1 2 3 4 5 6 7	WILLIAM F. WRAITH, SBN 185927 WRAITH LAW 16485 Laguna Canyon Rd., Suite 250 Irvine, California 92618 Tel: (949) 251-9977 Fax: (949) 251-9978 Attorneys for Plaintiff Environmental Research Center				
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9	SUPERIOR COURT OF CALIFORNIA				
10	COUNTY OF ORANGE, CENTRAL JUSTICE CENTER				
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12	ENVIRONMENTAL RESEARCH) Case No.: 30-2013-00667616-CU-MC-CJC				
13	CENTER, a California non-profit) corporation,)				
14	 Plaintiff, Plaintiff, INJUNCTIVE RELIEF AND CIVIL PENALTIES 				
15	vs.				
16	GENESIS TODAY, INC., and DOES 1-) 25, Inclusive,) (UNLIMITED CIVIL CASE - AMOUNT)				
17	Defendants.				
18)				
19					
20	Plaintiff Environmental Research Center, Inc. brings this action in the interests of the				
21	general public and, on information and belief, hereby alleges:				
22	INTRODUCTION				
23	1. This action seeks to remedy Defendant's continuing failure to warn consumers in				
24	California that they are being exposed to lead, a substance known to the State of California to				
25	cause cancer, birth defects and other reproductive harm.				
26	2. Defendant has manufactured, packaged, distributed, marketed, sold and/or have				
27	otherwise been involved in the chain of commerce of, and continues to manufacture, package,				
28	distribute, market, sell and/or otherwise continues to be involved in the chain of commerce of the				
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	FIRST AMENDED COMPLAINT				

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1 following ingestible products, which contain the chemical lead and which have been and 2 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to 3 individuals in California: a. Genesis Today Inc. GenEssentials Greens 4 5 Genesis Today Inc. GenEssentials Fiber b. Genesis Today Inc. Sea Buckthorn 6 c. 7 Genesis Today Inc. 4Heart d. 8 Genesis Today Inc. 4Energy e. 9 Genesis Today Inc. 4Blood Sugar f. 10 Genesis Today Inc. 4Weight Control g. 11 h. Genesis Today Inc. 4Total Cleanse Part 1 Whole Body Cleanser 12 Genesis Today Inc. 4Total Cleanse Part 2 Intestinal Cleanser i. 13 Genesis Today Inc. Pure & Potent Cassia Nomame j. 14 k. Genesis Today Inc. Pure & Potent Caralluma Fimbriata 15 These listed products are hereinafter referred to together as "THE PRODUCTS". 3 16 The use and/or handling of THE PRODUCTS causes exposures to lead at levels 17 requiring a "clear and reasonable warning" under California's Safe Drinking Water and Toxic 18 Enforcement Act of 1986, Health & Safety Code ("H&S Code") §25249.5, et. seq. (also known 19 as "Proposition 65"). Defendant has failed to provide the health hazard warnings required by 20 Proposition 65. 21 4. The continued manufacturing, packaging, distributing, marketing and/or sales of 22 THE PRODUCTS without the required health hazard warnings, causes individuals to be 23 involuntarily and unwittingly exposed to levels of lead that violate Proposition 65. 24 5. Plaintiff seeks injunctive relief enjoining Defendant from the continued 25 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 26 27 Proposition 65, regarding the risks of cancer, birth defects and other reproductive harm posed by 28 exposure to lead through the use and/or handling of THE PRODUCTS. Plaintiff seeks an

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injunctive order compelling Defendant 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.

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

JURISDICTION AND VENUE

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 Defendant 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.

PARTIES

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

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11. ERC is a person within the meaning of H&S Code §25118 and brings this

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enforcement action in the public interest pursuant to H&S Code §25249.7(d).

12. ERC alleges on information and belief that Defendant GENESIS TODAY, INC. is a Corporation that is a person within the meaning of H&S Code §25249.11(a).

13. Defendant manufactured, packaged, distributed, marketed, sold and/or has 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. Defendant employs ten or more persons, and is thus a "person in the course of doing business" within the meaning of Proposition 65.

9 14. Defendants DOES 1-25 are named herein under fictitious names, as their true names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon 10 11 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of commerce of, and continues to manufacture, 12 13 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of 14 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some actionable manner, for the events and happenings referred to herein, either through its conduct or 15 16 through the conduct of its agents, servants or employees, or in some other manner, causing the 17 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true 18 names and capacities of DOES when ascertained.

