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ENDORSED
FILED
ALAMEDA COUNTY

SEP 11 2014

CLERK OF THE SUPERIOR COURT
By MARGARET J. DOWNING
Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 ENVIRONMENTAL RESEARCH
12 CENTER, INC.,

13 Plaintiff,

14 v.

15 RENEW LIFE FORMULAS, INC.; and
16 DOES 1-50, inclusive,

17 Defendants.

Case No. **REG 14740218**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

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

20 **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, sold and/or have
25 otherwise been involved in the chain of commerce of, and continue to manufacture, package,
26 distribute, market, sell, and/or otherwise continue to be involved in the chain of commerce of the
27 following products (referred to collectively as "THE PRODUCTS"), which contain the chemical
28 lead and which have been and continue to be offered for sale, sold and/or otherwise provided for

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

1 use and/or handling to individuals in California:

- 2 1. ReNew Life Formulas ParaGone (*kit includes the below products*):
 - 3 a. ReNew Life Formulas ParaGone 1
 - 4 b. ReNew Life Formulas ParaGone 2
- 5 2. ReNew Life Formulas Liver Detox (*kit includes the below products*):
 - 6 a. ReNew Life Formulas Liver Detox 1 Morning Formula
 - 7 b. ReNew Life Formulas Liver Detox 2 Evening Formula
- 8 3. ReNew Life Formulas CleanseMore
- 9 4. ReNew Life Formulas Intestinal Bowel Soother
- 10 5. ReNew Life Formulas Intestinal Bowel Support (*kit includes the below*
11 *products*):
 - 12 a. ReNew Life Formulas Intestinal Bowel Support 1 Morning
13 Formula
 - 14 b. ReNew Life Formulas Intestinal Bowel Support 2 Evening
15 Formula
- 16 6. ReNew Life Formulas FirstCleanse (*kit includes the below products*):
 - 17 a. ReNew Life Formulas FirstCleanse 1 Morning Formula
 - 18 b. ReNew Life Formulas FirstCleanse 2 Evening Formula
- 19 7. ReNew Life Formulas FitSmart Fat Burner

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

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

28 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued

1 manufacturing, packaging, distributing, marketing and/or selling of THE PRODUCTS for sale or
2 use in California without first providing clear and reasonable warnings, within the meaning of
3 Proposition 65, regarding the risks of cancer, birth defects and other reproductive harm posed by
4 exposure to lead through the use and/or handling of THE PRODUCTS. Plaintiff seeks an
5 injunctive order compelling Defendants to bring their business practices into compliance with
6 Proposition 65 by providing clear and reasonable warnings to each individual who may be
7 exposed to lead from the use and/or handling of THE PRODUCTS.

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

11 JURISDICTION AND VENUE

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

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

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

27 PARTIES

28 10. Plaintiff ENVIRONMENTAL RESEARCH CENTER, INC. ("ERC") is a non-

1 profit corporation organized under California's Non-Profit Benefit Corporation Law. ERC is
2 dedicated to, among other causes, reducing the use and misuse of hazardous and toxic
3 substances, consumer protection, worker safety and corporate responsibility.

4 11. ERC is a "Person" within the meaning of H&S Code §25118 and H&S Code
5 §25249.11(a), and brings this enforcement action "in the public interest" pursuant to H&S Code
6 §25249.7(d).

7 12. Defendant RENEW LIFE FORMULAS, INC. is a Florida corporation and is a
8 "Person" within the meaning of H&S Code §25249.11(a). Defendant RENEW LIFE
9 FORMULAS, INC. has manufactured, packaged, distributed, marketed, sold and/or has
10 otherwise been involved in the chain of commerce of, and continues to manufacture, package,
11 distribute, market, sell, and/or otherwise continues to be involved in the chain of commerce of
12 THE PRODUCTS for sale or use in California. Based on information and belief, Defendant
13 RENEW LIFE FORMULAS, INC., at all times relevant to this action, has had and now has 10 or
14 more employees and is a "Person in the course of doing business" pursuant to H&S Code
15 §25249.11(b).

