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CODE SECTION 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

PEOPLE OF THE STATE OF CALIFORNIA, ex rel. KAMALA D. HARRIS, Attorney General,

Plaintiff,

v.

HEALTHFORCE, INC. d/b/a HEALTHFORCE NUTRITIONALS, a Nevada Corporation; GRASS ADVANTAGE d/b/a AMAZING GRASS, a California Corporation; and DOES 1-50, inclusive,

Defendants.

Case No.
COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

(Health and Safety Code, § 25249.5 et seq.; Business and Professions Code, §§ 17200, 17500)

1 Plaintiffs, the People of the State of California, by and through Kamala D. Harris, Attorney
2 General of the State of California, hereby allege:

3 **I. INTRODUCTION**

4 1. This complaint seeks to remedy the Defendants' failure to warn California consumers of
5 the exposures to lead and cadmium in purported "nutritional supplement" products ("Products")
6 that the Defendants sell, manufacture, and/or distribute for sale in the state of California.

7 2. Lead and cadmium are known to the State of California to cause cancer, birth defects,
8 reproductive harm, and other ailments.

9 3. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
10 Code section 25249.6, or "Proposition 65," businesses must provide a "clear and reasonable
11 warning" before exposing individuals to chemicals known to California to cause reproductive
12 harm or cancer.

13 4. None of the Defendants is providing warnings regarding the lead and cadmium content of
14 the Products.

15 5. In addition to seeking to remedy Defendants' Proposition 65 violations and obtain other
16 appropriate relief, this complaint seeks to preclude: (1) Defendants from making false and
17 misleading statements regarding the lead and cadmium content in their respective Products and
18 the safety and/or purported health benefits associated with consumption of their respective
19 Products; and (2) Defendant HEALTHFORCE from advertising, manufacturing, and selling
20 Products with such exceedingly high lead levels that the Products are "adulterated" within the
21 meaning of Health and Safety Code section 110545.

22 **II. PARTIES**

23 6. Plaintiff is the People of the State of California, by and through the Attorney General of
24 California, Kamala D. Harris (the "People"). Health and Safety Code section 25249.7,
25 subdivision (c) provides that actions to enforce Proposition 65 may be brought by the Attorney
26 General in the name of the People of the State of California. Business and Professions Code
27 sections 17200 et seq. ("the Unfair Competition Law") and 17500 et seq. ("the False Advertising
28 Law") further provide that enforcement actions may be brought by the Attorney General in the

1 name of the People of the State of California. The People bring this action under the authority
2 granted to them by Proposition 65, the Unfair Competition Law, and the False Advertising Law.

3 7. Defendant HEALTHFORCE, INC. d/b/a HEALTHFORCE NUTRITIONALS
4 (“HEALTHFORCE”) is a corporation organized and existing under the laws of the State of
5 Nevada. HEALTHFORCE is a “person in the course of doing business” within the meaning of
6 Health and Safety Code section 25249.6. HEALTHFORCE is also “a person” within the
7 meaning of sections 17201, 17506, and 109995 of the California Health and Safety Code.

8 8. Defendant GRASS ADVANTAGE d/b/a AMAZING GRASS (“AMAZING GRASS”) is a
9 corporation organized and existing under the laws of the State of California. AMAZING GRASS
10 is a “person in the course of doing business” within the meaning of Health and Safety Code
11 section 25249.6. AMAZING GRASS is also “a person” within the meaning of sections 17201,
12 17506, and 109995 of the California Health and Safety Code.

13 9. DOES 1-50 (“DOES”) are business entities or persons engaged in the manufacture, sale,
14 and/or distribution of “nutritional supplements” that contain lead or cadmium. Individuals who
15 consume these products are exposed to lead or cadmium through ingestion. The supplements
16 being manufactured, sold; or distributed by DOES 1-50 may be adulterated because of their high
17 lead or cadmium content. DOES 1-50 also include business entities and persons that have made
18 and/or continue to make false and misleading statements to the public regarding the heavy metal
19 content in their products and the safety and/or purported health benefits associated with
20 consumption of their products. The names and identities of defendants DOES 1 through 50 are
21 unknown to the People, and when they are known this complaint will be amended to state their
22 names and identities.

