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ENCLOSURE  
FILED  
ALAMEDA COUNTY

JUN 09 2016

CLERK OF THE SUPERIOR COURT  
By: D. GUNER, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

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

13 Plaintiff,

14 vs.

15 IQ FORMULATIONS, LLC.; IQ  
16 FORMULATIONS, LLC. DBA METABOLIC  
17 NUTRITION; and DOES 1-50, inclusive,

18 Defendants.

CASE NO.

R 16818883

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

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

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 alleges:

21 **INTRODUCTION**

22 1. This action seeks to remedy IQ Formulations LLC; IQ Formulations, LLC dba  
23 Metabolic Nutrition; and DOES 1-50's ("DEFENDANTS") continuing failure to warn  
24 consumers in California that they are being exposed to lead and cadmium, chemicals known to  
25 the State of California<sup>1</sup> to cause cancer, birth defects, and other reproductive harm.

26 2. DEFENDANTS have, and continue to, manufacture, package, distribute, market, sell,  
27 and/or otherwise be involved in the chain of commerce of the following "SUBJECT  
28

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

1 PRODUCTS”, which contain lead and/or cadmium, and which have been, and continue to be,  
2 offered for sales, sold, and/or otherwise provided for use and/or handling to individuals in  
3 California:

- 4 (1) Metabolic Nutrition P.S.P. Pre-Workout Blue Raspberry - Lead
- 5 (2) Metabolic Nutrition P.S.P. Pre-Workout Watermelon - Lead
- 6 (3) Metabolic Nutrition P.S.P. Pre-Workout Fruit Punch - Lead
- 7 (4) Metabolic Nutrition ProtiZyme Butter Pecan Cookie - Lead
- 8 (5) Metabolic Nutrition ProtiZyme Banana Creme - Lead
- 9 (6) Metabolic Nutrition ProtiZyme Peanut Butter Cookie - Lead
- 10 (7) Metabolic Nutrition ProtiZyme Chocolate Cake – Lead, Cadmium
- 11 (8) Metabolic Nutrition ProtiZyme Strawberry Creme - Lead
- 12 (9) Metabolic Nutrition MuscLean Chocolate Milkshake – Lead, Cadmium
- 13 (10) Metabolic Nutrition MuscLean Strawberry Milkshake - Lead
- 14 (11) Metabolic Nutrition MuscLean Peanut Butter Milkshake - Lead
- 15 (12) Metabolic Nutrition MuscLean Vanilla Milkshake – Lead

16 3. The use and/or handling of each of the SUBJECT PRODUCTS causes exposures to lead  
17 and cadmium at levels requiring a “clear and reasonable warning” under California’s Safe  
18 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code (“H&S Code”)  
19 Section 25249.5, *et. seq.* (also known as “Proposition 65”). DEFENDANTS have failed to  
20 provide the health hazard warnings required by Proposition 65.

21 4. The continued manufacturing, packing, distributing, marketing, and/or sales of the  
22 SUBJECT PRODUCTS without the required health hazard warnings causes individuals to  
23 involuntarily and unwittingly be exposed to levels of lead and/or cadmium that violate  
24 Proposition 65.

25 5. PLAINTIFF seeks injunctive relief enjoining DEFENDANTS from the continued  
26 manufacturing, packaging, distributing, marketing, and/or selling of the SUBJECT  
27 PRODUCTS, for sale or use in California, without first providing clear and reasonable  
28 warnings, within the meaning of Proposition 65, regarding the risks of cancer, birth defects, and  
other reproductive harm posed by exposure to lead and/or cadmium through the use and/or  
handling of the SUBJECT 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 exposure to

1 lead and/or cadmium.

2 **JURISDICTION AND VENUE**

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

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

13 9. This Court is the proper venue for this action because the DEFENDANTS have violated  
14 California law in Alameda County, California. Furthermore, this Court is the proper venue  
15 under Code of Civil Procedure Section 395.5 and H&S Code Section 25249.7, subdivision (a),  
16 which provides that any person who violates, or threatens to violate, H&S Code Sections  
17 25249.5 or 25249.6 may be enjoined in any court of competent jurisdiction.

