

1 Aqua Terra Aeris (ATA) Law Group
2 MATTHEW C. MACLEAR, SBN 209228
3 ANTHONY M. BARNES, SBN 19904
4 828 San Pablo Avenue, Suite 115B
5 Albany, CA 94706
6 Telephone: (415) 568 5200
7 E-mail: mcm@atalawgroup.com

8 **Attorneys for Plaintiff**

9 *Center for Advanced Public Awareness, Inc. ("CAPA")*

ENDORSED
FILED
Superior Court of California
County of San Francisco

MAY 25 2017

CLEK OF THE COURT
BY: ANNA L. TORRES
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 **CENTER FOR ADVANCED PUBLIC
13 AWARENESS, INC.**, a non-profit
14 California corporation,

15 Plaintiff,

16 vs.

17 **SHAMBALA HEALING CENTER,
18 Inc., doing business as Shambhala
19 Healing Center; and DOES 1-25,
20 inclusive,**

21 Defendant.

No. **CGC-17-559173**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 *et seq.*)

BY FAX
ONE LEGAL LLC

22 Plaintiff Center for Advanced Public Awareness, Inc. ("PLAINTIFF" or "CAPA") brings
23 this action in the interest of the general public, and on information and belief, hereby alleges:

24 **INTRODUCTION**

25 1. This action seeks to remedy the continuing failure of Defendants SHAMBALA
26 HEALING CENTER, INC., doing business as Shambala Healing Center ("Shambala") and
27 DOES 1-25 (hereinafter individually referred to as "DEFENDANT" or collectively as
28 "DEFENDANTS") to warn consumers in California that they are being exposed to marijuana
smoke, a chemical known to the State of California to cause cancer. According to the Safe
Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code ("H&S Code"),
section 25249.5 (also known as and referred to hereinafter as "Proposition 65"), businesses must

1 provide persons with a “clear and reasonable warning” before exposing individuals to chemicals
2 known to the State to cause cancer or reproductive harm. Marijuana smoke is referred to
3 hereinafter as the “LISTED CHEMICAL.”¹

4 2. DEFENDANTS manufacture, package, distribute, market, and/or sell in California
5 products containing marijuana intended for smoking, including, but not limited to, pre-rolled
6 products, unprocessed and processed marijuana intended to be heated, combusted, then inhaled,
7 and specifically, the flowers, leaves, and other organic parts of marijuana plants (“SUBJECT
8 PRODUCTS”), the consumption and use of which result in exposure to the LISTED CHEMICAL
9 that require a “clear and reasonable” warning under Proposition 65. DEFENDANTS exposed
10 consumers, users and patients to the LISTED CHEMICAL and have failed to provide the health
11 hazard warnings required under Proposition 65.

12 3. DEFENDANTS continue manufacturing, packaging, distributing, marketing
13 and/or sales of the SUBJECT PRODUCTS without the required health hazard warnings, which
14 causes or threatens to cause, individuals to be involuntarily, unknowingly, and unwittingly
15 exposed to the LISTED CHEMICAL in violation of Proposition 65, and subjects DEFENDANTS
16 to injunctive relief for such conduct as well as civil penalties for each violation. (H&S Code
17 § 25249.7, subds. (a), (b)(1).)

18 **PARTIES**

19 4. PLAINTIFF is a non-profit public benefit corporation organized under California
20 law. CAPA is dedicated to, among other causes, providing information to consumers regarding
21 the hazards of toxins in products; protecting public health and drinking water sources by
22 preventing pollution and toxics from being discharged, released or emitted into the environment;