23 III. JURISDICTION AND VENUE

24 10. This Court has jurisdiction over this matter pursuant to California Constitution, article VI,
25 section 10, because this case is a cause not given by statute to other trial courts.

26 11. This Court has jurisdiction over each Defendant named above, because each is a business
27 entity that does sufficient business and/or has sufficient minimum contacts in California, or
28 otherwise intentionally avails itself of the California market through the manufacture,

1 distribution, sale, and/or marketing of products and services in California, to render the exercise
2 of jurisdiction over it by the California courts consistent with traditional notions of fair play and
3 substantial justice.

4 12. Venue is proper in this Court because the causes of action, or parts thereof, arise in
5 Alameda County because Defendants' products are sold and consumed in this county.

6 IV. STATUTORY BACKGROUND

7 A. Proposition 65

8 13. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
9 passed as "Proposition 65" by a vote of the people in November 1986.

10 14. The warning requirement of Proposition 65 is contained in Health and Safety Code
11 section 25249.6, which provides:

12 No Person in the course of doing business shall knowingly and intentionally expose
13 any individual to a chemical known to the state to cause cancer or reproductive
14 toxicity without first giving clear and reasonable warning to such individual, except
as provided in Section 25249.10.

15 15. An exposure to a chemical in a consumer product is one "which results from a person's
16 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer
17 good, or any exposure that results from receiving a consumer service." (Cal. Code Regs., tit. 27,
18 § 25602, subd. (b).)

19 16. Proposition 65 establishes a procedure by which California is to develop a list of
20 chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code, §
21 25249.8.)

22 17. Any person "violating or threatening to violate" the statute may be enjoined in any court
23 of competent jurisdiction. (Health & Safety Code, § 25249.7.) To "threaten to violate" means
24 "to create a condition in which there is a substantial probability that a violation will occur." (*Id.*,
25 § 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up to \$2,500 per day
26 for each violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)

27 18. Actions to enforce the law "may be brought by the Attorney General in the name of the
28 People of the State of California" (*Id.*, § 25249.7, subd. (c).)

1 19. The Attorney General may “seek and recover costs and attorney’s fees on behalf of any
2 party who provides a notice pursuant to subdivision (d) and who renders assistance in that
3 action.” (*Id.*, § 25249.7, subd. (j).)

4 **B. False and Misleading Statements**

5 20. Section 17500 of the Business and Professions Code provides that it is unlawful for any
6 person, “with the intent directly or indirectly to dispose of real or personal property,” to make
7 “any statement, concerning that real or personal property . . . which is untrue or misleading, and
8 which is known, or which by the exercise of reasonable care should be known, to be untrue or
9 misleading.”

10 21. The Attorney General may commence an action for equitable relief for violations of
11 section 17500 et seq., including injunctive relief and restitution. (Bus. & Prof. Code, § 17535.)
12 The Attorney General may also seek civil penalties for each violation. (*Id.*, § 17536.) The
13 remedies and penalties for making false and misleading statements are cumulative to each other
14 and to the remedies or penalties available under other California laws. (*Id.*, § 17534.5.)

15 **C. The Sherman Food, Drug, and Cosmetic Law**

16 22. The Sherman Food, Drug, and Cosmetic Law (“Sherman Law”) protects consumers,
17 among other things, against false advertising and the sale of products that are adulterated or
18 misbranded. (Health & Saf. Code, § 109875 et seq.)

19 23. Pursuant to the Sherman Law, it is “unlawful for any person to manufacture, sell, deliver,
20 hold, or offer for sale any food, drug, device, or cosmetic that is falsely advertised.” (*Id.*,
21 §110395.)

22 24. The Sherman Law also renders it unlawful “for any person to advertise any food, drug,
23 device, or cosmetic that is adulterated or misbranded.” (*Id.*, § 110398.).

