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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Orange  
**04/25/2014** at 03:30:00 PM  
Clerk of the Superior Court  
By Debbie Lechmann, Deputy Clerk

7 Attorneys for Plaintiff  
8 Environmental Research Center

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

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

14 Plaintiffs,

15 vs.

16 HERBAL HEALER ACADEMY, INC.,  
17 and DOES 1-25, Inclusive,

18 Defendants.

) **Case No.:** 30-2014-00710231-CU-MC-CJC

) [Assigned to Hon. William Claster]

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

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

19  
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 has  
28

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 ingestible products, which contain the chemical lead and which have been and  
4 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to  
5 individuals in California:

- 6 (1) Douglas Laboratories Dr. Marijah McCain G.F.S. – 2000 Powder
- 7 (2) Herbal Healer Academy Inc. Herbalgesic
- 8 (3) Herbal Healer Academy Inc. Women in Balance
- 9 (4) Herbal Healer Academy Inc. Colon Enhancer Intestinal Cleanser
- 10 (5) Herbal Healer Academy Inc. Super Fem Plex
- 11 (6) Herbal Healer Academy Inc. Muscle Calm
- 12 (7) Herbal healer Academy Inc. Hair, Skin and Nails Silica Complex 500 mg.
- 13 (8) Herbal Healer Academy Inc Shark Cartilage 750 mg
- 14 (9) Herbal Healer Academy Inc Super Male Plex
- 15 (10) Herbal Healer Academy Inc Nature's Rush
- 16 (11) Herbal Healer Academy Inc. Oral Chelation
- 17 (12) Herbal Healer Academy Memory Power
- 18 (13) Herbal Healer Academy Inc. First Responder
- 19 (14) Great Life Laboratories Inc. Metabo Right
- 20 (15) Herbal Healer Academy Natural Detox
- 21 (16) Herbal Healer Academy Inc. Herbal Healer's Formula One
- 22 (17) Chi's Enterprise Inc. Myomin
- 23 (18) Chi's Enterprise Inc. Maitake
- 24 (19) Chi's Enterprise Inc. Slender All
- 25 (20) Chi's Enterprise Inc. SXD
- 26 (21) Chi's Enterprise Inc. Myosteo
- 27 (22) Chi's Enterprise Inc. Snoreless
- 28 (23) Chi's Enterprise Inc. Psoricaid

- 1 (24) Chi's Enterprise Inc. Vein Lite
- 2 (25) Chi's Enterprise Inc. Liver Chi
- 3 (26) Chi's Enterprise Inc. Chi Energy
- 4 (27) Chi's Enterprise Inc. Diabend
- 5 (28) Chi's Enterprise Inc. Revivin
- 6 (29) Chi's Enterprise Inc. Kidney Chi
- 7 (30) Chi's Enterprise Inc. GI Chi
- 8 (31) Chi's Enterprise Inc. Metal Flush
- 9 (32) Chi's Enterprise Inc. Chi-F
- 10 (33) Chi's Enterprise Inc. Sinus Chi
- 11 (34) Chi's Enterprise Inc. Jujuchi
- 12 (35) Chi's Enterprise Inc. Asparagus Extract

13 These listed products are hereinafter referred to together as "THE PRODUCTS".

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

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

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

1 exposed to lead from the use and/or handling of THE PRODUCTS. Plaintiff also seeks an order  
2 compelling Defendant to identify and locate each individual person who in the past has  
3 purchased the PRODUCTS, and to provide to each such purchaser a clear and reasonable  
4 warning that the use of the PRODUCTS will cause exposures to Lead.

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

### 8 JURISDICTION AND VENUE

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

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

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

### 24 PARTIES

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

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

3           12.     Defendant HERBAL HEALER ACADEMY, INC. is a business of unknown  
4 form, which ERC alleges on information and belief is a person within the meaning of H&S Code  
5 §25249.11(a).

6           13.     Defendant manufactured, packaged, distributed, marketed, sold and/or has  
7 otherwise been involved in the chain of commerce, and continues to manufacture, package,  
8 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of  
9 THE PRODUCTS for sale or use in California. Defendant employees ten or more persons, and  
10 are thus each a “person in the course of doing business” within the meaning of Proposition 65.

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

21           15.     Plaintiff is informed and believes and thereon alleges that the defendant is in  
22 some manner responsible for the events set forth in this Complaint and proximately caused the  
23 injuries and damages to Plaintiffs as alleged in this Complaint.

24   **STATUTORY BACKGROUND**

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

28           17.     To effect this goal, Proposition 65 requires that individuals be provided with a

1 “clear and reasonable warning” before being exposed to substances listed by the State of  
2 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent  
3 part:

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

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

13 **FACTUAL BACKGROUND**

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

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

23 21. Plaintiff is informed and believes, and based on such information and belief,  
24 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in  
25 California without the requisite clear and reasonable warnings before, on, and after September  
26 13, 2010. THE PRODUCTS continue to be marketed, distributed and sold in California without  
27 the requisite warning information.

