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11 Attorneys for Plaintiff
12 ENVIRONMENTAL RESEARCH CENTER, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

15 ENVIRONMENTAL RESEARCH CENTER,
16 INC., a non-profit California corporation,

17 Plaintiff,

18 v.

19 HERBS OF LIGHT, INC., a Florida
20 Corporation,

21 Defendant.

22 ENDORSED
23 FILED
24 ALAMEDA COUNTY

25 SEP 18 2015

26 CLERK OF THE SUPERIOR COURT

By

Jayana Turner
Deputy

Case No. RG15761345

ASSIGNED FOR ALL PURPOSES TO:
JUDGE WYNN CARVILL
DEPARTMENT 21

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

Health & Safety Code §25249.5, *et seq.*

Case Filed: March 6, 2015

27 Plaintiff ENVIRONMENTAL RESEARCH CENTER, INC. ("Plaintiff" or "ERC")
28 brings this action in the interests of the general public and, on information and belief, hereby
29 alleges:

30 **INTRODUCTION**

31 1. This action seeks to remedy the continuing failure of Defendant HERBS OF
32 LIGHT, INC., a Florida Corporation ("Herbs of Light" or "Defendant") to warn consumers in
33 California that they are being exposed to lead, a substance known to the State of California to
34 cause cancer, birth defects, and other reproductive harm.

1 2. Defendant manufactures, packages, distributes, markets, and/or sells in
2 California certain products containing lead, including each of the following products
3 (“PRODUCTS”):

- 4 a. Herbs of Light Inc. Horsetail Organic/Wildcrafted;
- 5 b. Herbs of Light Inc. St. John’s Wort Organic/Wildcrafted;
- 6 c. Herbs of Light Inc. Lung Assist Wildcrafted;
- 7 d. Herbs of Light Inc. Liver/Gall Bladder Health;
- 8 e. Herbs of Light Inc. Head Balance Naturally Cultivated;
- 9 f. Herbs of Light Inc. Mood Health;
- 10 g. Herbs of Light Inc. Echinacea/Goldenseal Naturally Cultivated;
- 11 h. Herbs of Light Inc. Alfalfa;
- 12 i. Herbs of Light Inc. Blood/Lymph Health;
- 13 j. Herbs of Light Inc. Brown Seaweed Wildcrafted;
- 14 k. Herbs of Light Inc. Energy Assist Wildcrafted;
- 15 l. Herbs of Light Inc. Anamu Plus Wildcrafted;
- 16 m. Herbs of Light Inc. Black Walnut;
- 17 n. Herbs of Light Inc. Eleuthero;
- 18 o. Herbs of Light Inc. Fo-Ti;
- 19 p. Herbs of Light Inc. Muira Puama;
- 20 q. Herbs of Light Inc. Cleavers Wildcrafted;
- 21 r. Herbs of Light Inc. Neem;
- 22 s. Herbs of Light Inc. Cinnamon Wildcrafted;
- 23 t. Herbs of Light Inc. Gotu Kola Organic/Wildcrafted;
- 24 u. Herbs of Light Inc. Black Cohosh;
- 25 v. Herbs of Light Inc. Red Clover;
- 26 w. Herbs of Light Inc. Barberry;

- x. Herbs of Light Inc. Goldenseal Wildcrafted;
- y. Herbs of Light Inc. Ginkgo;
- z. Herbs of Light Inc. Ginseng/American;
- aa. Herbs of Light Inc. Green Tea.

3. Lead and lead compounds (hereinafter, the "LISTED CHEMICAL") are substances known to the State¹ of California to cause cancer, birth defects, and other reproductive harm.

4. The use and/or handling of the PRODUCTS causes exposures to the LISTED CHEMICAL at levels requiring a "clear and reasonable warning" under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code") §25249.5, *et seq.* (also known and referred to herein as "Proposition 65").

5. Defendant has failed to provide a clear and reasonable Proposition 65 warning on its PRODUCTS.

6. Defendant's past and continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS without the required Proposition 65 health hazard warnings causes individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICAL that violate Proposition 65. As a proximate result of these actions, Defendants have violated and will continue to violate Proposition 65.