24 25. It is also unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any
25 food, drug, device, or cosmetic that is adulterated. (*Id.*, §§ 110620, 111295, 111700.)

26 26. “Any food is adulterated if it bears or contains any poisonous or deleterious substance
27 that may render it injurious to health of man or any other animal that may consume it.” (*Id.*, §
28 110545.) “Foods” under the Sherman Law are broadly defined to include “[a]ny article used or

1 intended for use for food, drink, confection, condiment, or chewing gum by man” or anything
2 used or intended for use as a component of any such article. (*Id.*, § 109935.)

3 **D. The Unfair Competition Law**

4 27. California Business and Professions Code section 17200 provides that “unfair
5 competition shall mean and include unlawful, unfair, or fraudulent business practice.” Section
6 17203 of the Business and Professions Code provides that “[a]ny person performing or proposing
7 to perform an act of unfair competition within this state may be enjoined in any court of
8 competent jurisdiction.”

9 28. Section 17206(a) provides that any person violating Section 17200 “shall be liable for a
10 civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which
11 shall be assessed and recovered in a civil action brought in the name of the people of the State of
12 California by the Attorney General or by any district attorney.” Under section 17205, these
13 penalties are “cumulative to each other and to the remedies or penalties available under all other
14 laws of this statute.”

15 **V. FACTS**

16 29. Lead was placed on the list of chemicals known to the State of California to cause birth
17 defects or other reproductive harm on February 27, 1987. It is specifically identified under three
18 subcategories: “developmental reproductive toxicity,” which means harm to the developing fetus;
19 “female reproductive toxicity,” which means harm to the female reproductive system; and “male
20 reproductive toxicity,” which means harm to the male reproductive system. (Cal. Code Regs., tit.
21 27, § 27001, subd. (c).)

22 30. Cadmium was placed on the list of chemicals known to the State of California to cause
23 birth defects or other reproductive harm on May 1, 1997. It is specifically identified under the
24 subcategories developmental reproductive toxicity and male reproductive toxicity. (*Ibid.*)

25 31. Lead and Cadmium were both placed on the list of chemicals known to the State of
26 California to cause cancer on October 1, 1992. (*Ibid.*)

27 32. Lead bioaccumulates in humans. Recent studies have determined that lead can damage
28 the human nervous system at lower exposure levels than previously believed. Children and

1 pregnant or nursing women are the most vulnerable to lead exposure. Children who are exposed
2 to lead may suffer from lowered IQs, behavioral issues, slowed body growth, hearing problems,
3 kidney damage, and other serious health effects.

4 33. Like lead, cadmium bioaccumulates in humans. In addition to being a carcinogen and
5 reproductive toxicant, cadmium can cause impaired kidney functioning and other serious health
6 effects.

7 34. The United States Food and Drug Administration (USFDA) has established Provisional
8 Total Tolerable Daily Intake levels (Tolerable Intake Levels) for products containing lead. These
9 Tolerable Intake Levels include the following: 6 ug/day for children under six years old; 15
10 ug/day for children seven years old or older; and 25 ug/day for pregnant women.

11 35. HEALTHFORCE Products that have caused and continue to cause exposures to lead
12 include, but are not limited to: Warrior Force Warrior Endurance; VitaMineral Earth v.3.3
13 TruGanic; Warrior Force Warrior Core Foundation 100% TruGanic; VitaMineral Green v.5.2;
14 Detox Intestinal Drawing Formula v.6; Nopal Blood Sugar 100% TruGanic; and Warrior Force
15 Warrior Greens Vegan Caps.

16 36. In addition to causing exposures to lead without providing the required warning,
17 consumption of certain HEALTHFORCE Products has resulted in exposures to lead above the
18 Tolerable Intake Levels for some California consumers.