23 _____
24 ¹ Many of the chemical constituents that have been identified in marijuana smoke are carcinogens. The following 33
25 marijuana smoke constituents . . . are listed under Proposition 65 as causing cancer: acetaldehyde, acetamide,
26 acrylonitrile, 4-aminobiphenyl, arsenic, benz[a]anthracene, benzene, benzo[a]pyrene, benzo[b]fluoranthene,
27 benzo[j]fluoranthene, benzo[k]fluoranthene, benzofuran, 1,3-butadiene, cadmium, carbazole, catechol, chromium
28 (hexavalent compounds), chrysene, dibenz[a,h]anthracene, dibenz[a,i]pyrene, dibenzo[a,e]pyrene,
diethylnitrosamine, dimethylnitrosamine, formaldehyde, indeno[1,2,3,-c,d]pyrene, isoprene, lead, mercury, 5-
methylchrysene, naphthalene, nickel, pyridine, and quinoline. (Evidence on the Carcinogenicity of Marijuana Smoke,
Office of Environmental Health Hazard Assessment, Reproductive and Cancer Hazard Assessment Branch, March,
2009 at 5.)

1 and enforcing state and federal environmental laws and regulations through citizen suits.

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

7 6. SHAMBALA is now, and was at all times relevant herein, a non-profit corporation
8 organized under the laws of California and is doing business within the meaning of H&S Code,
9 section 25249.11 at 2441 Mission Street, San Francisco, California 94110.

10 7. DEFENDANTS manufacture, package, distribute, market, sell in and/or offer the
11 SUBJECT PRODUCTS for sale or use in the State of California or imply by their conduct that
12 they manufacture, distribute, and/or offer the SUBJECT PRODUCTS for sale or use in the State
13 of California (including but not limited to San Francisco County), which contain the LISTED
14 CHEMICAL without first giving “clear and reasonable” warnings.

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

23 9. In this Complaint, when reference is made to any act of a DEFENDANT, such
24 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or
25 representatives of a DEFENDANT acted or authorized such actions, and/or negligently failed and
26 omitted to act or adequately and properly supervise, control or direct its employees and agents
27 while engaged in the management, direction, operation or control of the affairs of the business
28

1 organization. Whenever reference is made to any act of any DEFENDANT, such allegation shall
2 be deemed to mean the act of each DEFENDANT acting individually, jointly, and severally as
3 defined by Civil Code, section 1430 *et seq.*

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

9 **JURISDICTION AND VENUE**

10 11. Venue is proper in the San Francisco County Superior Court, pursuant to Code of
11 Civil Procedure, sections 393, 395, and 395.5, because this Court is a court of competent
12 jurisdiction, because one or more instances of wrongful conduct occurred, and continue to occur,
13 in San Francisco County, and because DEFENDANTS conducted, and continue to conduct,
14 business in this County with respect to the SUBJECT PRODUCTS.

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

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

24 14. Venue in this action is proper in the San Francisco County Superior Court because
25 the cause, or part thereof, arises in San Francisco County since DEFENDANTS’ violations
26 occurred (products are marketed, offered for sale, sold, used, and/or consumed without clear and
27 reasonable warnings) in this County.

1 **STATUTORY BACKGROUND**

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

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

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

12 17. An exposure to a chemical in a consumer product is one “which results from a
13 person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
14 consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code
15 Regs., tit. 22, § 12601, subd. (b).) H&S Code, section 25603, subdivision (c) states that “a person
16 in the course of doing business . . . shall provide a warning to any person to whom the product is
17 sold or transferred unless the product is packaged or labeled with a clear and reasonable
18 warning.”

19 18. Pursuant to H&S Code, section 25603.1:

20 The warning may be provided by using one or more of the following methods singly
21 or in combination:

22 (a) A warning that appears on a product's label or other labeling.

23 (b) Identification of the product at the retail outlet in a manner which provides a
24 warning. Identification may be through shelf labeling, signs, menus, or a
25 combination thereof.

26 (c) The warnings provided pursuant to subparagraphs (a) and (b) shall be
27 prominently placed upon a product's label or other labeling or displayed at the retail
28 outlet with such conspicuousness, as compared with other words, statements,
designs, or devices in the label, labeling or display as to render it likely to be read
and understood by an ordinary individual under customary conditions of purchase
or use.