19 15. Plaintiff is informed and believes and thereon alleges that each of the defendants
20 is in some manner responsible for the events set forth in this Complaint and proximately caused
21 the injuries and damages to Plaintiffs as alleged in this Complaint.

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

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1	STATUTORY BACKGROUND					
2 17. The People of the State of California have declared in Proposition 65						
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4	reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).					
5	18. To effect this goal, Proposition 65 requires that individuals be provided with a					
6	"clear and reasonable warning" before being exposed to substances listed by the State of					
7						
8	part:					
9	No person in the course of doing business shall knowingly and					
10	intentionally expose any individual to a chemical known to the state to					
11	cause cancer or reproductive toxicity without first giving clear and					
12	reasonable warning to such individual					
13	19. Proposition 65 provides that any person who "violates or threatens to violate" the					
14	statute "may be enjoined in any court of competent jurisdiction." (H&S Code §25249.7(a).)					
15	"Threaten to violate" is defined to mean creating "a condition in which there is a substantial					
16	probability that a violation will occur." (H&S Code §25249.11(e).) Violators are liable for civil					
17	penalties of up to \$2,500 per day for each violation of Proposition 65. (H&S Code §25249.7(b).)					
18	FACTUAL BACKGROUND					
19	20. On February 27, 1987, the State of California officially listed the chemical lead as					
20	a chemical known to cause developmental and reproductive toxicity. Lead became subject to the					
21	warning requirement one year later and was therefore subject to the "clear and reasonable"					
22	warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of					
23	Regulations ("CCR") §25000, et seq.; H&S Code §25249.5, et seq.)					
24	21. On October 1, 1992, the State of California officially listed the chemical lead as a					
25	chemical known to cause cancer. Lead became subject to the warning requirement one year later					
26	and was therefore subject to the "clear and reasonable" warning requirements of Proposition 65					
27	beginning on October 1, 1993. (27 CCR §25000, et seq.; H&S Code §25249.5, et seq.)					
28	22. Plaintiff is informed and believes, and based on such information and belief,					
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	FIRST AMENDED COMPLAINT					

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1 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in 2 California without the requisite clear and reasonable warnings before, on, and after January 6, 3 2009. THE PRODUCTS continue to be marketed, distributed and sold in California without the 4 requisite warning information.

23. As a proximate result of acts by Defendant, 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.

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

14 25. Individuals using or handling THE PRODUCTS are exposed to lead in excess of the "maximum allowable daily" and "no significant risk" levels determined by the State of California, as applicable. 16

17 26. At all times relevant to this action, Defendant has, in the course of doing business, 18 failed to provide individuals using and/or handling THE PRODUCTS with clear and reasonable warnings that THE PRODUCTS expose individuals to lead. 19

20 27. Upon information and belief, Plaintiff alleges THE PRODUCTS continue to be 21 marketed, distributed, and/or sold in California without the requisite clear and reasonable 22 warnings.

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FIRST CAUSE OF ACTION

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

25 Plaintiff hereby incorporates by reference each and every preceding allegation and 28. paragraph as though fully set forth in this cause of action. 26

27 29. On January 6, 2012 and October 18, 2013, Plaintiff sent 60-Day Notices of 28 Proposition 65 violations to the requisite public enforcement agencies and to defendant

1	GENESIS TODAY, INC. ("Notices of Violations"). Each of the Notices of Violations was				
2	issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the				
3	statute's implementing regulations regarding the notices of violations to be given to certain				
4	public enforcement agencies and to the violator. Each of the Notices of Violations was issued as				
5	follows:				
6	a. Defendant GENESIS TODAY, INC. and the California Attorney General were				
7	provided copies of the Notice of Violations, along with a Certificate of Merit by				
8	the attorney for the noticing party stating that there is a reasonable and				
9	meritorious cause for this action. The requisite county district attorneys and city				
10	attorneys were provided copies by US Mail of the Notices of Violations and				
11	Certificate of Merit.				
12 b. Defendant GENESIS TODAY, INC. was provided, with the Notice					
13 a copy of a document entitled "The Safe Drinking Water and Toxic Er					
14	Act of 1986 (Proposition 65): A Summary," which is also known as Appendix A				
15	to Title 27 of CCR § 25903.				
16	c. The California Attorney General was provided, with the Notice of Violations,				
17	additional factual information sufficient to establish a basis for the Certificate of				
18	Merit, including the identity of the persons consulted with and relied on by the				
19	certifier, and the facts, studies, or other data reviewed by those persons, pursuant				
20	to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).				
21	30. The appropriate public enforcement agencies have failed to commence and				
22	diligently prosecute a cause of action under H&S Code §25249.5, et seq. against Defendant				
23	based on the allegations herein.				
24	31. By committing the acts alleged in this Complaint, Defendant at all times relevant				
25	to this action, and continuing through the present, has violated and continues to violate H&S				
26	Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing				
27	individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding				
28	allowable exposure levels without Defendant first giving clear and reasonable warnings to such				
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FIRST AMENDED COMPLAINT

