

1 TANYA A. GULESSERIAN (CBN 198640)  
2 CHRISTINA M. CARO (CBN 250797)  
3 ADAMS BROADWELL JOSEPH & CARDOZO  
4 601 Gateway Blvd., Suite 1000  
5 South San Francisco, CA 94080  
6 Telephone: (650) 589-1660  
7 Fax No.: (650) 589-5062  
8 Email: tgulesserian@adamsbroadwell.com  
9 ccaro@adamsbroadwell.com

7 Attorneys for Plaintiff  
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

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

13 Plaintiff,

14 v.

15 ORANGE PEEL ENTERPRISES,  
16 INCORPORATED DBA GREENS PLUS, a  
17 Florida Corporation

18 Defendant.

Case No.

**CGC -16-552495**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

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

19  
20 Plaintiff ENVIRONMENTAL RESEARCH CENTER, INC. ("Plaintiff" or "ERC")  
21 brings this action in the interests of the general public and hereby alleges:

22 **INTRODUCTION**

23 1. This action seeks to remedy the continuing failure of ORANGE PEEL  
24 ENTERPRISES, INCORPORATED DBA GREENS PLUS, a Florida Corporation ("Orange  
25 Peel" or "Defendant") to warn consumers in California that they are being exposed to lead and  
26 cadmium, substances known to the State of California to cause cancer, birth defects, and other  
27 reproductive harm.

28  
Page 1 of 15

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

3468-006rc

**F I L E D**

Superior Court of California  
County of San Francisco

JUN 10 2016

CLERK OF THE COURT

BY: Adeline Ramon  
Deputy Clerk

ORIGINAL  
BY FACSIMILE

1           2.     Defendant manufactures, packages, distributes, markets, and/or sells in  
2 California certain PRODUCTS containing lead and cadmium, including each of the following  
3 PRODUCTS:

- 4           1.     Greens Plus Greens+ PlusShake Meal Replacement Raw Vanilla - Lead
- 5           2.     Greens Plus Greens+ PlusShake Meal Replacement Raw Chocolate –  
6                 Lead, Cadmium
- 7           3.     Greens Plus Greens+ Advanced Multi Wild Berry Superfood - Lead
- 8           4.     Greens Plus Greens+ Advanced Multi Vanilla Chai Superfood - Lead
- 9           5.     Orange Peel Enterprises Inc. Greens+ PlusBar Superfood Chia Crisp -  
10                Lead
- 11          6.     Orange Peel Enterprises Inc. Greens+ PlusBar Blueberry Almond Chia  
12                Crisp - Lead
- 13          7.     Orange Peel Enterprises Inc. Greens+ PlusBar Chocolate Peanut Butter  
14                Chia Crisp - Lead
- 15          8.     Orange Peel Enterprises Inc. Greens+ PlusBar Chia Chocolate – Lead,  
16                Cadmium
- 17          9.     Orange Peel Enterprises Inc. Greens+ PlusBar Chia Natural - Lead
- 18          10.    Orange Peel Enterprises Inc. Greens+ Plusbar Energy Natural - Lead
- 19          11.    Orange Peel Enterprises Inc. Greens+ Plusbar Protein Whey Krisp - Lead
- 20          12.    Greens Plus Greens+ Advanced Multi Raw Superfood - Lead
- 21          13.    Greens Plus Greens+ Organics Superfood Raw - Lead
- 22          14.    Orange Peel Enterprises Inc. Greens+ Plusbar Energy Chocolate - Lead

23           3.     Lead, and cadmium are substances known to the State<sup>1</sup> of California to cause  
24 reproductive harm, cancer, and birth defects. Lead compounds and cadmium compounds  
25 (collectively with lead and cadmium as the “LISTED CHEMICALS”) are substances known to  
26  
27

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

1 the State of California to cause cancer. Proposition 65 requires that consumers must be warned  
2 before they are exposed to LISTED CHEMICALS.

