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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ENVIRONMENTAL RESEARCH
CENTER, a California non-profit
corporation,

Plaintiff,

vs.

EROM, INC. and DOES 1-50, Inclusive,
Defendants.

Case No.: 30-2013-00673734-CU-MC-CJC

Judge: Judge William M. Monroe

COMPLAINT

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

INTRODUCTION

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

2. Defendant has manufactured, packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of commerce of, and continues to manufacture, package, distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the following ingestible products, which contain the chemical lead and which have been and continue to be offered for sale, sold and/or otherwise provided for use and/or handling to

1 individuals in California:

- 2 (1) Erom Inc. Juvo Slim Natural Raw Meal
- 3 (2) Erom Inc. Juvo Natural Raw Meal Whole Food
- 4 (3) Erom Inc. Juvo YogaFood
- 5 (4) Erom Inc. Juvo Raw Green Protein Organic Blend

6 These listed products are hereinafter referred to together as the “Covered Products”.

7 3. The use and/or handling of the Covered Products causes exposures to lead at
8 levels requiring a “clear and reasonable warning” under California’s Safe Drinking Water and
9 Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”) §25249.5, *et. seq.* (also
10 known as “Proposition 65”). Defendant has failed to provide the health hazard warnings required
11 by Proposition 65.

12 4. The continued manufacturing, packaging, distributing, marketing and/or sales of
13 the Covered Products without the required health hazard warnings, causes individuals to be
14 involuntarily and unwittingly exposed to levels of lead that violate Proposition 65.

15 5. Plaintiff seeks injunctive relief enjoining Defendant from the continued
16 manufacturing, packaging, distributing, marketing and/or selling of the Covered Products for sale
17 or use in California without first providing clear and reasonable warnings, within the meaning of
18 Proposition 65, regarding the risks of cancer, birth defects and other reproductive harm posed by
19 exposure to lead through the use and/or handling of the Covered Products. Plaintiff seeks an
20 injunctive order compelling Defendant to bring each of its business practices into compliance
21 with Proposition 65 by providing clear and reasonable warnings to each individual who may be
22 exposed to lead from the use and/or handling of the Covered Products.

23 6. In addition, Plaintiff seeks an assessment of civil penalties to remedy Defendant’s
24 failure to provide clear and reasonable warnings regarding exposures to the lead.

25 **JURISDICTION AND VENUE**

26 7. This Court has jurisdiction over this action pursuant to California Constitution
27 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except
28 those given by statute to other trial courts.” The statute under which this action is brought does

1 not specify any other basis for jurisdiction.

2 8. This Court has jurisdiction over Defendant because, based on information and
3 belief, each Defendant is a business having sufficient minimum contacts with California, or
4 otherwise intentionally availing itself of the California market through the marketing,
5 distribution and/or sale of the Covered Products in the State of California to render the exercise
6 of jurisdiction over it by the California courts consistent with traditional notions of fair play and
7 substantial justice.

8 9. This Court is the proper venue for this action because each Defendant has violated
9 California law in the County of Orange. Furthermore, this Court is the proper venue under Code
10 of Civil Procedure §395.5 and H&S Code §25249.7(a), which provides that any person who
11 violates or threatens to violate H&S Code §§25249.5 or 25249.6 may be enjoined in any court of
12 competent jurisdiction.

13 **PARTIES**

14 10. Plaintiff Environmental Research Center, Inc. (“ERC”) is a non-profit corporation
15 organized under California’s Non-Profit Benefit Corporation Law. ERC is dedicated to, among
16 other causes, reducing the use and misuse of hazardous and toxic substances, consumer
17 protection, worker safety and corporate responsibility.

18 11. ERC is a person within the meaning of H&S Code §25118 and brings this
19 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

20 12. Plaintiff alleges on information and belief that Defendant EROM, INC. is a
21 California Corporation.

22 13. Defendant EROM is a person within the meaning of H&S Code §25249.11(a).

23 14. Each defendant has manufactured, packaged, distributed, marketed, sold and/or
24 have otherwise been involved in the chain of commerce, and continues to manufacture, package,
25 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the
26 Covered Products for sale or use in California. Plaintiff alleges on information and belief that
27 Defendant employs ten or more persons, and is thus each a “person in the course of doing
28 business” within the meaning of Proposition 65.

