

FILED

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**KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN**

**ENVIRONMENTAL RESEARCH CENTER,
a California non-profit corporation**

Plaintiff,

vs.

**IT WORKS GLOBAL, INC., IT WORKS
MARKETING, INC., and DOES 1-100**

Defendants.

CASE NO. CIV1304656

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

[Miscellaneous Civil Complaint (42)]
Proposition 65, Health & Safety Code
Section 25249.5 et seq.]

Plaintiff Environmental Research Center hereby alleges:

I

INTRODUCTION

1. Plaintiff Environmental Research Center (hereinafter "Plaintiff" or "ERC") brings this action as a private attorney general enforcer and in the public interest pursuant to Health & Safety Code section 25249.7, subdivision (d). This complaint seeks injunctive and declaratory relief and civil penalties to remedy Defendants It Works Global, Inc., It Works Marketing, Inc., and Does 1-100 (hereinafter "It Works")' failure to warn consumers that they have been exposed to lead from several of It Works' nutritional health products. Lead is a chemical known to the State of California

1 to cause cancer, birth defects and other reproductive harm. Based on the Safe Drinking Water and
2 Toxic Enforcement Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as
3 “Proposition 65,” businesses with ten or more employees must provide a “clear and reasonable
4 warning” prior to exposing persons to these chemicals.

5 **II**
6 **PARTIES**

7 2. Plaintiff ERC is a California non-profit corporation dedicated to, among other causes,
8 helping safeguard the public from health hazards by reducing the use and misuse of hazardous and
9 toxic chemicals, facilitating a safe environment for consumers and employees and encouraging
10 corporate responsibility.

11 3. Defendant It Works is a business that manufactures, distributes and/or sells nutritional
12 health products that have exposed users to lead in the State of California within the relevant statute
13 of limitations period. These “Covered Products” are It Works Global Regular Support for Colon
14 Function; It Works Global Ultimate ThermoFit Thermogenic Weight Loss Formula with Acai Berry
15 & Capsimax; It Works Global Advanced Formula FatFighter with Carb Inhibitors; It Works Global
16 Confianza Anti-Stress Formula with Natural Adaptogens; It Works Global It’s Vital Advanced
17 Formula Daily Multi-Vitamin, Mineral, Antioxidant, Phytonutrient Supplement; It Works Global
18 Greens Alkalize Balance Detoxify Orange Flavor, It Works! Global It’s Essential Dark Chocolate
19 Berry, It Works! Global Greens Berry, and It Works! Global Ultimate ProFit Rich Chocolate. It
20 Works is a company subject to Proposition 65 as it employs ten or more persons.

21 4. Defendants Does 1-100, are named herein under fictitious names, as their true names and
22 capacities are unknown to ERC. ERC is informed and believes, and thereon alleges, that each of
23 said Does is responsible, in some actionable manner, for the events and happenings hereinafter
24 referred to, either through said Defendant’s conduct, or through the conduct of its agents, servants or
25 employees, or in some other manner, causing the harms alleged by ERC in this complaint. When
26 said true names and capacities of Does are ascertained, ERC will seek leave to amend this complaint
27 to set forth the same.
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III

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10 because this case is a cause not given by statute to other trial courts.

6. The Complaint is based on allegations contained in Notices of Violation dated January 18, 2013 and May 23, 2014, served on the California Attorney General, other public enforcers and It Works. True and correct copy of these Notices of Violation are attached as Exhibit A. More than 60 days have passed since the Notices of Violation were mailed and no public enforcement entity has filed a complaint in this case.

7. This Court is the proper venue for the action because the causes of action have arisen in the County of Marin where some of the violations of law have occurred. Furthermore, this Court is the proper venue under Code of Civil Procedure section 395.5 and Health & Safety Code section 25249.7.

IV

STATUTORY BACKGROUND

A. Proposition 65

8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute passed as “Proposition 65” by an overwhelming majority vote of the people in November of 1986.

9. The warning requirement of Proposition 65 is contained in Health & Safety Code section 25249.6, which provides:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

10. Implementing regulations for Proposition 65 define expose as “to cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed chemical.” An individual may come into contact with a listed chemical through water, air, food, consumer products and any other environmental exposure as well as occupational exposures.” (Cal. Code Regs., tit. 27, § 25102, subd. (i).)

1 11. In this case, the exposures at issue are caused by consumer products. Implementing
2 regulations for Proposition 65 define a consumer product exposure as “ an exposure which results
3 from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of
4 a consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code
5 Regs., tit. 27, § 25602, subd. (b).)

6 12. Whenever a clear and reasonable warning is required under Health & Safety Code
7 section 25249.6, the “method employed to transmit the warning must be reasonably calculated
8 considering the alternative methods available under the circumstances, to make the warning
9 message available prior to exposure.” (Cal. Code Regs., tit. 27, § 25601.) The warning requirement
10 may be satisfied by a warning that appears on a product’s label or other labeling, shelf labeling,
11 signs, a system of signs, public advertising identifying the system and toll-free information services,
12 or any other, system, that provides clear and reasonable warnings. (Cal. Code Regs., tit. 27, §
13 25603.1, subd. (a)-(d).)