3 4. The use and/or handling of the PRODUCTS causes exposures to the LISTED  
4 CHEMICALS at levels requiring a "clear and reasonable warning" under California's Safe  
5 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code")  
6 §25249.5, *et seq.* (also known and referred to herein as "Proposition 65").

7 5. Defendant has failed to provide the health hazard warnings required by  
8 Proposition 65.

9 6. Defendant's past and continuing manufacturing, packaging, distributing,  
10 marketing and/or sales of the PRODUCTS without the required health hazard warnings causes,  
11 or threatens to cause, individuals to be involuntarily and unwittingly exposed to levels of the  
12 LISTED CHEMICALS that violate or threaten to violate Proposition 65. As a proximate result  
13 of these actions, Defendant has violated and will continue to violate Proposition 65.

14 7. Plaintiff seeks injunctive relief enjoining Defendant from the continued  
15 manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS in California  
16 without provision of clear and reasonable warnings regarding the risks of cancer, birth defects,  
17 and other reproductive harm posed by exposure to the LISTED CHEMICALS through the use  
18 and/or handling of the PRODUCTS. Plaintiff seeks an injunctive order compelling Defendant to  
19 bring their business practices into compliance with Proposition 65 by providing a clear and  
20 reasonable warning to each individual who has been and who in the future may be exposed to  
21 the LISTED CHEMICALS from the use of the PRODUCTS. Plaintiff also seeks an order  
22 compelling Defendant to identify and locate each individual person who has purchased the  
23 PRODUCTS in the past, and to provide to each such purchaser a clear and reasonable warning  
24 that the use of the PRODUCTS will cause exposures to the LISTED CHEMICALS.

25 8. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties in  
26 excess of \$194 million to remedy Defendant's failure to provide clear and reasonable warnings  
27 regarding exposures to the LISTED CHEMICALS.  
28



1 chemicals that cause cancer, birth defects, or other reproductive harm.” Section 1(b) of Initiative  
2 Measure, Proposition 65.

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

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

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

14 18. Proposition 65 establishes a procedure by which the Governor lists chemicals  
15 known to the state to cause cancer or reproductive toxicity. H&S Code §25249.8. The warning  
16 requirements under Proposition 65 for a given chemical go into effect one year after the  
17 Governor places that chemical on the list. H&S Code §25249.10(b).

18 19. Proposition 65 provides that any person “violating or threatening to violate” the  
19 warning requirements of the statute may be enjoined in a court of competent jurisdiction. H&S  
20 Code § 25249.7. The phrase “threatening to violate” is defined to mean creating “a condition in  
21 which there is a substantial likelihood that a violation will occur.” H&S Code §25249.11(e).

22 20. Violators are liable for civil penalties of up to \$2,500 per day for each violation  
23 of the Act. H&S Code §25249.7.

24 **FACTUAL BACKGROUND**

25 21. On February 27, 1987, the State of California officially listed the chemical lead  
26 as a chemical known to cause reproductive toxicity. Lead became subject to the warning  
27 requirement one year later and was therefore subject to the “clear and reasonable” warning  
28 requirements of Proposition 65 beginning on February 27, 1988. H&S Code §25249.5, *et seq.*;

1 27 CCR §25000, *et seq.* Due to the high toxicity of lead, the maximum allowable dose level for  
2 lead is 0.5 ug/day (micrograms a day) for reproductive toxicity. 27 CCR §25805(b).

3 22. On October 1, 1992, the State of California officially listed the chemicals lead  
4 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
5 subject to the warning requirement one year later and were therefore subject to the “clear and  
6 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993. 27 CCR  
7 §25102, *et seq.*; H&S Code § 25249.6, *et seq.* Due to the carcinogenicity of lead, the no  
8 significant risk level for lead is 15 ug/day (micrograms a day). 27 CCR §25705(b)(1).

