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From: Lexington Law Group

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LEXINGTON LAW GROUP
Eric S. Somers, State Bar No. 139050
Lucas Williams, State Bar No. 264518
503 Divisadero Street
San Francisco, CA 94117
Telephone: (415) 913-7800
Facsimile: (415) 759-4112
esomers@lexlawgroup.com
lwilliams@lexlawgroup.com

Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH

FILED BY FAX
ALAMEDA COUNTY

January 19, 2018

CLERK OF
THE SUPERIOR COURT
By Burt Moskaira, Deputy

CASE NUMBER:
RG18889903

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,

Plaintiff,

v.

FREE SPEECH SYSTEMS, LLC; INFOWARS,
LLC; and DOES 1 through 50, inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on information and
2 belief and investigation of counsel, except for information based on knowledge, hereby makes the
3 following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds (collectively,
7 "Lead"), chemicals known to the State of California to cause cancer, birth defects and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and consumption of Defendants' Infowars Life dietary
10 supplements sold in capsule and powder form (the "Products"). The Products are offered for sale
11 and sold to California consumers. California consumers, including pregnant women, are exposed
12 to Lead when they ingest the Products.

13 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is
14 unlawful for businesses to knowingly and intentionally expose individuals in California to
15 chemicals known to the State to cause cancer, birth defects or other reproductive harm without
16 providing clear and reasonable warnings to individuals prior to their exposure. Defendants
17 introduce Products contaminated with significant quantities of Lead into the California
18 marketplace, thereby exposing consumers of their Products to Lead.

19 3. Despite the fact that Defendants expose pregnant women and other consumers to
20 Lead, Defendants provide no warnings whatsoever about the carcinogenic and reproductive
21 hazards associated with Lead exposure. Defendants' conduct thus violates the warning provision
22 of Proposition 65. Health & Safety Code § 25249.6.

23 **PARTIES**

24 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit
25 corporation dedicated to protecting the public from environmental health hazards and toxic
26 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
27 California. CEH is a "person" within the meaning of Health & Safety Code § 25249.11(a) and
28 brings this enforcement action in the public interest pursuant to Health & Safety Code §

1 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
2 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
3 resulted in significant public benefit, including the reformulation of thousands of products to
4 remove toxic chemicals and to make them safer. CEH also provides information to Californians
5 about the health risks associated with exposure to hazardous substances, where manufacturers and
6 other responsible parties fail to do so.

7 5. Defendant FREE SPEECH SYSTEMS, LLC is a person in the course of doing
8 business within the meaning of Health & Safety Code § 25249.11. Defendant FREE SPEECH
9 SYSTEMS, LLC manufactures, distributes and/or sells the Products.

10 6. Defendant INFOWARS, LLC is a person in the course of doing business within
11 the meaning of Health & Safety Code § 25249.11. Defendant INFOWARS, LLC manufactures,
12 distributes and/or sells the Products.

13 7. DOES 1 through 50 are each a person in the course of doing business within the
14 meaning of Health & Safety Code § 25249.11. DOES 1 through 50 manufacture, distribute
15 and/or sell the Products.

16 8. The true names of DOES 1 through 50 are either unknown to CEH at this time or
17 the applicable time period before which CEH may file a Proposition 65 action has not run. When
18 their identities are ascertained or the applicable time period before which CEH may file a
19 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

20 9. The defendants identified in paragraphs 5 through 6 and DOES 1 through 50 are
21 collectively referred to herein as “Defendants.”

22 **JURISDICTION AND VENUE**

23 10. The Court has jurisdiction over this action pursuant to Health & Safety Code §
24 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
25 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
26 other trial courts.

27 11. This Court has jurisdiction over Defendants because each is a business entity that
28 does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally

1 avails itself of the California market through the sale, marketing, or use of the Products in
2 California or by having such other contacts with California so as to render the exercise of
3 jurisdiction over it by the California courts consistent with traditional notions of fair play and
4 substantial justice.

5 12. Venue is proper in Alameda County Superior Court because one or more of the
6 violations arise in the County of Alameda.

7 **BACKGROUND FACTS**

8 13. The People of the State of California have declared by initiative under Proposition
9 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
10 other reproductive harm.” Proposition 65, § 1(b).

