1	WILLIAM F. WRAITH, SBN 185927 WRAITH LAW	ELECTRONICALLY FILED Superior Court of California, County of Orange			
2	16485 Laguna Canyon Rd., Suite 250 Irvine, California 92618	10/19/2012 at 12:15:21 PM			
3	Tel: (949) 251-9977 Fax: (949) 251-9978	Clerk of the Superior Court By Fidel Ibarra,Deputy Clerk			
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5	Attorneys for Plaintiff Environmental Research Center				
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8	SUPERIOR COURT OF CALIFORNIA COUNTY OF ORANGE, CENTRAL JUSTICE CENTER				
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12	ENVIRONMENTAL RESEARCH				
12	CENTER, a California non-profit) Case No.: 30-2012-00606439-CU-MC-CUC)			
13	corporation,) COMPLAINT FOR INJUNCTIVE			
15	Plaintiffs,) RELIEF AND CIVIL PENALTIES				
16	VS.	[Health & Safety Code § 25249.5, et seq.]			
10	STARWEST BOTANICALS, INC. and DOES 1-50, Inclusive,) [UNLIMITED CIVIL CASE - AMOUNT) DEMANDED EXCEEDS \$25,000)]			
17	Defendants,)) Judge Andrew P. Banks)			
19	Plaintiff Environmental Research Center, Inc. brings this action in the interests of the				
20	general public and, on information and belie				
21		RODUCTION			
22	1. This action seeks to remedy Defendants' continuing failure to warn consumers in				
23	California that they are being exposed to lead, a substance known to the State of California to				
24	cause cancer, birth defects and other reproductive harm.				
25	2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have				
26	otherwise been involved in the chain of commerce of, and continue to manufacture, package,				
27		tinue to be involved in the chain of commerce of the			
28		n the chemical lead and which have been and			
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	COMPLAINT				

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continue to be offered for sale, sold and/or otherwise provided for use and/or handling to 1 2 individuals in California: 3 Starwest Botanicals Inc. Detox a. b. Starwest Botanicals Inc. Blood Cleanser 4 5 Starwest Botanicals Inc. GreenPower Alkalizing Superfood c. 6 Starwest Botanicals Inc. Burdock Root d. 7 Starwest Botanicals Inc. Relaxation e. 8 Starwest Botanicals Inc. Marshmallow Root f. 9 Starwest Botanicals Inc. Liver Cleanse g. 10 Starwest Botanicals Inc. Licorice Root h. 11 i. Starwest Botanicals Inc. Turmeric 12 Starwest Botanicals Inc. Fo-Ti Root 1. 13 Starwest Botanicals Inc. Wheat Grass k. Starwest Botanicals Inc. Valerian Root 14 1. 15 m. Starwest Botanicals Inc. Gotu Kola Herb 16 Starwest Botanicals Inc. White Willow Bark n. 17 Starwest Botanicals Inc. Regularity 0. 18 Starwest Botanicals Inc. Kidney Support p. 19 These listed products are hereinafter referred to together as "THE PRODUCTS". 20 3. The use and/or handling of THE PRODUCTS causes exposures to lead at levels 21 requiring a "clear and reasonable warning" under California's Safe Drinking Water and Toxic 22 Enforcement Act of 1986, Health & Safety Code ("H&S Code") §25249.5, et. seq. (also known 23 as "Proposition 65"). Defendants have failed to provide the health hazard warnings required by 24 Proposition 65. 25 4. The continued manufacturing, packaging, distributing, marketing and/or sales of 26 THE PRODUCTS without the required health hazard warnings, causes individuals to be 27 involuntarily and unwittingly exposed to levels of lead that violate Proposition 65. 28 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued -2-COMPLAINT

WRATHLAW 5485 Laguna Canyon Rd., Suite 250 Irvine, California 92618 (949) 251-9977 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 each of its 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.

8 6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to
9 remedy Defendants' failure to provide clear and reasonable warnings regarding exposures to the
10 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, each Defendant is a business having sufficient minimum contacts with California, or
otherwise intentionally availing itself of the California market through the marketing,

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

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

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10. Plaintiff Environmental Research Center, Inc. ("ERC") is a non-profit corporation

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PARTIES

organized under California's Non-Profit Benefit Corporation Law. ERC is dedicated to, among
 other causes, reducing the use and misuse of hazardous and toxic substances, consumer
 protection, worker safety and corporate responsibility.

