BC545397

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

- (1) Yoga Wellness LLC Bikram Yoga Bikram Balance Berry
- (2) Yoga Wellness LLC Bikram Yoga Bikram Balance Original These listed products are hereinafter referred to together as "THE PRODUCTS".
- 3. The use and/or handling of THE PRODUCTS causes exposures to lead at levels requiring a "clear and reasonable warning" under California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code") §25249.5, et. seq. (also known as "Proposition 65"). Defendant has failed to provide the health hazard warnings required by Proposition 65.
- 4. The continued manufacturing, packaging, distributing, marketing and/or sales of THE PRODUCTS without the required health hazard warnings, causes individuals to be involuntarily and unwittingly exposed to levels of lead that violate Proposition 65.
- 5. Plaintiff seeks injunctive relief enjoining Defendant from the continued manufacturing, packaging, distributing, marketing and/or selling of THE PRODUCTS for sale or use in California without first 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. Plaintiff seeks an injunctive order compelling Defendant to bring each of its business practices into compliance with Proposition 65 by providing clear and reasonable warnings to each individual who may be exposed to lead from the use and/or handling of THE PRODUCTS.
- In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to 6. remedy Defendant's failure to provide clear and reasonable warnings regarding exposures to the lead.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to California Constitution

Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis for jurisdiction.

- 8. This Court has jurisdiction over Defendant because, based on information and belief, each Defendant is a business having sufficient minimum contacts with California, or otherwise intentionally availing itself of the California market through the marketing, distribution and/or sale of THE PRODUCTS in the State of California to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.
- 9. This Court is the proper venue for this action because each Defendant has violated California law in the County of Los Angeles. Furthermore, this Court is the proper venue under Code of Civil Procedure §395.5 and H&S Code §25249.7(a), which provides that any person who violates or threatens to violate H&S Code §\$25249.5 or 25249.6 may be enjoined in any court of competent jurisdiction.

PARTIES

- 10. Plaintiff Environmental Research Center, Inc. ("ERC") is a non-profit corporation organized under California's Non-Profit Benefit Corporation Law. ERC is dedicated to, among other causes, reducing the use and misuse of hazardous and toxic substances, consumer protection, worker safety and corporate responsibility.
- 11. ERC is a person within the meaning of H&S Code §25118 and brings this enforcement action in the public interest pursuant to H&S Code §25249.7(d).
- 12. ERC alleges on information and belief that Defendant YOGA WELLNESS, LLC is a business of unknown form that is a person within the meaning of H&S Code §25249.11(a).
- 13. Defendant manufactured, packaged, distributed, marketed, sold and/or has otherwise been involved in the chain of commerce, and continues to manufacture, package, distribute, market, sell and/or otherwise continues to be involved in the chain of commerce of THE PRODUCTS for sale or use in California. Defendant employs ten or more persons, and is thus a "person in the course of doing business" within the meaning of Proposition 65.

2

3

4

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- 14. Defendants DOES 1-25 are named herein under fictitious names, as their true names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon alleges, that each of said DOES 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 continues to be involved in the chain of commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some actionable manner, for the events and happenings referred to herein, either through its conduct or through the conduct of its agents, servants or employees, or in some other manner, causing the harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true names and capacities of DOES when ascertained.
- Plaintiff is informed and believes and thereon alleges that each of the defendants is in some manner responsible for the events set forth in this Complaint and proximately caused the injuries and damages to Plaintiff as alleged in this Complaint.
- 16. Plaintiff is informed and believes and thereon alleges that at all material times, defendants, and each of them, were the agents, servants, and employees of the other defendant, and each of them in such a way as to cause each defendant to be jointly and severally liable and responsible for the conduct of one another. The conduct of each defendant was within the course and scope of the authority granted each defendant by the other defendant. Each defendant ratified and approved of the acts or omissions of each other such as to cause each to be jointly and severally liable for the conduct of each other defendant.

STATUTORY BACKGROUND

- 17 The People of the State of California have declared in Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).
- 18. To effect this goal, Proposition 65 requires that individuals be provided with a "clear and reasonable warning" before being exposed to substances listed by the State of California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent part:

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

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

FACTUAL BACKGROUND

- 20. On February 27, 1987, the State of California officially listed the chemical lead as a chemical known to cause developmental and reproductive toxicity. Lead became subject to the warning requirement one year later and was therefore subject to the "clear and reasonable" warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of Regulations ("CCR") §25000, et seq.; H&S Code §25249.5, et seq.)
- 21. On October 1, 1992, the State of California officially listed the chemical lead as a chemical known to cause cancer. Lead became subject to the warning requirement one year later and was therefore subject to the "clear and reasonable" warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR §25000, et seq.; H&S Code §25249.5, et seq.)
- 22. Plaintiff is informed and believes, and based on such information and belief, alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in California without the requisite clear and reasonable warnings. THE PRODUCTS continue to be marketed, distributed and sold in California without the requisite warning information.
- 23. As a proximate result of acts by Defendant, as a person in the course of doing business within the meaning of H&S Code §25249.11(b), individuals throughout the State of California, including in the County of Los Angeles, have been exposed to lead without clear and reasonable warnings. The individuals subject to exposures to lead include normal and foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE

