From Wrai	th_La	aw_Fax Thu 13 Nov 2014	06:22:06 PM EST Page 5 of 1			
	1 2 3 4 5 6	WILLIAM F. WRAITII, SBN 185927 WRAITH LAW 24422 Avenida de la Carlota, Suite 400 Laguna Hills, CA 92653 Tel: (949) 251-9977 Fax: (949) 251-9978 Attorneys for Plaintiff Environmental Research Center	FILED BY FAX ALAMEDA COUNTY November 13, 2014 CLERK OF THE SUPERIOR COURT By Alicia Espinoza, Deputy CASE NUMBER: RG14748134			
	7 8	SUPERIOR CC	URT OF CALIFORNIA			
	9 10	COUNT	Y OF ALAMEDA			
	11					
tite 250	12	ENVIRONMENTAL RESEARCH CENTER, a California non-profit	Case No.:			
AW Rd Su ^{a 92618}	13	corporation,	COMPLAINT FOR INJUNCTIVE			
	14	Plaintiffs,	RELIEF AND CIVIL PENALTIES			
ARA Aguna ((949)	15	VS.) [Health & Safety Code § 25249.5, et seq.]			
WRAITH LAW I6483 Laguna Canyon Rd. Suite 250 Invine, California 92618 (949) 251-9977	16 17	LIVING ECOLOGY INC, LIVING ECOLOGY MANUFACTURING INC. and DOES 1-25, Inclusive,	UNLIMITED CIVIL CASE - AMOUNT DEMANDED EXCEEDS \$25,000)]			
	18	Defendants.				
	19					
	20	Plaintiff Environmental Research Center, Inc. ("Plaintiff") brings this action in the				
	21	interests of the general public and, on inform	nation and belief, hereby alleges:			
	22	INTRODUCTION				
	23	1. This action seeks to remedy Defendants Living Ecology Inc, Living Ecology				
	24	Manufacturing Inc. and Does 1-25, Inclusive's (individually referred to hereinafter as				
	25	"Defendant" or collectively as "Defendants") continuing failure to warn consumers in California				
	26	that they are being exposed to lead, a substance known to the State of California to cause cancer,				
	27	birth defects and other reproductive harm.				
	28	2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have				
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			COMPLAINT			

1	otherwise been involved in the chain of commerce of, and continue to manufacture, package,				
2	distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of the				
3	following ingestible products, which contain the chemical lead and which have been and				
4	continue to be offered for sale, sold and/or otherwise provided for use and/or handling to				
5	individuals in California:				
6	1. Bio International Organic Active Greens Powder				
7	2. Bio International Organic Active Greens				
8	3. Organic Food Bar Inc. Raw Organic Food Bar Cinnamon Raisin				
9	4. Organic Food Bar Inc. Raw Organic Food Bar Chocolatey Chocolate Chip				
10	5. Organic Food Bar Inc. Organic Food Bar Chocolate Covered Active Greens				
11	6. Organic Food Bar Inc. Organic Food Bar Active Greens - Protein Chocolate				
12	Covered				
13	7. Organic Food Bar Inc. Organic Food Bar Active Greens				
14	8. Organic Food Bar Inc. Organic Food Bar Active Greens Chocolate				
15	9. Organic Food Bar Inc. Organic Food Bar Original				
16	10. Organic Food Bar Inc. Organic Food Bar Protein				
17	11. Organic Food Bar Inc. Organic Food Bar Vegan				
18	12. Organic Food Bar Inc. OFB Vegan Protein Vanilla				
19	13. Organic Food Bar Inc. OFB Vegan Protein Strawberry				
20	14. Organic Food Bar Inc. OFB Vegan Protein Chocolate				
21	15. Organic Food Bar Inc. OFB Whey Protein Strawberry				
22	16. Organic Food Bar Inc. OFB Whey Protein Vanilla				
23	These listed products are hereinafter referred to together as "THE PRODUCTS".				
24	3. The use and/or handling of THE PRODUCTS causes exposures to lead at levels				
25	requiring a "clear and reasonable warning" under California's Safe Drinking Water and Toxic				
26	Enforcement Act of 1986, Health & Safety Code ("H&S Code") §25249.5, et. seq. (also known				
27	as "Proposition 65"). Defendants have failed to provide the health hazard warnings required by				
28	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 Defendants 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 Defendants 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. Plaintiff also seeks an order compelling Defendants to identify and locate each individual person who in the past has purchased the PRODUCTS, and to provide to each such purchaser a clear and reasonable warning that the use of the PRODUCTS will cause exposures to Lead.

6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to
remedy Defendants' failure to provide clear and reasonable warnings regarding exposures to the
lead.

JURISDICTION AND VENUE

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 Defendants 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.

1 9. This Court is the proper venue for this action because each Defendant has violated 2 California law in the County of Alameda. Furthermore, this Court is the proper venue under 3 Code of Civil Procedure §395.5 and H&S Code §25249.7(a), which provides that any person 4 who violates or threatens to violate H&S Code §§25249.5 or 25249.6 may be enjoined in any 5 court of competent jurisdiction.

