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ENDORSED
FILED
ALAMEDA COUNTY

OCT 20 2015

CLERK OF THE SUPERIOR COURT
Jayana Furtado Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA

9 ENVIRONMENTAL RESEARCH
10 CENTER, INC.,

11 Plaintiff,

12 v.

13 RENEW LIFE FORMULAS, INC.; and
14 DOES 1-50, inclusive,

15 Defendants.

Case No. RG14740218

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

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

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17 Plaintiff Environmental Research Center, Inc. brings this action in the interests of the
18 general public and, on information and belief, hereby alleges:

19 **INTRODUCTION**

20 1. This action seeks to remedy Defendants' continuing failure to warn consumers in
21 California that they are being exposed to lead, a substance known to the State of California¹ to
22 cause cancer, birth defects and other reproductive harm.

23 2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have
24 otherwise been involved in the chain of commerce of, and continue to manufacture, package,
25 distribute, market, sell, and/or otherwise continue to be involved in the chain of commerce of the
26 following products (referred to collectively as "THE PRODUCTS"), which contain the chemical
27 lead and which have been and continue to be offered for sale, sold and/or otherwise provided for
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¹ All statutory and regulatory references herein are to California law, unless otherwise specified.

1 use and/or handling to individuals in California:

- 2 1. ReNew Life Formulas ParaGone (*kit includes the below products*):
 - 3 a. ReNew Life Formulas ParaGone 1
 - 4 b. ReNew Life Formulas ParaGone 2
- 5 2. ReNew Life Formulas Liver Detox (*kit includes the below products*):
 - 6 a. ReNew Life Formulas Liver Detox 1 Morning Formula
 - 7 b. ReNew Life Formulas Liver Detox 2 Evening Formula
- 8 3. ReNew Life Formulas CleánseMore
- 9 4. ReNew Life Formulas Intestinal Bowel Soother
- 10 5. ReNew Life Formulas Intestinal Bowel Support (*kit includes the below*
11 *products*):
 - 12 a. ReNew Life Formulas Intestinal Bowel Support 1 Morning
13 Formula
 - 14 b. ReNew Life Formulas Intestinal Bowel Support 2 Evening
15 Formula
- 16 6. ReNew Life Formulas FirstCleanse (*kit includes the below products*):
 - 17 a. ReNew Life Formulas FirstCleanse 1 Morning Formula
 - 18 b. ReNew Life Formulas FirstCleanse 2 Evening Formula
- 19 7. ReNew Life Formulas FitSmart Fat Burner
- 20 8. ReNew Life Formulas Skinny Gut Ultimate Shake Natural Chocolate
21 Flavor
- 22 9. ReNew Life Formulas Skinny Gut Ultimate Shake Natural Vanilla Flavor
- 23 10. Advanced Naturals Total Body Detox (*kit contains the below products*):
 - 24 a. Advanced Naturals Total Body Detox 1 Detox with Total Body
25 Herbal Detox
 - 26 b. Advanced Naturals Total Body Detox 2 Capture with Total Body
27 Fiber Blend
 - 28 c. Advanced Naturals Total Body Detox 3 Eliminate with Total Body

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Colon Cleanse

3. The use and/or handling of each of THE PRODUCTS causes exposures to lead 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. The continued manufacturing, packaging, distributing, marketing and/or sales of THE PRODUCTS without the required health hazard warnings, causes individuals to be involuntarily and unwittingly exposed to levels of lead that violate Proposition 65.

5. Plaintiff seeks injunctive relief enjoining Defendants from the continued manufacturing, packaging, distributing, marketing and/or selling of THE PRODUCTS for sale or use in California without first providing clear and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer, birth defects and other reproductive harm posed by exposure to lead 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 clear and reasonable warnings to each individual who may be exposed to lead from the use and/or handling of THE PRODUCTS.

6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to remedy Defendants’ failure to provide clear and reasonable warnings regarding exposures to the lead.

JURISDICTION AND VENUE

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

8. This Court has jurisdiction over Defendants because, based on information and belief, Defendants are businesses having sufficient minimum contacts with California, or otherwise intentionally availing themselves of the California market through the marketing,

1 distribution and/or sale of THE PRODUCTS in the State of California to render the exercise of
2 jurisdiction over them by the California courts consistent with traditional notions of fair play and
3 substantial justice.

4 9. This Court is the proper venue for this action because the Defendants have
5 violated California law in the Alameda County, California. Furthermore, this Court is the proper
6 venue under Code of Civil Procedure §395.5 and H&S Code §25249.7(a), which provides that
7 any person who violates or threatens to violate H&S Code §§25249.5 or 25249.6 may be
8 enjoined in any court of competent jurisdiction.

9 **PARTIES**

10 10. Plaintiff ENVIRONMENTAL RESEARCH CENTER, INC. (“ERC”) is a non-
11 profit corporation organized under California’s Non-Profit Benefit Corporation Law. ERC is
12 dedicated to, among other causes, reducing the use and misuse of hazardous and toxic
13 substances, consumer protection, worker safety and corporate responsibility.