18 10. Plaintiff ERC is a non-profit corporation organized under California’s Non-Profit  
19 Benefit Corporation Law. ERC is dedicated to, among other causes, reducing the use and  
20 misuse of hazardous and toxic substances, consumer protection, worker safety, and corporate  
21 responsibility.

22 11. ERC is a “person” within the meaning of H&S Code Section 25118 and H&S Code  
23 Section 25249.11, subdivision (a) and brings this action “in the public interest” pursuant to  
24 H&S Code Section 25249.7, subdivision (d).

25 12. Defendants IQ Formulations, LLC. and IQ Formulations, LLC. dba Metabolic Nutrition  
26 are Florida limited liability companies and each of them are a “person” within the meaning of  
27 H&S Code Section 25249.11, subdivision (a). IQ Formulations, LLC. and IQ Formulations,  
28 LLC. dba Metabolic Nutrition have, and continue to, manufacture, package, distribute, market,

1 and/or sell, and/or otherwise have been and continue to be involved in the chain of commerce of  
2 the SUBJECT PRODUCTS for sale or use in California. Based on information and belief, IQ  
3 Formulations, LLC. and IQ Formulations, LLC. dba Metabolic Nutrition, at all times relevant to  
4 this action, has each had and now has 10 or more employees and is a "person in the course of  
5 doing business" pursuant to H&S Code Section 25249.11, subdivision (b).

6 13. Defendants DOES 1-50 are named herein under fictitious names, as their true names and  
7 capacities are unknown to PLAINTIFF. ERC is informed and believes, and thereon alleges,  
8 that each of said DOES has, and continues to, manufacture, package, distribute, market, and/or  
9 sell, and/or otherwise has been and continues to be involved in the chain of commerce of the  
10 SUBJECT PRODUCTS for sale or use in California, and/or is responsible in some actionable  
11 manner, for the events and happenings referred to herein, either through its conduct or through  
12 the conduct of its agents, servants, employees, or in some other manner, causing the harms  
13 alleged herein. PLAINTIFF will seek leave to amend this Complaint to set forth the true names  
14 and capacities of DOES when or if ascertained.

#### 15 STATUTORY BACKGROUND

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

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

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

25 16. Proposition 65 provides that any person who "violates or threatens to violate" the statute  
26 "may be enjoined in any court of competent jurisdiction." (H&S Code Section 25249.7,  
27 subdivision (a).) "Threaten to violate" is defined to mean creating "a condition in which there is  
28 a substantial probability that a violation will occur." (H&S Code Section 25249.11, subdivision

1 (e.) Violators are liable for civil penalties of up to \$2,500 per day for each violation of  
2 Proposition 65. (H&S Code Section 25249.7, subdivision (b).)

3  
4 **FACTUAL BACKGROUND**

5 17. On February 27, 1987, the State of California officially listed the chemical lead as a  
6 chemical known to cause developmental and reproductive toxicity. Lead became subject to the  
7 warning requirement one year later and was therefore subject to the "clear and reasonable"  
8 warning requirements of Proposition 65 beginning on February 27, 1988. (Title 27, California  
9 Code of Regulations ("CCR") Section 25000, *et seq.*; H&S Code Section 25249.5, *et seq.*)

10 18. On October 1, 1992, the State of California officially listed the chemical lead as a  
11 chemical known to cause cancer. Lead became subject to the warning requirement one year later  
12 and was therefore subject to the "clear and reasonable" warning requirements of Proposition 65  
13 beginning on October 1, 1993. (27 CCR Section 25000, *et seq.*; H&S Code Section 25249.5, *et*  
14 *seq.*)

15 19. On May 1, 1997, the State of California officially listed the chemical cadmium as a  
16 chemical known to cause reproductive toxicity. Cadmium became subject to the warning  
17 requirement one year later and was therefore subject to the "clear and reasonable" warning  
18 requirements of Proposition 65 beginning on May 1, 1998. (27 CCR Section 25000, *et seq.*; H&S  
19 Code Section 25249.5, *et seq.*)

20 20. On October 1, 1987, the State of California officially listed the chemicals cadmium and  
21 cadmium compounds as chemicals known to cause cancer. Cadmium and cadmium compounds  
22 became subject to the warning requirement one year later and were therefore subject to the "clear  
23 and reasonable" warning requirements of Proposition 65 beginning on October 1, 1988 (27 CCR  
24 Section 25000, *et seq.*; H&S Code Section 25249.6 *et seq.*)

