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8 Attorneys for Plaintiff
9 Environmental Research Center

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12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

14 ENVIRONMENTAL RESEARCH
15 CENTER, a California non-profit
16 corporation,

17 Plaintiffs,

18 vs.

19 RAW INDULGENCE, LTD., and DOES
20 1-25, Inclusive,

21 Defendants.

22 **Case No.:** 30-2014-00709007-CU-MC-CJC

Judge Derek W. Hunt

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

[Health & Safety Code § 25249.5, et seq.]

**[UNLIMITED CIVIL CASE - AMOUNT
DEMANDED EXCEEDS \$25,000]**

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

INTRODUCTION

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

27 2. Defendant has manufactured, packaged, distributed, marketed, sold and/or has
28 otherwise been involved in the chain of commerce of, and continue to manufacture, package,
distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the

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:

- 4 a. Raw Indulgence LTD Raw Revolution Organic Live Food Bar Chocolate &
5 Coconut
- 6 b. Raw Indulgence LTD Raw Revolution Organic Live Food Bar Spirulina &
7 Cashew
- 8 c. Raw Indulgence LTD Raw Revolution Organic Greens Super Food Bar Lemon
9 Dew
- 10 d. Raw Indulgence LTD Raw Revolution Organic Greens Super Food Bar Apple
11 Cinnamon
- 12 e. Raw Indulgence Ltd. Raw Revolution Organic Live Food Bar Cherry Chocolate
13 Chunk
- 14 f. Raw Indulgence Ltd. Raw Revolution Organic Life Food Bar Heavenly Hazelnut
15 Chocolate
- 16 g. Raw Indulgence Ltd. Raw Revolution Organic Live Food Bar Chocolate Coconut
17 Bliss
- 18 h. Raw Indulgence Ltd. Raw Revolution Organic Food Bar Chocolate Raspberry
19 Truffle
- 20 i. Raw Indulgence Ltd. Raw Revolution Organic Live Food Bar Spirulina Dream

21 These listed products are hereinafter referred to together as “THE PRODUCTS”.

22 3. The use and/or handling of THE PRODUCTS causes exposures to lead at levels
23 requiring a “clear and reasonable warning” under California’s Safe Drinking Water and Toxic
24 Enforcement Act of 1986, Health & Safety Code (“H&S Code”) §25249.5, *et. seq.* (also known
25 as “Proposition 65”). Defendants have failed to provide the health hazard warnings required by
26 Proposition 65.

27 4. The continued manufacturing, packaging, distributing, marketing and/or sales of
28 THE PRODUCTS without the required health hazard warnings, causes individuals to be

1 of Civil Procedure §395.5 and H&S Code §25249.7(a), which provides that any person who
2 violates or threatens to violate H&S Code §§25249.5 or 25249.6 may be enjoined in any court of
3 competent jurisdiction.

4 **PARTIES**

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

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

11 12. Defendant RAW INDULGENCE, LTD. is a business of unknown form, which
12 ERC alleges on information and belief is a person within the meaning of H&S Code
13 §25249.11(a).

14 13. Defendant manufactured, packaged, distributed, marketed, sold and/or has
15 otherwise been involved in the chain of commerce, and continues to manufacture, package,
16 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of
17 THE PRODUCTS for sale or use in California. Defendant employs ten or more persons, and is
18 thus each a “person in the course of doing business” within the meaning of Proposition 65.

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

1 and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65
2 beginning on October 1, 1993. (27 CCR §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

3 21. Plaintiff is informed and believes, and based on such information and belief,
4 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in
5 California without the requisite clear and reasonable warnings before, on, and after March 8,
6 2009. THE PRODUCTS continue to be marketed, distributed and sold in California without the
7 requisite warning information.

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

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

17 24. Individuals using or handling THE PRODUCTS are exposed to lead in excess of
18 the “maximum allowable daily” and “no significant risk” levels determined by the State of
19 California, as applicable.

