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FILED
Superior Court of California
County of Los Angeles

APR 28 2014

7 Attorneys for Plaintiff
8 Environmental Research Center

Sherri R. Carter, Executive Officer/Clerk
By Nancy Alvarez Deputy

D 42 Holly E. Kendig

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
10 CENTRAL DISTRICT, STANLEY MOSK COURTHOUSE

11 BC 543392

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

Case No.:

15 Plaintiff,

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

16 vs.

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

17 PIPING ROCK HEALTH PRODUCTS,
18 LLC and DOES 1-25, Inclusive,

[UNLIMITED CIVIL CASE - AMOUNT
DEMANDED EXCEEDS \$25,000]

19 Defendants.

[BY FAX]

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
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

CIT/DRGE: 60943392
LEAD/DEF#: 008
RECEIVED: 04/28/14 11:08 AM
DATE PAID: 04/28/14
PAYMENT: \$435.00
OFFICE: 310
CHRG: \$0.00
CASH: \$0.00
CHRG: \$0.00
DND: \$435.00

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Irvine, California 92618
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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
- 5 (1) Piping Rock Health Products Max Whole Greens Whole Foods Multi
- 6 (2) Piping Rock Health Products Natural Triple Action Herbal Laxative
- 7 (3) Piping Rock Health Products Milk Thistle, Dandelion & Yellow Dock Combo
- 8 (4) Piping Rock Health Products Ultimate Colon Cleansing Formula
- 9 (5) Piping Rock Health Products Detox
- 10 (6) Piping Rock Health Products Max Whole Greens Whole Foods Powder
- 11 (7) Piping Rock Health Products Whole Husk Psyllium Vegetarian Powder
- 12 (8) Piping Rock Health Products Triple Action Colon Cleanser Vegetarian Powder
- 13 (9) Piping Rock Health Products LLC Tiger Snake
- 14 (10) Piping Rock Health Products LLC Fruit & Veggies for Life
- 15 (11) Piping Rock Health Products LLC Natural Vegetarian Spirulina Blue-Green
16 Algae Powder
- 17 (12) Piping Rock Health Products LLC Maca Powder Vegetarian Powder
- 18 (13) Piping Rock Health Products LLC Psyllium Husk Powder Vegetarian Powder
- 19 (14) Piping Rock Health Products LLC Menopause Ease
- 20 (15) Piping Rock Health Products LLC Ultimate Horny Goat Weed Complex
- 21 (16) Piping Rock Health Products LLC Garcinia Cambogia 500 MG
- 22 (17) Piping Rock Health Products LLC Triple Action Fiber Complex
- 23 (18) Piping Rock Health Products LLC Shark Cartilage 750 mg
- 24 (19) Piping Rock Health Products LLC Dong Quai 1000 MG
- 25 (20) Piping Rock Health Products LLC Stinging Nettles 500 MG
- 26 (21) Piping Rock Health Products LLC Cinnamon Gymnema Mulberry Complex 750
27 MG
- 28 (22) Piping Rock Health Products LLC Ultra Energy Booster

- 1 (23) Piping Rock Health Products LLC Ashwagandha 460 MG
- 2 (24) Piping Rock Health Products LLC Bacopa 500 MG
- 3 (25) Piping Rock Health Products LLC Fertility Blend
- 4 (26) Piping Rock Health Products LLC White Willow Bark 400 MG
- 5 (27) Piping Rock Health Products LLC Double Strength Circulation Complex
- 6 (28) Piping Rock Health Products LLC Beet Root 500 MG
- 7 (29) Piping Rock Health Products LLC Super Fiber Complex
- 8 (30) Piping Rock Health Products LLC Aller-7
- 9 (31) Piping Rock Health Products LLC Noni 400 MG
- 10 (32) Piping Rock Health Products LLC Butcher's Broom 470 MG
- 11 (33) Piping Rock Health Products LLC ProstAid Herbal Complex
- 12 (34) Piping Rock Health Products LLC Alfalfa 500 MG
- 13 (35) Piping Rock Health Products LLC Turmeric 410 MG
- 14 (36) Piping Rock Health Products LLC Fenugreek 610 MG
- 15 (37) Piping Rock Health Products LLC Echinacea and Goldenseal Root
- 16 (38) Piping Rock Health Products LLC Devil's Claw 510 MG
- 17 (39) Piping Rock Health Products LLC Ginger Root 550 MG
- 18 (40) Piping Rock Health Products LLC Calm Caps
- 19 (41) Piping Rock Health Products LLC Sleep Activator with Melatonin
- 20 (42) Piping Rock Health Products LLC Yohimbe Bark Powder 320 MG
- 21 (43) Piping Rock Health Products LLC Reishi Mushroom 500 mg
- 22 (44) Piping Rock Health Products LLC Bitter Melon 450 MG
- 23 (45) Piping Rock Health Products LLC Blood Sugar Complex with Cinnamon Extract
- 24 (46) Piping Rock Health Products LLC Spirulina Super Blue-Green Algae 500 MG
- 25 (47) Piping Rock Health Products LLC Korean Ginseng 500 MG
- 26 (48) Piping Rock Health Products LLC Neem Leaf 475 mg
- 27 (49) Piping Rock Health Products LLC Hawthorn Berries 565 MG

