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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 Plaintiffs,

15 vs.

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

18 Defendants.

Case No.: 30-2014-00710231-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 William Claster

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

21 **INTRODUCTION**

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

25 2. Defendant has manufactured, packaged, distributed, marketed, sold and/or has
26 otherwise been involved in the chain of commerce of, and continue to manufacture, package,
27 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the
28 following ingestible products, which contain the chemical lead and which have been and

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1 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to
2 individuals in California:

- 3 (1) Douglas Laboratories Dr. Marijah McCain G.F.S. – 2000 Powder
- 4 (2) Herbal Healer Academy Inc. Herbalgesic
- 5 (3) Herbal Healer Academy Inc. Women in Balance
- 6 (4) Herbal Healer Academy Inc. Colon Enhancer Intestinal Cleanser

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. Plaintiff also seeks an order
24 compelling Defendant to identify and locate each individual person who in the past has
25 purchased the PRODUCTS, and to provide to each such purchaser a clear and reasonable
26 warning that the use of the PRODUCTS will cause exposures to Lead.

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

1 lead.

2 **JURISDICTION AND VENUE**

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

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

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

18 **PARTIES**

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

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

25 12. Defendant HERBAL HEALER ACADEMY, INC. is a business of unknown
26 form, which ERC alleges on information and belief is a person within the meaning of H&S Code
27 §25249.11(a).

28 13. Defendant manufactured, packaged, distributed, marketed, sold and/or has

1 otherwise been involved in the chain of commerce, and continues to manufacture, package,
2 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of
3 THE PRODUCTS for sale or use in California. Defendant employees ten or more persons, and
4 are thus each a “person in the course of doing business” within the meaning of Proposition 65.

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

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

18 **STATUTORY BACKGROUND**

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

22 17. To effect this goal, Proposition 65 requires that individuals be provided with a
23 “clear and reasonable warning” before being exposed to substances listed by the State of
24 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
25 part:

26 No person in the course of doing business shall knowingly and
27 intentionally expose any individual to a chemical known to the state to
28 cause cancer or reproductive toxicity without first giving clear and

1 reasonable warning to such individual....

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

7 **FACTUAL BACKGROUND**

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

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

17 21. Plaintiff is informed and believes, and based on such information and belief,
18 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in
19 California without the requisite clear and reasonable warnings before, on, and after September
20 13, 2010. THE PRODUCTS continue to be marketed, distributed and sold in California without
21 the requisite warning information.

22 22. As a proximate result of acts by Defendant, as a person in the course of doing
23 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of
24 California, including in the County of Orange, have been exposed to lead without clear and
25 reasonable warnings. The individuals subject to exposures to lead include normal and
26 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE
27 PRODUCTS.

28 23. At all times relevant to this action, Defendant has knowingly and intentionally

1 exposed the users and/or handlers of THE PRODUCTS to lead without first giving clear and
2 reasonable warnings to such individuals.

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

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

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

11 **FIRST CAUSE OF ACTION**

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

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

15 28. On September 13, 2013 Plaintiff sent a 60-Day Notice of Proposition 65
16 violations to the requisite public enforcement agencies (“Notice of Violations”). THE
17 PRODUCTS were identified in the Notice of Violations as containing lead exceeding allowable
18 levels. The Notice of Violations was issued pursuant to, and in compliance with, the
19 requirements of H&S Code §25249.7(d) and the statute’s implementing regulations regarding the
20 notice of violations to be given to certain public enforcement agencies and to the violator. The
21 Notice of Violations were issued as follows:

- 22 (1) Defendant HERBAL HEALER ACADEMY, INC., and the California Attorney
23 General were provided copies of the Notices of Violations, along with a
24 Certificate of Merit by the attorney for the noticing party stating that there is a
25 reasonable and meritorious cause for this action. The requisite county district
26 attorneys and city attorneys were provided copies of the Notice of Violations and
27 Certificate of Merit.

- 28 (2) Defendant HERBAL HEALER ACADEMY, INC. was provided, with the Notice

1 of Violations, a copy of a document entitled “The Safe Drinking Water and Toxic
2 Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as
3 Appendix A to Title 27 of CCR § 25903.

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

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

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

27 31. By the above-described acts, Defendant has violated H&S Code §25249.6 and is
28 therefore subject to an injunction ordering Defendant to stop violating Proposition 65, and to

1 provide required warnings to consumers and other individuals who will purchase, use and/or
2 handle THE PRODUCTS.

3 32. An action for injunctive relief under Proposition 65 is specifically authorized by
4 Health & Safety Code §25249.7(a).

5 33. Continuing commission by Defendant of the acts alleged above will irreparably
6 harm the citizens of the State of California, for which harm they have no plain, speedy, or
7 adequate remedy at law.

8 34. Wherefore, plaintiff prays judgment against Defendant, as set forth hereafter.

9 **SECOND CAUSE OF ACTION**

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

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

13 36. On September 13, 2013, Plaintiff sent a 60-Day Notice of Proposition 65
14 violations to the requisite public enforcement agencies (“Notice of Violation”). The Notice of
15 Violations was sent to the Defendant HERBAL HEALER ACADEMY, INC and THE
16 PRODUCTS were identified in the Notice of Violations as containing lead exceeding allowable
17 levels. The Notice of Violations was issued pursuant to, and in compliance with, the
18 requirements of H&S Code §25249.7(d) and the statute’s implementing regulations regarding the
19 notices of violations to be given to certain public enforcement agencies and to the violator. The
20 Notice of Violations was issued as follows:

21 (1) Defendant HERBAL HEALER ACADEMY, INC. and the California Attorney
22 General were provided copies of the Notice of Violations, along with a Certificate
23 of Merit by the attorney for the noticing party stating that there is a reasonable
24 and meritorious cause for this action. The requisite county district attorneys and
25 city attorneys were provided copies of the Notice of Violations and Certificate of
26 Merit.

27 (2) Defendant HERBAL HEALER ACADEMY, INC. was provided, with the Notice
28 of Violations, a copy of a document entitled “The Safe Drinking Water and Toxic

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

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

8 37. 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 Defendant
10 based on the allegations herein.

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

26 39. By the above-described acts, Defendant is 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.