14 13. Proposition 65 establishes a procedure by which the State is to develop a list of
15 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
16 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after the
17 chemical was published on the State list. (Health & Safety Code, § 25249.10, subd. (b).) Lead
18 was listed as a chemical known to the State of California to cause developmental toxicity in the
19 fetus and male and female reproductive toxicity on February 27, 1987. Lead was listed as a
20 chemical known to the State of California to cause cancer on October 1, 1992. (Cal. Code Regs., tit.
21 27, § 27001.)

22 14. The Maximum Allowable Dose Level for lead as a chemical known to cause
23 reproductive toxicity is 0.5 micrograms per day. (Cal. Code Regs., tit. 27, § 25805.) The No
24 Significant Risk Level for lead as a carcinogen is 15 micrograms per day. (Cal. Code Regs., tit.
25 27, § 25705.)

26 15. Proposition 65 may be enforced by any person in the public interest who provides
27 notice sixty days before filing suit to both the violator and designated law enforcement officials.
28 The failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed

1 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

2 16. Proposition 65 provides that any person “violating or threatening to violate” Proposition
3 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, § 25249.7,
4 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial
5 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)
6 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
7 (Health & Safety Code, § 25249.7, subd. (b)(1).

8 **V**

9 **STATEMENT OF FACTS**

10 17. It Works has manufactured, distributed and/or sold the Covered Products containing
11 lead into the State of California. Consumers have been ingesting these products for many years,
12 without any knowledge of their exposure to lead, a very dangerous chemical.

13 18. For many years, It Works has knowingly and intentionally exposed numerous persons
14 to lead, without providing a Proposition 65 warning. Prior to ERC’s Notices of Violation, It Works
15 failed to provide a warning on the label of the Covered Products. It Works has at all times relevant
16 hereto been aware that the Covered Products contained lead and that persons using these products
17 have been exposed to the chemical. It Works’ website repeatedly asserts that the company’s
18 products are “safe, effective, and grounded in natural, botanical principles”, and that they are
19 produced from “the highest quality natural ingredients”. It Works also employs health professionals
20 holding M.D. and Ph.D. degrees with decades of experience in nutrition and natural remedies in
21 roles as a health consultant and as product formulators. These professionals represent that It Works’
22 products are manufactured with “strict quality standards”. Experts with this level of knowledge and
23 experience would undoubtedly be aware that the ingredients used in many nutritional supplement
24 products can contain unsafe concentrations of lead. It Works’ representations indicate that the
25 company has a thorough knowledge of the contents and composition of its products, which would
26 include knowledge of the presence of lead. Nevertheless, the company’s health consultant
27 represents to the public that “[y]ou can rest assured that with It Works!, what’s on the label is what’s
28 in the product, and only what’s in the product is on the label.” It Works has been aware of the lead

1 in the Covered Products and has failed to disclose the presence of this chemical to the public, who
2 undoubtedly believed they have been ingesting totally healthy and pure products.

3 19. Both prior and subsequent to ERC's Notices of Violation, It Works failed to provide
4 consumers of the Covered Products with a clear and reasonable warning that they have been
5 exposed to a chemical known to the State of California to cause cancer, birth defects and other
6 reproductive harm.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear**
9 **and Reasonable Warning under Proposition 65)**

10 20. ERC refers to paragraphs 1-19, inclusive, and incorporates them herein by this
11 reference.

12 21. By committing the acts alleged above, It Works has, in the course of doing business,
13 knowingly and intentionally exposed users of the Covered Products to lead, a chemical known to
14 the State of California to cause cancer, birth defects and other reproductive harm without first giving
15 clear and reasonable warning to such individuals, within the meaning of Health & Safety Code
16 section 25249.6.

17 22. Said violations render It Works liable for civil penalties up to \$2,500 per day, for
18 each violation.

19 **SECOND CAUSE OF ACTION**

20 **(Declaratory Relief)**

21 23. ERC refers to paragraphs 1-22, inclusive, and incorporates them herein by this
22 reference.

23 24. There exists an actual controversy relating to the legal rights and duties of the parties,
24 within the meaning of Code of Civil Procedure section 1060, between ERC and It Works
25 concerning whether It Works has exposed individuals to a chemical known to the State of California
26 to cause cancer, birth defects and other reproductive harm without providing clear and reasonable
27 warning.
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VI

PRAYER

WHEREFORE ERC prays for relief as follows:

1. On the First Cause of Action, for civil penalties for each and every violation according to proof;
2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7, subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive orders, or other orders, prohibiting It Works from exposing persons to lead without providing clear and reasonable warning;
3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil Procedure section 1060 declaring that It Works has exposed individuals to a chemical known to the State of California to cause, birth defects and other reproductive harm without providing clear and reasonable warning; and
4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure or the substantial benefit theory;
5. For costs of suit herein; and
6. For such other relief as the Court may deem just and proper.

Dated: October 22, 2014

By Michael Freund by RRA

Michael Freund
Attorney for Environmental Research Center