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*Page 2  
ALUDD*

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**FILED**  
Superior Court Of California  
County Of Los Angeles

MAR 05 2014

7 Attorneys for Plaintiff  
8 Environmental Research Center

Sherri R. Carter, Executive Officer/Clerk  
By *[Signature]* Deputy  
Amber Hayes

*DAG Elizabeth Allen White*

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
10 CENTRAL DISTRICT, STANLEY MOSK COURTHOUSE

11 ENVIRONMENTAL RESEARCH  
12 CENTER, a California non-profit  
13 corporation,

Case No.:

**BC 587514**

14 Plaintiff,

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

15 vs.

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

16 BIO NUTRITIONAL RESEARCH  
17 GROUP, INC. and DOES 1-25, Inclusive,

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

18 Defendants.

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

21 **INTRODUCTION**

22 1. This action seeks to remedy Defendant's 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. Defendant has manufactured, packaged, distributed, marketed, sold and/or  
26 otherwise been involved in the chain of commerce of, and continues to manufacture, package  
27 distribute, market, sell and/or otherwise continues to be involved in the chain of commerce of the  
28 following ingestible products, which contain the chemical lead and which have been and

RECEIPT #1: 03/05/2014  
DATE PAID: 03/06/2014  
FEE: \$435.00  
CHECK: \$0.00  
CASH: \$0.00  
CHANGE: \$0.00  
TOTAL: \$435.00  
03:56 PM  
310

CIT/CASE: BC587514  
LEA/DEF#:

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Irvine, California 92618  
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1 continue to be offered for sale, sold and/or otherwise provided for use and/or handling to  
2 individuals in California:

- 3 a. BNRG Proto Whey Vanilla Crème
- 4 b. BNRG Power Crunch Proto Whey Café Mocha
- 5 c. BNRG Power Crunch Protein Energy Bar Original Triple Chocolate
- 6 d. BNRG Power Crunch Proto Whey Double Chocolate
- 7 e. BNRG Power Crunch Proto Whey Cookies & Crème

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

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

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

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

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

28 ///



1 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of  
2 THE PRODUCTS for sale or use in California. Defendant employs ten or more persons, and is  
3 thus a “person in the course of doing business” within the meaning of Proposition 65.

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

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

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

#### 24 **STATUTORY BACKGROUND**

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

28 18. To effect this goal, Proposition 65 requires that individuals be provided with a



1 California, including in the County of Los Angeles, have been exposed to lead without clear and  
2 reasonable warnings. The individuals subject to exposures to lead include normal and  
3 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE  
4 PRODUCTS.

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

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

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

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

17 **FIRST CAUSE OF ACTION**

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

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

21 29. On July 19, 2013, Plaintiff sent a 60-Day Notice of Proposition 65 violations to  
22 the requisite public enforcement agencies and to defendant BIO NUTRITIONAL RESEARCH  
23 GROUP, INC. (“Notice of Violations”). The Notice of Violations was issued pursuant to, and in  
24 compliance with, the requirements of H&S Code §25249.7(d) and the statute’s implementing  
25 regulations regarding the notices of violations to be given to certain public enforcement agencies  
26 and to the violator. The Notice of Violations was issued as follows:

27 a. Defendant BIO NUTRITIONAL RESEARCH GROUP, INC. and the California  
28 Attorney General were provided copies of the Notice of Violations, along with a

1 Certificate of Merit by the attorney for the noticing party stating that there is a  
2 reasonable and meritorious cause for this action. The requisite county district  
3 attorneys and city attorneys were provided copies of the Notices of Violations and  
4 Certificate of Merit.

5 b. Defendant BIO NUTRITIONAL RESEARCH GROUP, INC. was provided, with  
6 the Notice of Violations, a copy of a document entitled “The Safe Drinking Water  
7 and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,” which is also  
8 known as Appendix A to Title 27 of CCR § 25903.

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

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

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

1 handling of THE PRODUCTS. Furthermore, Defendant has threatened to violate H&S Code  
2 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided  
3 for use and/or handling to individuals in California.

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

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

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

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

14 **SECOND CAUSE OF ACTION**

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

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

18 37. On July 19, 2013, Plaintiff sent a 60-Day Notice of Proposition 65 violations to  
19 the requisite public enforcement agencies and to defendant BIO NUTRITIONAL RESEARCH  
20 GROUP, INC. (“Notice of Violations”). The Notice of Violations was issued pursuant to, and in  
21 compliance with, the requirements of H&S Code §25249.7(d) and the statute’s implementing  
22 regulations regarding the notices of violations to be given to certain public enforcement agencies  
23 and to the violator. The Notice of Violations was issued as follows:

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



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Certificate of Merit.

b. Defendant BIO NUTRITIONAL RESEARCH GROUP, INC. was provided, with the Notice 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 Notice 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).

38. The appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendant 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 commerce of, and continues to manufacture, package, distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are, 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, 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 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided for use and/or handling to individuals in California.

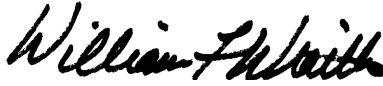


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E. Such other and further relief as may be just and proper.

Dated: March 4, 2014

WRAITH LAW



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

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