9 23. On May 1, 1997, the State of California officially listed the chemical cadmium  
10 as a chemical known to cause reproductive toxicity. Cadmium became subject to the warning  
11 requirement one year later and was therefore subject to the “clear and reasonable” warning  
12 requirements of Proposition 65 beginning on May 1, 1998. (27 CCR §25000, *et seq.*; H&S Code  
13 §25249.5, *et seq.*) Due to the high toxicity of cadmium, the maximum allowable dose level for  
14 cadmium is 4.1 ug/day (micrograms a day) for reproductive toxicity. (27 CCR § 25805(b).)

15 24. On October 1, 1987, the State of California officially listed the chemicals  
16 cadmium and cadmium compounds as chemicals known to cause cancer. Cadmium and  
17 cadmium compounds became subject to the warning requirement one year later and were  
18 therefore subject to the “clear and reasonable” warning requirements of Proposition 65  
19 beginning on October 1, 1988 (27 CCR §25000, *et seq.*; H&S Code §25249.6 *et seq.*).

20 25. The PRODUCTS have been sold by Defendant for use in California since at least  
21 January 29, 2013.

22 26. To test Defendant’s PRODUCTS for lead and cadmium, Plaintiff hired a well-  
23 respected and accredited testing laboratory. Product testing was performed according to the  
24 testing protocol used and approved by the California Attorney General for testing heavy metals.  
25 The results of testing undertaken by Plaintiff of Defendant's PRODUCTS show that the  
26 PRODUCTS tested were in violation of the 0.5 ug/day "safe harbor" daily dose limits for lead  
27 and/or in violation of the 4.1 µg/day “safe harbor” daily dose limits for cadmium set forth in  
28 Proposition 65's regulations. Very significant is the fact that people are being exposed to lead

1 and cadmium through ingestion as opposed to other, less harmful, methods of exposure such as  
2 dermal exposure. Ingestion of lead and cadmium produces much higher exposure levels and  
3 health risks than does dermal exposure to these chemicals.

4 27. At all times relevant to this action, Defendant has knowingly and intentionally  
5 exposed the users and/or handlers of the PRODUCTS to the LISTED CHEMICALS without  
6 first giving a clear and reasonable warning to such individuals.

7 28. On January 29, 2016, Plaintiff served Defendant and each of the appropriate  
8 public enforcement agencies with a 60-Day Notice of Proposition 65 violations document  
9 entitled "Notice of Violations of California Health & Safety Code §25249.5 ("Notice"). A true  
10 and correct copy of the Notice is attached hereto as Exhibit A and incorporated by reference.  
11 The Notice was issued pursuant to, and in compliance with, the requirements of H&S Code  
12 §25249.7(d) and the statute's implementing regulations regarding the notice of the violations to  
13 be given to certain public enforcement agencies and to the violator. The Notice included, *inter*  
14 *alia*, the following information: the name, address, and telephone number of the noticing  
15 individual; the name of the alleged violator; the statute violated; the approximate time period  
16 during which violations occurred; and descriptions of the violations, including the chemicals  
17 involved, the routes of toxic exposure, and the specific product or type of product causing the  
18 violations, and was issued as follows:

- 19 a. Defendant was provided a copy of the Notice by Certified Mail;
- 20 b. Defendant was provided a copy of a document entitled "The Safe  
21 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
22 Summary," which is also known as Appendix A to Title 27 of CCR  
23 §25903;
- 24 c. the California Attorney General was provided a copy of the Notice via  
25 online submission; and
- 26 d. the California Attorney General was provided with a Certificate of Merit  
27 by the attorney for the noticing party, stating that there is a reasonable  
28 and meritorious case for this action, and attaching factual information

1 sufficient to establish a basis for the certificate, including the identity of  
2 the persons consulted with and relied on by the certifier, and the facts,  
3 studies, or other data reviewed by those persons, pursuant to H&S Code  
4 §25249.7(h) (2).