25 21. PLAINTIFF is informed and believes, and based on such information and belief, alleges  
26 the SUBJECT PRODUCTS have been marketed, distributed, sold, or otherwise provided to  
27 individuals in California without the requisite clear and reasonable warnings before, on, and after  
28 March 30, 2013. The SUBJECT PRODUCTS continue to be marketed, distributed, and sold in

1 California without the requisite warning information.

2 22. As a proximate result of acts by DEFENDANTS, as persons in the course of doing  
3 business within the meaning of H&S Code Section 25249.11, subdivision (b), individuals  
4 throughout the State of California, including in the County of Alameda, have been exposed to  
5 lead and/or cadmium without clear and reasonable warnings. The individuals subject to  
6 exposures to lead and/or cadmium include normal and foreseeable users of the SUBJECT  
7 PRODUCTS, as well as all other persons exposed to the SUBJECT PRODUCTS.

8 23. At all times relevant to this action, Defendants have knowingly and intentionally exposed  
9 the users and/or handlers of the SUBJECT PRODUCTS to lead and/or cadmium without first  
10 giving clear and reasonable warnings to such individuals.

11 24. Individuals using or handling the SUBJECT PRODUCTS are exposed to lead and/or  
12 cadmium in excess of the "maximum allowable daily" and "no significant risk" levels  
13 determined by the State of California, as applicable.

14 25. At all times relevant to this action, Defendants have in the course of doing business,  
15 failed to provide individuals using and/or handling the SUBJECT PRODUCTS with clear and  
16 reasonable warnings that the SUBJECT PRODUCTS expose individuals to lead and/or  
17 cadmium.

18 26. The SUBJECT PRODUCTS continue to be marketed, distributed, and/or sold in  
19 California without the requisite clear and reasonable warnings.

20 **FIRST CAUSE OF ACTION**

21 **(Injunctive Relief for Violations of Health and Safety Code Section 25249.5, et. seq.**  
22 **concerning the SUBJECT PRODUCTS, which are identified in PLAINTIFF's March 30,**  
23 **2016 60-Day Notice of Violations)**

24 27. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 26, inclusive,  
25 as if specifically set forth herein.

26 28. On March 30, 2016, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the  
27 requisite public enforcement agencies and to Defendants IQ Formulations, LLC and IQ  
28 Formulations, LLC. dba Metabolic Nutrition ("Notice of Violations"). The SUBJECT

1 PRODUCTS were identified in the Notice of Violations as containing lead and/or cadmium  
2 exceeding allowable levels. The Notice of Violations was issued pursuant to, and in compliance  
3 with, the requirements of H&S Code Section 25249.7, subdivision (d) and the statute's  
4 implementing regulations regarding the notice of violations to be given to certain public  
5 enforcement agencies and to the violator. The Notice of Violations was issued as follows:

- 6 a. Defendants IQ Formulations, LLC, and IQ Formulations, LLC. dba Metabolic  
7 Nutrition were provided copies by Priority Mail of the Notice of Violations, along  
8 with a Certificate of Merit by the attorney for the noticing party stating that there  
9 is a reasonable and meritorious cause for this action. The California Attorney  
10 General, requisite county district attorneys, and city attorneys were provided  
11 copies either by Priority Mail or via electronic service of the Notice of Violations  
12 and Certificate of Merit.
- 13 b. Defendants IQ Formulations, LLC and IQ Formulations, LLC. dba Metabolic  
14 Nutrition were provided with the Notice of Violations, a copy of a document  
15 entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986  
16 (Proposition 65): A Summary," which is also known as Appendix A to 27 CCR  
17 Section 25903.
- 18 c. The California Attorney General was provided, with the Notice of Violations,  
19 additional factual information sufficient to establish a basis for the Certificate of  
20 Merit including the identity of the persons consulted with and relied on by the  
21 certifier, and the facts, studies, or other data reviewed by those persons pursuant  
22 to H&S Code Sections 25249.7, subdivision (d)(1) and 25249.7, subdivision  
23 (h)(2).