16 13. Defendants DOES 1-50 are named herein under fictitious names, as their true
17 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
18 alleges, that each of said Does has manufactured, packaged, distributed, marketed, sold and/or
19 has otherwise been involved in the chain of commerce of, and continues to manufacture,
20 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of
21 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some
22 actionable manner, for the events and happenings referred to herein, either through its conduct or
23 through the conduct of its agents, servants or employees, or in some other manner, causing the
24 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true
25 names and capacities of Does when ascertained.

26 **STATUTORY BACKGROUND**

27 14. The People of the State of California have declared in Proposition 65 their right
28 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other

1 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

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

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

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

14 **FACTUAL BACKGROUND**

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

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

24 19. Plaintiff is informed and believes, and based on such information and belief,
25 alleges THE PRODUCTS have been marketed, distributed, sold, or otherwise provided to
26 individuals in California without the requisite clear and reasonable warnings before, on, and after
27 January 31, 2011. THE PRODUCTS continue to be marketed, distributed and sold in California
28 without the requisite warning information.

1 enforcement agencies and to the violator. The Notice of Violations was issued as follows:

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

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

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

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

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

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

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

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

20 **SECOND CAUSE OF ACTION**

21 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq. concerning THE**
22 **PRODUCTS, which are identified in Plaintiff's January 31, 2014 60-Day Notice of**
23 **Violations)**

24 32. Plaintiff realleges and incorporates by reference Paragraphs 1 through 31,
25 inclusive, as if specifically set forth herein.

26 33. On January 31, 2014, Plaintiff sent a 60-Day Notice of Proposition 65 violations
27 to the requisite public enforcement agencies and to Defendant RENEW LIFE FORMULAS,
28 INC. ("Notice of Violations"). THE PRODUCTS were identified in the Notice of Violations as
containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to,

1 and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's
2 implementing regulations regarding the notice of violations to be given to certain public
3 enforcement agencies and to the violator. The Notice of Violations was issued as follows:

- 4 a. Defendant RENEW LIFE FORMULAS, INC. and the California Attorney
5 General were each provided a copy by First Class Certified Mail of the
6 Notice of Violations, along with a copy of the Certificate of Merit by the
7 attorney for the noticing party stating that there is a reasonable and
8 meritorious cause for this action. The requisite county district attorneys
9 and city attorneys were provided copies by First Class Mail of the Notice
10 of Violations and Certificates of Merit.
- 11 b. Defendant RENEW LIFE FORMULAS, INC. was provided, with the
12 Notice of Violations, a copy of a document entitled "The Safe Drinking
13 Water and Toxic Enforcement Act of 1986 (Proposition 65): A
14 Summary," which is also known as Appendix A to Title 27 of CCR
15 §25903.
- 16 c. The California Attorney General was provided, with the Notice of
17 Violations, additional factual information sufficient to establish a basis for
18 the Certificate of Merit, including the identity of the persons consulted
19 with and relied on by the certifier, and the facts, studies, or other data
20 reviewed by those persons, pursuant to H&S Code §§25249.7(d)(1) and
21 25249.7(h)(2).

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

25 35. By committing the acts alleged in this Complaint, Defendants at all times relevant
26 to this action, and continuing through the present, have violated and continue to violate H&S
27 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
28 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding

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

12 36. By the above-described acts, Defendants are liable, pursuant to H&S Code
13 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
14 relating to THE PRODUCTS.

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

16 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

24 **PRAYER FOR RELIEF**

25 Wherefore, Plaintiff prays for the following relief:

26 A. A preliminary and permanent injunction enjoining Defendants, their agents,
27 employees, assigns and all persons acting in concert or participating with Defendants, from
28 manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or

1 use in California without first providing clear and reasonable warnings, within the meaning of
2 Proposition 65, that the users and/or handlers of THE PRODUCTS are exposed to the lead.

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


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

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

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

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10 Dated: September 11, 2014

LAW OFFICE OF PHILIP T. EMMONS

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12 By: 
13 Philip T. Emmons
14 Attorney for Plaintiff
15 Environmental Research Center, Inc.

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