5 29. Defendant has sold at least one unit (one package) of the PRODUCT Greens  
6 Plus Greens+ PlusShake Meal Replacement Raw Vanilla to a person in the State of California  
7 each day since at least January 29, 2013. Each unit contains 15 servings of the PRODUCT.  
8 Therefore, Defendant' sales have resulted in at least 16,425 individual exposures from  
9 Defendant's sales of Greens Plus Greens+ PlusShake Meal Replacement Raw Vanilla since at  
10 least January 29, 2013.

11 30. Defendant has sold at least one unit (one package) of the PRODUCT Greens  
12 Plus Greens+ PlusShake Meal Replacement Raw Chocolate to a person in the State of  
13 California each day since at least January 29, 2013. Each unit contains 15 servings of the  
14 PRODUCT. Therefore, Defendant' sales have resulted in at least 16,425 individual exposures  
15 from Defendant's sales of Greens Plus Greens+ PlusShake Meal Replacement Raw Chocolate  
16 since at least January 29, 2013.

17 31. Defendant has sold at least one unit (one package) of the PRODUCT Greens  
18 Plus Greens+ Advanced Multi Wild Berry Superfood to a person in the State of California each  
19 day since at least January 29, 2013. Each unit contains 30 servings of the PRODUCT.  
20 Therefore, Defendant' sales have resulted in at least 32,850 individual exposures from  
21 Defendant's sales of Greens Plus Greens+ Advanced Multi Wild Berry Superfood since at least  
22 January 29, 2013.

23 32. Defendant has sold at least one unit (one package) of the PRODUCT Greens  
24 Plus Greens+ Advanced Multi Vanilla Chai Superfood to a person in the State of California  
25 each day since at least January 29, 2013. Each unit contains 30 servings of the PRODUCT.  
26 Therefore, Defendant' sales have resulted in at least 32,850 individual exposures from  
27 Defendant's sales of Greens Plus Greens+ Advanced Multi Vanilla Chai Superfood since at  
28 least January 29, 2013.



1           33. Defendant has sold at least one unit (one package) of the PRODUCT Orange  
2 Peel Enterprises Inc. Greens+ PlusBar Superfood Chia Crisp to a person in the State of  
3 California each day since at least January 29, 2013. Each unit contains 12 servings of the  
4 PRODUCT. Therefore, Defendant' sales have resulted in at least 13,140 individual exposures  
5 from Defendant's sales of Orange Peel Enterprises Inc. Greens+ PlusBar Superfood Chia Crisp  
6 since at least January 29, 2013.

7           34. Defendant has sold at least one unit (one package) of the PRODUCT Orange  
8 Peel Enterprises Inc. Greens+ PlusBar Blueberry Almond Chia Crisp to a person in the State of  
9 California each day since at least January 29, 2013. Each unit contains 12 servings of the  
10 PRODUCT. Therefore, Defendant' sales have resulted in at least 13,140 individual exposures  
11 from Defendant's sales of Orange Peel Enterprises Inc. Greens+ PlusBar Blueberry Almond  
12 Chia Crisp since at least January 29, 2013.

13           35. Defendant has sold at least one unit (one package) of the PRODUCT Orange  
14 Peel Enterprises Inc. Greens+ PlusBar Chocolate Peanut Butter Chia Crisp to a person in the  
15 State of California each day since at least January 29, 2013. Each unit contains 12 servings of  
16 the PRODUCT. Therefore, Defendant' sales have resulted in at least 13,140 individual  
17 exposures from Defendant's sales of Orange Peel Enterprises Inc. Greens+ PlusBar Chocolate  
18 Peanut Butter Chia Crisp since at least January 29, 2013.

