

ENDORSED
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ALAMEDA COUNTY
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By SUE PESKO

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ENVIRONMENTAL RESEARCH CENTER, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 ENVIRONMENTAL RESEARCH CENTER,)
11 INC., a non-profit California corporation,)

12 Plaintiff,

13 v.

14 SUPPLEMENTALWAREHOUSE.COM INC.)
15 Wisconsin Corporation, and DOES 1 – 25,)

16 Defendants.

Case No. RG16810946

**SECOND AMENDED COMPLAINT FOR
PERMANENT INJUNCTION, CIVIL
PENALTIES AND OTHER RELIEF**

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

17
18
19 Plaintiff Environmental Research Center, Inc. (“PLAINTIFF” or “ERC”) brings this
20 action in the interests of the general public and, on information and belief, hereby
21 alleges:

22 **INTRODUCTION**

23 1. This action seeks to remedy the continuing failure of Defendants
24 SUPPLEMENTWAREHOUSE.COM INC. (“SUPPLEMENTWAREHOUSE”), and
25 DOES 1-25 (hereinafter individually referred to as “DEFENDANT” or collectively as
26 “DEFENDANTS”) to warn consumers in California that they are being exposed to lead
27 and cadmium, substances known to the State of California to cause cancer, birth defects,
28

1 and other reproductive harm. According to the Safe Drinking Water and Toxics
2 Enforcement Act of 1986, Health and Safety Code (“H&S Code”) section 25249.5 (also
3 known as and referred to hereinafter as “Proposition 65”), businesses must provide
4 persons with a “clear and reasonable warning” before exposing individuals to chemicals
5 known to the state to cause cancer or reproductive harm. DEFENDANTS manufacture,
6 package, distribute, market, and/or sell in California certain products containing lead
7 and/or cadmium (the “SUBJECT PRODUCTS”):

- 8 • Myogenix Inc. After Shock Critical Mass Vanilla Milk Shake - Lead
- 9 • Myogenix Inc. After Shock Critical Mass Cookies N' Cream Milk Shake –
10 Lead, Cadmium
- 11 • Myogenix Inc. After Shock Critical Mass Chocolate Milk Shake – Lead,
12 Cadmium
- 13 • Myogenix Inc. Adipro Appetite Control + Adrenal A2 - Lead
- 14 • Myogenix Inc. Liver Support Extra Strength – Lead

15 2. Lead and cadmium (hereinafter, the “LISTED CHEMICALS”) are
16 substances known to the State of California to cause cancer, birth defects, and other
17 reproductive harm.

18 3. The use and/or handling of the SUBJECT PRODUCTS causes exposures to
19 the LISTED CHEMICALS at levels requiring a “clear and reasonable warning” under
20 Proposition 65. DEFENDANTS exposed consumers, users, and handlers to the LISTED
21 CHEMICALS and have failed to provide the health hazard warnings required by
22 Proposition 65.

23 4. DEFENDANTS’ continued manufacturing, packaging, distributing,
24 marketing and/or sales of the SUBJECT PRODUCTS without the required health hazard
25 warnings, causes, or threatens to cause, individuals to be involuntarily, unknowingly and
26 unwittingly exposed to levels of the LISTED CHEMICALS that violate Proposition 65.

PARTIES

27 5. PLAINTIFF is a non-profit corporation organized under California Law.
28

1 ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and
2 toxic substances, consumer protection, worker safety, and corporate responsibility.

3 6. ERC is a person within the meaning of H&S Code section 25249.11 and
4 brings this enforcement action in the public interest pursuant to H&S Code section
5 25249.7(d). H&S Code section 25249.7 (d) specifies that actions to enforce Proposition
6 65 may be brought by a person in the public interest, provided certain notice
7 requirements and no other public prosecutor is diligently prosecuting an action for the
8 same violation(s).

9 7. SUPPLEMENTWAREHOUSE is now, and was at all times relevant herein,
10 a corporation organized under the laws of Wisconsin and is doing business within the
11 meaning of H&S Code section 25249.11.

