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8 SUPERIOR COURT OF CALIFORNIA
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10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
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12 ENVIRONMENTAL RESEARCH)	Case No.: 30-2013-00667616-CU-MC-CJC
13 CENTER, a California non-profit)	
corporation,)	
14 Plaintiff,)	FIRST AMENDED COMPLAINT FOR
)	INJUNCTIVE RELIEF AND CIVIL
15 vs.)	PENALTIES
)	[Health & Safety Code § 25249.5, et seq.]
16 GENESIS TODAY, INC., and DOES 1-)	
25, Inclusive,)	[UNLIMITED CIVIL CASE - AMOUNT
17 Defendants.)	DEMANDED EXCEEDS \$25,000]
)	

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

22 **INTRODUCTION**

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

26 2. Defendant has manufactured, packaged, distributed, marketed, sold and/or have
27 otherwise been involved in the chain of commerce of, and continues to manufacture, package,
28 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. Genesis Today Inc. GenEssentials Greens
- 5 b. Genesis Today Inc. GenEssentials Fiber
- 6 c. Genesis Today Inc. Sea Buckthorn
- 7 d. Genesis Today Inc. 4Heart
- 8 e. Genesis Today Inc. 4Energy
- 9 f. Genesis Today Inc. 4Blood Sugar
- 10 g. Genesis Today Inc. 4Weight Control
- 11 h. Genesis Today Inc. 4Total Cleanse Part 1 Whole Body Cleanser
- 12 i. Genesis Today Inc. 4Total Cleanse Part 2 Intestinal Cleanser
- 13 j. Genesis Today Inc. Pure & Potent Cassia Nomame
- 14 k. Genesis Today Inc. Pure & Potent Caralluma Fimbriata

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

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

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

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

1 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

2 12. ERC alleges on information and belief that Defendant GENESIS TODAY, INC.
3 is a Corporation that is a person within the meaning of H&S Code §25249.11(a).

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

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

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

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

1 GENESIS TODAY, INC. (“Notices of Violations”). Each of the Notices of Violations was
2 issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the
3 statute’s implementing regulations regarding the notices of violations to be given to certain
4 public enforcement agencies and to the violator. Each of the Notices of Violations was issued as
5 follows:

- 6 a. Defendant GENESIS TODAY, INC. and the California Attorney General were
7 provided copies of the Notice of Violations, along with a Certificate of Merit by
8 the attorney for the noticing party stating that there is a reasonable and
9 meritorious cause for this action. The requisite county district attorneys and city
10 attorneys were provided copies by US Mail of the Notices of Violations and
11 Certificate of Merit.
- 12 b. Defendant GENESIS TODAY, INC. was provided, with the Notice of Violations,
13 a copy of a document entitled “The Safe Drinking Water and Toxic Enforcement
14 Act of 1986 (Proposition 65): A Summary,” which is also known as Appendix A
15 to Title 27 of CCR § 25903.
- 16 c. The California Attorney General was provided, with the Notice of Violations,
17 additional factual information sufficient to establish a basis for the Certificate of
18 Merit, including the identity of the persons consulted with and relied on by the
19 certifier, and the facts, studies, or other data reviewed by those persons, pursuant
20 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

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

24 31. By committing the acts alleged in this Complaint, Defendant at all times relevant
25 to this action, and continuing through the present, has violated and continues to violate H&S
26 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
27 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
28 allowable exposure levels without Defendant first giving clear and reasonable warnings to such

1 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendant has manufactured,
2 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of
3 commerce of, and continues to manufacture, package, distribute, market, sell and/or otherwise
4 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
5 and will be used and/or handled by individuals in California, without Defendant providing clear
6 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
7 birth defects and other reproductive harm posed by exposure to lead through the use and/or
8 handling of THE PRODUCTS. Furthermore, Defendant has threatened to violate H&S Code
9 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
10 for use and/or handling to individuals in California.

11 32. By the above-described acts, Defendant has violated H&S Code §25249.6 and is
12 therefore subject to an injunction ordering Defendant to stop violating Proposition 65, and to
13 provide required warnings to consumers and other individuals who will purchase, use and/or
14 handle THE PRODUCTS.

15 33. An action for injunctive relief under Proposition 65 is specifically authorized by
16 Health & Safety Code §25249.7(a).

17 34. Continuing commission by Defendant of the acts alleged above will irreparably
18 harm the citizens of the State of California, for which harm they have no plain, speedy, or
19 adequate remedy at law.

20 35. Wherefore, Plaintiff prays judgment against Defendant, as set forth hereafter.

21 **SECOND CAUSE OF ACTION**

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

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

25 37. On January 6, 2012 and October 18, 2013, Plaintiff sent 60-Day Notices of
26 Proposition 65 violations to the requisite public enforcement agencies and to defendant
27 GENESIS TODAY, INC. (“Notices of Violations”). Each of the Notices of Violations was
28 issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the

1 statute’s implementing regulations regarding the notices of violations to be given to certain
2 public enforcement agencies and to the violator. Each of the Notices of Violations was issued as
3 follows:

- 4 a. Defendant GENESIS TODAY, INC. and the California Attorney General were
5 provided copies of the Notices of Violations, along with a Certificate of Merit by
6 the attorney for the noticing party stating that there is a reasonable and
7 meritorious cause for this action. The requisite county district attorneys and city
8 attorneys were provided copies by US Mail of the Notices of Violations and
9 Certificate of Merit.
- 10 b. Defendant GENESIS TODAY, INC. was provided, with the Notices of
11 Violations, a copy of a document entitled “The Safe Drinking Water and Toxic
12 Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as
13 Appendix A to Title 27 of CCR § 25903.
- 14 c. The California Attorney General was provided, with the Notices of Violations,
15 additional factual information sufficient to establish a basis for the Certificate of
16 Merit, including the identity of the persons consulted with and relied on by the
17 certifier, and the facts, studies, or other data reviewed by those persons, pursuant
18 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

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

22 39. By committing the acts alleged in this Complaint, Defendant at all times relevant
23 to this action, and continuing through the present, has violated and continues to violate H&S
24 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
25 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
26 allowable exposure levels without Defendant first giving clear and reasonable warnings to such
27 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendant has manufactured,
28 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of

1 commerce of, and continues to manufacture, package, distribute, market, sell and/or otherwise
2 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
3 and will be used and/or handled by individuals in California, without Defendant providing clear
4 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
5 birth defects and other reproductive harm posed by exposure to lead through the use and/or
6 handling of THE PRODUCTS. Furthermore, Defendant have threatened to violate H&S Code
7 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
8 for use and/or handling to individuals in California.

9 40. By the above-described acts, Defendant is liable, pursuant to H&S Code
10 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
11 relating to THE PRODUCTS.

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

13 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

21 **PRAYER FOR RELIEF**

22 Wherefore, Plaintiff prays for the following relief against Defendant GENESIS TODAY,
23 INC.:

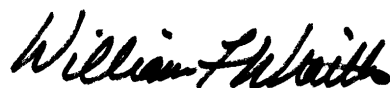
24 A. A preliminary and permanent injunction enjoining each Defendant, its agents,
25 employees, assigns and all persons acting in concert or participating with each Defendant, from
26 manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or
27 use in California without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

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- B. An assessment of civil penalties against Defendant, pursuant to Health & Safety Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;
- 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: March 3, 2014

WRAITH LAW



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