19           36. Defendant has sold at least one unit (one package) of the PRODUCT Orange  
20 Peel Enterprises Inc. Greens+ PlusBar Chia Chocolate to a person in the State of California each  
21 day since at least January 29, 2013. Each unit contains 12 servings of the PRODUCT.  
22 Therefore, Defendant' sales have resulted in at least 13,140 individual exposures from  
23 Defendant's sales of Orange Peel Enterprises Inc. Greens+ PlusBar Chia Chocolate since at  
24 least January 29, 2013.

25           37. Defendant has sold at least one unit (one package) of the PRODUCT Orange  
26 Peel Enterprises Inc. Greens+ PlusBar Chia Natural to a person in the State of California each  
27 day since at least January 29, 2013. Each unit contains 12 servings of the PRODUCT.  
28 Therefore, Defendant' sales have resulted in at least 13,140 individual exposures from

1 Defendant's sales of Orange Peel Enterprises Inc. Greens+ PlusBar Chia Natural since at least  
2 January 29, 2013.

3 38. Defendant has sold at least one unit (one package) of the PRODUCT Orange  
4 Peel Enterprises Inc. Greens+ Plusbar Energy Natural to a person in the State of California each  
5 day since at least January 29, 2013. Each unit contains one serving of the PRODUCT.  
6 Therefore, Defendant' sales have resulted in at least 1,095 individual exposures from  
7 Defendant's sales of Orange Peel Enterprises Inc. Greens+ Plusbar Energy Natural since at least  
8 January 29, 2013.

9 39. Defendant has sold at least one unit (one package) of the PRODUCT Orange  
10 Peel Enterprises Inc. Greens+ Plusbar Protein Whey Krisp to a person in the State of California  
11 each day since at least January 29, 2013. Each unit contains one serving of the PRODUCT.  
12 Therefore, Defendant' sales have resulted in at least 1,095 individual exposures from  
13 Defendant's sales of Orange Peel Enterprises Inc. Greens+ Plusbar Protein Whey Krisp since at  
14 least January 29, 2013.

15 40. Defendant has sold at least one unit (one package) of the PRODUCT Greens  
16 Plus Greens+ Advanced Multi Raw Superfood to a person in the State of California each day  
17 since at least January 29, 2013. Each unit contains 30 servings of the PRODUCT. Therefore,  
18 Defendant' sales have resulted in at least 32,850 individual exposures from Defendant's sales of  
19 Greens Plus Greens+ Advanced Multi Raw Superfood since at least January 29, 2013.

20 41. Defendant has sold at least one unit (one package) of the PRODUCT Greens  
21 Plus Greens+ Organics Superfood Raw to a person in the State of California each day since at  
22 least January 29, 2013. Each unit contains 30 servings of the PRODUCT. Therefore, Defendant'  
23 sales have resulted in at least 32,850 individual exposures from Defendant's sales of Greens  
24 Plus Greens+ Organics Superfood Raw since at least January 29, 2013.

25 42. Defendant has sold at least one unit (one package) of the PRODUCT Orange  
26 Peel Enterprises Inc. Greens+ Plusbar Energy Chocolate to a person in the State of California  
27 each day since at least January 29, 2013. Each unit contains one serving of the PRODUCT.  
28 Therefore, Defendant' sales have resulted in at least 1,095 individual exposures from

1 Defendant's sales of Orange Peel Enterprises Inc. Greens+ Plusbar Energy Chocolate since at  
2 least January 29, 2013.

3 43. Defendant's sales of the PRODUCTS have resulted in at least 233,235 individual  
4 exposures without the warnings required by Proposition 65 since at least January 29, 2013, the  
5 three-year period preceding Plaintiff's January 29, 2016 service of the Notice.

6 44. Defendant's sales of the PRODUCTS have resulted in at least 77,745 individual  
7 exposures without the warnings required by Proposition 65 since at least January 29, 2015, the  
8 one-year period preceding the Notice. These exposures entitle the Court to award civil penalties  
9 in excess of \$194 million for the applicable statutory penalty period, which is one year prior to  
10 the date of the Notice of Violation. CCP §340; *Consumer Advocacy Group, Inc.*, 150  
11 Cal.App.4th at 981.