1 (d) A system of signs, public advertising identifying the system and toll-free
2 information services, or any other system that provides clear and reasonable
3 warnings.

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

9 **FACTUAL BACKGROUND**

10 20. On December 12, 2007, the Office of Environmental Health Hazard Assessment
11 (OEHHA) announced the selection of marijuana smoke as a chemical for consideration for listing
12 by the Carcinogen Identification Committee (CIC) in the *California Regulatory Register*. The
13 CIC subsequently determined that marijuana smoke has been clearly shown, through
14 scientifically valid testing according to general accepted principles, to cause cancer.
15 Consequently, on June 19, 2009, marijuana smoke was added to the Proposition 65 list, pursuant
16 to California Code of Regulations, section 25305, subdivision (a)(1) (formerly Title 22, California
17 Code of Regulations, section 12305, subdivision (a)(1)). In summary, marijuana smoke was listed
18 under Proposition 65 as known to the State to cause cancer.

19 21. The consumer exposures that are the subject of this Complaint result from the
20 combustion and inhalation of the SUBJECT PRODUCTS resulting in exposure to the LISTED
21 CHEMICAL, to wit – marijuana smoke. Consequently, a primary route of exposure to the
22 LISTED CHEMICAL contained in marijuana is through direct smoking of the marijuana leaves,
23 flowers, and stems or pre-rolled products.

24 22. DEFENDANTS have manufactured, grown, processed, marketed, distributed,
25 offered to sell and/or sold the SUBJECT PRODUCTS for use and consumption by
26 inhalation/smoking in California since at least February 17, 2016. The SUBJECT PRODUCTS
27 continue to be distributed and sold in California without the requisite warning information.

28 23. At all times relevant to this action, DEFENDANTS, therefore, have knowingly

1 and intentionally exposed the users, consumers and/or patients to the SUBJECT PRODUCTS and
2 the LISTED CHEMICAL without first giving a clear and reasonable warning(s) to such
3 individuals.

4 24. As a proximate result of acts by DEFENDANTS, as persons in the course of doing
5 business within the meaning of H&S Code, section 25249.11, individuals throughout the State of
6 California, including in Sacramento County have been exposed to the LISTED CHEMICAL
7 without a clear and reasonable warning on the SUBJECT PRODUCTS. The individuals subject to
8 the violative exposures include normal and foreseeable users, consumers and patients of the
9 SUBJECT PRODUCTS, as well as all others exposed to the SUBJECT PRODUCTS.

10 25. On February 17, 2017, CAPA served SHAMBALA and each of the appropriate
11 public enforcement agencies with a document entitled “Notice of Violations of California Health
12 & Safety Code Section 25249.5” that provided SHAMBALA and the public enforcement
13 agencies with notice that SHAMBALA was in violation of Proposition 65 for failing to warn
14 purchasers and individuals using the SUBJECT PRODUCTS that the use of the SUBJECT
15 PRODUCTS exposes them to marijuana smoke, a chemical known to the State of California to
16 cause cancer (“Prop. 65 Notice”). A true and correct copy of the 60-Day Notice (“NOTICE”) is
17 attached hereto as **Exhibit A** and is hereby incorporated by reference, and is available on the
18 Attorney General’s website located at <http://oag.ca.gov/prop65>.

19 26. The NOTICE was issued pursuant to, and in compliance with, the requirements of
20 H&S Code, section 25249.7, subdivision (d) and the statute’s implementing regulations regarding
21 the notice of the violations to be given to certain public enforcement agencies and to the violator.
22 The NOTICE included, *inter alia*, the following information: the name, address, and telephone
23 number of the noticing individual; the name of the alleged violator; the statute violated; the
24 approximate time period during which violations occurred; and descriptions of the violations
25 including the chemicals involved, the routes of toxic exposure, and the specific product or type of
26 product causing the violations.

27 27. SHAMBALA was also provided copies of the document entitled “The Safe
28

1 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is
2 also known as Appendix A to Title 27 of CCR, section 25903, via Certified Mail.

