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

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

14 Plaintiff,

15 vs.

16 NAC MARKETING COMPANY, LLC,  
17 doing business as NEW VITALITY, and  
18 DOES 1-25, Inclusive,

19 Defendants.

Case No.: 30-2013-00667839-CU-MC-CJC

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

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

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

Judge Robert J. Moss

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

23 **INTRODUCTION**

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

27 2. Defendant has manufactured, packaged, distributed, marketed, sold and/or have  
28 otherwise been involved in the chain of commerce of, and continues to manufacture, package,  
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. New Vitality Ruby Reds
- 5 b. New Vitality Royal Greens Ultra Blend
- 6 c. New Vitality Aloe Ease Colon and Body Cleanse

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

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

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

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

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

27 **JURISDICTION AND VENUE**

28 7. This Court has jurisdiction over this action pursuant to California Constitution

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

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

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

15 **PARTIES**

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

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

22 12. ERC alleges on information and belief that Defendant NAC MARKETING  
23 COMPANY, LLC is a Limited Liability Company doing business as, and using the tradestyle,  
24 NEW VITALITY, which collectively and individually is a person within the meaning of H&S  
25 Code §25249.11(a).

26 13. Defendant manufactured, packaged, distributed, marketed, sold and/or has  
27 otherwise been involved in the chain of commerce, and continues to manufacture, package,  
28 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of

1 THE PRODUCTS for sale or use in California. Defendant employs ten or more persons, and is  
2 thus a “person in the course of doing business” within the meaning of Proposition 65.

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

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

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

23 **STATUTORY BACKGROUND**

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

27 18. To effect this goal, Proposition 65 requires that individuals be provided with a  
28 “clear and reasonable warning” before being exposed to substances listed by the State of

1 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent  
2 part:

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

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

12 **FACTUAL BACKGROUND**

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

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

22 22. Plaintiff is informed and believes, and based on such information and belief,  
23 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in  
24 California without the requisite clear and reasonable warnings before, on, and after October 26,  
25 2009. THE PRODUCTS continue to be marketed, distributed and sold in California without the  
26 requisite warning information.

27 23. As a proximate result of acts by Defendant, as a person in the course of doing  
28 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of

1 California, including in the County of Orange, have been exposed to lead without clear and  
2 reasonable warnings. The individuals subject to exposures to lead include normal and  
3 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE  
4 PRODUCTS.

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

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

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

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

17 **FIRST CAUSE OF ACTION**

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

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

21 29. On October 26, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations  
22 to the requisite public enforcement agencies and to defendant NAC MARKETING COMPANY,  
23 LLC doing business as, and using the tradestyle, NEW VITALITY (“Notice of Violations”). The  
24 Notice of Violations was issued pursuant to, and in compliance with, the requirements of H&S  
25 Code §25249.7(d) and the statute’s implementing regulations regarding the notices of violations  
26 to be given to certain public enforcement agencies and to the violator. The Notice of Violations  
27 was issued as follows:

28 a. Defendant NAC MARKETING COMPANY, LLC doing business as, and using

1 the tradestyle, NEW VITALITY and the California Attorney General were  
2 provided copies by Priority Mail of the Notice of Violations, along with a  
3 Certificate of Merit by the attorney for the noticing party stating that there is a  
4 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 NAC MARKETING COMPANY, LLC doing business as, and using  
8 the tradestyle, NEW VITALITY was provided, with the Notice of Violations, a  
9 copy of a document entitled “The Safe Drinking Water and Toxic Enforcement  
10 Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A  
11 to Title 27 of CCR § 25903.

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

17 30. 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 Defendant  
19 based on the allegations herein.

20 31. By committing the acts alleged in this Complaint, Defendant at all times relevant  
21 to this action, and continuing through the present, has violated and continues 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 Defendant first giving clear and reasonable warnings to such  
25 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendant has manufactured,  
26 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of  
27 commerce of, and continues 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 Defendant 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, Defendant has 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 32. By the above-described acts, Defendant has violated H&S Code §25249.6 and is  
8 therefore subject to an injunction ordering Defendant 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 33. An action for injunctive relief under Proposition 65 is specifically authorized by  
12 Health & Safety Code §25249.7(a).

13 34. Continuing commission by Defendant 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 35. Wherefore, Plaintiff prays judgment against Defendant, as set forth hereafter.

17 **SECOND CAUSE OF ACTION**

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

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

21 37. On October 26, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations  
22 to the requisite public enforcement agencies and to defendant NAC MARKETING COMPANY,  
23 LLC doing business as, and using the tradestyle, NEW VITALITY (“Notice of Violations”). The  
24 Notice of Violations was issued pursuant to, and in compliance with, the requirements of H&S  
25 Code §25249.7(d) and the statute’s implementing regulations regarding the notices of violations  
26 to be given to certain public enforcement agencies and to the violator. The Notice of Violations  
27 was issued as follows:

28 a. Defendant NAC MARKETING COMPANY, LLC doing business as, and using



1 the tradestyle, NEW VITALITY and the California Attorney General were  
2 provided copies by Priority Mail of the Notice of Violations, along with a  
3 Certificate of Merit by the attorney for the noticing party stating that there is a  
4 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 NAC MARKETING COMPANY, LLC doing business as, and using  
8 the tradestyle, NEW VITALITY was provided, with the Notice of Violations, a  
9 copy of a document entitled “The Safe Drinking Water and Toxic Enforcement  
10 Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A  
11 to Title 27 of CCR § 25903.

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

17 38. 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 Defendant  
19 based on the allegations herein.

20 39. By committing the acts alleged in this Complaint, Defendant at all times relevant  
21 to this action, and continuing through the present, has violated and continues 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 Defendant first giving clear and reasonable warnings to such  
25 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendant has manufactured,  
26 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of  
27 commerce of, and continues 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 Defendant 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, Defendant 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 40. By the above-described acts, Defendant is liable, pursuant to H&S Code  
8 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6  
9 relating to THE PRODUCTS.

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

11 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

19 **PRAAYER FOR RELIEF**

20 Wherefore, Plaintiff prays for the following relief against Defendant NAC MARKETING  
21 COMPANY, LLC doing business as, and using the tradestyle, NEW VITALITY:

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

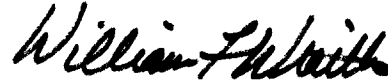
27 B. An assessment of civil penalties against Defendant, pursuant to Health & Safety  
28 Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;

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- 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: August 7, 2013

WRAITH LAW



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