12 8. DEFENDANTS own, administer, direct, control and/or operate facilities
13 and/or agents, distributors sellers, marketers or other retail operations who place its
14 SUBJECT PRODUCTS into the stream of commerce in California (including but not
15 limited to Alameda County) under the brand name MYOGENIX INC. and other brand
16 names, which contain the LISTED CHEMICALS without first giving clear and
17 reasonable warnings.

18 9. DEFENDANTS, separately and each of them, are or were, at all times
19 relevant to the claims in this Complaint and continuing through the present, legally
20 responsible for compliance with the provisions of Proposition 65. Whenever an
21 allegation regarding any act of a DEFENDANT is made herein, such allegation shall be
22 deemed to mean that DEFENDANT, or its agent, officer, director, manager, supervisor
23 or employee did or so authorized such acts while engaged in the affairs of
24 DEFENDANT's business operations and/or while acting within the course and scope of
25 their employment or while conducting business for DEFENDANT(S) for a commercial
26 purpose.

27 10. In this Second Amended Complaint, when reference is made to any act of a
28 DEFENDANT, such allegation shall mean that the owners, officers, directors, agents,

1 employees, contractors, or representatives of DEFENDANT acted or authorized such
2 actions, and/or negligently failed and omitted to act or adequately and properly
3 supervise, control or direct its employees and agents while engaged in the management,
4 direction, operation or control of the affairs of the business organization. Whenever
5 reference is made to any act of any DEFENDANT, such allegation shall be deemed to
6 mean the act of each DEFENDANT acting individually, jointly, and severally as defined
7 by Civil Code Section 1430 *et seq.*

8 11. PLAINTIFF does not know the true names, capacities and liabilities of
9 DEFENDANTS' DOES Nos. 1-25, inclusive, and therefore sues them under fictitious
10 names. PLAINTIFF will amend this Complaint to allege the true name and capacities of
11 the DOE Defendants upon being ascertained. Each of these Defendants was in some way
12 legally responsible for the acts, omissions, and/or violations alleged herein.

13 **JURISDICTION AND VENUE**

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

18 13. This Court has jurisdiction over DEFENDANTS because they are business
19 entities that do sufficient business, have sufficient minimum contacts in California or
20 otherwise intentionally avail themselves of the California market, through the sale,
21 marketing and use of their SUBJECT PRODUCTS in California, to render the exercise
22 of jurisdiction over them by the California courts consistent with traditional notions of
23 fair play and substantial justice.

24 14. Venue in this action is proper in the Alameda County Superior Court because
25 the cause, or part thereof, arises in the County of Alameda since DEFENDANTS'
26 products are marketed, offered for sale, sold, used, and/or consumed in this county.

27 **STATUTORY BACKGROUND**

28 15. The People of the State of California declared in Proposition 65 their right

1 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
2 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

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

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

11 17. An exposure to a chemical in a consumer product is one "which results from
12 a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable
13 use of a consumer good, or any exposure that results from receiving a consumer
14 service." (Cal. Code Regs., tit. 22, § 12601, subd. (b).)

15 18. Proposition 65 provides that any "person who violates or threatens to violate" the
16 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The phrase
17 "threaten to violate" is defined to mean creating "a condition in which there is a substantial
18 probability that a violation will occur" (H&S Code §25249.11(e)). Violators are liable for civil
19 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

20 **FACTUAL BACKGROUND**

21 19. On February 27, 1987, the State of California officially listed lead as a chemical
22 known to cause reproductive toxicity. Lead became subject to the warning requirement one
23 year later and was therefore subject to the "clear and reasonable" warning requirements of
24 Proposition 65 beginning on February 27, 1988. (27 California Code of Regulations ("CCR")
25 §25000, *et seq.*; H&S Code §25249.5, *et seq.*).

26 20. On October 1, 1992, the State of California officially listed lead and lead
27 compounds as chemicals known to cause cancer. Lead and lead compounds became subject to

1 the warning requirement one year later and were therefore subject to the "clear and reasonable"
2 warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR § 25000, *et*
3 *seq.*; H&S Code §25249.6, *et seq.*). Due to the high toxicity of lead, the maximum allowable
4 dose level for lead is 0.5 ug/day (micrograms a day) for reproductive toxicity and the no
5 significant risk level for carcinogens is 15ug/day (oral).