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

1 jurisdiction over it by the California courts consistent with traditional notions of fair play and
2 substantial justice.

3 9. This Court is the proper venue for this action because each Defendant has violated
4 California law in the County of Los Angeles. Furthermore, this Court is the proper venue under
5 Code of Civil Procedure §395.5 and H&S Code §25249.7(a), which provides that any person
6 who violates or threatens to violate H&S Code §§25249.5 or 25249.6 may be enjoined in any
7 court of competent jurisdiction.

8 **PARTIES**

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

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

15 12. ERC alleges on information and belief that Defendant PIPING ROCK HEALTH
16 PRODUCTS, LLC is a business of unknown form that is a person within the meaning of H&S
17 Code §25249.11(a).

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

23 14. Defendants DOES 1-25 are named herein under fictitious names, as their true
24 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
25 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or
26 has otherwise been involved in the chain of commerce of, and continues to manufacture,
27 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of
28 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some

1 actionable manner, for the events and happenings referred to herein, either through its conduct or
2 through the conduct of its agents, servants or employees, or in some other manner, causing the
3 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true
4 names and capacities of DOES when ascertained.

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

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

15 **STATUTORY BACKGROUND**

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

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

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

27 19. Proposition 65 provides that any person who “violates or threatens to violate” the
28 statute “may be enjoined in any court of competent jurisdiction.” (H&S Code §25249.7(a).)

1 “Threaten to violate” is defined to mean creating “a condition in which there is a substantial
2 probability that a violation will occur.” (H&S Code §25249.11(e).) Violators are liable for civil
3 penalties of up to \$2,500 per day for each violation of Proposition 65. (H&S Code §25249.7(b).)

4 **FACTUAL BACKGROUND**

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

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

14 22. Plaintiff is informed and believes, and based on such information and belief,
15 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in
16 California without the requisite clear and reasonable warnings. THE PRODUCTS continue to be
17 marketed, distributed and sold in California without the requisite warning information.

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

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

27 25. Individuals using or handling THE PRODUCTS are exposed to lead in excess of
28 the “maximum allowable daily” and “no significant risk” levels determined by the State of

1 California, as applicable.

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

5 27. Upon information and belief, Plaintiff alleges THE PRODUCTS continue to be
6 marketed, distributed, and/or sold in California without the requisite clear and reasonable
7 warnings.

8 **FIRST CAUSE OF ACTION**

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

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

12 29. On January 31, 2014, Plaintiff sent a 60-Day Notice of Proposition 65 violations
13 to the requisite public enforcement agencies and to defendant PIPING ROCK HEALTH
14 PRODUCTS, LLC (“Notice of Violations”). The Notice of Violations was issued pursuant to,
15 and in compliance with, the requirements of H&S Code §25249.7(d) and the statute’s
16 implementing regulations regarding the notices of violations to be given to certain public
17 enforcement agencies and to the violator. The Notice of Violations was issued as follows:

- 18 a. Defendant PIPING ROCK HEALTH PRODUCTS, LLC and the California
19 Attorney General were provided copies of the Notice of Violations, along with a
20 Certificate of Merit by the attorney for the noticing party stating that there is a
21 reasonable and meritorious cause for this action. The requisite county district
22 attorneys and city attorneys were provided copies of the Notices of Violations and
23 Certificate of Merit.
- 24 b. Defendant PIPING ROCK HEALTH PRODUCTS, LLC was provided, with the
25 Notice of Violations, a copy of a document entitled “The Safe Drinking Water
26 and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also
27 known as Appendix A to Title 27 of CCR § 25903.
- 28 c. The California Attorney General was provided, with the Notice of Violations,