14 11. ERC is a “Person” within the meaning of H&S Code §25118 and H&S Code
15 §25249.11(a), and brings this enforcement action “in the public interest” pursuant to H&S Code
16 §25249.7(d).

17 12. Defendant RENEW LIFE FORMULAS, INC. is a Florida corporation and is a
18 “Person” within the meaning of H&S Code §25249.11(a). Defendant RENEW LIFE
19 FORMULAS, INC. has manufactured, packaged, distributed, marketed, sold and/or has
20 otherwise been involved in the chain of commerce of, and continues to manufacture, package,
21 distribute, market, sell, and/or otherwise continues to be involved in the chain of commerce of
22 THE PRODUCTS for sale or use in California. Based on information and belief, Defendant
23 RENEW LIFE FORMULAS, INC., at all times relevant to this action, has had and now has 10 or
24 more employees and is a “Person in the course of doing business” pursuant to H&S Code
25 §25249.11(b).

26 13. Defendants DOES 1-50 are named herein under fictitious names, as their true
27 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
28 alleges, that each of said Does has manufactured, packaged, distributed, marketed, sold and/or

1 has otherwise been involved in the chain of commerce of, and continues to manufacture,
2 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of
3 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some
4 actionable manner, for the events and happenings referred to herein, either through its conduct or
5 through the conduct of its agents, servants or employees, or in some other manner, causing the
6 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true
7 names and capacities of Does when ascertained.

8 STATUTORY BACKGROUND

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

12 15. To effect this goal, Proposition 65 requires that individuals be provided with a
13 “clear and reasonable warning” before being exposed to substances listed by the State of
14 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
15 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 16. Proposition 65 provides that any person who “violates or threatens to violate” the
20 statute “may be enjoined in any court of competent jurisdiction.” (H&S Code §25249.7(a).)
21 “Threaten to violate” is defined to mean creating “a condition in which there is a substantial
22 probability that a violation will occur.” (H&S Code §25249.11(e).) Violators are liable for civil
23 penalties of up to \$2,500 per day for each violation of Proposition 65. (H&S Code §25249.7(b).)

24 FACTUAL BACKGROUND

25 17. On February 27, 1987, the State of California officially listed the chemical lead as
26 a chemical known to cause developmental and reproductive toxicity. Lead became subject to the
27 warning requirement one year later and was therefore subject to the “clear and reasonable”
28 warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of

1 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

2 18. On October 1, 1992, the State of California officially listed the chemical lead as a
3 chemical known to cause cancer. Lead became subject to the warning requirement one year later
4 and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65
5 beginning on October 1, 1993. (27 CCR §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

6 19. Plaintiff is informed and believes, and based on such information and belief,
7 alleges THE PRODUCTS have been marketed, distributed, sold, or otherwise provided to
8 individuals in California without the requisite clear and reasonable warnings before, on, and after
9 January 31, 2011. THE PRODUCTS continue to be marketed, distributed and sold in California
10 without the requisite warning information.

11 20. As a proximate result of acts by Defendants, as persons in the course of doing
12 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of
13 California, including in the County of Alameda, have been exposed to lead without clear and
14 reasonable warnings. The individuals subject to exposures to lead include normal and
15 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE
16 PRODUCTS.

17 21. At all times relevant to this action, Defendants have knowingly and intentionally
18 exposed the users and/or handlers of THE PRODUCTS to lead without first giving clear and
19 reasonable warnings to such individuals.

20 22. Individuals using or handling THE PRODUCTS are exposed to lead in excess of
21 the “maximum allowable daily” and “no significant risk” levels determined by the State of
22 California, as applicable.

23 23. At all times relevant to this action, Defendants have, in the course of doing
24 business, failed to provide individuals using and/or handling THE PRODUCTS with clear and
25 reasonable warnings that THE PRODUCTS exposes individuals to lead.

26 24. THE PRODUCTS continue to be marketed, distributed, and/or sold in California
27 without the requisite clear and reasonable warnings.

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FIRST CAUSE OF ACTION

(Injunctive Relief for Violations of Health and Safety Code §25249.5, *et seq.* concerning THE PRODUCTS, which are identified in Plaintiff's January 31, 2014 and July 24, 2015 60-Day Notices of Violations)

25. Plaintiff realleges and incorporates by reference Paragraphs 1 through 24, inclusive, as if specifically set forth herein.