6 21. On May 1, 1997, the State of California officially listed the chemical cadmium as a
7 chemical known to cause reproductive toxicity. Cadmium became subject to the warning
8 requirement one year later and was therefore subject to the “clear and reasonable” warning
9 requirements of Proposition 65 beginning on May 1, 1998. (27 CCR §25000, *et seq.*; H&S
10 Code §25249.5, *et seq.*). Due to the high toxicity of cadmium, the maximum allowable dose
11 level for cadmium is 4.1 ug/day (micrograms a day) for reproductive toxicity. (27 CCR §
12 25805(b).)

13 22. On October 1, 1987, the State of California officially listed the chemicals
14 cadmium and cadmium compounds as chemicals known to cause cancer. Cadmium and
15 cadmium compounds became subject to the warning requirement one year later and
16 were therefore subject to the “clear and reasonable” warning requirements of Proposition
17 65 beginning on October 1, 1988 (27 CCR §25000, *et seq.*; H&S Code §25249.6 *et*
18 *seq.*).

19 23. To test DEFENDANTS’ SUBJECT PRODUCTS for lead and cadmium,
20 PLAINTIFF hired a well-respected and accredited testing laboratory that designed the
21 testing protocol used and approved by the California Attorney General years ago for
22 testing heavy metals. The results of testing undertaken by PLAINTIFF of
23 DEFENDANTS’ SUBJECT PRODUCTS show that the SUBJECT PRODUCTS tested
24 were in violation of the 0.5 micrograms per day (“µg/day”) and/or 15 µg/day “safe
25 harbor” daily dose limits for lead, and/or the 4.1 µg/day “safe harbor” daily dose limits
26 for cadmium, set forth in Proposition 65’s regulations. Very significant is the fact that
27 people are being exposed to lead and cadmium through ingestion as opposed to other not
28 as harmful methods of exposure such as dermal exposure. Ingestion of lead produces

1 much higher exposure levels and health risks than does dermal exposure to this
2 chemical.

3 24. At all times relevant to this action, DEFENDANTS, therefore, have
4 knowingly and intentionally exposed the users, consumers and/or handlers of the
5 SUBJECT PRODUCTS to the LISTED CHEMICALS without first giving a clear and
6 reasonable warning to such individuals.

7 25. The DEFENDANTS have allegedly sold the SUBJECT PRODUCTS for
8 use in California since at least January 29, 2013. The SUBJECT PRODUCTS continue
9 to be distributed and sold in California without the requisite warning information.

10 26. As a proximate result of acts by DEFENDANTS, as persons in the course of
11 doing business within the meaning of Health & Safety Code section 25249.11,
12 individuals throughout the State of California, including in the County of Alameda have
13 been exposed to the LISTED CHEMICALS without a clear and reasonable warning on
14 the SUBJECT PRODUCTS. The individuals subject to the violative exposures include
15 normal and foreseeable users of the SUBJECT PRODUCTS, as well as all other persons
16 exposed to the SUBJECT PRODUCTS.

17 27. On January 29, 2016, ERC served SUPPLEMENTWAREHOUSE and each
18 of the appropriate public enforcement agencies with a document entitled "Notice of
19 Violations of California Health & Safety Code Section 25249.5" that provided
20 SUPPLEMENTWAREHOUSE and the public enforcement agencies with notice that
21 SUPPLEMENTWAREHOUSE was in violation of Proposition 65 for failing to warn
22 purchasers and individuals using the SUBJECT PRODUCTS that the use of the
23 SUBJECT PRODUCTS exposes them to lead and/or cadmium, chemicals known to the
24 State of California to cause cancer and/or reproductive toxicity ("Prop. 65 Notice"). A
25 true and correct copy of the 60-Day Notice ("NOTICE") is attached hereto as **Exhibits**
26 **A** and is hereby incorporated by reference, and is available on the Attorney General's
27 website located at <http://oag.ca.gov/prop65>.