7. Plaintiff seeks injunctive relief enjoining Defendant from the continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS in California without provision of clear and reasonable warnings regarding the risks of cancer, birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICAL through the use and/or handling of the PRODUCTS. Plaintiff seeks an injunctive order compelling Defendant to bring its business practices into compliance with Proposition 65 by

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

1 providing a clear and reasonable warning to each individual who has been and who in the
2 future may be exposed to the LISTED CHEMICAL from the use of the PRODUCTS. Plaintiff
3 also seeks an order compelling Defendant to identify and locate each individual person who in
4 the past has purchased the PRODUCTS, and to provide to each such purchaser a clear and
5 reasonable warning that the use of the PRODUCTS will cause exposures to the LISTED
6 CHEMICAL.

7 8. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties in
8 the amount of \$2,500 per day, per violation to remedy Defendant's failure to provide clear and
9 reasonable warnings on the PRODUCTS regarding exposures to the LISTED CHEMICAL.
10 Therefore, Plaintiff seeks an assessment of civil penalties in excess of \$1 billion.

11 JURISDICTION AND VENUE

12 9. 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
14 except those given by statute to other trial courts." The statute under which this action is
15 brought does not specify any other basis for jurisdiction.

16 10. This Court has jurisdiction over Defendant because, based on information and
17 belief, Defendant is a business having sufficient minimum contacts with California, or
18 otherwise intentionally availing itself of the California market through the distribution and sale
19 of the PRODUCTS in the State of California to render the exercise of jurisdiction over
20 Defendant by the California courts consistent with traditional notions of fair play and
21 substantial justice.

22 11. Venue in this action is proper in the Alameda Superior Court because the
23 Defendant has violated California law in the County of Alameda.

24 PARTIES

25 12. Plaintiff ERC is a non-profit corporation organized under California's
26 Corporation Law. ERC is dedicated to, among other causes, reducing the use and misuse of

1 hazardous and toxic substances, consumer protection, worker safety, and corporate
2 responsibility.

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

5 14. Defendant Herbs of Light is a corporation organized under the laws of the State
6 of Florida and is a person doing business within the meaning of H&S Code §25249.11.
7 Defendant manufactures, packages, distributes, markets and/or sells the PRODUCTS for sale
8 or use in California and in Alameda County.

9 **STATUTORY BACKGROUND**

10 15. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative
11 statute passed as “Proposition 65” by a vote of the People of the State of California in 1986. In
12 passing Proposition 65, the People declared in their right “[t]o be informed about exposures to
13 chemicals that cause cancer, birth defects, or other reproductive harm.” Section 1(b) of
14 Initiative Measure, Proposition 65..

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

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

23 17. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release
24 of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
25 knowledge that the discharge, release or exposure is unlawful is required.” 27 California Code
26 of Regulations (“CCR”) §25102(n).

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

1 phrase “threaten to violate” is defined to mean creating “a condition in which there is a
2 substantial likelihood that a violation will occur.” H&S Code §25249.11(e).

3 19. The limitations period for injunctive relief under Proposition 65 is three (3)
4 years from the date of last alleged violation. Cal. Code Civ. Proc (“CCP”) § 338; *Consumer*
5 *Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2007) 150 Cal.App.4th 953, 981.
6 Under that standard, the applicable limitations period for injunctive relief against Defendant is
7 three years prior to the date of the Notice of Violation.

8 20. Violators are liable for civil penalties of up to \$2,500 per day for each violation
9 of the Act. H&S Code §25249.7.

10 21. The limitations period for penalties under Proposition 65 is one (1) year from
11 the date of last alleged violation. CCP § 340; *Consumer Advocacy Group, Inc* 150 Cal.App.4th
12 at 981. Under that standard, the applicable limitations period for penalties against Defendant is
13 one year prior to the date of the Notice of Violation.

14 **FACTUAL BACKGROUND**

15 22. On February 27, 1987, the State of California officially listed the chemical lead
16 as a chemical known to cause reproductive toxicity. Lead became subject to the warning
17 requirement one year later and was therefore subject to the “clear and reasonable” warning
18 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.* Due to the high toxicity of
20 lead, the maximum allowable dose level for lead is 0.5 ug/day (micrograms a day) for
21 reproductive toxicity. 27 CCR § 25805(b).