11 14. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals
12 listed by the State of California as known to cause cancer, birth defects, or other reproductive
13 harm above certain levels without a “clear and reasonable warning” unless the business
14 responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety
15 Code § 25249.6 states, in pertinent part:

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

19 15. On February 27, 1987, the State of California officially listed lead as a chemical
20 known to cause reproductive toxicity. Lead is specifically identified as a reproductive toxicant
21 under three subcategories: “developmental reproductive toxicity,” which means harm to the
22 developing fetus, “female reproductive toxicity,” which means harm to the female reproductive
23 system, and “male reproductive toxicity,” which means harm to the male reproductive system. 27
24 California Code of Regulations (“C.C.R.”) § 27001(c). On February 27, 1988, one year after it
25 was listed as a chemical known to cause reproductive toxicity, lead became subject to the clear
26 and reasonable warning requirement regarding reproductive toxicants under Proposition 65. *Id.*;
27 Health & Safety Code § 25249.10(b).

1 16. On October 1, 1992, the State of California officially listed lead and lead
2 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
3 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear
4 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
5 § 27001(c); Health & Safety Code § 25249.10(b).

6 17. There is no safe level of exposure to Lead and even minute amounts of Lead have
7 been proven harmful to children and adults. *See, e.g.*, Report of the Advisory Committee on
8 Childhood Lead Poisoning Prevention of the Centers for Disease Control and Prevention, “Low
9 Level Lead Exposure Harms Children: A Renewed Call For Primary Prevention,” January 4,
10 2012. A study performed by the California Office of Environmental Health Hazard Assessment
11 determined that exposures to Lead even at levels previously considered safe have now been
12 shown to cause adverse health effects, including reduced cognitive ability and significant
13 diminution of intellectual potential. Carlisle, J., *et al.*, “A Blood Lead Benchmark for Assessing
14 Risks from Childhood Lead Exposure,” *Journal of Environmental Science & Health*, 44, 2009.
15 This conclusion is based on a meta study of 1,333 children who participated in seven international
16 studies. *See* Lanphear, B., *et al.*, “Low-Level Environmental Lead Exposure and Children’s
17 Intellectual Function: An International Pooled Analysis,” *Environmental Health Perspectives*,
18 113:7, 2005.

19 18. Lead exposures for pregnant women are also of particular concern in light of
20 evidence that even short term Lead exposures *in utero* may have long-term harmful effects. *See,*
21 *e.g.*, Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant
22 Mental Development,” *Environmental Health Perspectives*, 114:11, 2006; Schnaas, L., *et al.*,
23 “Reduced Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental*
24 *Health Perspectives*, 114:5, 2006. Increased Lead exposure during pregnancy has also been
25 shown to cause increased risk of premature birth and increased blood pressure in both the mother
26 during pregnancy and the child after birth. *See, e.g.*, Vigeh, M., *et al.*, “Blood Lead at Currently
27 Acceptable Levels May Cause Preterm Labour,” *Occupational & Environmental Medicine*,
28 68:231-234, 2010; Zhang, A., *et al.*, “Association Between Prenatal Lead Exposure and Blood

1 Pressure in Children,” *Environmental Health Perspectives*, 120:3, 2012; Wells, E., *et al.*, “Low-
2 Level Lead Exposure and Elevations in Blood Pressure During Pregnancy,” *Environmental*
3 *Health Perspectives*, 119:5, 2011.

4 19. Defendants’ Products contain sufficient quantities of Lead such that consumers,
5 including pregnant women, who consume the Products are exposed to Lead. The route of
6 exposure for the violations is direct ingestion when individuals consume the Products. These
7 exposures occur in homes, schools, workplaces and everywhere else throughout California where
8 the Products are consumed.

9 20. No clear and reasonable warning is provided with the Products regarding the
10 carcinogenic and reproductive hazards of Lead.

11 21. Any person acting in the public interest has standing to enforce violations of
12 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
13 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
14 within such time. Health & Safety Code § 25249.7(d).

15 22. More than sixty days prior to naming each Defendant in this lawsuit, CEH
16 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General, to
17 the District Attorneys of every county in California, to the City Attorneys of every California city
18 with a population greater than 750,000, and to each of the named Defendants. In compliance with
19 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included the following
20 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
21 during which violations occurred; (4) specific descriptions of the violations, including (a) the
22 routes of exposure to Lead from the Products, and (b) the specific type of Products sold and used
23 in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed chemical that
24 is the subject of the violations described in the Notice.