PRODUCTS.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- 24. At all times relevant to this action, Defendant has knowingly and intentionally exposed the users and/or handlers of THE PRODUCTS to lead without first giving clear and reasonable warnings to such individuals.
- 25. Individuals using or handling THE PRODUCTS are exposed to lead in excess of the "maximum allowable daily" and "no significant risk" levels determined by the State of California, as applicable.
- 26. At all times relevant to this action, Defendant has, in the course of doing business, failed to provide individuals using and/or handling THE PRODUCTS with clear and reasonable warnings that THE PRODUCTS expose individuals to lead.
- 27. Upon information and belief, Plaintiff alleges THE PRODUCTS continue to be marketed, distributed, and/or sold in California without the requisite clear and reasonable warnings.

FIRST CAUSE OF ACTION

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

- 28. Plaintiff hereby incorporates by reference each and every preceding allegation and paragraph as though fully set forth in this cause of action.
- 29. On December 13, 2013, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies and to defendant YOGA WELLNESS, LLC, ("Notice of Violations"). The Notice of Violations was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding the notices of violations to be given to certain public enforcement agencies and to the violator. The Notice of Violations was issued as follows:
 - a. Defendant YOGA WELLNESS, LLC and the California Attorney General were provided copies of the Notice of Violations, along with a Certificate of Merit by the attorney for the noticing party stating that there is a reasonable and meritorious cause for this action. The requisite county district attorneys and city attorneys were provided copies of the Notices of Violations and Certificate of

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Merit.

- b. Defendant YOGA WELLNESS, LLC 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.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- 32. By the above-described acts, Defendant has violated H&S Code §25249.6 and is therefore subject to an injunction ordering Defendant to stop violating Proposition 65, and to provide required warnings to consumers and other individuals who will purchase, use and/or handle THE PRODUCTS.
- 33. An action for injunctive relief under Proposition 65 is specifically authorized by Health & Safety Code §25249.7(a).
- 34. Continuing commission by Defendant of the acts alleged above will irreparably harm the citizens of the State of California, for which harm they have no plain, speedy, or adequate remedy at law.
 - 35. Wherefore, Plaintiff prays judgment against Defendant, as set forth hereafter.

SECOND CAUSE OF ACTION

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

- Plaintiff hereby incorporates by reference each and every preceding allegation and 36. paragraph as though fully set forth in this cause of action.
- 37. On December 13, 2013, Plaintiff sent a 60-Day Notice of Proposition 65 violations to the requisite public enforcement agencies and to defendant YOGA WELLNESS, LLC ("Notice of Violations"). The Notice of Violations was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding the notices of violations to be given to certain public enforcement agencies and to the violator. The Notice of Violations was issued as follows:
 - a. Defendant YOGA WELLNESS, LLC and the California Attorney General were provided copies of the Notice of Violations, along with a Certificate of Merit by the attorney for the noticing party stating that there is a reasonable and meritorious cause for this action. The requisite county district attorneys and city attorneys were provided copies of the Notices of Violations and Certificate of Merit.
 - b. Defendant YOGA WELLNESS, LLC was provided, with the Notice of Violations, a copy of a document entitled "The Safe Drinking Water and Toxic

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

THE NEED FOR INJUNCTIVE RELIEF

- 42. Plaintiff hereby incorporates by reference each and every preceding allegation and paragraph as though fully set forth in this cause of action.
- 43. By committing the acts alleged in this Complaint, Defendant has caused irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence of equitable relief, Defendant will continue to create a substantial risk of irreparable injury by continuing to cause consumers to be involuntarily and unwittingly exposed to lead through the use and/or handling of THE PRODUCTS.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief against Defendant YOGA WELLNESS, LLC:

- A. A preliminary and permanent injunction enjoining each Defendant, its agents, employees, assigns and all persons acting in concert or participating with each Defendant, from manufacturing, packaging, distributing, marketing and/or selling THE PRODUCTS for sale or use in California without first providing clear and reasonable warnings, within the meaning of Proposition 65, that the users and/or handlers of THE PRODUCTS are exposed to the lead;
- 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: April 28, 2014

WRAITH LAW

By:

WILLIAM F. WRAITH

Attorney for Plaintiff Environmental Research Center

William Falaith