28 28. The NOTICE was issued pursuant to, and in compliance with, the

1 requirements of H&S Code section 25249.7(d) and the statute's implementing
2 regulations regarding the notice of the violations to be given to certain public
3 enforcement agencies and to the violator. The NOTICE included, *inter alia*, the
4 following information: the name, address, and telephone number of the noticing
5 individual; the name of the alleged violator; the statute violated; the approximate time
6 period during which violations occurred; and descriptions of the violations including the
7 chemicals involved, the routes of toxic exposure, and the specific product or type of
8 product causing the violations.

9 29. SUPPLEMENTWAREHOUSE was also provided copies of the document
10 entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65):
11 A Summary," which is also known as Appendix A to Title 27 of CCR section 25903, via
12 Certified Mail.

13 30. The California Attorney General was provided a copy of the NOTICE and a
14 Certificate of Merit by the attorney for the noticing party, stating that there is a
15 reasonable and meritorious case for this action, and attaching factual information
16 sufficient to establish a basis for the certificate, including the identity of the persons
17 consulted 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(h) (2) via online
19 submission.

20 31. After expiration of the sixty (60) day notice period, the appropriate public
21 enforcement agencies have failed to commence and diligently prosecute a cause of
22 action under H&S Code section 25249.5, *et seq.* against SUPPLEMENTWAREHOUSE
23 based on the allegations herein.

24 32. SUPPLEMENTWAREHOUSE has sold at least one unit of the product
25 MYOGENIX INC. AFTER SHOCK CRITICAL MASS VANILLA MILK SHAKE¹ to

26
27 ¹ "MYOGENIX INC. AFTER SHOCK CRITICAL MASS VANILLA MILK SHAKE" as used in these
28 interrogatories means the product "MYOGENIX INC. AFTER SHOCK CRITICAL MASS VANILLA
MILK SHAKE" sold by the Responding Party set forth above, which was the subject of ERC's January 29,
2016 Notice of Violation letter.

1 a PERSON² in the State of California each and every month from May 19, 2015 through
2 the present, amounting to at least 16 units of the product sold in that period. The
3 packaging of MYOGENIX INC. AFTER SHOCK CRITICAL MASS VANILLA MILK
4 SHAKE states that each unit of said product contains 5.62 pounds and recommends 170
5 grams be consumed up to several times a day. ERC's test results for MYOGENIX INC.
6 AFTER SHOCK CRITICAL MASS VANILLA MILK SHAKE shows the daily
7 exposure exceeds 0.5 µg lead.

8 33. SUPPLEMENTWAREHOUSE has sold at least one unit of the product
9 MYOGENIX INC. AFTER SHOCK CRITICAL MASS COOKIES N' CREAM MILK
10 SHAKE³ to a PERSON in the State of California each and every month from May 19,
11 2015 through the present, amounting to at least 16 units of the product sold in that
12 period. The packaging of MYOGENIX INC. AFTER SHOCK CRITICAL MASS
13 COOKIES N' CREAM MILK SHAKE states that each unit of said product contains
14 5.62 pounds and recommends 170 grams be consumed up to several times a day. ERC's
15 test results for MYOGENIX INC. AFTER SHOCK CRITICAL MASS COOKIES N'
16 CREAM MILK SHAKE show the daily exposure exceeds 0.5 µg lead and 4.1 µg
17 cadmium.

18 34. SUPPLEMENTWAREHOUSE has sold at least one unit of the product
19 MYOGENIX INC. AFTER SHOCK CRITICAL MASS CHOCOLATE MILK
20 SHAKE⁴ to a PERSON in the State of California each and every month from May 19,
21 2015 through the present, amounting to at least 16 units of the product sold in that
22 period. The packaging of MYOGENIX INC. AFTER SHOCK CRITICAL MASS

23 2 "PERSON" includes a natural person, firm, association, organization, partnership, business, trust,
24 corporation, public entity, joint venture, and any other incorporated or unincorporated association, business
or enterprise.

25 ³ "MYOGENIX INC. AFTER SHOCK CRITICAL MASS COOKIES N' CREAM MILK SHAKE" as
26 used in these interrogatories means the product "MYOGENIX INC. AFTER SHOCK CRITICAL MASS
COOKIES N' CREAM MILK SHAKE" sold by the Responding Party set forth above, which was the
subject of ERC's January 29, 2016 Notice of Violation letter.