28 22. As a proximate result of acts by Defendant, as a person in the course of doing

1 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of  
2 California, including in the County of Orange, have been exposed to lead without clear and  
3 reasonable warnings. The individuals subject to exposures to lead include normal and  
4 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE  
5 PRODUCTS.

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

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

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

15 26. THE PRODUCTS continue to be marketed, distributed, and/or sold in California  
16 without the requisite clear and reasonable warnings.

17 **FIRST CAUSE OF ACTION**

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

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

21 28. On September 13, 2013 and January 31, 2014 Plaintiff sent separate 60-Day  
22 Notices of Proposition 65 violations to the requisite public enforcement agencies (“Notice of  
23 Violations”). THE PRODUCTS were identified in the Notices of Violations as containing lead  
24 exceeding allowable levels. The Notices of Violations were issued pursuant to, and in  
25 compliance with, the requirements of H&S Code §25249.7(d) and the statute’s implementing  
26 regulations regarding the notice of violations to be given to certain public enforcement agencies  
27 and to the violator. The Notices of Violations were issued as follows:

28 (1) Defendant HERBAL HEALER ACADEMY, INC., and the California Attorney

1 General were provided copies of the Notices of Violations, along with a  
2 Certificate of Merit by the attorney for the noticing party stating that there is a  
3 reasonable and meritorious cause for this action. The requisite county district  
4 attorneys and city attorneys were provided copies of the Notices of Violations and  
5 Certificate of Merit.

6 (2) Defendant HERBAL HEALER ACADEMY, INC. was provided, with the  
7 Notices of Violations, a copy of a document entitled “The Safe Drinking Water  
8 and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also  
9 known as Appendix A to Title 27 of CCR § 25903.

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

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

18 30. By committing the acts alleged in this Complaint, Defendant at all times relevant  
19 to this action, and continuing through the present, has violated and continues to violate H&S  
20 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing  
21 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding  
22 allowable exposure levels without Defendant first giving clear and reasonable warnings to such  
23 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendant has manufactured,  
24 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of  
25 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise  
26 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,  
27 and will be used and/or handled by individuals in California, without Defendant providing clear  
28 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, Defendant has 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 31. By the above-described acts, Defendant has violated H&S Code §25249.6 and is  
6 therefore subject to an injunction ordering Defendant 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 32. An action for injunctive relief under Proposition 65 is specifically authorized by  
10 Health & Safety Code §25249.7(a).

11 33. Continuing commission by Defendant 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 34. Wherefore, plaintiff prays judgment against Defendant, as set forth hereafter.

15 **SECOND CAUSE OF ACTION**

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

17 35. Plaintiff hereby incorporates by reference each and every preceding allegation and  
18 paragraph as though fully set forth in this cause of action.

19 36. On September 13, 2013 and January 31, 2014, Plaintiff sent separate 60-Day  
20 Notices of Proposition 65 violations to the requisite public enforcement agencies (“Notices of  
21 Violations”). The Notices of Violations was sent to the Defendant HERBAL HEALER  
22 ACADEMY, INC and THE PRODUCTS were identified in the Notices of Violations as  
23 containing lead exceeding allowable levels. The Notices of Violations were issued pursuant to,  
24 and in compliance with, the requirements of H&S Code §25249.7(d) and the statute’s  
25 implementing regulations regarding the notices of violations to be given to certain public  
26 enforcement agencies and to the violator. The Notices of Violations were issued as follows:

27 (1) Defendant HERBAL HEALER ACADEMY, INC. and the California Attorney

28 General were provided copies of the Notices of Violations, along with a

1 Certificate of Merit by the attorney for the noticing party stating that there is a  
2 reasonable and meritorious cause for this action. The requisite county district  
3 attorneys and city attorneys were provided copies of the Notices of Violations and  
4 Certificate of Merit.

5 (2) Defendant HERBAL HEALER ACADEMY, INC. were provided, with the  
6 Notices of Violations, a copy of a document entitled “The Safe Drinking Water  
7 and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also  
8 known as Appendix A to Title 27 of CCR § 25903.

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

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

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

1 handling of THE PRODUCTS. Furthermore, Defendant has threatened to violate H&S Code  
2 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided  
3 for use and/or handling to individuals in California.

4 39. By the above-described acts, Defendant is liable, pursuant to H&S Code  
5 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6  
6 relating to THE PRODUCTS.

7 40. Wherefore, plaintiff prays judgment against Defendant, as set forth hereafter.

8 **THE NEED FOR INJUNCTIVE RELIEF**

9 41. Plaintiff hereby incorporates by reference each and every preceding allegation and  
10 paragraph as though fully set forth in this cause of action.

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

16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiff prays for the following relief against Defendant HERBAL HEALER  
18 ACADEMY, INC.:

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

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

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

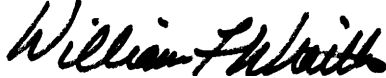
28 D. An award of costs of suit herein; and

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

Dated: April 25, 2014

WRAITH LAW



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

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