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

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

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

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

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

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

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

5 **SECOND CAUSE OF ACTION**

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

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

9 37. On January 31, 2014, Plaintiff sent a 60-Day Notice of Proposition 65 violations
10 to the requisite public enforcement agencies and to defendant PIPING ROCK HEALTH
11 PRODUCTS, LLC (“Notice of Violations”). The Notice of Violations was issued pursuant to,
12 and in compliance with, the requirements of H&S Code §25249.7(d) and the statute’s
13 implementing regulations regarding the notices of violations to be given to certain public
14 enforcement agencies and to the violator. The Notice of Violations was issued as follows:

- 15 a. Defendant PIPING ROCK HEALTH PRODUCTS, LLC and the California
16 Attorney General were provided copies of the Notice of Violations, along with a
17 Certificate of Merit by the attorney for the noticing party stating that there is a
18 reasonable and meritorious cause for this action. The requisite county district
19 attorneys and city attorneys were provided copies of the Notices of Violations and
20 Certificate of Merit.
- 21 b. Defendant PIPING ROCK HEALTH PRODUCTS, LLC was provided, with the
22 Notice of Violations, a copy of a document entitled “The Safe Drinking Water
23 and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also
24 known as Appendix A to Title 27 of CCR § 25903.
- 25 c. The California Attorney General was provided, with the Notice of Violations,
26 additional factual information sufficient to establish a basis for the Certificate of
27 Merit, including the identity of the persons consulted with and relied on by the
28 certifier, and the facts, studies, or other data reviewed by those persons, pursuant

1 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

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

5 39. By committing the acts alleged in this Complaint, Defendant at all times relevant
6 to this action, and continuing through the present, has violated and continues to violate H&S
7 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
8 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
9 allowable exposure levels without Defendant first giving clear and reasonable warnings to such
10 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendant has manufactured,
11 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of
12 commerce of, and continues to manufacture, package, distribute, market, sell and/or otherwise
13 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
14 and will be used and/or handled by individuals in California, without Defendant providing clear
15 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
16 birth defects and other reproductive harm posed by exposure to lead through the use and/or
17 handling of THE PRODUCTS. Furthermore, Defendant have threatened to violate H&S Code
18 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
19 for use and/or handling to individuals in California.

20 40. By the above-described acts, Defendant is liable, pursuant to H&S Code
21 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
22 relating to THE PRODUCTS.

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

24 **THE NEED FOR INJUNCTIVE RELIEF**

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

27 43. By committing the acts alleged in this Complaint, Defendant has caused
28 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence of

1 equitable relief, Defendant will continue to create a substantial risk of irreparable injury by
2 continuing to cause consumers to be involuntarily and unwittingly exposed to lead through the
3 use and/or handling of THE PRODUCTS.

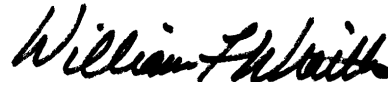
4 **PRAYER FOR RELIEF**

5 Wherefore, Plaintiff prays for the following relief against Defendant PIPING ROCK
6 HEALTH PRODUCTS, LLC:

- 7 A. A preliminary and permanent injunction enjoining each Defendant, its agents,
8 employees, assigns and all persons acting in concert or participating with each Defendant, from
9 manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or
10 use in California without first providing clear and reasonable warnings, within the meaning of
11 Proposition 65, that the users and/or handlers of THE PRODUCTS are exposed to the lead;
- 12 B. An assessment of civil penalties against Defendant, pursuant to Health & Safety
13 Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;
- 14 C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code
15 of Civil Procedure §1021.5 or the substantial benefit theory;
- 16 D. An award of costs of suit herein; and
- 17 E. Such other and further relief as may be just and proper.

18
19 Dated: April 28, 2014

WRAITH LAW



20
21 By: _____
22 WILLIAM F. WRAITH
23 Attorney for Plaintiff Environmental
24 Research Center
25
26
27
28