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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 ENVIRONMENTAL RESEARCH  
12 CENTER, a California non-profit  
13 corporation,

14 Plaintiff,

15 v.

16 ALOE VERA OF AMERICA, INC.;;  
17 FOREVER LIVING PRODUCTS  
18 INTERNATIONAL, LLC; FOREVER  
19 LIVING PRODUCTS U.S., INC.;;  
20 FOREVER LIVING.COM, L.L.C.;;  
21 FOREVER LIVING PRODUCTS, L.L.C.;;  
22 and DOES 1-50, inclusive,

23 Defendants.

Case No. CGC-13-529243

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

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

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

26 **INTRODUCTION**

27 1. This action seeks to remedy Defendants' continuing failure to warn consumers in  
28 California that they are being exposed to lead, a substance known to the State of California<sup>1</sup> to  
cause cancer, birth defects and other reproductive harm.

2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have

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

1 otherwise been involved in the chain of commerce of, and continue to manufacture, package,  
2 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the  
3 following products, which contain the chemical lead and which have been and continue to be  
4 offered for sale, sold and/or otherwise provided for use and/or handling to individuals in  
5 California:

- 6 a. Aloe Vera of America Inc. Forever Living Products Forever Lite Ultra  
7 with Aminotein Vanilla Shake Mix.
- 8 b. Aloe Vera of America Inc. Forever Living Products Forever Lean.
- 9 c. Forever Living Products Sonya 310 Caramel Aloe Mineral Makeup.
- 10 d. Forever Living Products Sonya 308 Natural Aloe Mineral Makeup.
- 11 e. Forever Living Products Sonya 309 Amber Aloe Mineral Makeup.

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 their business practices into compliance with  
27 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 INTERNATIONAL, LLC, FOREVER LIVING.COM, L.L.C. and FOREVER LIVING  
2 PRODUCTS, L.L.C. are limited liability companies, thus each being a person within the  
3 meaning of H&S Code §25249.11(a). Defendants have manufactured, packaged, distributed,  
4 marketed, sold and/or have otherwise been involved in the chain of commerce, and continue to  
5 manufacture, package, distribute, market, sell and/or otherwise continue to be involved in the  
6 chain of commerce of THE PRODUCTS for sale or use in California.

7 13. Defendants Does 1-50 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 **STATUTORY BACKGROUND**

18 14. The People of the State of California have declared in Proposition 65 their right  
19 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other  
20 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

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

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

28 16. Proposition 65 provides that any person who “violates or threatens to violate” the

1 statute “may be enjoined in any court of competent jurisdiction.” (H&S Code §25249.7(a).)  
2 “Threaten to violate” is defined to mean creating “a condition in which there is a substantial  
3 probability that a violation will occur.” (H&S Code §25249.11(e).) Violators are liable for civil  
4 penalties of up to \$2,500 per day for each violation of Proposition 65. (H&S Code §25249.7(b).)

#### 5 FACTUAL BACKGROUND

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

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

15 19. Plaintiff is informed and believes, and based on such information and belief,  
16 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in  
17 California without the requisite clear and reasonable warnings before, on, and after May 9, 2009.  
18 THE PRODUCTS continue to be marketed, distributed and sold in California without the  
19 requisite warning information.

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

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



1 that there is a reasonable and meritorious cause for this action. The  
2 requisite county district attorneys and city attorneys were provided copies  
3 by First Class Mail of the Notice of Violations and Certificate of Merit.

- 4 b. Defendants ALOE VERA OF AMERICA, INC., FOREVER LIVING  
5 PRODUCTS INTERNATIONAL, LLC, FOREVER LIVING  
6 PRODUCTS U.S., INC., FOREVER LIVING.COM, L.L.C. and  
7 FOREVER LIVING PRODUCTS, L.L.C. were provided, with the Notice  
8 of Violations, a copy of a document entitled "The Safe Drinking Water  
9 and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,"  
10 which is also known as Appendix A to Title 27 of CCR §25903.
- 11 c. The California Attorney General was provided, with the Notice of  
12 Violations, additional factual information sufficient to establish a  
13 basis for the Certificate of Merit, including the identity of the persons  
14 consulted with and relied on by the certifier, and the facts, studies, or other  
15 data reviewed by those persons, pursuant to H&S Code §§25249.7(d)(1)  
16 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,

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

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

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

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

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

17 **SECOND CAUSE OF ACTION**

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

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

22 33. On May 9, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the  
23 requisite public enforcement agencies and to Defendants ALOE VERA OF AMERICA, INC.,  
24 FOREVER LIVING PRODUCTS INTERNATIONAL, LLC, FOREVER LIVING PRODUCTS  
25 U.S., INC., FOREVER LIVING.COM, L.L.C. and FOREVER LIVING PRODUCTS, L.L.C.  
26 ("Notice of Violations"). THE PRODUCTS were identified in the Notice of Violations as  
27 containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to,  
28 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



1 enforcement agencies and to the violator. The Notice of Violations was issued as follows:

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

24 34. The appropriate public enforcement agencies have failed to commence and  
25 diligently prosecute a cause of action under H&S Code §2524935, *et seq.* against Defendants  
26 based on the allegations herein.

27 35. By committing the acts alleged in this Complaint, Defendants at all times relevant  
28 to this action, and continuing through the present, have violated and continue to violate H&S

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

14 36. By the above-described acts, Defendants are liable, pursuant to H&S Code  
15 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6  
16 relating to THE PRODUCTS.

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

18 **THE NEED FOR INJUNCTIVE RELIEF**

19 37. Plaintiff realleges and incorporates by this reference Paragraphs 1 through 36,  
20 inclusive, as if specifically set forth herein.

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

26 **PRAYER FOR RELIEF**

27 Wherefore, Plaintiff prays for the following relief:

28 A. A preliminary and permanent injunction enjoining Defendants, their agents,

1 employees, assigns and all persons acting in concert or participating with Defendants, from  
2 manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or  
3 use in California without first providing clear and reasonable warnings, within the meaning of  
4 Proposition 65, that the users and/or handlers of THE PRODUCTS are exposed to the lead.

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

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

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

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

11  
12 Dated: March 5, 2013

LAW OFFICE OF PHILIP T. EMMONS

13  
14 By: 

Philip T. Emmons

Attorney for Plaintiff

Environmental Research Center