSE OF ACTION**

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

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

20 38. On May 9, 2012, Plaintiff sent 60-Day Notices of Proposition 65 violations to the
21 requisite public enforcement agencies and to Defendant ARBONNE INTERNATIONAL, LLC
22 (“Notices of Violations”). THE PRODUCTS were identified in the Notices of Violations as
23 containing lead exceeding allowable levels. The Notices of Violations were issued pursuant to,
24 and in compliance with, the requirements of H&S Code §25249.7(d) and the statute’s
25 implementing regulations regarding the notices of violations to be given to certain public
26 enforcement agencies and to the violator. The Notices of Violations were issued as follows:

27 a. Defendant ARBONNE INTERNATIONAL, LLC and the California Attorney
28 General were provided copies by Priority Mail of the Notices of Violations, along

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

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

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

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

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

1 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
2 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
3 for use and/or handling to individuals in California.

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

7 42. Wherefore, Plaintiff prays judgment against Defendants, as set forth hereafter.

8 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiff prays for the following relief against Defendant ARBONNE
18 INTERNATIONAL, LLC:

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

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

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

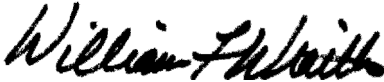
28 D. An award of costs of suit herein; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

Dated: February 22, 2013

WRAITH LAW



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