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5 Attorneys for Plaintiff
Environmental Research Center
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
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12 ENVIRONMENTAL RESEARCH) Case No.: 30-2013-00650409-CU-MC-CJC
CENTER, a California non-profit)
13 corporation,)
14 Plaintiffs,) **COMPLAINT FOR INJUNCTIVE**
) **RELIEF AND CIVIL PENALTIES**
15 vs.) **[Health & Safety Code § 25249.5, et seq.]**
16 NAVITAS NATURALS, INC., NAVITAS) [UNLIMITED CIVIL CASE - AMOUNT
LLC, and DOES 1-25, Inclusive,) DEMANDED EXCEEDS \$25,000]
17 Defendants.)
18 Judge Gregory Munoz

19
20
21 Plaintiff Environmental Research Center, Inc. brings this action in the interests of the
22 general public and, on information and belief, hereby alleges:

23 **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. Defendants have manufactured, packaged, distributed, marketed, sold and/or have
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. Navitas Naturals Organic Raw Maca Powder
- 5 b. Navitas Naturals Raw Nori Sheets Certified Organic Sea Superfood
- 6 c. Navitas Naturals Hemp-Cacao-Maca Superfood Blend Certified Organic Protein
7 Smoothie Mix
- 8 d. Navitas Naturals Lucuma Powder Lucuma Powder Certified Organic Incan
9 Superfood

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

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

16 4. The continued manufacturing, packaging, distributing, marketing and/or sales of
17 THE PRODUCTS without the required health hazard warnings, causes individuals to be
18 involuntarily and unwittingly exposed to levels of lead that violate Proposition 65.

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

27 6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to
28 remedy Defendants’ failure to provide clear and reasonable warnings regarding exposures to the

1 lead.

2 **JURISDICTION AND VENUE**

3 7. This Court has jurisdiction over this action pursuant to California Constitution
4 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except
5 those given by statute to other trial courts.” The statute under which this action is brought does
6 not specify any other basis for jurisdiction.

7 8. This Court has jurisdiction over Defendants because, based on information and
8 belief, each Defendant is a business having sufficient minimum contacts with California, or
9 otherwise intentionally availing itself of the California market through the marketing,
10 distribution and/or sale of THE PRODUCTS in the State of California to render the exercise of
11 jurisdiction over it by the California courts consistent with traditional notions of fair play and
12 substantial justice.

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

18 **PARTIES**

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

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

25 12. Defendant NAVITAS NATURALS, INC. is a business of unknown form that is a
26 person within the meaning of H&S Code §25249.11(a).

27 13. Defendant NAVITAS LLC. is a business of unknown form that is a person within
28 the meaning of H&S Code §25249.11(a).

1 14. Plaintiff alleges on information and belief that Defendants NAVITAS
2 NATURALS, INC. and NAVITAS LLC are under the same ownership and control, are
3 essentially the same entity, and for all intents and purposes each is conducted the acts alleged
4 herein, received the notices alleged herein, and each is responsible for the relief prayed for
5 herein. Therefore, these defendants are collectively referred to herein as “NAVITAS.”

6 15. Each defendant has manufactured, packaged, distributed, marketed, sold and/or
7 have otherwise been involved in the chain of commerce, and continues to manufacture, package,
8 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of
9 THE PRODUCTS for sale or use in California. Defendants employ ten or more persons, and are
10 thus each a “person in the course of doing business” within the meaning of Proposition 65.

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

21 17. Plaintiff is informed and believe and thereon allege that each of the defendants is
22 in some manner responsible for the events set forth in this Complaint and proximately caused the
23 injuries and damages to Plaintiffs as alleged in this Complaint.

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

1 ratified and approved of the acts or omissions of each other such as to cause each to be jointly
2 and severally liable for the conduct of each other defendant.

3 **STATUTORY BACKGROUND**

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

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

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

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

20 **FACTUAL BACKGROUND**

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

26 23. On October 1, 1992, the State of California officially listed the chemical lead as a
27 chemical known to cause cancer. Lead became subject to the warning requirement one year later
28 and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65

1 beginning on October 1, 1993. (27 CCR §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

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

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

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

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

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

21 29. THE PRODUCTS continue to be marketed, distributed, and/or sold in California
22 without the requisite clear and reasonable warnings.

23 **FIRST CAUSE OF ACTION**

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

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

27 31. On September 17, 2012, Plaintiff sent a 60-Day Notice of Proposition 65
28 violations to the requisite public enforcement agencies and to NAVITAS (“Notice of

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

- 6 a. Defendants NAVITAS and the California Attorney General were provided copies
7 by Priority Mail of the Notices 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 Priority Mail of the Notices of Violations and
11 Certificate of Merit.
- 12 b. Defendants NAVITAS were provided, with the Notice of Violations, a copy of a
13 document entitled “The Safe Drinking Water and Toxic Enforcement Act of 1986
14 (Proposition 65): A Summary,” which is also known as Appendix A to Title 27 of
15 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 32. 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 33. By committing the acts alleged in this Complaint, Defendants at all times relevant
25 to this action, and continuing through the present, have violated and continue 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 Defendants first giving clear and reasonable warnings to such

1 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have 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 Defendants 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, Defendants have 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 34. By the above-described acts, Defendants have violated H&S Code §25249.6 and
12 is therefore subject to an injunction ordering Defendant to stop violating Proposition 65, and to
13 provide required warnings to consumers and other individuals who will purchase, use and/or
14 handle THE PRODUCTS.

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

17 36. Continuing commission by Defendants 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.

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

21 **SECOND CAUSE OF ACTION**

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

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

25 39. On September 17, 2012, Plaintiff sent a 60-Day Notice of Proposition 65
26 violations to the requisite public enforcement agencies and to Defendants NAVITAS (“Notice of
27 Violations”). THE PRODUCTS were identified in the Notice of Violations as containing lead
28 exceeding allowable levels. The Notice of Violations was issued pursuant to, and in compliance

1 with, the requirements of H&S Code §25249.7(d) and the statute’s implementing regulations
2 regarding the notices of violations to be given to certain public enforcement agencies and to the
3 violator. The Notice of Violations was issued as follows:

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

19 40. 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 Defendants
21 based on the allegations herein.

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

1 commerce of, and continue 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 Defendants 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
6 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
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 42. By the above-described acts, Defendants are 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.

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

13 **THE NEED FOR INJUNCTIVE RELIEF**

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

16 45. By committing the acts alleged in this Complaint, Defendants have 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.

21 **PRAYER FOR RELIEF**

22 Wherefore, Plaintiff prays for the following relief against Defendants NAVITAS
23 NATURALS, INC. and NAVITAS LLC:


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
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: May 18, 2013

WRAITH LAW



By: _____
WILLIAM F. WRAITH
Attorney for Plaintiff Environmental
Research Center