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**FILED BY FAX**  
 ALAMEDA COUNTY

March 10, 2014

CLERK OF  
 THE SUPERIOR COURT  
 By Burt Moskaira, Deputy

CASE NUMBER:  
**RG14716823**

7 Attorneys for Plaintiff  
 8 Environmental Research Center

9 SUPERIOR COURT OF CALIFORNIA  
 10 COUNTY OF ALAMEDA

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

14 Plaintiffs,

15 vs.

16 GASPARI NUTRITION INC. and DOES  
 17 1-25, Inclusive,

18 Defendants.

**Case No.:**

**COMPLAINT FOR INJUNCTIVE  
 RELIEF AND CIVIL PENALTIES**

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

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

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

22 **INTRODUCTION**

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

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

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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. Gaspari Nutrition Inc. Anatropin Supreme Vitality
- 5 b. Gaspari Nutrition Inc. SuperPump Max Grape Cooler
- 6 c. Gaspari Nutrition Inc. MyoFusion Probiotic Series Milk Chocolate
- 7 d. Gaspari Nutrition Inc. MyoFusion Probiotic Series Delicious Vanilla
- 8 e. Gaspari Nutrition Inc. MyoFusion Probiotic Series Banana Perfection
- 9 f. Gaspari Nutrition Inc. Real Mass Probiotic Series Rich Vanilla Milkshake
- 10 g. Gaspari Nutrition Inc. Myofusion Elite Protein Series Milk Chocolate
- 11 h. Gaspari Nutrition Inc. Real Mass Probiotic Series Strawberry Milkshake
- 12 i. Gaspari Nutrition Inc. Real Mass Probiotic Series Chocolate Ice Cream
- 13 j. Gaspari Nutrition Inc. MyoFusion Probiotic Series Cookies & Cream
- 14 k. Gaspari Nutrition Inc. MyoFusion Probiotic Series Cinnamon Roll
- 15 l. Gaspari Nutrition Inc. MyoFusion Probiotic Series Chocolate Peanut Butter

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

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

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

25 5. Plaintiff seeks injunctive relief enjoining Defendant from the continued  
26 manufacturing, packaging, distributing, marketing and/or selling of THE PRODUCTS for sale or  
27 use in California without first providing clear and reasonable warnings, within the meaning of  
28 Proposition 65, regarding the risks of cancer, birth defects and other reproductive harm posed by



**PARTIES**

1  
2 10. Plaintiff Environmental Research Center, Inc. (“ERC”) is a non-profit corporation  
3 organized under California’s Non-Profit Benefit Corporation Law. ERC is dedicated to, among  
4 other causes, reducing the use and misuse of hazardous and toxic substances, consumer  
5 protection, worker safety and corporate responsibility.

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

8 12. Defendant GASPARI NUTRITION INC. is a business of unknown form, which  
9 ERC alleges on information and belief is a person within the meaning of H&S Code  
10 §25249.11(a).

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

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

26 15. Plaintiff is informed and believes and thereon alleges that each defendant is in  
27 some manner responsible for the events set forth in this Complaint and proximately caused the  
28 injuries and damages to Plaintiff as alleged in this Complaint.



1 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in  
2 California without the requisite clear and reasonable warnings before, on, and after March 8,  
3 2009. THE PRODUCTS continue to be marketed, distributed and sold in California without the  
4 requisite warning information.

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

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

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

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

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

22 **FIRST CAUSE OF ACTION**

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

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

26 28. On May 17, 2013, and December 13, 2013, Plaintiff sent separate 60-Day Notice  
27 of Proposition 65 violations to the requisite public enforcement agencies (“Notices of  
28 Violation”). The Notices of Violations were issued pursuant to, and in compliance with, the

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

- 4 a. Defendant GASPARI NUTRITION INC. and the California Attorney General  
5 were provided copies of the Notice of Violations, along with a Certificate of Merit  
6 by 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 of the Notices of Violations and Certificate of  
9 Merit.
- 10 b. Defendant GASPARI NUTRITION INC. was provided with the Notices of  
11 Violations, a copy of a document entitled “The Safe Drinking Water and Toxic  
12 Enforcement Act of 1986 (Proposition 65): A Summary,” which is also known as  
13 Appendix A to Title 27 of CCR § 25903.
- 14 c. The California Attorney General was provided, with the Notices 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 29. 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 30. By committing the acts alleged in this Complaint, Defendant at all times relevant  
23 to this action, and continuing through the present, has violated and continues 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 Defendant first giving clear and reasonable warnings to such  
27 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendant has 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 Defendant 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, Defendant has 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 31. By the above-described acts, Defendant has violated H&S Code §25249.6 and is  
10 therefore subject to an injunction ordering Defendant to stop violating Proposition 65, and to  
11 provide required warnings to consumers and other individuals who will purchase, use and/or  
12 handle THE PRODUCTS.

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

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

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

19 **SECOND CAUSE OF ACTION**

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

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

23 36. On May 17, 2013, and December 13, 2013, Plaintiff sent separate 60-Day Notice  
24 of Proposition 65 violations to the requisite public enforcement agencies (“Notices of  
25 Violation”). The Notices of Violations were issued pursuant to, and in compliance with, the  
26 requirements of H&S Code §25249.7(d) and the statute’s implementing regulations regarding the  
27 notices of violations to be given to certain public enforcement agencies and to the violator. The

28 ///



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

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

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

1 and will be used and/or handled by individuals in California, without Defendant providing clear  
2 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,  
3 birth defects and other reproductive harm posed by exposure to lead through the use and/or  
4 handling of THE PRODUCTS. Furthermore, Defendant has threatened to violate H&S Code  
5 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided  
6 for use and/or handling to individuals in California.

7 39. By the above-described acts, Defendant is liable, pursuant to H&S Code  
8 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6  
9 relating to THE PRODUCTS.

10 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

18 **PRAYER FOR RELIEF**

19 Wherefore, Plaintiff prays for the following relief against GASPARI NUTRITION INC.:

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

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

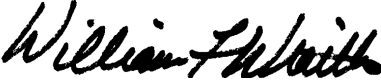
27 C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code  
28 of Civil Procedure §1021.5 or the substantial benefit theory;

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- D. An award of costs of suit herein; and
- E. Such other and further relief as may be just and proper.

Dated: March 10, 2014

WRAITH LAW



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

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