

ENDORSED
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CLERK OF THE SUPERIOR COURT
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF ALAMEDA**

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

15 Plaintiff,

16 v.

17 ROBINSON PHARMA, INC., a California
18 corporation; HEALTHY AMERICA, INC., a
19 California corporation; GERO VITA, INC.,
20 individually and doing business as GVI, a
21 California corporation; DOCTOR'S
22 CLINICAL, INC., individually and doing
23 business as U.S. DOCTORS' CLINICAL, a
24 California corporation; and VITASTRONG
25 INC., individually and doing business as
26 GARDAVITA/GVI, a California corporation,

Defendants.

Case No. **RG 17862850**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

Plaintiff Environmental Research Center, Inc. ("PLAINTIFF" or "ERC") brings this
action in the interests of the general public and, on information and belief, hereby alleges:

INTRODUCTION

1. This action seeks to remedy the continuing failure of Defendants ROBINSON
PHARMA, INC.; HEALTHY AMERICA, INC.; GERO VITA, INC., individually and doing

1 business as GVI; DOCTOR’S CLINICAL, INC., individually and doing business as U.S.
2 DOCTORS’ CLINICAL; and VITASTRONG INC., individually and doing business as
3 GARDAVITA/GVI; (collectively “ROBINSON PHARMA” or “DEFENDANTS”) to warn
4 consumers in California that they are being exposed to lead, a substance known to the State of
5 California to cause cancer, birth defects, and other reproductive harm. DEFENDANTS
6 manufacture, package, distribute, market, and/or sell in California certain products containing
7 lead (collectively, the “PRODUCTS”) (as identified and imputed to DEFENDANTS in the
8 Notices of Violation dated March 24, 2017 directed to ROBINSON PHARMA, INC. attached
9 hereto as **Exhibit A**; HEALTHY AMERICA, INC. attached hereto as **Exhibit B**; GERO
10 VITA, INC., individually and doing business as GVI attached hereto as **Exhibit C**;
11 DOCTOR’S CLINICAL, INC., individually and doing business as U.S. DOCTORS’
12 CLINICAL attached hereto as **Exhibit D**; and VITASTRONG INC., individually and doing
13 business as GARDAVITA/GVI attached hereto as **Exhibit E**):

- 14 1) Joint Health Extra-Strength Glucosamine Chondroitin with MSM
- 15 2) Joint Support OsteoNourish
- 16 3) GardaVita Arthro 8 Bone & Joint Health
- 17 4) Antioxidant Support ACF 223
- 18 5) Prostate Health Prostata
- 19 6) Cardiovascular Health OCC
- 20 7) Sinus Health Sinetic
- 21 8) Circulatory Support GlucoVita
- 22 9) Joint Health Arthro-7
- 23 10) GardaVita Garcinia Cambogia Extract
- 24 11) Men's Health Genix
- 25 12) Antioxidant Support G.H.3.
- 26 13) GardaVita Lung Support Advanced

- 14) GardaVita GH3 Advanced
- 15) GardaVita ThyroSlend Thyroid Health
- 16) GardaVita SlimX Complete
- 17) Joint Health Triple-Strength Glucosamine Chondroitin with MSM
- 18) Joint Health Mega MSM
- 19) Eye Health Ocu-Max
- 20) Urinary Health Control-X
- 21) Lung Health Lung Support Formula
- 22) Cardiovascular Health OCC
- 23) Men's Health Sexativa Plus
- 24) Antioxidant Support Phytoplex
- 25) Immune Support Defense Pro
- 26) U.S. Doctors' Clinical Prostate
- 27) U.S. Doctors' Clinical Arthro-7 Sport
- 28) U.S. Doctors' Clinical SlimX Complete
- 29) U.S. Doctors' Clinical Advanced BrainPower
- 30) U.S. Doctor's Clinical GlucoVita
- 31) Healthy America Psyllium Husk 500 mg
- 32) Healthy America Double-Strength Joint Comfort Glucosamine
Chondroitin with MSM
- 33) Healthy America Apple Cider Vinegar 600 mg
- 34) Healthy America Herbal Laxative Formula

2. Lead (hereinafter, the "LISTED CHEMICAL") is a substance known to the State¹ of California to cause cancer, birth defects, and other reproductive harm.

3. The use and/or handling of the PRODUCTS causes exposures to the LISTED

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

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 as “Proposition 65”). DEFENDANTS have failed to provide the health hazard warnings required by Proposition 65.