22 23. On October 1, 1992, the State of California officially listed the chemicals lead
23 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became
24 subject to the warning requirement one year later and were therefore subject to the “clear and
25 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993. 27 CCR
26

1 § 25102, *et seq.*; H&S Code §25249.6, *et seq.* Due to the carcinogenicity of lead, the no
2 significant risk level for lead is 15 ug/day (micrograms a day). 27 CCR § 25705(b)(1).

3 24. To test Defendant's PRODUCTS for lead, Plaintiff hired a well-respected and
4 accredited testing laboratory that designed the testing protocol used and approved by the
5 California Attorney General years ago for testing heavy metals. The results of testing
6 undertaken by Plaintiff of Defendant's PRODUCTS show that the PRODUCTS tested were in
7 violation of the 0.5 ug/day "safe harbor" daily dose limit set forth in Proposition 65's
8 regulations.

9 25. The results of testing undertaken by PLAINTIFF of DEFENDANT's
10 Goldenseal Wildcrafted product show that product was in violation of the 15 ug/day "safe
11 harbor" no significant risk level set forth in Proposition 65's regulations for chemicals listed as
12 carcinogens.

13 26. Very significant is the fact that people are being exposed to lead through
14 ingestion of the PRODUCTS as opposed to other, less harmful, methods of exposure such as
15 dermal exposure. Ingestion of lead produces much higher exposure levels and health risks than
16 does dermal exposure to this chemical.

17 27. At all times relevant to this action, Defendant, therefore, has knowingly and
18 intentionally exposed the users and/or handlers of the PRODUCTS to the LISTED
19 CHEMICAL without first giving a clear and reasonable warning to such individuals.

20 28. The PRODUCTS have been sold by Defendant for use in California since at
21 least December 22, 2011.

22 29. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
23 Light Inc. Horsetail Organic/Wildcrafted to a person in the State of California each day since at
24 least December 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore,
25 Defendant's sales have resulted in at least 49,275 individual exposures from Defendant's sales
26 of this PRODUCT since at least December 22, 2011.

1 30. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
2 Light Inc. St. John's Wort Organic/Wildcrafted to a person in the State of California each day
3 since at least December 22, 2011. Each unit contains 45 servings of the PRODUCT.
4 Therefore, Defendant's sales have resulted in at least 49,275 individual exposures from
5 Defendant's sales of this PRODUCT since at least December 22, 2011.

6 31. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
7 Light Inc. Lung Assist Wildcrafted to a person in the State of California each day since at least
8 December 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore,
9 Defendant's sales have resulted in at least 49,275 individual exposures from Defendant's sales
10 of this PRODUCT since at least December 22, 2011.

11 32. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
12 Light Inc. Liver/Gall Bladder Health to a person in the State of California each day since at
13 least December 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore,
14 Defendant's sales have resulted in at least 49,275 individual exposures from Defendant's sales
15 of this PRODUCT since at least December 22, 2011.

16 33. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
17 Light Inc. Head Balance Naturally Cultivated to a person in the State of California each day
18 since at least December 22, 2011. Each unit contains 45 servings of the PRODUCT.
19 Therefore, Defendant's sales have resulted in at least 49,275 individual exposures from
20 Defendant's sales of this PRODUCT since at least December 22, 2011.

21 34. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
22 Light Inc. Mood Health to a person in the State of California each day since at least December
23 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales
24 have resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
25 since at least December 22, 2011.

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1 35. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
2 Light Inc. Echinacea/Goldenseal Naturally Cultivated to a person in the State of California
3 each day since at least December 22, 2011. Each unit contains 45 servings of the PRODUCT.
4 Therefore, Defendant's sales have resulted in at least 49,275 individual exposures from
5 Defendant's sales of this PRODUCT since at least December 22, 2011.

6 36. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
7 Light Inc. Alfalfa to a person in the State of California each day since at least December 22,
8 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales have
9 resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
10 since at least December 22, 2011.

11 37. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
12 Light Inc. Blood/Lymph Health to a person in the State of California each day since at least
13 December 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore,
14 Defendant's sales have resulted in at least 49,275 individual exposures from Defendant's sales
15 of this PRODUCT since at least December 22, 2011.

16 38. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
17 Light Inc. Brown Seaweed Wildcrafted to a person in the State of California each day since at
18 least December 22, 2011. Each unit contains 15 servings of the PRODUCT. Therefore,
19 Defendant's sales have resulted in at least 16,425 individual exposures from Defendant's sales
20 of this PRODUCT since at least December 22, 2011.