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PARTIES

10. Plaintiff Environmental Research Center, Inc. ("ERC") is a non-profit corporation 8 organized under California's Non-Profit Benefit Corporation Law. ERC is dedicated to, among 9 other causes, reducing the use and misuse of hazardous and toxic substances, consumer 10 protection, worker safety and corporate responsibility.

11. ERC is a person within the meaning of H&S Code §25118 and brings this 12 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

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

15 13. Defendant LIVING ECOLOGY MANUFACTURING INC. is a business of unknown form, which ERC alleges on information and belief is a person within the meaning of 16 H&S Code §25249.11(a). 17

18 14. Each Defendant manufactured, packaged, distributed, marketed, sold and/or has 19 otherwise been involved in the chain of commerce, and continues to manufacture, package, 20 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of 21 THE PRODUCTS for sale or use in California. Plaintiff alleges on information and belief that 22 each Defendant employs ten or more persons, and is thus each a "person in the course of doing 23 business" within the meaning of Proposition 65.

24 15. 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 25 26 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or 27 has otherwise been involved in the chain of commerce of, and continues to manufacture, 28 package, distribute, market, sell, and/or otherwise continues to be involved in the chain of

1 commerce of THE PRODUCTS for sale or use in California, and/or is responsible, in some 2 actionable manner, for the events and happenings referred to herein, either through its conduct or 3 through the conduct of its agents, servants or employees, or in some other manner, causing the 4 harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true 5 names and capacities of DOES when ascertained. 16. Plaintiff is informed and believes and thereon alleges that each Defendant is in 6

7 some manner responsible for the events set forth in this Complaint and proximately caused the 8 injuries and damages to Plaintiff as alleged in this Complaint.

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).

13 18. To effect this goal, Proposition 65 requires that individuals be provided with a 14 "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 16 part:

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....

21 19. Proposition 65 provides that any person who "violates or threatens to violate" the 22 statute "may be enjoined in any court of competent jurisdiction." (H&S Code §25249.7(a).) 23 "Threaten to violate" is defined to mean creating "a condition in which there is a substantial 24 probability that a violation will occur." (H&S Code §25249.11(e).) Violators are liable for civil 25 penalties of up to \$2,500 per day for each violation of Proposition 65. (H&S Code §25249.7(b).)

FACTUAL BACKGROUND

27 20. On February 27, 1987, the State of California officially listed the chemical lead as 28 a chemical known to cause developmental and reproductive toxicity. Lead became subject to the

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1 warning requirement one year later and was therefore subject to the "clear and reasonable" 2 warning requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of 3 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.)

8 22. Plaintiff is informed and believes, and based on such information and belief, 9 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in 10 California without the requisite clear and reasonable warnings before, on, and after January 31, 11 2011. THE PRODUCTS continue to be marketed, distributed and sold in California without the 12 requisite warning information.

23. 13 As a proximate result of acts by Defendants, as a person in the course of doing 14 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of California, including in the County of Alameda, have been exposed to lead without clear and 16 reasonable warnings. The individuals subject to exposures to lead include normal and 17 foreseeable users of THE PRODUCTS, as well as all other persons exposed to THE PRODUCTS. 18

19 24. At all times relevant to this action, Defendants have knowingly and intentionally 20 exposed the users and/or handlers of THE PRODUCTS to lead without first giving clear and 21 reasonable warnings to such individuals.

22 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 23 24 California, as applicable.

25 26. At all times relevant to this action, each Defendant has, in the course of doing 26 business, failed to provide individuals using and/or handling THE PRODUCTS with clear and 27 reasonable warnings that THE PRODUCTS expose individuals to lead.

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27. THE PRODUCTS continues to be marketed, distributed, and/or sold in California

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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.

6 29. On January 31, 2014 and April 4, 2014, Plaintiff sent separate 60-Day Notice of Proposition 65 Violations to the requisite public enforcement agencies ("Notices of Violations"). 8 The Notices of Violations were issued pursuant to, and in compliance with, the requirements of 9 H&S Code §25249.7(d) and the statute's implementing regulations regarding the notices of 10 violations to be given to certain public enforcement agencies and to the violator. The Notices of Violations were issued as follows:

1. Defendants LIVING ECOLOGY INC. and LIVING ECOLOGY

MANUFACTURING INC. and the California Attorney General were provided copies of the Notices of Violations, along with a Certificates 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 Certificates of Merit.

2. Defendants LIVING ECOLOGY INC. and LIVING ECOLOGY MANUFACTURING INC. were provided with the Notices 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.

3. The California Attorney General was provided, with the Notices of Violations, additional factual information sufficient to establish a basis for the Certificates 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 Defendants
 based on the allegations herein.