4. DEFENDANTS’ past sales and continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS without the required health hazard warnings, causes or threatens to cause individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICAL that violates or threatens to violate Proposition 65.

5. PLAINTIFF seeks injunctive relief enjoining DEFENDANTS 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 DEFENDANTS to bring their business practices into compliance with Proposition 65 by providing a clear and reasonable warning to each individual who has been and who in the future may be exposed to the LISTED CHEMICAL from the use of the PRODUCTS. PLAINTIFF also seeks an order compelling DEFENDANTS to identify and locate each individual person who in the past has purchased the PRODUCTS, and to provide to each such purchaser a clear and reasonable warning that the use of the PRODUCTS will cause exposures to the LISTED CHEMICAL.

6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil penalties up to the maximum civil penalty of \$2,500 per day per exposure authorized by Proposition 65 to remedy DEFENDANTS’ failure to provide clear and reasonable warnings regarding exposures to the LISTED CHEMICAL.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to California Constitution

1 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes
2 except those given by statute to other trial courts.” The statute under which this action is
3 brought does not specify any other basis for jurisdiction.

4 8. This Court has jurisdiction over DEFENDANTS because, based on information
5 and belief, DEFENDANTS are businesses having sufficient minimum contacts with California,
6 or otherwise intentionally availing themselves of the California market through the distribution
7 and sale of the PRODUCTS in the State of California to render the exercise of jurisdiction over
8 them by the California courts consistent with traditional notions of fair play and substantial
9 justice.

10 9. Venue in this action is proper in the Alameda Superior Court because the
11 DEFENDANTS have violated or threaten to violate California law in the County of Alameda.

12 10. On March 24, 2017, PLAINTIFF sent 60-Day Notices of Proposition 65
13 Violations (“NOTICES”) to the requisite public enforcement agencies, and to DEFENDANTS.
14 The NOTICES were issued pursuant to, and in compliance with, the requirements of H&S
15 Code § 25249.7(d) and the statute’s implementing regulations regarding the notice of the
16 violations to be given to certain public enforcement agencies and to the violators. The
17 NOTICES included, *inter alia*, the following information: the name, address, and telephone
18 number of the noticing individuals; the name of the alleged violator; the statute violated; the
19 approximate time period during which violations occurred; and descriptions of the violations,
20 including the chemical involved, the routes of toxic exposure, and the specific product or type
21 of product causing the violations, and was issued as follows:

- 22 a. DEFENDANTS were provided copies of the NOTICES by Certified Mail.
- 23 b. DEFENDANTS were provided a copy of a document entitled “The Safe
24 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
25 Summary,” which is also known as Appendix A to Title 27 of CCR §
26 25903.

- 1 c. The California Attorney General was provided copies of the NOTICES via
2 online submission.
- 3 d. The California Attorney General was provided with a Certificate of Merit by
4 the attorney for the noticing parties for each of the NOTICES, stating that
5 there is a reasonable and meritorious case for this action, and attaching
6 factual information sufficient to establish a basis for the certificate,
7 including the identity of the persons consulted with and relied on by the
8 certifier, and the facts, studies, or other data reviewed by those persons,
9 pursuant to H&S Code § 25249.7(h)(2).
- 10 e. The district attorneys, city attorneys or prosecutors of each jurisdiction
11 within which the PRODUCTS are offered for sale within California were
12 provided with copies of the NOTICES pursuant to H&S Code §
13 25249.7(d)(1).

14 11. At least 60-days have elapsed since PLAINTIFF sent the NOTICES to
15 DEFENDANTS. The appropriate public enforcement agencies have failed to commence and
16 diligently prosecute a cause of action under H&S Code § 25249.5, *et seq.* against
17 DEFENDANTS based on the allegations herein.

18 **PARTIES**

19 12. PLAINTIFF is a non-profit corporation organized under California's
20 Corporation Law. ERC is dedicated to, among other causes, reducing the use and misuse of
21 hazardous and toxic substances, consumer protection, worker safety, and corporate
22 responsibility.

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

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26

1 14. DEFENDANT ROBINSON PHARMA, INC., is a corporation organized
2 under the State of California's Corporation Law and is a person doing business within the
3 meaning of H&S Code § 25249.11.

4 15. DEFENDANT HEALTHY AMERICA, INC., is a corporation organized
5 under the State of California's Corporation Law and is a person doing business within the
6 meaning of H&S Code § 25249.11.

7 16. DEFENDANT GERO VITA, INC., individually and doing business as
8 GVI, is a corporation organized under the State of California's Corporation Law and is a
9 person doing business within the meaning of H&S Code § 25249.11.

