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1 WILLIAM F. WRAITH, SBN 185927
2 WRAITH LAW
3 16485 Laguna Canyon Rd., Suite 250
4 Irvine, California 92618
5 Tel: (949) 251-9977
6 Fax: (949) 251-9978

FILED
Superior Court Of California
County Of Los Angeles

MAR 04 2014

Sherri R. Carter, Executive Officer/Clerk
By Amber Blayes, Deputy
Amber Blayes

7 Attorneys for Plaintiff
8 Environmental Research Center

D14 Terry Green

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

BC 587505

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

Case No.:

14 Plaintiff,

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

15 vs.

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

16 HEARTLAND PRODUCTS, INC. and
17 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 have
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 #: 0150035784
DATE PAID: 03/05/14 11:19 AM
PAYMENT: \$435.00
RECEIVED:
CHECK #: 510
CASH: \$0.00
CHANGE: \$0.00
CARD: \$5.00

WRAITHLAW
16485 Laguna Canyon Rd., Suite 250
Irvine, California 92618
(949) 251-9977

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

- 3 a. Heartland Products Inc. Uber Greens
- 4 b. Heartland Products Inc. Omega Greens Delicious Berry Flavor
- 5 c. Heartland Products Inc. Uber Flax with Chia

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

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

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

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

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

26 JURISDICTION AND VENUE

27 7. This Court has jurisdiction over this action pursuant to California Constitution
28 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except

1 those given by statute to other trial courts.” The statute under which this action is brought does
2 not specify any other basis for jurisdiction.

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

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

14 **PARTIES**

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

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

21 12. ERC alleges on information and belief that Defendant HEARTLAND
22 PRODUCTS, INC. is a California Corporation that is a person within the meaning of H&S Code
23 §25249.11(a).

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

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

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

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

21 **STATUTORY BACKGROUND**

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

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

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

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

10 **FACTUAL BACKGROUND**

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

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

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

24 23. As a proximate result of acts by Defendant, as a person in the course of doing
25 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of
26 California, including in the County of Los Angeles, have been exposed to lead without clear and
27 reasonable warnings. The individuals subject to exposures to lead include normal and
28 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE

1 PRODUCTS.

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

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

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

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

14 **FIRST CAUSE OF ACTION**

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

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

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

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

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Merit.

- b. Defendant HEARTLAND PRODUCTS, 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).

30. 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.

31. 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 has 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.

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

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

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

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

11 **SECOND CAUSE OF ACTION**

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

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

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

- 21 a. Defendant HEARTLAND PRODUCTS, INC. and the California Attorney
22 General were provided copies of the Notice of Violations, along with a Certificate
23 of Merit by the attorney for the noticing party stating that there is a reasonable
24 and meritorious cause for this action. The requisite county district attorneys and
25 city attorneys were provided copies of the Notices of Violations and Certificate of
26 Merit.
- 27 b. Defendant HEARTLAND PRODUCTS, INC. was provided, with the Notice of
28 Violations, a copy of a document entitled “The Safe Drinking Water and Toxic

1 Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as
2 Appendix A to Title 27 of CCR § 25903.

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

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

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

26 40. By the above-described acts, Defendant is liable, pursuant to H&S Code
27 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
28 relating to THE PRODUCTS.

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

2 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff prays for the following relief against Defendant HEARTLAND
12 PRODUCTS, INC.:

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

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

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

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

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

24 Dated: March 4, 2014

WRAITH LAW



25 By: _____
26 WILLIAM F. WRAITH
27 Attorney for Plaintiff Environmental
28 Research Center