21 39. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
22 Light Inc. Energy Assist Wildcrafted to a person in the State of California each day since at
23 least December 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore,
24 Defendant's sales have resulted in at least 49,275 individual exposures from Defendant's sales
25 of this PRODUCT since at least December 22, 2011.

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1 40. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
2 Light Inc. Anamu Plus Wildcrafted to a person in the State of California each day since at least
3 December 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore,
4 Defendant's sales have resulted in at least 49,275 individual exposures from Defendant's sales
5 of this PRODUCT since at least December 22, 2011.

6 41. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
7 Light Inc. Black Walnut to a person in the State of California each day since at least December
8 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales
9 have resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
10 since at least December 22, 2011.

11 42. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
12 Light Inc. Eleuthero to a person in the State of California each day since at least December 22,
13 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales have
14 resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
15 since at least December 22, 2011.

16 43. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
17 Light Inc. Fo-Ti to a person in the State of California each day since at least December 22,
18 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales have
19 resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
20 since at least December 22, 2011.

21 44. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
22 Light Inc. Muira Puama to a person in the State of California each day since at least December
23 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales
24 have resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
25 since at least December 22, 2011.
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1 45. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
2 Light Inc. Cleavers Wildcrafted to a person in the State of California each day since at least
3 December 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore,
4 Defendant's sales have resulted in at least 49,275 individual exposures from Defendant's sales
5 of this PRODUCT since at least December 22, 2011.

6 46. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
7 Light Inc. Neem to a person in the State of California each day since at least December 22,
8 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales have
9 resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
10 since at least December 22, 2011.

11 47. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
12 Light Inc. Cinnamon Wildcrafted to a person in the State of California each day since at least
13 December 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore,
14 Defendant's sales have resulted in at least 49,275 individual exposures from Defendant's sales
15 of this PRODUCT since at least December 22, 2011.

16 48. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
17 Light Inc. Gotu Kola Organic/Wildcrafted to a person in the State of California each day since
18 at least December 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore,
19 Defendant's sales have resulted in at least 49,275 individual exposures from Defendant's sales
20 of this PRODUCT since at least December 22, 2011.

21 49. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
22 Light Inc. Black Cohosh to a person in the State of California each day since at least December
23 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales
24 have resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
25 since at least December 22, 2011.

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1 50. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
2 Light Inc. Red Clover to a person in the State of California each day since at least December
3 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales
4 have resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
5 since at least December 22, 2011.

6 51. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
7 Light Inc. Barberry to a person in the State of California each day since at least December 22,
8 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales have
9 resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
10 since at least December 22, 2011.

11 52. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
12 Light Inc. Goldenseal Wildcrafted to a person in the State of California each day since at least
13 December 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore,
14 Defendant's sales have resulted in at least 49,275 individual exposures from Defendant's sales
15 of this PRODUCT since at least December 22, 2011.

16 53. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
17 Light Inc. Ginkgo to a person in the State of California each day since at least December 22,
18 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales have
19 resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
20 since at least December 22, 2011.

21 54. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
22 Light Inc. Ginseng/American to a person in the State of California each day since at least
23 December 22, 2011. Each unit contains 45 servings of the PRODUCT. Therefore,
24 Defendant's sales have resulted in at least 49,275 individual exposures from Defendant's sales
25 of this PRODUCT since at least December 22, 2011.

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1 55. Defendant has sold at least one unit (one package) of the PRODUCT Herbs of
2 Light Inc. Green Tea to a person in the State of California each day since at least December 22,
3 2011. Each unit contains 45 servings of the PRODUCT. Therefore, Defendant's sales have
4 resulted in at least 49,275 individual exposures from Defendant's sales of this PRODUCT
5 since at least December 22, 2011.

6 56. Defendant's sales of the PRODUCTS have resulted in at least 1,297,575
7 individual exposures without the warnings required by Proposition 65 since at least December
8 22, 2011. Defendant's actions must be enjoined by the Court.

9 57. These exposures also entitle the Court to award civil penalties in excess of \$1
10 billion for the applicable statutory penalty period, which is one year prior to the date of the
11 Notice of Violation. CCP § 340; *Consumer Advocacy Group, Inc.*, 150 Cal.App.4th at 981.