3 28. The California Attorney General was provided a copy of the NOTICE and a
4 Certificate of Merit by the attorney for the noticing party, stating that there is a reasonable and
5 meritorious case for this action, and attaching factual information sufficient to establish a basis
6 for the certificate, including the identity of the persons consulted with and relied on by the
7 certifier, and the facts or other data reviewed by those persons, pursuant to H&S Code, section
8 25249.7, subdivision (h)(2) via online submission.

9 29. After expiration of the sixty (60) day notice period, the appropriate public
10 enforcement agencies have failed to commence and diligently prosecute a cause of action under
11 H&S Code, section 25249.5, *et seq.* against SHAMBALA based on the allegations herein.

12 30. The Parties entered into an agreement tolling the statute of limitations for the
13 purpose of trying to resolve the matter prior to litigation. The tolling period extended the statute
14 of limitations from April 24, 2017 through May 24, 2017. Pursuant to this agreement, any
15 statute(s) of limitation for any claims PLAINTIFF may have had related to the NOTICE was
16 tolled and extended as to PLAINTIFF and will not be included in computing the time applicable
17 to the cause of action brought against Defendants based on claims covered by the tolling
18 agreement. Those claims include the claims alleged in this action against Defendants.

19 31. Based on information and belief, SHAMBALA has sold multiple strains of buds,
20 flowers and pre-rolled marijuana/cannabis products intended for combustion and inhalation by
21 doctor-recommended “patients” without giving clear and reasonable warnings that medical
22 cannabis can cause cancer. SHAMBALA has sold dozens, if not hundreds, of units of SUBJECT
23 PRODUCT to a PERSON² in the State of California during each and every month from February
24 17, 2016 through the present, amounting to numerous violative products sold in that period.

25
26
27 ² “PERSON” includes a natural person, firm, association, organization, partnership, business, trust, corporation,
28 public entity, joint venture, and any other incorporated or unincorporated association, business or enterprise.

1 **Basis for Injunctive Relief for Violations of Health and Safety Code, section 25249.5, et seq.**
2 **concerning the SUBJECT PRODUCTS described in the February 17, 2017, Prop. 65**
3 **Notice of Violation Against DEFENDANTS**

4 32. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 31,
5 inclusive, as if specifically set forth herein

6 33. By committing the acts alleged in this Complaint, DEFENDANTS at all times
7 relevant to this action, and continuing through the present, have violated, or threaten to violate,
8 H&S Code, section 25249.6 by, in the course of doing business, knowingly and intentionally
9 exposing individuals in California to a chemical known to the State of California to cause cancer
10 without first giving “clear and reasonable” warnings to such persons/patients who use or consume
11 the SUBJECT PRODUCTS containing the LISTED CHEMICAL, pursuant to H&S Code
12 sections, 25249.6 and 25249.11, subdivision (f).

13 34. By committing the acts alleged in this Complaint, DEFENDANTS have caused or
14 threaten to cause irreparable harm for which there is no plain, speedy, or adequate remedy at law.
15 In the absence of equitable relief, DEFENDANTS will continue to create a substantial risk of
16 irreparable injury by continuing to cause patients and consumers to be involuntarily and
17 unwittingly exposed to cancer-causing marijuana smoke through the foreseeable and/or intended
18 use and/or consumption of the SUBJECT PRODUCTS.

19 35. By the above-described acts, DEFENDANTS have violated, or threaten to violate,
20 H&S Code, section 25249.6 and are therefore subject to preliminary and permanent injunctions
21 ordering DEFENDANTS to stop violating Proposition 65, to provide warnings to all present and
22 future patients and customers, and possibly be required to provide warnings to DEFENDANTS’
23 past customers who purchased or used the SUBJECT PRODUCTS without receiving a clear and
24 reasonable warning.

25 36. An action for injunctive relief under Proposition 65 is specifically authorized by
26 H&S Code, section 25249.7(a).