10 17. DEFENDANT DOCTOR'S CLINICAL, INC., individually and doing
11 business as U.S. DOCTORS' CLINICAL, is a corporation organized under the State of
12 California's Corporation Law and is a person doing business within the meaning of H&S
13 Code § 25249.11.

14 18. DEFENDANT VITASTRONG INC., individually and doing business as
15 GARDAVITA/GVI, is a corporation organized under the State of California's
16 Corporation Law and is a person doing business within the meaning of H&S Code §
17 25249.11.

18 19. On information and belief, PLAINTIFF alleges that HEALTHY
19 AMERICA, INC. is an in house brand of ROBINSON PHARMA, INC.

20 20. On information and belief, PLAINTIFF alleges that GERO VITA, INC. is
21 a subsidiary, affiliate, or parent corporation of ROBINSON PHARMA, INC.

22 21. On information and belief, PLAINTIFF alleges that U.S. DOCTORS'
23 CLINICAL is a subsidiary, affiliate, or parent corporation of ROBINSON PHARMA,
24 INC.

25 22. On information and belief, PLAINTIFF alleges that U.S. DOCTORS'
26 CLINICAL is an in house brand of ROBINSON PHARMA, INC.

23. On information and belief, PLAINTIFF alleges that GARDAVITA/GTI is a subsidiary, affiliate, or parent corporation of ROBINSON PHARMA, INC.

24. On information and belief, PLAINTIFF alleges that GARDAVITA/GTI is an in house brand of ROBINSON PHARMA, INC

25. DEFENDANTS have manufactured, packaged, distributed, marketed and/or sold the PRODUCTS for sale or use in California and the County of Alameda. ERC is informed and believes, and thereupon alleges, that DEFENDANTS continue to manufacture, package, distribute, market and/or sell the PRODUCTS for sale or use in California and in Alameda County.

STATUTORY BACKGROUND

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

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

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

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

29. 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 phrase “threaten to violate” is defined to mean creating “a condition in which there is a

substantial probability that a violation will occur” (H&S Code § 25249.11(e)). Violators are liable for civil penalties of up to \$2,500 per day for each violation of the Act. (H&S Code § 25249.7.)

FACTUAL BACKGROUND

30. On February 27, 1987, the State of California officially listed the chemical lead as a chemical known to cause reproductive toxicity. Lead became subject to the warning requirement one year later and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*; H&S Code § 25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose level for lead is 0.5 µg/day (micrograms a day) for reproductive toxicity. (27 CCR § 25805(b).)

31. On October 1, 1992, the State of California officially listed the chemicals lead and lead compounds as chemicals known to cause cancer. Lead and lead compounds became subject to the warning requirement one year later and were therefore subject to the “clear and reasonable” warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR § 25000, *et seq.*; H&S Code § 25249.6 *et seq.*) Due to the carcinogenicity of lead, the no significant risk level for lead is 15 µg/day (micrograms a day). (27 CCR § 25705(b)(1).)

32. To test DEFENDANTS’ PRODUCTS for lead, PLAINTIFF hired a well-respected and accredited testing laboratory. The results of testing undertaken by PLAINTIFF of DEFENDANTS’ PRODUCTS show that the PRODUCTS tested were in violation of the 0.5 µg/day for lead “safe harbor” daily dose limits set forth in Proposition 65’s regulations. Very significant is the fact that people are being exposed to lead through ingestion as opposed to other less harmful methods of exposure such as dermal exposure. Ingestion of lead produces much higher exposure levels and health risks than dermal exposure to these chemicals.

33. At all times relevant to this action, DEFENDANTS, therefore, have knowingly and intentionally exposed the users and/or handlers of the PRODUCTS to the LISTED

1 CHEMICAL without first giving a clear and reasonable warning to such individuals.

2 34. The PRODUCTS have allegedly been sold by DEFENDANTS for use in
3 California since at least March 24, 2014. The PRODUCTS continue to be distributed and
4 sold in California without the requisite warning information.

5 35. On March 24, 2017, ERC served DEFENDANTS and each of the appropriate
6 public enforcement agencies with Proposition 65 Notices, a document entitled "Notice of
7 Violations of California Health & Safety Code Section 25249.5" that provided DEFENDANTS
8 and the public enforcement agencies with notice that DEFENDANTS were in violation of
9 Proposition 65 for failing to warn purchasers and individuals using the PRODUCTS that the
10 use of the PRODUCTS exposes them to lead, a chemical known to the State of California to
11 cause cancer and/or reproductive toxicity (true and correct copies of the 60-Day NOTICES are
12 attached hereto as **Exhibits A-E** and each is incorporated by reference).