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

11 16. Plaintiff is informed and believes and thereon alleges that each of the defendants
12 is in some manner responsible for the events set forth in this Complaint and proximately caused
13 the injuries and damages as alleged in this Complaint.

14 17. Plaintiff is informed and believes and thereon alleges that at all material times,
15 defendants, and each of them, were the agents, servants, and employees of the other defendants,
16 and each of them in such a way as to cause each defendant to be jointly and severally liable and
17 responsible for the conduct of one another. The conduct of each defendant was within the course
18 and scope of the authority granted each defendant by the other defendants. Each defendant
19 ratified and approved of the acts or omissions of each other such as to cause each to be jointly
20 and severally liable for the conduct of each other defendant.

21 **STATUTORY BACKGROUND**

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

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

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

5 20. Proposition 65 provides that any person who “violates or threatens to violate” the
6 statute “may be enjoined in any court of competent jurisdiction.” (H&S Code §25249.7(a).)
7 “Threaten to violate” is defined to mean creating “a condition in which there is a substantial
8 probability that a violation will occur.” (H&S Code §25249.11(e).) Violators are liable for civil
9 penalties of up to \$2,500 per day for each violation of Proposition 65. (H&S Code §25249.7(b).)

10 **FACTUAL BACKGROUND**

11 21. On February 27, 1987, the State of California officially listed the chemical lead as
12 a chemical known to cause developmental and reproductive toxicity. Lead became subject to the
13 warning requirement one year later and was therefore subject to the “clear and reasonable”
14 warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of
15 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

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

20 23. Plaintiff is informed and believes, and based on such information and belief,
21 alleges the Covered Products have been marketed, distributed and/or sold to individuals in
22 California without the requisite clear and reasonable warnings. The Covered Products continue
23 to be marketed, distributed and sold in California without the requisite warning information.

24 24. As a proximate result of acts by Defendant, as a person in the course of doing
25 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of
26 California, including in the County of Orange, have been exposed to lead without clear and
27 reasonable warnings. The individuals subject to exposures to lead include normal and
28 foreseeable users of the Covered Products, as well as all other persons exposed to the Covered

1 Products.

2 25. At all times relevant to this action, Defendant has knowingly and intentionally
3 exposed the users and/or handlers of the Covered Products to lead without first giving clear and
4 reasonable warnings to such individuals.

5 26. Individuals using or handling the Covered Products are exposed to lead in excess
6 of the “maximum allowable daily” and “no significant risk” levels determined by the State of
7 California, as applicable.

8 27. At all times relevant to this action, Defendant has, in the course of doing business,
9 failed to provide individuals using and/or handling the Covered Products with clear and
10 reasonable warnings that the Covered Products expose individuals to lead.

11 28. The Covered Products continue to be marketed, distributed, and/or sold in
12 California without the requisite clear and reasonable warnings.

13 **FIRST CAUSE OF ACTION**

14 **(Injunctive Relief for Violations of Health and Safety Code §25249.5, *et seq.*)**

15 29. Plaintiff hereby incorporates by reference each and every preceding allegation and
16 paragraph as though fully set forth in this cause of action.

17 30. On April 15, 2011 and January 18, 2013, Plaintiff sent separate 60-Day notices of
18 Proposition 65 violations to the requisite public enforcement agencies (“Notices of Violations”).
19 Each of the Notices of Violations was sent to EROM, INC. The Covered Products were
20 identified in the Notices of Violations as containing lead exceeding allowable levels. The Notices
21 of Violations were issued pursuant to, and in compliance with, the requirements of H&S Code
22 §25249.7(d) and the statute’s implementing regulations regarding the notices of violations to be
23 given to certain public enforcement agencies and to the violator. The Notices of Violations were
24 issued as follows:

- 25 a. Defendant EROM, INC. and the California Attorney General were provided copies by
26 Certified Mail of the Notices of Violations, along with a Certificate of Merit by the
27 attorney for the noticing party stating that there is a reasonable and meritorious cause for
28 this action. The requisite county district attorneys and city attorneys were provided copies

1 by Priority Mail of the Notices of Violations and Certificate of Merit.