19 37. Pregnant women or children older than seven consuming the recommended level of
20 Detox Intestinal Drawing Formula v. 6 have suffered, and continue to suffer, intakes of lead in
21 excess of the applicable Tolerable Intake Levels. Pregnant women and children older than seven
22 who use other HEALTHFORCE Products at the maximum suggested servings have also suffered,
23 and continue to suffer, lead intakes at levels above the applicable Tolerable Intake Levels.
24 Children younger than six that consume certain HEALTHFORCE Products, even at less than
25 suggested serving levels, have suffered, and continue to suffer, intakes of lead above the
26 Tolerable Intake Level for children. Certain of the HEALTHFORCE Products are therefore
27 adulterated within the meaning of the Sherman Law for the purposes of consumption by pregnant
28 or nursing women and children.

1 38. AMAZING GRASS Products that have caused and continue to cause exposures to lead
2 include, but are not limited to: Amazing Meal Chocolate Infusion and Amazing Grass Raw
3 Reserve Chocolate.

4 39. AMAZING GRASS Products that have caused and continue to cause exposures to
5 cadmium include, but are not limited to: Amazing Grass Raw Reserve Chocolate.

6 40. At all times material to this complaint, Defendants knew their respective Products
7 contained lead and/or cadmium.

8 41. Notwithstanding this knowledge, all Defendants—at all times material to this
9 complaint—advertised, manufactured, marketed, distributed, and/or sold the Products in
10 California, causing consumers to be exposed to lead and/or cadmium. Defendants continue to
11 advertise, manufacture, market, distribute, and/or sell the Products in California.

12 42. These exposures are knowing and intentional because they are the result of Defendants'
13 deliberate act of advertising, manufacturing, marketing, distributing, and/or selling the Products
14 known to contain lead and/or cadmium to consumers, with the knowledge that the intended use of
15 these Products would result in exposures to lead and/or cadmium.

16 43. At all times material to this complaint, Defendants failed to provide clear and reasonable
17 warning that the use of the Products results in exposure to chemicals known to the State of
18 California to cause cancer, birth defects, and other reproductive harm, and no such warning was
19 provided by any other person to the individuals who suffered such exposures.

20 44. At all times material to this complaint, all Defendants and/or their corporate officers have
21 falsely advertised and made other misrepresentations to California (and other) consumers
22 regarding the Products' heavy metal content, safety, and/or purported health benefits. Among
23 other things, each of the Defendants advertise that their Products do not contain heavy metals,
24 including lead and/or cadmium, at levels that are unsafe. These advertisements and
25 representations have caused the public to wrongly believe that no adverse health consequences, or
26 increased risk of adverse health consequences, would result from consumption of the Products.

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28 ///

1 **VI. FIRST CAUSE OF ACTION**

2 (Against All Defendants for Violation of Proposition 65)

3 45. The People re-allege paragraphs 1 through 44, as if fully set forth herein.

4 46. By committing the acts alleged above, Defendants, and each of them, in the course of
5 doing business, knowingly and intentionally exposed individuals to chemicals known to the state
6 of California to cause cancer and/or reproductive toxicity without first giving clear and reasonable
7 warning to such individuals, within the meaning of Health and Safety Code section 25249.6

8 **VII. SECOND CAUSE OF ACTION**

9 (Against all Defendants for False Advertising and Misleading Statements
10 in Violation of Business and Professions Code section 17500 et seq.)

11 47. The People re-allege paragraphs 1 through 46, as if fully set forth herein.

12 48. Defendants have violated and continue to violate Business and Professions Code section
13 17500 et seq. by making or causing others to make untrue or misleading statements to induce
14 California consumers to purchase and consume their respective Products, which contain high
15 levels of lead and/or cadmium. These untrue or misleading statements include, but are not limited
16 to, statements that their respective Products are safe and beneficial, do not contain heavy metals
17 or contain only low levels of heavy metals, or pose no adverse health risks to themselves or their
18 children. Defendants knew, or by the exercise of reasonable care should have known, that these
19 statements were untrue or misleading at the time such statements were made.

