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FILED
Superior Court of California
County of Los Angeles

NOV 25 2013

Sheri R. Carter, Executive Officer/Clerk
By Dawn Alexander Deputy
Dawn Alexander

Attorneys for Plaintiff
Environmental Research Center

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

(BY FAX)

ENVIRONMENTAL RESEARCH
CENTER, a California non-profit
corporation,

Plaintiff,

vs.

ZIJA INTERNATIONAL, INC. and
DOES 1-25, inclusive,

Defendants.

Case No.: **BC588952**

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

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

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

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

INTRODUCTION

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

2. Defendant has manufactured, packaged, distributed, marketed, sold and/or have
otherwise been involved in the chain of commerce of, and continues to manufacture, package,
distribute, market, sell and/or otherwise continues to be involved in the chain of commerce of the
following ingestible products, which contain the chemical lead and which have been and

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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. Zija International Inc. Moringa SmartMix
- 4 b. Zija International Inc. Prime90 Dutch Chocolate
- 5 c. Zija International Inc. Prime90 Vanilla Bean
- 6 d. Zija International Inc. XM3
- 7 e. Zija International Inc. XM+
- 8 f. Zija International Inc. Moringa SuperMix

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

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

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

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

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

JURISDICTION AND VENUE

1
2 7. This Court has jurisdiction over this action pursuant to California Constitution
3 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except
4 those given by statute to other trial courts.” The statute under which this action is brought does
5 not specify any other basis for jurisdiction.

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

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

PARTIES

17
18 10. Plaintiff Environmental Research Center, Inc. (“ERC”) is a non-profit corporation
19 organized under California’s Non-Profit Benefit Corporation Law. ERC is dedicated to, among
20 other causes, reducing the use and misuse of hazardous and toxic substances, consumer
21 protection, worker safety and corporate responsibility.

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

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

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

1 THE PRODUCTS for sale or use in California. Defendant employs ten or more persons, and is
2 thus a “person in the course of doing business” within the meaning of Proposition 65.

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

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

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

23 **STATUTORY BACKGROUND**

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

27 18. To effect this goal, Proposition 65 requires that individuals be provided with a
28 “clear and reasonable warning” before being exposed to substances listed by the State of

1 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
2 part:

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

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

12 **FACTUAL BACKGROUND**

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

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

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

26 23. As a proximate result of acts by Defendant, as a person in the course of doing
27 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of
28 California, including in the County of Los Angeles, have been exposed to lead without clear and

1 reasonable warnings. The individuals subject to exposures to lead include normal and
2 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE
3 PRODUCTS.

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

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

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

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

16 **FIRST CAUSE OF ACTION**

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

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

20 29. On September 13, 2013, Plaintiff sent a 60-Day Notice of Proposition 65
21 violations to the requisite public enforcement agencies and to defendant ZIJA
22 INTERNATIONAL, INC. (“Notice of Violations”). The Notice of Violations was issued
23 pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the
24 statute’s implementing regulations regarding the notices of violations to be given to certain
25 public enforcement agencies and to the violator. The Notice of Violations was issued as follows:

26 a. Defendant ZIJA INTERNATIONAL, INC. and the California Attorney General
27 were provided copies of the Notice of Violations, along with a Certificate of Merit
28 by the attorney for the noticing party stating that there is a reasonable and

1 meritorious cause for this action. The requisite county district attorneys and city
2 attorneys were provided copies of the Notices of Violations and Certificate of
3 Merit.

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

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

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

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

1 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
2 for use and/or handling to individuals in California.

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

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

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

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

13 **SECOND CAUSE OF ACTION**

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

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

17 37. On September 13, 2013, Plaintiff sent a 60-Day Notice of Proposition 65
18 violations to the requisite public enforcement agencies and to defendant ZIJA
19 INTERNATIONAL, INC. (“Notice of Violations”). The Notice of Violations was issued
20 pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the
21 statute’s implementing regulations regarding the notices of violations to be given to certain
22 public enforcement agencies and to the violator. The Notice of Violations was issued as follows:

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

1 b. Defendant ZIJA INTERNATIONAL, INC. was provided, with the Notice of
2 Violations, a copy of a document entitled “The Safe Drinking Water and Toxic
3 Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as
4 Appendix A to Title 27 of CCR § 25903.

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

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

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

28 40. By the above-described acts, Defendant is liable, pursuant to H&S Code

1 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
2 relating to THE PRODUCTS.

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

4 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff prays for the following relief against Defendant ZIJA
14 INTERNATIONAL, INC.:

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

20 B. An assessment of civil penalties against Defendant, pursuant to Health & Safety
21 Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;

22 C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code
23 of Civil Procedure §1021.5 or the substantial benefit theory;

24 D. An award of costs of suit herein; and

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

Dated: November 22, 2013

WRAITH LAW



By: _____
WILLIAM F. WRAITH
Attorney for Plaintiff Environmental
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