2 b. Defendant EROM, INC. was provided, with the Notices of Violations, a copy of a
3 document entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986
4 (Proposition 65): A Summary,” which is also known as Appendix A to Title 27 of CCR §
5 25903.

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

11 31. The appropriate public enforcement agencies have failed to commence and
12 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendant
13 based on the allegations herein.

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

1 33. By the above-described acts, Defendant has violated H&S Code §25249.6 and is
2 therefore subject to an injunction ordering Defendant to stop violating Proposition 65, and to
3 provide required warnings to consumers and other individuals who will purchase, use and/or
4 handle the Covered Products.

5 34. An action for injunctive relief under Proposition 65 is specifically authorized by
6 Health & Safety Code §25249.7(a).

7 35. Continuing commission by Defendant of the acts alleged above will irreparably
8 harm the citizens of the State of California, for which harm they have no plain, speedy, or
9 adequate remedy at law.

10 36. Wherefore, plaintiff prays judgment against Defendant, as set forth hereafter.

11 **SECOND CAUSE OF ACTION**

12 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq.)**

13 37. Plaintiff hereby incorporates by reference each and every preceding allegation and
14 paragraph as though fully set forth in this cause of action.

15 38. On April 15, 2011 and January 18, 2013, Plaintiff sent separate 60-Day notices of
16 Proposition 65 violations to the requisite public enforcement agencies (“Notices of Violations”).
17 Each of the Notices of Violations was sent to EROM, INC. The Covered Products were
18 identified in the Notices of Violations as containing lead exceeding allowable levels. The Notices
19 of Violations were issued pursuant to, and in compliance with, the requirements of H&S Code
20 §25249.7(d) and the statute’s implementing regulations regarding the notices of violations to be
21 given to certain public enforcement agencies and to the violator. The Notices of Violations were
22 issued as follows:

23 a. Defendant EROM, INC. and the California Attorney General were provided copies by
24 Certified Mail of the Notices of Violations, along with a Certificate of Merit by the
25 attorney for the noticing party stating that there is a reasonable and meritorious cause for
26 this action. The requisite county district attorneys and city attorneys were provided copies
27 by Priority Mail of the Notices of Violations and Certificate of Merit.

28 b. Defendant EROM, INC. was provided, with the Notices of Violations, a copy of a

1 document entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986
2 (Proposition 65): A Summary,” which is also known as Appendix A to Title 27 of
3 CCR § 25903.

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

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

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

27 41. By the above-described acts, Defendant is liable, pursuant to H&S Code
28 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6

1 relating to the Covered Products.

2 42. Wherefore, plaintiff prays judgment against Defendant, as set forth hereafter.

3 **THE NEED FOR INJUNCTIVE RELIEF**

4 43. Plaintiff hereby incorporates by reference each and every preceding allegation and
5 paragraph as though fully set forth in this cause of action.

6 44. By committing the acts alleged in this Complaint, Defendant has caused
7 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence of
8 equitable relief, Defendant will continue to create a substantial risk of irreparable injury by
9 continuing to cause consumers to be involuntarily and unwittingly exposed to lead through the
10 use and/or handling of the Covered Products.

11 **PRAYER FOR RELIEF**

12 Wherefore, Plaintiff prays for the following relief against Defendant EROM, INC.:

13 A. A preliminary and permanent injunction enjoining each Defendant, its agents,
14 employees, assigns and all persons acting in concert or participating with each Defendant, from
15 manufacturing, packaging, distributing, marketing and/or selling the Covered Products for sale or
16 use in California without first providing clear and reasonable warnings, within the meaning of
17 Proposition 65, that the users and/or handlers of the Covered Products are exposed to the lead;

18 B. An assessment of civil penalties against Defendant, pursuant to Health & Safety
19 Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;


20 C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code
21 of Civil Procedure §1021.5 or the substantial benefit theory;

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

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

24 Dated: September 5, 2013

WRAITH LAW



26 By: _____

27 WILLIAM F. WRAITH
28 Attorney for Plaintiff Environmental
Research Center