20 **VIII. THIRD CAUSE OF ACTION**

21 (Against all Defendants for Unlawful Business Practices in Violation of
22 Business and Professions Code section 17200 et seq.)

23 49. The People re-allege Paragraphs 1 through 48, as if fully set forth herein.

24 50. Defendants have violated and continue to violate Business and Professions Code section
25 17200 by engaging in the following unlawful, unfair, or fraudulent business acts or practices:

26 A. Defendants knowingly and intentionally exposed individuals in California to high
27 levels of lead and/or cadmium without providing a clear and reasonable warning, in violation of
28 Proposition 65, Health and Safety Code section 25249.5 et seq;

B. Defendants made or caused others to make untrue and/or misleading statements,
which they knew, or by the exercise of reasonable care should have known, were untrue or

1 misleading at the time such statements were made, to induce California consumers to purchase
2 and consume their respective Products, which contained high levels of lead and/or cadmium, in
3 violation of Business and Professions Code section 17500 et seq.; and

4 C. Defendants violated the Sherman Law's prohibition on selling, delivering, or offering
5 for sale any falsely advertised food product.

6 **IX. FOURTH CAUSE OF ACTION**

7 (Against Defendant HealthForce for Unlawful Business Practices in Violation of
8 Business and Professions Code section 17200 et seq.)

9 51. The People re-allege Paragraphs 1 through 50, as if fully set forth herein.

10 52. Defendant HEALTHFORCE has violated and continues to violate Business and
11 Professions Code section 17200 by engaging in the following unlawful, unfair, or fraudulent
12 business acts or practices:

13 A. Defendant HEALTHFORCE violated the Sherman Law by advertising food products
14 that are adulterated for the purposes of consumption by pregnant or nursing women and children;
15 and

16 B. Defendant HEALTHFORCE violated the Sherman Law by manufacturing, selling,
17 delivering, holding, and/or offering for sale food products that are adulterated for the purposes of
18 consumption by pregnant or nursing women and children.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff prays that the Court:

- 21 1. Pursuant to all causes of action, grant civil penalties according to proof;
- 22 2. Pursuant to Health and Safety Code section 25249.7 and Business and Professions
23 Code section 17203, enter such temporary restraining orders, preliminary injunctions, permanent
24 injunctions, or other orders prohibiting defendants from exposing persons within the State of
25 California to lead and/or cadmium caused by the ingestion of their Products, without providing
26 clear and reasonable warnings, as Plaintiff shall specify in further application to the court;
- 27 3. Pursuant to Business and Professions Code sections 17535 and 17203, enter such
28 temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders
prohibiting Defendants, their agents, employees, and all other persons or entities, corporate or

1 otherwise, in active concert or participation with any of them, from making, or causing to be
2 made, untrue and/or misleading statements that inducing California consumers to purchase and
3 consume their respective Products;

4 4. Pursuant to Business and Professions Code section 17203, enter such temporary
5 restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting
6 Defendant HEALTHFORCE from advertising, manufacturing, selling, delivering, holding, and/or
7 offering for sale Products that are adulterated;

8 5. Award the People costs of suit;

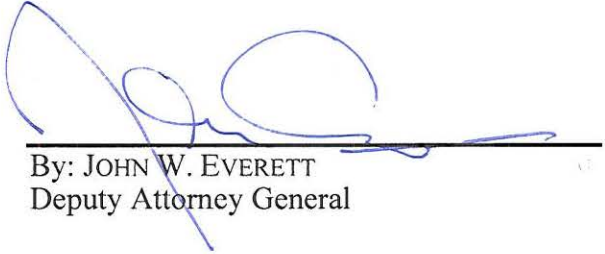
9 6. Award attorneys' fees and costs at the discretion of the Attorney General, pursuant to
10 Health and Safety Code section 25249.7(j); and

11 7. Grant such other and further relief as the court deems just and proper.
12

13 Dated: April 2, 2015

Respectfully Submitted,

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15 Attorney General of California
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17 Supervising Deputy Attorney General
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