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

23 26. THE PRODUCTS continues to be marketed, distributed, and/or sold in California
24 without the requisite clear and reasonable warnings.

25 **FIRST CAUSE OF ACTION**

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

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

1 28. On March 8, 2012, and December 13, 2013, Plaintiff sent separate 60-Day Notice
2 of Proposition 65 violations to the requisite public enforcement agencies (“Notices of
3 Violation”). The Notices of Violations were issued pursuant to, and in compliance with, the
4 requirements of H&S Code §25249.7(d) and the statute’s implementing regulations regarding the
5 notices of violations to be given to certain public enforcement agencies and to the violator. The
6 Notices of Violations were issued as follows:

- 7 a. Defendant RAW INDULGENCE LTD. and the California Attorney General were
8 provided copies of the Notice of Violations, along with a Certificate of Merit by
9 the attorney for the noticing party stating that there is a reasonable and
10 meritorious cause for this action. The requisite county district attorneys and city
11 attorneys were provided copies of the Notices of Violations and Certificate of
12 Merit.
- 13 b. Defendant RAW INDULGENCE LTD. was provided with the Notices of
14 Violations, a copy of a document entitled “The Safe Drinking Water and Toxic
15 Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as
16 Appendix A to Title 27 of CCR § 25903.
- 17 c. The California Attorney General was provided, with the Notices of Violations,
18 additional factual information sufficient to establish a basis for the Certificate of
19 Merit, including the identity of the persons consulted with and relied on by the
20 certifier, and the facts, studies, or other data reviewed by those persons, pursuant
21 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

22 29. The appropriate public enforcement agencies have failed to commence and
23 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants
24 based on the allegations herein.

25 30. By committing the acts alleged in this Complaint, Defendant at all times relevant
26 to this action, and continuing through the present, has violated and continues to violate H&S
27 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
28 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding

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

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

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

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

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

22 **SECOND CAUSE OF ACTION**

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

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

26 36. On March 8, 2012 and December 13, 2013, Plaintiff sent a separate 60-Day
27 Notice of Proposition 65 Violations to the requisite public enforcement agencies (“Notices of
28 Violation”). The Notice of Violations was sent to the Defendant RAW INDULGENCE LTD.

1 and was identified in the Notice of Violations as containing lead exceeding allowable levels. The
2 Notice of Violations was issued pursuant to, and in compliance with, the requirements of H&S
3 Code §25249.7(d) and the statute’s implementing regulations regarding the notices of violations
4 to be given to certain public enforcement agencies and to the violator. The Notice of Violations
5 was issued as follows:

- 6 a. Defendant RAW INDULGENCE LTD. 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 of the Notices of Violations and Certificate of
11 Merit.
- 12 b. Defendant RAW INDULGENCE LTD. was provided, with the Notices of
13 Violations, a copy of a document entitled “The Safe Drinking Water and Toxic
14 Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as
15 Appendix A to Title 27 of CCR § 25903.
- 16 c. The California Attorney General was provided, with the Notices 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 H&S Code §§25249.7(d)(1) and 25249.7(h)(2)3.

21 37. 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 Defendants
23 based on the allegations herein.

24 38. 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

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 continue 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
6 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,
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
10 for use and/or handling to individuals in California.

11 39. By the above-described acts, Defendant is liable, pursuant to H&S Code
12 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
13 relating to THE PRODUCTS.

14 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff prays for the following relief against RAW INDULGENCE LTD.:


24 A. A preliminary and permanent injunction enjoining the Defendant, its agents,
25 employees, assigns and all persons acting in concert or participating with the Defendant, from
26 manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or
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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- B. An assessment of civil penalties against Defendant, pursuant to Health & Safety Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;
- C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code of Civil Procedure §1021.5 or the substantial benefit theory;
- D. An award of costs of suit herein; and
- E. Such other and further relief as may be just and proper.

Dated: March 5, 2014

WRAITH LAW



By: _____
WILLIAM F. WRAITH
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