12 58. The imposition of a civil penalty award in excess of \$1 billion would clearly
13 have a deterrent economic effect in that it is likely to deter future conduct in violation of
14 Proposition 65 by both Defendant and the regulated community as a whole.

15 59. The PRODUCTS continue to be distributed and sold in California without the
16 requisite warning information.

17 60. On December 22, 2014, Plaintiff sent a 60-Day Notice of Proposition 65
18 ("Notice") violations to the requisite public enforcement agencies, and to the Defendant. A
19 true and correct copy of the Notice is attached hereto as Exhibit A and incorporated by
20 reference. The Notice was issued pursuant to, and in compliance with, the requirements of
21 H&S Code §25249.7(d) and the statute's implementing regulations regarding the notice of the
22 violations to be given to certain public enforcement agencies and to the violator. The Notice
23 included, *inter alia*, the following information: the name, address, and telephone number of the
24 noticing individual; the name of the alleged violator; the statute violated; the approximate time
25 period during which violations occurred; and descriptions of the violations, including the
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1 chemicals involved, the routes of toxic exposure, and the specific product or type of product
2 causing the violations, and was issued as follows:

- 3 a. Defendant was provided a copy of the Notice by Certified Mail.
- 4 b. Defendant was provided a copy of a document entitled "The Safe
5 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
6 Summary," which is also known as Appendix A to Title 27 of CCR
7 §25903.
- 8 c. The California Attorney General was provided a copy of the Notice via
9 online submission.
- 10 d. The California Attorney General was provided with a Certificate of Merit
11 by the attorney for the noticing party, stating that there is a reasonable
12 and meritorious case for this action, and attaching factual information
13 sufficient to establish a basis for the certificate, including the identity of
14 the persons consulted with and relied on by the certifier, and the facts,
15 studies, or other data reviewed by those persons, pursuant to H&S Code
16 §25249.7(h) (2).

17 61. At least 60-days have elapsed since Plaintiff sent the Notice to the Defendant.
18 The appropriate public enforcement agencies have failed to commence and diligently prosecute
19 a cause of action under H&S Code §25249.5, *et seq.* against Defendant based on the
20 allegations herein.

21 62. As a proximate result of acts by Defendant, as persons in the course of doing
22 business within the meaning of Health & Safety Code §25249.11, individuals throughout the
23 State of California, including in the County of Alameda, have been exposed to the LISTED
24 CHEMICAL without a clear and reasonable warning. The individuals subject to the illegal
25 exposures include normal and foreseeable users of the PRODUCTS, as well as all other
26 persons exposed to the PRODUCTS.

FIRST CAUSE OF ACTION

(Injunctive Relief for Violations of Health and Safety Code § 25249.5, et seq. concerning the PRODUCTS described in the December 22, 2014 Prop. 65 Notice By Plaintiff Against Defendant)

63. Plaintiff realleges and incorporates by reference all preceding paragraphs as if specifically set forth herein.

64. By committing the acts alleged in this Complaint, Defendant at all times relevant to this action, and continuing through the present, has violated H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who use or handle the PRODUCTS set forth in the Notice to the LISTED CHEMICAL, without first providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and 25249.11(f).

65. By the above-described acts, Defendant has violated H&S Code § 25249.6 and is therefore subject to an injunction ordering Defendant to stop violating Proposition 65, to provide warnings to all present and future customers, and to provide warnings to Defendant's past customers who purchased or used the PRODUCTS without receiving a clear and reasonable warning.

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

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

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

SECOND CAUSE OF ACTION

(Civil Penalties for Violations of Health and Safety Code § 25249.5, et seq. concerning the PRODUCTS described in the December 22, 2014 Prop. 65 Notice By Plaintiff Against Defendant)

68. Plaintiff realleges and incorporates by reference all preceding paragraphs as if specifically set forth herein.

1 This product contains lead, a chemical known to the State of California to cause [cancer and]
2 birth defects or other reproductive harm. The phrase "cancer and" shall be included in the
3 warning only if the maximum recommended daily dose causes an exposure to more than 15
4 micrograms of lead when taken as directed on the PRODUCTS' label;