13 36. As a proximate result of acts by DEFENDANTS, as persons in the course of
14 doing business within the meaning of Health & Safety Code §25249.11, individuals throughout
15 the State of California, including in the County of Alameda, have been exposed to the LISTED
16 CHEMICAL without a clear and reasonable warning. The individuals subject to the illegal
17 exposures include normal and foreseeable users of the PRODUCTS, as well as all other
18 persons exposed to the PRODUCTS.

19 **FIRST CAUSE OF ACTION**
20 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
21 **the PRODUCTS described in the March 24, 2017**
Prop. 65 NOTICES) Against DEFENDANTS

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

24 38. By committing the acts alleged in this Complaint, DEFENDANTS, at all
25 times relevant to this action, and continuing through the present, have violated or
26 threaten to violate H&S Code § 25249.6 by, in the course of doing business, knowingly

1 and intentionally exposing individuals who use or handle the PRODUCTS set forth in
2 the NOTICES to the LISTED CHEMICAL, without first providing a clear and
3 reasonable warning to such individuals pursuant to H&S Code §§ 25249.6 and
4 25249.11(f).

5 39. By the above-described acts, DEFENDANTS have violated or threaten to
6 violate H&S Code § 25249.6 and are therefore subject to an injunction ordering
7 DEFENDANTS to stop violating Proposition 65, to provide warnings to all present and
8 future customers, and to provide warnings to DEFENDANTS' past customers who
9 purchased or used the PRODUCTS without receiving a clear and reasonable warning.

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

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

15 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, as set forth
16 hereafter.

17 **SECOND CAUSE OF ACTION**
18 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
19 **PRODUCTS described in PLAINTIFF's NOTICES)**
20 **Against DEFENDANTS**

21 42. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 41,
22 inclusive, as if specifically set forth herein.

23 43. By committing the acts alleged in this Complaint, DEFENDANTS at all times
24 relevant to this action, and continuing through the present, have violated H&S Code § 25249.6
25 by, in the course of doing business, knowingly and intentionally exposing individuals who use
26 or handle the PRODUCTS set forth in the NOTICES 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).

1 44. By the above-described acts, DEFENDANTS are liable, pursuant to H&S Code
2 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to
3 the LISTED CHEMICAL from the PRODUCTS.

4 Wherefore, PLAINTIFF prays for judgment against DEFENDANTS, as set forth
5 hereafter.

6 **THE NEED FOR INJUNCTIVE RELIEF**

7 45. PLAINTIFF re-alleges and incorporates by this reference Paragraphs 1 through
8 44, as if set forth below.

9 46. By committing the acts alleged in this Complaint, DEFENDANTS have caused
10 or threaten to cause irreparable harm for which there is no plain, speedy or adequate remedy at
11 law. In the absence of equitable relief, DEFENDANTS will continue to create a substantial
12 risk of irreparable injury by continuing to cause or threatening to cause consumers to be
13 involuntarily and unwittingly exposed to the LISTED CHEMICAL through the use and/or
14 handling of the PRODUCTS.

15
16 **PRAYER FOR RELIEF**

17 Wherefore, PLAINTIFF accordingly prays for the following relief:

18 A. A preliminary and permanent injunction, pursuant to H&S Code § 25249.7(b),
19 enjoining DEFENDANTS, their agents, employees, assigns and all persons acting in concert or
20 participating with DEFENDANTS, from distributing or selling the PRODUCTS in California
21 without first providing a clear and reasonable warning, within the meaning of Proposition 65,
22 that the users and/or handlers of the PRODUCTS are exposed to the LISTED CHEMICAL;

23 B. An injunctive order, pursuant to H&S Code § 25249.7(b), compelling
24 DEFENDANTS to identify and locate each individual who has purchased the PRODUCTS
25 since March 24, 2014, and to provide a warning to such person that the use of the PRODUCTS
26 will expose the user to chemicals known to cause birth defects and other reproductive harm;


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

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

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

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9 DATED: June 5, 2017

LOZEAU | DRURY LLP

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13 Richard T. Drury
14 Douglas J. Chermak
15 Attorneys for Plaintiff
16 Environmental Research Center, Inc.
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EXHIBIT A

EXHIBIT B

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EXHIBIT C

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EXHIBIT D

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EXHIBIT E

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