27 ⁴ "MYOGENIX INC. AFTER SHOCK CRITICAL MASS CHOCOLATE MILK SHAKE" as used in
28 these interrogatories means the product "MYOGENIX INC. AFTER SHOCK CRITICAL MASS
CHOCOLATE MILK SHAKE" sold by the Responding Party set forth above, which was the subject of
ERC's January 29, 2016 Notice of Violation letter.

1 CHOCOLATE MILK SHAKE states that each unit of said product contains 5.62 pounds
2 and recommends 170 grams be consumed up to several times a day. ERC's test results
3 for MYOGENIX INC. AFTER SHOCK CRITICAL MASS CHOCOLATE MILK
4 SHAKE show the daily exposure exceeds 0.5 µg lead and 4.1 µg cadmium.

5 35. SUPPLEMENTWAREHOUSE has sold at least one unit of the product
6 MYOGENIX INC. ADIPRO APPETITE CONTROL + ADRENAL A2⁵ to a PERSON
7 in the State of California each and every month from May 19, 2015 through the present,
8 amounting to at least 16 units of the product sold in that period. The packaging of
9 MYOGENIX INC. ADIPRO APPETITE CONTROL + ADRENAL A2 states that each
10 unit of said product contains 60 capsules and recommends four (4) to eight (8) capsules
11 be consumed daily. ERC's test results for MYOGENIX INC. ADIPRO APPETITE
12 CONTROL + ADRENAL A2 show the daily exposure exceeds 0.5 µg lead.

13 36. SUPPLEMENTWAREHOUSE has sold at least one unit of the product
14 MYOGENIX INC. LIVER SUPPORT EXTRA STRENGTH⁶ to a PERSON in the State
15 of California each and every month from May 19, 2015 through the present, amounting
16 to at least 16 units of the product sold in that period. The packaging of MYOGENIX
17 INC. LIVER SUPPORT EXTRA STRENGTH states that each unit of said product
18 contains 120 capsules and recommends four (4) to eight (8) capsules be consumed daily.
19 ERC's test results for MYOGENIX INC. LIVER SUPPORT EXTRA STRENGTH
20 show the daily exposure exceeds 0.5 µg lead.

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25 ⁵ "MYOGENIX INC. ADIPRO APPETITE CONTROL + ADRENAL A2" as used in these interrogatories
26 means the product "MYOGENIX INC. ADIPRO APPETITE CONTROL + ADRENAL A2" sold by the
27 Responding Party set forth above, which was the subject of ERC's January 29, 2016 Notice of Violation
28 letter.

⁶ "MYOGENIX INC. LIVER SUPPORT EXTRA STRENGTH" as used in these interrogatories means the
product "MYOGENIX INC. LIVER SUPPORT EXTRA STRENGTH" sold by the Responding Party set
forth above, which was the subject of ERC's January 29, 2016 Notice of Violation letter.

1
2 **FIRST CAUSE OF ACTION**

3 **(Injunctive Relief for Violations of Health and Safety Code section 25249.5, et seq.**
4 **concerning the SUBJECT PRODUCTS described in the January 29, 2016,**
5 **Prop. 65 Notice of Violation Against DEFENDANTS)**

6 37. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through
7 36, inclusive, as if specifically set forth herein.

8 38. By committing the acts alleged in this Complaint, DEFENDANTS at all
9 times relevant to this action, and continuing through the present, have violated, or
10 threaten to violate, H&S Code section 25249.6 by, in the course of doing business,
11 knowingly and intentionally exposing individuals in California to chemicals known to
12 the State of California to cause cancer or reproductive toxicity without first giving clear
13 and reasonable warnings to such persons who use, consume or handle the SUBJECT
14 PRODUCTS containing the LISTED CHEMICALS, pursuant to H&S Code sections
15 25249.6 and 25249.11(f).