5 B. An injunctive order, pursuant to H&S Code §25249.7(b), compelling Defendant
6 to identify and locate each individual who has purchased the PRODUCTS since December 22,
7 2011, and to provide a warning to such person that the use of the PRODUCTS will expose the
8 user to chemicals known to cause cancer, birth defects, and other reproductive harm;

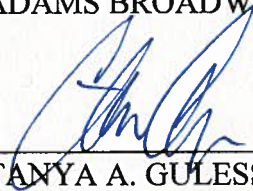
9 C. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
10 against Defendant in the amount of \$2,500 per day for each violation of Proposition 65, in an
11 amount in excess of \$1 billion;

12 D. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant
13 to California Code of Civil Procedure §1021.5, as Plaintiff shall specify in further application
14 to the Court; and

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

16 Dated: September 18, 2015

ADAMS BROADWELL JOSEPH & CARDOZO

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TANYA A. GULESSERIAN
CHRISTINA M. CARO

21 Attorneys for Plaintiff
22 ENVIRONMENTAL RESEARCH CENTER, INC.
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Exhibit A

LAW OFFICE OF CHRISTINA M. CARO

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VIA CERTIFIED MAIL

Current CEO or President
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29323 NW County Road 241
Alachua, FL 32615

Current CEO or President
Herbs of Light, Inc.
Post Office Box 1648
High Springs, FL 32655

Dean W. Martens
(Herbs of Light, Inc.'s
Registered Agent for Service of Process)
29323 NW County Road 241
Alachua, FL 32615

VIA ONLINE SUBMISSION

Office of the California Attorney General

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent the Environmental Research Center, Inc. ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The name of the Company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

Herbs of Light, Inc.

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. Herbs of Light Inc. Horsetail Organic/Wildcrafted - Lead
2. Herbs of Light Inc. St. John's Wort Organic/Wildcrafted - Lead
3. Herbs of Light Inc. Lung Assist Wildcrafted - Lead
4. Herbs of Light Inc. Liver/Gall Bladder Health - Lead
5. Herbs of Light Inc. Head Balance Naturally Cultivated - Lead
6. Herbs of Light Inc. Mood Health - Lead
7. Herbs of Light Inc. Echinacea/Goldenseal Naturally Cultivated - Lead
8. Herbs of Light Inc. Alfalfa - Lead
9. Herbs of Light Inc. Blood/Lymph Health - Lead
10. Herbs of Light Inc. Brown Seaweed Wildcrafted - Lead
11. Herbs of Light Inc. Energy Assist Wildcrafted - Lead
12. Herbs of Light Inc. Anamu Plus Wildcrafted - Lead
13. Herbs of Light Inc. Black Walnut - Lead
14. Herbs of Light Inc. Eleuthero - Lead
15. Herbs of Light Inc. Fo-Ti - Lead
16. Herbs of Light Inc. Muira Puama - Lead
17. Herbs of Light Inc. Cleavers Wildcrafted - Lead
18. Herbs of Light Inc. Neem - Lead
19. Herbs of Light Inc. Cinnamon Wildcrafted - Lead
20. Herbs of Light Inc. Gotu Kola Organic/Wildcrafted - Lead
21. Herbs of Light Inc. Black Cohosh - Lead
22. Herbs of Light Inc. Red Clover - Lead
23. Herbs of Light Inc. Barberry - Lead
24. Herbs of Light Inc. Goldenseal Wildcrafted - Lead
25. Herbs of Light Inc. Ginkgo - Lead
26. Herbs of Light Inc. Ginseng/American - Lead
27. Herbs of Light Inc. Green Tea - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the

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identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since December 22, 2011, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Herbs of Light, Inc. and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by Herbs of Light, Inc.**

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: December 22, 2014



Christina M. Caro

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On December 22, 2014, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Herbs of Light, Inc.
29323 NW County Road 241
Alachua, FL 32615

Dean W. Martens
(Herbs of Light, Inc.'s
Registered Agent for Service of Process)
29323 NW County Road 241
Alachua, FL 32615

Current CEO or President
Herbs of Light, Inc.
Post Office Box 1648
High Springs, FL 32655

On December 22, 2014, I electronically served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On December 22, 2014, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on December 22, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

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Service List

District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
708 Court Street
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 93902

District Attorney, Napa County
Post Office Box 720
Napa, CA 94559

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Sonoma County
600 Administration Drive,
Room 212J
Santa Rosa, CA 95403

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93291

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113