27 37. Continuing commission by DEFENDANTS of the acts alleged above will
28 irreparably harm the citizens of the State of California, for which harm they have no plain,

1 speedy, or adequate remedy at law.

2 38. In the absence of preliminary and then permanent injunctive relief,
3 DEFENDANTS will continue to create a substantial risk of irreparable injury by continuing to
4 cause patients, users and/or consumers to be involuntarily, unknowingly and unwittingly exposed
5 to the LISTED CHEMICAL through the use, consumption and/or handling of the SUBJECT
6 PRODUCTS.

7 **FIRST CAUSE OF ACTION**

8 **(Civil Penalties for Violations of Health and Safety Code, section 25249.5, et seq.
9 concerning the SUBJECT PRODUCTS described in the February 17 2017, Prop. 65 Notice
10 of Violation Against DEFENDANTS)**

11 39. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 38,
12 inclusive, as if specifically set forth herein.

13 40. By committing the acts alleged in this Complaint, DEFENDANTS at all times
14 relevant to this action, and continuing through the present, have violated, continue to violation
15 and threaten to violate H&S Code, section 25249.6 by, in the course of doing business, knowingly
16 and intentionally exposing individuals in California to a chemical known to the State of
17 California to cause cancer, to wit – marijuana smoke, without first giving clear and reasonable
18 warnings to such persons who use, consume and/or inhale the SUBJECT PRODUCTS containing
19 the LISTED CHEMICAL, pursuant to H&S Code, sections 25249.6 and 25249.11, subdivision
20 (f).

21 41. For each knowing and intentional unwarned exposure discovered within
22 limitations period, exclusive of any applicable tolling periods, DEFENDANTS are liable,
23 pursuant to H&S Code, section 25249.7, subdivision (b), for a civil penalty of up to \$2,500 per
24 day per violation for each unlawful exposure to the LISTED CHEMICALS from the SUBJECT
25 PRODUCTS, according to proof.

26 **PRAYER FOR RELIEF**

27 Wherefore, PLAINTIFF prays for the following relief:

28 A. A preliminary and permanent injunction, pursuant to H&S Code, section 25249.7,

1 subdivision (b), enjoining DEFENDANTS, their agents, employees, assigns and all persons
2 acting in concert or participating with DEFENDANTS, from manufacturing, distributing,
3 marketing, processing, selling or offering to sell the SUBJECT PRODUCTS to patients or
4 consumers in California without first providing a “clear and reasonable warning” regarding the
5 LISTED CHEMICAL within the meaning of Proposition 65;

6 B. An injunctive order, pursuant to H&S Code, section 25249.7, subdivision (b) and
7 California Code of Regulations, title 27, sections 25603 and 25603.1, compelling
8 DEFENDANTS to provide “clear and reasonable” warnings on the labels of the SUBJECT
9 PRODUCTS; or a combination of warnings at the entrance to DEFENDANTS’ medical
10 marijuana facility; on DEFENDANTS’ website; inside DEFENDANTS’ membership
11 agreement; at the point of sale; inside display cases; at concerts and conventions that
12 DEFENDANTS participate in; and/or on pamphlet for SUBJECT PRODUCTS that are delivered
13 to consumers. The warnings should indicate that the SUBJECT PRODUCTS will expose the
14 user, consumer or patient to chemicals known to the State of California to cause cancer;

15 C. An assessment of civil penalties pursuant to H&S Code, section 25249.7,
16 subdivision (b), against DEFENDANTS in the amount of up to \$2,500 per day for each violation
17 of Proposition 65, according to proof;

18 D. An award to PLAINTIFF of its reasonable attorneys’ fees and costs of suit
19 pursuant to California Code of Civil Procedure, sections 1032 *et. seq* and 1021.5, according to
20 proof; and

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

22 DATED: May 25, 2017

AQUA TERRA AERIS LAW GROUP

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25 _____
26 Matthew C. Maclear
27 Attorneys for Plaintiff
28 Center for Advanced Public Awareness, Inc.