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ENDORSED
FILED
Superior Court of California
County of San Francisco

JUL 25 2013

CLERK OF THE COURT
BY CAROLYN BALISTRERI
Deputy Clerk

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 QUICK TRIM, LLC, and DOES 1-100,
17 inclusive,

18 Defendants.

Case No. CGC-11-513672

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

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

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

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 and/or sold, and
25 continue to manufacture, package, distribute, market and/or sell, the following ingestible
26 products, which contain the chemical lead and which have been and continue to be offered for
27 sale, sold and/or otherwise provided for use and/or handling to individuals in California:

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

- 1 - Quick Trim Fast-Shake Chocolate.
- 2 - Quick Trim, LLC ISO Burn AM 14 Day Diet System 3 Part System.
- 3 - Quick Trim, LLC ISO Cleanse PM 3 Part System.
- 4 - Quick Trim, LLC ISO Flush 3 Part System.
- 5 - Quick Trim Extreme Burn.
- 6 - Quick Trim, LLC ISO Cleanse PM 14 Day Diet System.
- 7 - Quick Trim, LLC ISO Burn AM.
- 8 - Quick Trim, LLC Hotstix-Berry Flavor.
- 9 - Quick Trim LLC Fast-Shake Vanilla.
- 10 - QuickTrim LLC Extreme Burn Weight Loss Formula.
- 11 - QuickTrim LLC Burn & Cleanse 14 Day Metabolic Makeover.
- 12 - QuickTrim LLC Iso-Burn Daytime Thermogenic Formula.
- 13 - QuickTrim LLC Iso-Cleanse Nighttime Cleansing Formula.

14 The products in this list are hereinafter referred to together as “THE PRODUCTS”).

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

20 4. Defendants’ continued manufacturing, packaging, distributing, marketing and/or
21 sales of THE PRODUCTS without the required health hazard warnings, causes individuals to be
22 involuntarily and unwittingly exposed to levels of lead that violate Proposition 65.

23 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued
24 manufacturing, packaging, distributing, marketing and/or selling of THE PRODUCTS for sale or
25 use in California without first providing clear and reasonable warnings, within the meaning of
26 Proposition 65, regarding the risks of cancer, birth defects and other reproductive harm posed by
27 exposure to lead through the use and/or handling of THE PRODUCTS. Plaintiff seeks an
28 injunctive order compelling Defendants to bring their business practices into compliance with

1 Proposition 65 by providing clear and reasonable warnings to each individual who may be
2 exposed to lead from the use and/or handling of THE PRODUCTS.

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

6 JURISDICTION AND VENUE

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

11 8. This Court has jurisdiction over Defendants because, based on information and
12 belief, Defendants are businesses having sufficient minimum contacts with California, or
13 otherwise intentionally availing themselves of the California market through the marketing,
14 distribution and/or sale of THE PRODUCTS in the State of California to render the exercise of
15 jurisdiction over them by the California courts consistent with traditional notions of fair play and
16 substantial justice.

17 9. This Court is the proper venue for this action because the Defendants have
18 violated California law in the County of San Francisco. Furthermore, this Court is the proper
19 venue under Code of Civil Procedure §395.5 and H&S Code §25249.7(a), which provides that
20 any person who violates or threatens to violate H&S Code §§25249.5 or 25249.6 may be
21 enjoined in any court of competent jurisdiction.

22 PARTIES

23 10. Plaintiff Environmental Research Center ("ERC") is a non-profit corporation
24 organized under California's Non-Profit Benefit Corporation Law. ERC is dedicated to, among
25 other causes, reducing the use and misuse of hazardous and toxic substances, consumer
26 protection, worker safety and corporate responsibility.

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

1 penalties of up to \$2,500 per day for each violation of Proposition 65. (H&S Code §25249.7(b).)

2 **FACTUAL BACKGROUND**

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

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

12 19. Plaintiff is informed and believes, and based on such information and belief,
13 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in
14 California without the requisite clear and reasonable warnings before, on, and after September
15 24, 2010. THE PRODUCTS continue to be marketed, distributed and sold in California without
16 the requisite warning information.

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

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

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

1 which is also known as Appendix A to Title 27 of CCR §25903.

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

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

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

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

1 and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,”
2 which is also known as Appendix A to Title 27 of CCR §25903.

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

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

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

26 36. By the above-described acts, Defendants are liable, pursuant to H&S Code
27 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
28 relating to THE PRODUCTS.

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

2 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff prays for the following relief:

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

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

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

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

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

23 Dated: 7/25/13

LAW OFFICE OF PHILIP T. EMMONS

24 By: 
25 _____

26 Philip T. Emmons
27 Attorney for Plaintiff
28 Environmental Research Center