25 23. CEH also sent a Certificate of Merit for each Notice to the California Attorney
26 General, to the District Attorneys of every county in California, to the City Attorneys of every
27 California city with a population greater than 750,000, and to each of the named Defendants. In
28 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, the Certificate

1 certified that CEH's counsel: (1) has consulted with one or more persons with relevant and
2 appropriate experience or expertise who reviewed facts, studies, or other data regarding the
3 exposures to Lead alleged in the Notice; and (2) based on the information obtained through such
4 consultations, believes that there is a reasonable and meritorious case for a citizen enforcement
5 action based on the facts alleged in the Notice. In compliance with Health & Safety Code §
6 25249.7(d) and 11 C.C.R. § 3102, the Certificate served on the Attorney General included factual
7 information – provided on a confidential basis – sufficient to establish the basis for the
8 Certificate, including the identity of the person(s) consulted by CEH's counsel and the facts,
9 studies or other data reviewed by such persons.

10 24. None of the public prosecutors with the authority to prosecute violations of
11 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against
12 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in
13 CEH's Notice.

14 25. Defendants both know and intend that individuals, including pregnant women, will
15 ingest the Products, thus exposing them to Lead.

16 26. Under Proposition 65, an exposure is "knowing" where the party responsible for
17 such exposure has:

18 knowledge of the fact that a[n] . . . exposure to a chemical listed pursuant
19 to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that
the . . . exposure is unlawful is required.

20 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
21 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
22 § 12601).

23 27. As companies that manufacture, import, distribute and/or sell the Products for use
24 in the California marketplace, Defendants know or should know that the Products contain Lead
25 and that individuals who ingest the Products will be exposed to Lead. The Lead exposures to
26 individuals who ingest the Products are a natural and foreseeable consequence of Defendants'
27 placing the Products into the stream of commerce.

28

1 28. Defendants have been informed of the Lead in their Products by the 60-Day Notice
2 of Violation and accompanying Certificate of Merit served on them by CEH.

3 29. Defendants also have constructive knowledge that their Products contain Lead due
4 to the widespread media coverage concerning the problem of Lead in consumer products in
5 general, and dietary supplements in particular.

6 30. Nevertheless, Defendants continue to expose individuals, including pregnant
7 women, to Lead without prior clear and reasonable warnings regarding the carcinogenic and
8 reproductive hazards of Lead.

9 31. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to
10 filing this Complaint.

11 32. Any person “violating or threatening to violate” Proposition 65 may be enjoined in
12 any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to violate” is
13 defined to mean “to create a condition in which there is a substantial probability that a violation
14 will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not
15 to exceed \$2,500 per day for each violation of Proposition 65.

16 **FIRST CAUSE OF ACTION**
17 **(Violations of Health & Safety Code § 25249.6)**

18 33. CEH realleges and incorporates by reference as if specifically set forth herein
19 Paragraphs 1 through 32, inclusive.

20 34. By placing the Products into the stream of commerce, each Defendant is a person
21 in the course of doing business within the meaning of Health & Safety Code § 25249.11.

22 35. Lead is a chemical listed by the State of California as known to cause cancer, birth
23 defects or other reproductive harm.

24 36. Defendants know that average use of the Products will expose users of their
25 Products to Lead.

26 37. Defendants have failed, and continue to fail, to provide clear and reasonable
27 warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of their
28 Products.

1 38. By committing the acts alleged above, Defendants have at all times relevant to this
2 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to Lead
3 without first giving clear and reasonable warnings to such individuals regarding the
4 carcinogenicity and reproductive toxicity of Lead.

5 **PRAYER FOR RELIEF**

6 CEH prays for judgment against Defendants as follows:

7 1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
8 permanently enjoin Defendants from offering Products for sale in California without providing
9 prior clear and reasonable warnings, as CEH shall specify in further application to the Court;

10 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants
11 to take action to stop ongoing unwarned exposures to Lead resulting from use of Products sold by
12 Defendants, as CEH shall specify in further application to the Court;

13 3. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil
14 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
15 Proposition 65 according to proof;

16 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
17 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

18 5. That the Court grant such other and further relief as may be just and proper.

19
20 Dated: January 19, 2018

Respectfully submitted,

21 LEXINGTON LAW GROUP

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24 Eric S. Somers
25 Attorneys for Plaintiff
26 CENTER FOR ENVIRONMENTAL HEALTH
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