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ENDORSED
FILED
Superior Court of California
County of San Francisco

OCT 11 2013

CLERK OF THE COURT
BY: MARY ANN MORAN
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 ENVIRONMENTAL RESEARCH
12 CENTER, INC.,

13 Plaintiff,

14 v.

15 NATURE'S ANSWER, INC.; and DOES
16 1-50, inclusive,

17 Defendants.

Case No. **CGC 13-534854**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

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

20 **INTRODUCTION**

21 1. This action seeks to remedy Defendants' continuing failure to warn consumers in
22 California that they are being exposed to lead, a substance known to the State of California¹ to
23 cause cancer, birth defects and other reproductive harm.

24 2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have
25 otherwise been involved in the chain of commerce of, and continue to manufacture, package,
26 distribute, market, sell, and/or otherwise continue to be involved in the chain of commerce of the
27 ingestible products identified in Exhibit A attached hereto (hereinafter referred to as "THE
28 PRODUCTS"), which contain the chemical lead and which have been and continue to be offered
for sale, sold and/or otherwise provided for use and/or handling to individuals in California.

¹ All statutory and regulatory references herein are to California law, unless otherwise specified.

1 requisite warning information.

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

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

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

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

17 24. THE PRODUCTS continue to be marketed, distributed, and/or sold in California
18 without the requisite clear and reasonable warnings.

19 FIRST CAUSE OF ACTION

20 (Injunctive Relief for Violations of Health and Safety Code §25249.5, *et seq.* concerning
21 THE PRODUCTS, which are identified in Plaintiff's May 9, 2012 60-Day Notice of
22 Violations)

23 25. Plaintiff realleges and incorporates by reference Paragraphs 1 through 24,
24 inclusive, as if specifically set forth herein.

25 26. On May 9, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the
26 requisite public enforcement agencies and to Defendant NATURE'S ANSWER, INC. ("Notice
27 of Violations"). THE PRODUCTS were identified in the Notice of Violations as containing lead
28 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 notice of violations to be given to certain public enforcement agencies and to the
violate. The Notice of Violations was issued as follows:

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

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

20 28. By committing the acts alleged in this Complaint, Defendants at all times relevant
21 to this action, and continuing through the present, have violated and continue to violate H&S
22 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
23 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
24 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
25 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
26 packaged, distributed, marketed, sold and/or have otherwise been involved in the chain of
27 commerce of, and continue to manufacture, package, distribute, market, sell, and/or otherwise
28 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
and will be used and/or handled by individuals in California, without Defendants providing clear
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, Defendants 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 29. By the above-described acts, Defendants have violated H&S Code §25249.6 and
6 are therefore subject to an injunction ordering Defendants to stop violating Proposition 65, and to
7 provide required warnings to consumers and other individuals who will purchase, use and/or
8 handle THE PRODUCTS.

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

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

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

15 **SECOND CAUSE OF ACTION**

16 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq. concerning THE
17 PRODUCTS, which are identified in Plaintiff's May 9, 2012 60-Day Notice of Violations)**

18 32. Plaintiff realleges and incorporates by reference Paragraphs 1 through 31,
19 inclusive, as if specifically set forth herein.

20 33. On May 9, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the
21 requisite public enforcement agencies and to Defendant NATURE'S ANSWER, INC. ("Notice
22 of Violations"). THE PRODUCTS were identified in the Notice of Violations as containing lead
23 exceeding allowable levels. The Notice of Violations was issued pursuant to, and in compliance
24 with, the requirements of H&S Code §25249.7(d) and the statute's implementing regulations
25 regarding the notice of violations to be given to certain public enforcement agencies and to the
26 violator. The Notice of Violations was issued as follows:

- 27 a. Defendant NATURE'S ANSWER, INC. and the California Attorney
28 General were provided copies by Certified Mail of the Notice 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

1 provided copies by First Class Mail of the Notice of Violations and
2 Certificate of Merit.

3 b. Defendant NATURE'S ANSWER, INC. was provided, with the Notice of
4 Violations, a copy of a document entitled "The Safe Drinking Water and
5 Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is
6 also known as Appendix A to Title 27 of CCR §25903.

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

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

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

36. By the above-described acts, Defendants are liable, pursuant to H&S Code

1 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
2 relating to THE PRODUCTS.

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

4 **THE NEED FOR INJUNCTIVE RELIEF**

5 37. Plaintiff realleges and incorporates by this reference Paragraphs 1 through 36, as
6 if set forth below.

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

12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff prays for the following relief:

14 A. A preliminary and permanent injunction enjoining Defendants, their agents,
15 employees, assigns and all persons acting in concert or participating with Defendants, from
16 manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or
17 use in California without first providing clear and reasonable warnings, within the meaning of
18 Proposition 65, that the users and/or handlers of THE PRODUCTS are exposed to the lead.

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

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

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

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

25 Dated: October 11, 2013

LAW OFFICE OF PHILIP T. EMMONS

26
27 By: 

Philip T. Emmons

Attorney for Plaintiff

Environmental Research Center, Inc.

EXHIBIT A

2
3 EXHIBIT A TO COMPLAINT

- 4 1. Nature's Answer Inc. Tru Cleanse Fiber Chia Plus
5 2. Nature's Answer Inc. Greens Today Energy Boosters
6 3. Nature's Answer Inc. Greens Today Children's Formula
7 4. Nature's Answer Inc. Greens Today Men's Formula
8 5. Nature's Answer Inc. Greens Today Women's Soy Formula French Vanilla Flavor
9 6. Nature's Answer Inc. Greens Today Powerhouse Formula
10 7. Nature's Answer Inc. Greens Today Soy Protein Formula
11 8. Nature's Answer Inc. Greens Today Vegan Formula
12 9. Nature's Answer Inc. Greens Today Original Formula
13 10. Nature's Answer Inc. Greens Today Joint Formula French Vanilla Flavor
14 11. Nature's Answer Inc. Greens Today Raw Superfood
15 12. Nature's Answer Inc. Astragalus Root
16 13. Nature's Answer Inc. Damiana Leaf
17 14. Nature's Answer Inc. Dandelion Root
18 15. Nature's Answer Inc. Spirulina
19 16. Nature's Answer Inc. Gotu Kola Herb
20 17. Nature's Answer Inc. Nettle Leaf
21 18. Nature's Answer Inc. Butcher's Broom Root
22 19. Nature's Answer Inc. Valerian Root
23 20. Nature's Answer Inc. Burdock Root
24 21. Nature's Answer Inc. Echinacea with Astragalus
25 22. Nature's Answer Inc. Bladdex
26 23. Nature's Answer Inc. Liver Support
27 24. Nature's Answer Inc. Breast Health with Maitake Bio-Beta-Glucan
28 25. Nature's Answer Inc. Detox Formula
29 26. Nature's Answer Inc. Tru Cleanse 10 Day Cleansing System 3 Remove & Eliminate
Colon Stimulant & Tonic Blend
30 27. Nature's Answer Inc. Tru Cleanse 10 Day Cleansing System 2 Capture & Filter Liver &
Organ Cleanse
31 28. Nature's Answer Inc. Tru Cleanse 10 Day Cleansing System 1 Detoxicant White
Bentonite Clay Cleanse