26. On January 31, 2014 and July 24, 2015, Plaintiff sent a 60-Day Notices of Proposition 65 violations to the requisite public enforcement agencies and to Defendant RENEW LIFE FORMULAS, INC. ("Notices of Violations"). THE PRODUCTS were identified in the Notices of Violations as containing lead exceeding allowable levels. The Notices of Violations were issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding the notice of violations to be given to certain public enforcement agencies and to the violator. The Notices of Violations were issued as follows:

- a. Defendant RENEW LIFE FORMULAS, INC. and the California Attorney General were each provided copies by First Class Certified Mail of the Notices of Violations, along with copies of Certificates of Merit by the attorney for the noticing party stating that there is a reasonable and meritorious cause for this action. The requisite county district attorneys and city attorneys were provided copies by First Class Mail of the Notices of Violations and Certificates of Merit.
- b. Defendant RENEW LIFE FORMULAS, INC. was provided, with each of the Notices of Violations, a copy of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as Appendix A to Title 27 of CCR §25903.
- c. The California Attorney General was provided, with each of the Notices of Violations, additional factual information sufficient to establish a basis for the Certificate of Merit, including the identity of the persons consulted

1 with and relied on by the certifier, and the facts, studies, or other data
2 reviewed by those persons, pursuant to H&S Code §§25249.7(d)(1) and
3 25249.7(h)(2).

4 27. The appropriate public enforcement agencies have failed to commence and
5 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants
6 based on the allegations herein.

7 28. By committing the acts alleged in this Complaint, Defendants at all times relevant
8 to this action, and continuing through the present, have violated and continue to violate H&S
9 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
10 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
11 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
12 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
13 packaged, distributed, marketed, sold and/or have otherwise been involved in the chain of
14 commerce of, and continue to manufacture, package, distribute, market, sell, and/or otherwise
15 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
16 and will be used and/or handled by individuals in California, without Defendants providing clear
17 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
18 birth defects and other reproductive harm posed by exposure to lead through the use and/or
19 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
20 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
21 for use and/or handling to individuals in California.

22 29. By the above-described acts, Defendants have violated H&S Code §25249.6 and
23 are therefore subject to an injunction ordering Defendants to stop violating Proposition 65, and to
24 provide required warnings to consumers and other individuals who will purchase, use and/or
25 handle THE PRODUCTS.

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

28 31. Continuing commission by Defendants of the acts alleged above will irreparably

1 harm the citizens of the State of California, for which harm they have no plain, speedy, or
2 adequate remedy at law.

3 Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

4 **SECOND CAUSE OF ACTION**

5 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq. concerning THE**
6 **PRODUCTS, which are identified in Plaintiff's January 31, 2014 and July 24, 2015 60-Day**
7 **Notices of Violations)**

8 32. Plaintiff realleges and incorporates by reference Paragraphs 1 through 31,
9 inclusive, as if specifically set forth herein.

10 33. On January 31, 2014 and July 24, 2015, Plaintiff sent a 60-Day Notices of
11 Proposition 65 violations to the requisite public enforcement agencies and to Defendant RENEW
12 LIFE FORMULAS, INC. ("Notices of Violations"). THE PRODUCTS were identified in the
13 Notices of Violations as containing lead exceeding allowable levels. The Notices of Violations
14 were issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d)
15 and the statute's implementing regulations regarding the notice of violations to be given to
16 certain public enforcement agencies and to the violator. The Notices of Violations were issued
17 as follows:

18 a. Defendant RENEW LIFE FORMULAS, INC. and the California Attorney
19 General were each provided copies by First Class Certified Mail of the
20 Notices of Violations, along with copies of Certificates of Merit by the
21 attorney for the noticing party stating that there is a reasonable and
22 meritorious cause for this action. The requisite county district attorneys
23 and city attorneys were provided copies by First Class Mail of the Notices
24 of Violations and Certificates of Merit.

25 b. Defendant RENEW LIFE FORMULAS, INC. was provided, with each of
26 the Notices of Violations, a copy of a document entitled "The Safe
27 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
28 Summary," which is also known as Appendix A to Title 27 of CCR
§25903.

1 c. The California Attorney General was provided, with each of the Notices of
2 Violations, additional factual information sufficient to establish a basis for
3 the Certificate of Merit, including the identity of the persons consulted
4 with and relied on by the certifier, and the facts, studies, or other data
5 reviewed by those persons, pursuant to H&S Code §§25249.7(d)(1) and
6 25249.7(h)(2).

7 34. The appropriate public enforcement agencies have failed to commence and
8 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants
9 based on the allegations herein.

10 35. By committing the acts alleged in this Complaint, Defendants at all times relevant
11 to this action, and continuing through the present, have violated and continue to violate H&S
12 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
13 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
14 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
15 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
16 packaged, distributed, marketed, sold and/or have otherwise been involved in the chain of
17 commerce of, and continue to manufacture, package, distribute, market, sell, and/or otherwise
18 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
19 and will be used and/or handled by individuals in California, without Defendants providing clear
20 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
21 birth defects and other reproductive harm posed by exposure to lead through the use and/or
22 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
23 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
24 for use and/or handling to individuals in California.

25 36. By the above-described acts, Defendants are liable, pursuant to H&S Code
26 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
27 relating to THE PRODUCTS.

28 Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