1 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendant has manufactured, 2 packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of 3 commerce of, and continues to manufacture, package, distribute, market, sell and/or otherwise 4 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are, 5 and will be used and/or handled by individuals in California, without Defendant providing clear and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer, 6 7 birth defects and other reproductive harm posed by exposure to lead through the use and/or 8 handling of THE PRODUCTS. Furthermore, Defendant has threatened to violate H&S Code 9 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided for use and/or handling to individuals in California. 10

32. By the above-described acts, Defendant has 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.

15 33. An action for injunctive relief under Proposition 65 is specifically authorized by
16 Health & Safety Code §25249.7(a).

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

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

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SECOND CAUSE OF ACTION

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

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

37. On January 6, 2012 and October 18, 2013, Plaintiff sent 60-Day Notices of
Proposition 65 violations to the requisite public enforcement agencies and to defendant
GENESIS TODAY, INC. ("Notices of Violations"). Each of the Notices of Violations was
issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the

statute's implementing regulations regarding the notices of violations to be given to certain
 public enforcement agencies and to the violator. Each of the Notices of Violations was issued as
 follows:

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

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

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

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

39. By committing the acts alleged in this Complaint, Defendant at all times relevant
to this action, and continuing through the present, has violated and continues to violate H&S
Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding
allowable exposure levels without Defendant first giving clear and reasonable warnings to such
individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendant has manufactured,
packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of

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1 commerce of, and continues to manufacture, package, distribute, market, sell and/or otherwise 2 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are, 3 and will be used and/or handled by individuals in California, without Defendant providing clear 4 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer, 5 birth defects and other reproductive harm posed by exposure to lead through the use and/or handling of THE PRODUCTS. Furthermore, Defendant have threatened to violate H&S Code 6 7 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided 8 for use and/or handling to individuals in California.

9 40. By the above-described acts, Defendant is liable, pursuant to H&S Code 10 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6 11 relating to THE PRODUCTS.

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

THE NEED FOR INJUNCTIVE RELIEF

42. 14 Plaintiff hereby incorporates by reference each and every preceding allegation and paragraph as though fully set forth in this cause of action.

16 43 By committing the acts alleged in this Complaint, Defendant has caused 17 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence of 18 equitable relief, Defendant will continue to create a substantial risk of irreparable injury by 19 continuing to cause consumers to be involuntarily and unwittingly exposed to lead through the 20 use and/or handling of THE PRODUCTS.

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PRAYER FOR RELIEF

22 Wherefore, Plaintiff prays for the following relief against Defendant GENESIS TODAY, 23 INC.:

24 A. A preliminary and permanent injunction enjoining each Defendant, its agents, 25 employees, assigns and all persons acting in concert or participating with each Defendant, from manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or 26 27 use in California without first providing clear and reasonable warnings, within the meaning of 28 Proposition 65, that the users and/or handlers of THE PRODUCTS are exposed to the lead;

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FIRST AMENDED COMPLAINT

1	1 B. An assessment of civil penalties against Defendant, pursuant to Health & Safe							
2	Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;							
3	C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code							
4	of Civil Procedure §1021.5 or the substantial benefit theory;							
5	D. An award of costs of suit herein; and							
6	E.	E. Such other and further relief as may be just and proper.						
7		1 2 2014						
8	Dated: Marc	h 3, 2014	WRAITH LAW					
9			William La laill					
10			William Fultaith					
11			WILLIAM F. WRAITH Attorney for Plaintiff Environmental					
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