16 39. By the above-described acts, DEFENDANTS have violated, or threaten to
17 violate, H&S Code section 25249.6 and are therefore subject to preliminary and
18 permanent injunctions ordering DEFENDANTS to stop violating Proposition 65, to
19 provide warnings to all present and future customers, and to provide warnings to
20 DEFENDANTS' past customers who purchased or used the SUBJECT PRODUCTS
21 without receiving a clear and reasonable warning.

22 40. An action for injunctive relief under Proposition 65 is specifically authorized
23 by H&S Code section 25249.7(a).

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

27 42. In the absence of preliminary and then permanent injunctive relief,
28 DEFENDANTS will continue to create a substantial risk of irreparable injury by
continuing to cause consumers to be involuntarily, unknowingly and unwittingly
exposed to the LISTED CHEMICALS through the use, consumption and/or handling of

1 the SUBJECT PRODUCTS.

2 **SECOND CAUSE OF ACTION**

3 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
4 **the SUBJECT PRODUCTS described in the January 29, 2016, Prop. 65**
5 **Notice of Violation)**
6 **Against DEFENDANTS**

7 43. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through
8 42, inclusive, as if specifically set forth herein.

9 44. By committing the acts alleged in this Complaint, DEFENDANTS at all
10 times relevant to this action, and continuing through the present, have violated H&S
11 Code section 25249.6 by, in the course of doing business, knowingly and intentionally
12 exposing individuals in California to chemicals known to the State of California to cause
13 cancer or reproductive toxicity without first giving clear and reasonable warnings to
14 such persons who use, consume or handle the SUBJECT PRODUCTS containing the
15 LISTED CHEMICALS, pursuant to H&S Code sections 25249.6 and 25249.11(f).

16 45. By the above-described acts, DEFENDANTS are liable, pursuant to H&S
17 Code section 25249.7(b), for a civil penalty of up to \$2,500 per day per violation for
18 each unlawful exposure to the LISTED CHEMICALS from the SUBJECT PRODUCTS,
19 in an amount in excess of \$200,000.

20 **THE NEED FOR INJUNCTIVE RELIEF**

21 46. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1
22 through 45, as if set forth below.

23 47. By committing the acts alleged in this Complaint, DEFENDANTS have
24 caused or threaten to cause irreparable harm for which there is no plain, speedy, or
25 adequate remedy at law. In the absence of equitable relief, DEFENDANTS will continue
26 to create a substantial risk of irreparable injury by continuing to cause consumers to be
27 involuntarily and unwittingly exposed to the LISTED CHEMICALS through the use
28 and/or handling of the SUBJECT PRODUCTS.

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1 **PRAYER FOR RELIEF**

2 Wherefore, PLAINTIFF prays for the following relief:

3 A. A preliminary and permanent injunction, pursuant to H&S Code Section
4 25249.7(b), enjoining DEFENDANTS, their agents, employees, assigns and all persons
5 acting in concert or participating with DEFENDANTS, from manufacturing,
6 distributing, marketing or selling the SUBJECT PRODUCTS in California without first
7 providing a clear and reasonable warning, within the meaning of Proposition 65, that the
8 users and/or handlers of the SUBJECT PRODUCTS are exposed to the LISTED
9 CHEMICALS;

10 B. An injunctive order, pursuant to H&S Code Section 25249.7(b),
11 compelling DEFENDANTS to identify and locate each individual who has purchased
12 the SUBJECT PRODUCTS since January 29, 2013, and to provide a warning to such
13 person that the use of the SUBJECT PRODUCTS will expose the user to chemicals
14 known to cause cancer, birth defects, and other reproductive harm;

15 C. An assessment of civil penalties pursuant to Health & Safety Code
16 Section 25249.7(b), against DEFENDANTS in the amount of \$2,500 per day for each
17 violation of Proposition 65, in an amount in excess of \$200,000, according to proof;

18 D. An award to PLAINTIFF of its reasonable attorneys' fees and costs of
19 suit pursuant to California Code of Civil Procedure sections 1032 *et. seq* and 1021.5, in
20 excess of \$14,850.00 and,

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

22 DATED: 10/27/16

AQUA TERRA AERIS LAW GROUP

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26 _____
27 Matthew C. Maclear
28 Attorneys for Plaintiff
Environmental Research Center, Inc.