3 31. By committing the acts alleged in this Complaint, Defendants at all times relevant 4 to this action, and continuing through the present, have violated and continue to violate H&S 5 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 6 7 allowable exposure levels without Defendants first giving clear and reasonable warnings to such 8 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured, 9 packaged, distributed, marketed, sold and/or have otherwise been involved in the chain of 10 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise 11 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are, 12 and will be used and/or handled by individuals in California, without Defendants providing clear 13 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer, 14 birth defects and other reproductive harm posed by exposure to lead through the use and/or 15 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided 16 17 for use and/or handling to individuals in California.

By the above-described acts, Defendants have violated H&S Code §25249.6 and
are therefore subject to an injunction ordering Defendants 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).

24 34. Continuing commission by Defendants of the acts alleged above will irreparably
25 harm the citizens of the State of California, for which harm they have no plain, speedy, or
26 adequate remedy at law.

27 35. Wherefore, Plaintiff prays judgment against Defendants, as set forth hereafter.
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1	SECOND CAUSE OF ACTION					
2	(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq.)					
3	36. Plaintiff hereby incorporates by reference each and every preceding allegation and					
4	paragraph as though fully set forth in this cause of action.					
5	37. On January 31, 2014 and April 4, 2014, Plaintiff sent separate 60-Day Notice of					
6	Proposition 65 Violations to the requisite public enforcement agencies ("Notices of Violations").					
7	The Notices of Violations were issued pursuant to, and in compliance with, the requirements of					
8	H&S Code §25249.7(d) and the statute's implementing regulations regarding the notices of					
9	violations to be given to certain public enforcement agencies and to the violator. The Notices of					
10	Violations were issued as follows:					
11	1. Defendants LIVING ECOLOGY INC. and LIVING ECOLOGY					
12	MANUFACTURING INC. and the California Attorney General were provided					
13	copies of the Notices of Violations, along with a Certificates of Merit by the					
14	attorney for the noticing party stating that there is a reasonable and meritorious					
15	cause for this action. The requisite county district attorneys and city attorneys					
16	were provided copies of the Notices of Violations and Certificates of Merit.					
17	2. Defendants LIVING ECOLOGY INC. and LIVING ECOLOGY					
18	MANUFACTURING INC. were provided with the Notices of Violations, a copy					
19	of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of					
20	1986 (Proposition 65): A Summary," which is also known as Appendix A to Title					
21	27 of CCR § 25903.					
22	3. The California Attorney General was provided, with the Notices of Violations,					
23	additional factual information sufficient to establish a basis for the Certificate of					
24	Merit, including the identity of the persons consulted with and relied on by the					
25	certifier, and the facts, studies, or other data reviewed by those persons, pursuant					
26	to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).					
27	38. The appropriate public enforcement agencies have failed to commence and					
28	diligently prosecute a cause of action under H&S Code §25249.5, et seq. against Defendants					
	-9-					
	COMPLAINT					

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1 2 based on the allegations herein.

39. By committing the acts alleged in this Complaint, Defendants at all times relevant 3 to this action, and continuing through the present, have violated and continue to violate H&S 4 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing 5 individuals who use or handle THE PRODUCTS to the chemical lead at levels exceeding allowable exposure levels without Defendants first giving clear and reasonable warnings to such 6 7 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured, 8 packaged, distributed, marketed, sold and/or have otherwise been involved in the chain of 9 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise 10 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 Defendants providing clear 11 12 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer, 13 birth defects and other reproductive harm posed by exposure to lead through the use and/or 14 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided 15 16 for use and/or handling to individuals in California.

40. By the above-described acts, Defendants are 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.

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THE NEED FOR INJUNCTIVE RELIEF

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

42. By committing the acts alleged in this Complaint, Defendants have caused
irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence of
equitable relief, Defendants 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.

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1		PRAYER FOR RELIEF			
2		Wherefore, Plaintiff prays for the following relief against Defendants LIVING			
3		ECOLOGY INC. and LIVING ECOLOGY MANUFACTURING INC.:			
4	A.	A. A preliminary and permanent injunction enjoining the Defendants, each of its			
5		agents, employees, assigns and all persons acting in concert or participating with each			
6	Defendant, f	Defendant, from manufacturing, packaging, distributing, marketing and/or selling THE			
7	PRODUCTS for sale or use in California without first providing clear and reasonable warnings,				
8	within the m	within the meaning of Proposition 65, that the users and/or handlers of THE PRODUCTS are			
9	exposed to the	he lead;			
10	B.	B. An assessment of civil penalties against each Defendant, pursuant to Health &			
11	Safety Code	Code §25249.7(b), in the amount of \$2,500 per day for each violation of Proposition 65;			
12	C.	C. An award to Plaintiff of its reasonable attorney fees pursuant to California Code			
13	of Civil Proc	ocedure §1021.5 or the substantial benefit theory;			
14	D.	An award of costs of suit herein; and			
15	E.	Such other and further relief as may be just and proper.			
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17	Dated [.] Nove	ember 13, 2014	WRAITH LAW		
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19			William Fhlaith By:		
20			WILLIAM F. WRAITH		
21			Attorney for Plaintiff Environmental Research Center		
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			COMPLAINT		

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