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ORIGINAL FILED
Superior Court of California
County of Los Angeles

NOV 03 2015

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

BC 599839

11 ROBERT BROWNWELL,
12 Plaintiff,
13 v.
14 VENICE MEDICAL CENTER, INC., a
15 corporation; and DOES 1-10, inclusive,
16 Defendants.

Case No.:
COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF
Health and Safety Code §25248.5, et seq.

By Fax

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1 Plaintiff alleges on information and belief as follows:

2 **NATURE OF THE ACTION**

3 1. This Complaint is a representative action brought by plaintiff ROBERT
4 BROWNWELL ("PLAINTIFF"), on behalf of the citizens of the State of California, to
5 enforce the People's right to be warned of the carcinogenic danger of marijuana smoke as
6 a result of products sold and/or consumed in California. Marijuana smoke is a carcinogen
7 inhaled by consumers through the smoking of marijuana.

8 2. Under Proposition 65, enacted as the Safe Drinking Water and Toxic
9 Enforcement Act of 1986 and codified as Health and Safety ("H&S") Code section 25249.5
10 *et seq.*, businesses must provide California consumers with a "clear and reasonable
11 warning" prior to exposing consumers to a chemical known to the State to cause cancer.
12 Marijuana smoke is a chemical known to the State of California to cause cancer.

13 3. By this Complaint, PLAINTIFF seeks to remedy Defendants' continuing
14 failure to warn California consumers of their exposure to excessive levels of marijuana
15 smoke derived from marijuana products manufactured, distributed, sold, and/or offered for
16 sale or use by Defendants throughout the State of California, including all marijuana
17 products not intended to be consumed in edible form ("PRODUCTS").

18 **PARTIES**

19 4. PLAINTIFF is a concerned California citizen and person within the meaning
20 of H&S Code section 25249.11(a). PLAINTIFF brings this action in the public interest
21 pursuant to H&S Code section 25249.7(d) and seeks to increase public awareness and
22 safety regarding products sold for consumption in California that expose California citizens
23 to unsafe levels of carcinogens.

24 5. Defendant Venice Medical Center, Inc. ("DEFENDANT"), doing business in
25 California as Venice Medical Center, is a person in the course of doing business within the
26 meaning of H&S Code section 25249.11(b). DEFENDANT has ten (10) or more employees
27 and manufactures, distributes, sells, and/or offers PRODUCTS for sale or use in the State
28 of California.

1 defects, or other reproductive harm.

2 12. Proposition 65 states, in pertinent part that, “[n]o person in the course of
3 doing business shall knowingly and intentionally expose any individual to a chemical
4 known to the state to cause cancer or reproductive toxicity without first giving clear and
5 reasonable warning to such individual...”

6 13. An exposure to a chemical in a consumer product “results from a person’s
7 acquisition, purchase, storage or other foreseeable use of a consumer good...” (California
8 Code of Regulations (“CCR”) Title 22 § 12601(b)) Under Proposition 65, a foreseeable use
9 of a consumer good is consumption.

10 **FACTUAL BACKGROUND**

11 14. On June 19, 2009, the Office of Environmental Health Hazard Assessment
12 (“OEHHA”) officially listed marijuana smoke as a chemical known to the State of California
13 to cause cancer under Proposition 65.

14 15. On June 19, 2010, pursuant to H&S Code section 25249.10(b), marijuana
15 smoke became subject to the “clear and reasonable” warning requirements of H&S Code
16 section 25249.6.

17 16. The OEHHA, under H&S Code section 25249.10(c), provides that no warning
18 is required if the level of exposure would not result in more than one excess case of cancer
19 in 100,000 individuals exposed to the chemical over a 70-year lifetime, also known as the
20 “No Significant Risk Level” (“NSRL”). Products that expose the public to levels of
21 carcinogens that are less than the NSRL do not require warnings. The OEHHA has
22 deemed that any level of marijuana smoke poses a significant risk, thus requiring notice be
23 given to the public warning of the cancer risk from exposure to marijuana smoke (CCR
24 Title 27, § 25705(b).)

25 17. Marijuana smoke shall hereinafter be referred to as the “LISTED
26 CHEMICAL.”

1 **FIRST CAUSE OF ACTION**

2 **(Against All Defendants for Violations of H&S Code §25249.5 et seq.)**

3 18. PLAINTIFF re-alleges and incorporates by reference as if fully set forth
4 herein each paragraph listed above.

5 19. DEFENDANTS, at all times relevant to this action, have violated H&S Code
6 section 25249.6 by knowingly and intentionally exposing individuals to the LISTED
7 CHEMICAL in the course of doing business without first providing a "clear and reasonable
8 warning" of the LISTED CHEMICAL's presence in the PRODUCTS.

9 20. On December 10, 2014, a 60-Day Notice of the Proposition 65 violation,
10 together with the requisite certificate of merit, was sent to DEFENDANT and certain public
11 enforcement agencies pursuant to H&S Code section 24249.7(d)(1), and attached hereto
12 as Exhibit A. The Notice stated that as a result of DEFENDANTS' sale of the PRODUCTS
13 containing the LISTED CHEMICAL, users and purchasers of the PRODUCTS in California
14 were exposed to the LISTED CHEMICAL through the reasonably foreseeable use of the
15 PRODUCTS, and that DEFENDANTS are in violation of Proposition 65 for continued
16 failure to provide a "clear and reasonable warning" of such toxic exposure.

17 21. DEFENDANTS have engaged in the manufacture, importation, distribution,
18 sale, and/or offering for sale or use of the PRODUCTS in California. Following
19 DEFENDANTS receipt of the 60-Day Notice of Violation, DEFENDANTS continue to
20 engage in the manufacture, distribution, sale, and/or offering the PRODUCTS for sale or
21 use in California. As such, DEFENDANTS' violations are ongoing and continuous in
22 nature, and will continue to occur in the future.

23 22. Following receipt of the 60-Day Notice of Violation, the appropriate public
24 enforcement agencies have failed to commence and diligently prosecute an action against
25 DEFENDANTS for violation of Proposition 65.

26 23. California consumers have been exposed and continue to be exposed to the
27 LISTED CHEMICAL through the normal and reasonably foreseeable use of the
28 PRODUCTS, *i.e.* consumption of marijuana smoke. (CCR Title 27 § 25602(b).)

1 4. An award of PLAINTIFF'S reasonable attorneys' fees and costs of bringing
2 suit in an amount the Court determines to be reasonable, pursuant to the provisions of
3 California Code of Civil Procedure section 1021.5, CCR Title 11 section 3201, and any
4 other applicable provisions of law; and,

5 5. For further relief as the Court may deem just and proper.
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7 Dated: November 2, 2015

WADE MILLER LAW

8 By: 
9 Wade A. Miller
10 Attorney for Plaintiff,
11 ROBERT BROWNWELL
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