24 29. The appropriate public enforcement agencies have failed to commence and  
25 diligently prosecute a cause of action under H&S Code Section 25249.5, *et seq.* against  
26 DEFENDANTS based on the allegations herein.

27 30. By committing the acts alleged in this Complaint, DEFENDANTS, at all times  
28 relevant to this action, and continuing through the present, have violated, and continue to violate,

1 H&S Code Section 25249.6 by, in the course of doing business, knowingly and intentionally  
2 exposing individuals who use or handle the SUBJECT PRODUCTS to the chemicals lead and/or  
3 cadmium at levels exceeding allowable exposure levels without DEFENDANTS first giving  
4 clear and reasonable warnings to such individuals pursuant to H&S Code Sections 25249.6 and  
5 25249.11, subdivision (f). DEFENDANTS have, and continue to, manufacture, package,  
6 distribute, market, and/or sell, and/or otherwise have been and continue to be involved in the  
7 chain of commerce of the SUBJECT PRODUCTS, which have been, are, and will be used and/or  
8 handled by individuals in California, without Defendants providing clear and reasonable  
9 warnings, within the meaning of Proposition 65, regarding the risks of cancer, birth defects and  
10 other reproductive harm posed by exposure to lead and/or cadmium through the use and/or  
11 handling of the SUBJECT PRODUCTS. Furthermore, DEFENDANTS have threatened to  
12 violate H&S Code Section 25249.6 by the SUBJECT PRODUCTS being marketed, offered for  
13 sale, sold, and/or otherwise provided for the use and/or handling to individuals in California.

14 31. By the above-described acts, DEFENDANTS have violated H&S Code Section  
15 25249.6 and are, therefore, subject to an injunction ordering DEFENDANTS to stop violating  
16 Proposition 65 and to provide required warnings to consumers and other individuals who will  
17 purchase, use, and/or handle the SUBJECT PRODUCTS.

18 32. An action for injunctive relief under Proposition 65 is specifically authorized by  
19 H&S Code Section 25249.7, subdivision (a).

20 33. Continuing commission by DEFENDANTS of the acts alleged above will  
21 irreparably harm the citizens of the State of California, for which harm they have no plain,  
22 speedy or adequate remedy at law.

23 Wherefore, Plaintiff prays judgment against DEFENDANTS, as set forth hereafter.

24 **SECOND CAUSE OF ACTION**

25 **(Civil Penalties for Violations of Health & Safety Code Section 25249.5, et. seq. concerning**  
26 **the SUBJECT PRODUCTS, which are identified in PLAINTIFF's March 30, 2016 60-Day**  
27 **Notice of Violation)**

28 34. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 33,  
inclusive, as specifically set forth herein.



1           Wherefore, PLAINTIFF prays for the following relief:

2           A.     A preliminary and permanent injunction enjoining DEFENDANTS, their  
3 agents, employees, assigns, and all persons acting in concert or participating with Defendant,  
4 from manufacturing, packaging, distributing, marketing, and/or selling the SUBJECT  
5 PRODUCTS for sale or use in California without first providing clear and reasonable warnings,  
6 within the meaning of Proposition 65, that the users and/or handlers of the SUBJECT  
7 PRODUCTS are exposed to lead and/or cadmium.

8           B.     An assessment of civil penalties, pursuant to H&S Code Section 25249.7,  
9 subdivision (b), against Defendants in the amount of \$2,500 per day for each violation of  
10 Proposition 65;

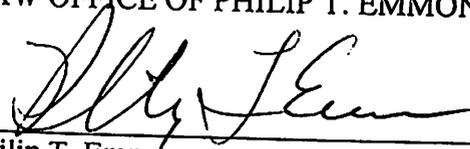
11           C.     An award to Plaintiff of its reasonable attorneys' fees pursuant to  
12 California Civil Code of Procedure Section 1021.5 or the substantial benefit theory;

13           D.     An award of costs of suit herein; and

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

15  
16 Dated: 6/9, 2016

LAW OFFICE OF PHILIP T. EMMONS

17  
18 By: 

19 Philip T. Emmons

20 Attorney for the Plaintiff

21 Environmental Research Center, Inc.