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

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

13. Defendant STARWEST BOTANICALS, INC. is a person within the meaning of H&S Code §25249.11(a).

14. Each defendant has manufactured, packaged, distributed, marketed, sold and/or have otherwise been involved in the chain of commerce, and continues to manufacture, package, distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of THE PRODUCTS for sale or use in California. Plaintiff alleges on information and belief that Defendants employ ten or more persons, and are thus each a "person in the course of doing business" within the meaning of Proposition 65.

Defendants DOES 1-50 are named herein under fictitious names, as their true 16 15. 17 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon 18 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or 19 has otherwise been involved in the chain of commerce of, and continues to manufacture, 20 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of 21 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some 22 actionable manner, for the events and happenings referred to herein, either through its conduct or 23 through the conduct of its agents, servants or employees, or in some other manner, causing the 24 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true 25 names and capacities of DOES when ascertained.

16. Plaintiffs are informed and believe and thereon allege that each of the defendants
is in some manner responsible for the events set forth in this Complaint and proximately caused
the injuries and damages as alleged in this Complaint.

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17. Plaintiff is informed and believes and thereon alleges that at all material times, 2 defendants, and each of them, were the agents, servants, and employees of the other defendants, 3 and each of them in such a way as to cause each defendant to be jointly and severally liable and 4 responsible for the conduct of one another. The conduct of each defendant was within the course 5 and scope of the authority granted each defendant by the other defendants. Each defendant 6 ratified and approved of the acts or omissions of each other such as to cause each to be jointly 7 and severally liable for the conduct of each other defendant.

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STATUTORY BACKGROUND

9 18. 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).

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

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

20 20. Proposition 65 provides that any person who "violates or threatens to violate" the 21 statute "may be enjoined in any court of competent jurisdiction." (H&S Code §25249.7(a).) 22 "Threaten to violate" is defined to mean creating "a condition in which there is a substantial 23 probability that a violation will occur." (H&S Code §25249.11(e).) Violators are liable for civil 24 penalties of up to \$2,500 per day for each violation of Proposition 65. (H&S Code §25249.7(b).)

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FACTUAL BACKGROUND

26 21. On February 27, 1987, the State of California officially listed the chemical lead as 27 a chemical known to cause developmental and reproductive toxicity. Lead became subject to the 28 warning requirement one year later and was therefore subject to the "clear and reasonable"

warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of
 Regulations ("CCR") §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

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

Plaintiff is informed and believes, and based on such information and belief,
alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in
California without the requisite clear and reasonable warnings. THE PRODUCTS continue to be
marketed, distributed and sold in California without the requisite warning information.

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

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

20 26. 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 27. 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 expose individuals to lead.

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

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1	FIRST CAUSE OF ACTION			
2	(Injunctive Relief for Violations of Health and Safety Code §25249.5, et seq.)			
3	29. Plaintiff hereby incorporates by reference each and every preceding allegation and			
4	paragraph as though fully set forth in this cause of action.			
5	30. On January 6, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations to			
6	the requisite public enforcement agencies and to Defendant STARWEST BOTANICALS, INC.			
7	("Notice of Violations"). THE PRODUCTS were identified in the Notice of Violations as			
8	containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to, and			
9	in compliance with, the requirements of H&S Code §25249.7(d) and the statute's implementing			
10	regulations regarding the notices of violations to be given to certain public enforcement agencies			
11	and to the violator. The Notice of Violations was issued as follows:			
12	a. Defendant STARWEST BOTANICALS, INC. and the California Attorney			
13	General were provided copies by Priority Mail of the Notices of Violations, along			
14	with a Certificate of Merit by the attorney for the noticing party stating that there			
15	is a reasonable and meritorious cause for this action. The requisite county district			
16	attorneys and city attorneys were provided copies by Priority Mail of the Notices			
17	of Violations and Certificate of Merit.			
18	b. Defendant STARWEST BOTANICALS, INC. was provided, with the Notice of			
19	Violations, a copy of a document entitled "The Safe Drinking Water and Toxic			
20	Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as			
21	Appendix A to Title 27 of CCR § 25903.			
22	c. The California Attorney General was provided, with the Notice of Violations,			
23	additional factual information sufficient to establish a basis for the Certificate of			
24	Merit, including the identity of the persons consulted with and relied on by the			
25	certifier, and the facts, studies, or other data reviewed by those persons, pursuant			
26	to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).			
27	31. The appropriate public enforcement agencies have failed to commence and			
28	diligently prosecute a cause of action under H&S Code §25249.5, et seq. against Defendants			
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2 32. By committing the acts alleged in this Complaint, Defendants at all times relevant 3 to this action, and continuing through the present, have violated and continue to violate H&S 4 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing 5 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding 6 allowable exposure levels without Defendants first giving clear and reasonable warnings to such 7 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured, 8 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of 9 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise 10 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are, 11 and will be used and/or handled by individuals in California, without Defendants providing clear 12 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer, 13 birth defects and other reproductive harm posed by exposure to lead through the use and/or 14 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided 15 16 for use and/or handling to individuals in California.