12 45. The imposition of a civil penalty award in excess of \$194 million will have a  
13 deterrent economic effect in that it is likely to deter future conduct in violation of Proposition 65  
14 by both Defendant and the regulated community as a whole.

15 46. The PRODUCTS continue to be distributed and sold in California without the  
16 requisite warning information.

17 47. At least 60 days have elapsed since Plaintiff sent the Notice to the Defendant.  
18 The appropriate public enforcement agencies have failed to commence and diligently prosecute  
19 a cause of action under Proposition 65 against Defendant based on the allegations herein.

20 48. As a proximate result of acts by the Defendant, as persons in the course of doing  
21 business within the meaning of H&S Code §25249.11, individuals throughout the State of  
22 California, including in the County of San Francisco, have been exposed to the LISTED  
23 CHEMICALS without a clear and reasonable warning. The individuals subject to the illegal  
24 exposures include normal and foreseeable users of the PRODUCTS, as well as all other persons  
25 exposed to the PRODUCTS.

1 **FIRST CAUSE OF ACTION**

2 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, et seq. concerning**  
3 **the PRODUCTS described in the January 29, 2016 Proposition 65 Notice.**

4 **By Plaintiff Against Defendant)**

5 49. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as if  
6 fully set forth herein.

7 50. By committing the acts alleged in this Complaint, Defendant at all times relevant  
8 to this action, and continuing through the present, has violated H&S Code §25249.6 by, in the  
9 course of doing business, knowingly and intentionally exposing individuals who use or handle  
10 the PRODUCTS set forth in the Notice to the LISTED CHEMICALS, without first providing a  
11 clear and reasonable warning to such individuals pursuant to H&S Code §§25249.6 and  
12 25249.11(f).

13 51. By the above-described acts, Defendant has violated, or threatens to violate,  
14 H&S Code §25249.6 and is therefore subject to an injunction ordering Defendant to stop  
15 violating, or threatening to violate, Proposition 65, to provide warnings to all present and future  
16 customers, and to provide warnings to Defendant's past customers who purchased or used the  
17 PRODUCTS without receiving a clear and reasonable warning.

18 52. An action for injunctive relief under Proposition 65 is specifically authorized by  
19 H&S Code §25249.7(a).

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

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

24 **SECOND CAUSE OF ACTION**

25 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, et seq. concerning the**  
26 **PRODUCTS described in the January 29, 2016 Proposition 65 Notice.**

27 **By Plaintiff Against Defendant)**

28 54. Plaintiff realleges and incorporates by reference all preceding paragraphs as if  
fully set forth herein.



1 B. an injunctive order, pursuant to H&S Code §25249.7(a), compelling Defendant  
2 to identify and locate each individual who has purchased the PRODUCTS since January 29,  
3 2013, and to provide a warning to such person that the use of the PRODUCTS will expose the  
4 user to chemicals known to cause cancer, birth defects, and other reproductive harm;

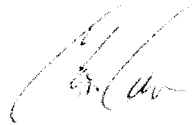
5 C. an assessment of civil penalties pursuant to H&S Code §25249.7(b), against  
6 Defendant in the amount of \$2,500 per day for each violation of Proposition 65, in an amount in  
7 excess of \$194 million;

8 D. an award to Plaintiff of its reasonable attorneys' fees and costs of suit pursuant to  
9 California Code of Civil Procedure §1021.5, as Plaintiff shall specify in further application to  
10 the Court; and

11 E. such other and further relief as may be just and proper.

12 Dated: June 10, 2016

ADAMS BROADWELL JOSEPH & CARDOZO

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16 \_\_\_\_\_  
17 TANYA A. GULESSERIAN  
18 CHRISTINA M. CARO  
19 Attorneys for Plaintiff  
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