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

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

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

36. Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.
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1	SECOND CAUSE OF ACTION			
2	(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq.)			
3	37. Plaintiff hereby incorporates by reference each and every preceding allegation and			
4	paragraph as though fully set forth in this cause of action.			
5	38. On January 6, 2012, Plaintiff sent a 60-Day Notice of Proposition 65 violations to			
6	the requisite public enforcement agencies and to Defendant STARWEST BOTANICALS, INC.			
7	("Notice of Violations"). THE PRODUCTS were identified in the Notice of Violations as			
8	containing lead exceeding allowable levels. The Notice of Violations was issued pursuant to, and			
9	in compliance with, the requirements of H&S Code §25249.7(d) and the statute's implementing			
10	regulations regarding the notices of violations to be given to certain public enforcement agencies			
11	and to the violator. The Notice of Violations was issued as follows:			
12	a. Defendant STARWEST BOTANICALS, INC. and the California Attorney			
13	General were provided copies by Priority Mail of the Notices of Violations, along			
14	with a Certificate of Merit by the attorney for the noticing party stating that there			
15	is a reasonable and meritorious cause for this action. The requisite county district			
16	attorneys and city attorneys were provided copies by Priority Mail of the Notices			
17	of Violations and Certificate of Merit.			
18	b. Defendant STARWEST BOTANICALS, INC. was provided, with the Notice of			
19	Violations, a copy of a document entitled "The Safe Drinking Water and Toxic			
20	Enforcement Act of 1986 (Proposition 65): A Summary," which is also known as			
21	Appendix A to Title 27 of CCR § 25903.			
22	c. The California Attorney General was provided, with the Notice of Violations,			
23	additional factual information sufficient to establish a basis for the Certificate of			
24	Merit, including the identity of the persons consulted with and relied on by the			
25	certifier, and the facts, studies, or other data reviewed by those persons, pursuant			
26	to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).			
27	39. The appropriate public enforcement agencies have failed to commence and			
28	diligently prosecute a cause of action under H&S Code §25249.5, et seq. against Defendants			
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COMPLAINT

WRATTHLAW 16485 Laguna Canyon Rd., Suite 250 Irvine, California 92618 (949) 251-9977 1 || based on the allegations herein.

2 40. By committing the acts alleged in this Complaint, Defendants at all times relevant 3 to this action, and continuing through the present, have violated and continue to violate H&S Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing 4 5 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding 6 allowable exposure levels without Defendants first giving clear and reasonable warnings to such 7 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured, 8 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of 9 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise 10 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are, 11 and will be used and/or handled by individuals in California, without Defendants providing clear 12 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer, 13 birth defects and other reproductive harm posed by exposure to lead through the use and/or 14 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided 15 16 for use and/or handling to individuals in California.

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

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

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THE NEED FOR INJUNCTIVE RELIEF

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

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

COMPLAINT

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1	PRAYER FOR RELIEF			
2	Whe	Wherefore, Plaintiff prays for the following relief against Defendant STARWEST		
3	BOTANICALS, INC.:			
4	A.			
5	employees,	employees, assigns and all persons acting in concert or participating with each Defendant, from		
6	manufacturi	manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or		
7	use in California without first providing clear and reasonable warnings, within the meaning of			
8	Proposition 65, that the users and/or handlers of THE PRODUCTS are exposed to the lead;			
9	B.	B. An assessment of civil penalties against Defendant, pursuant to Health & Safety		
10	Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;			
11	C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code			
12	of Civil Pro	of Civil Procedure §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	Dated: Octo	ber 19, 2012 WRAITH LAW		
16		001 19, 2012	WRAITHLAW	
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18			By:	
19			By: WILLIAM F. WRAITH	
20			Attorney for Plaintiff Environmental Research Center	
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	-11- COMPLAINT			

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