

1 ELLISON FOLK (State Bar No. 149232)
LAURA BEATON (State Bar No. 294466)
2 SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
3 San Francisco, CA 94102
Telephone: (415) 552-7272
4 Facsimile: (415) 552-5816
Folk@smwlaw.com
5 Miljanich@smwlaw.com

6 Attorneys for As You Sow

FILED
SAN FRANCISCO COUNTY
SUPERIOR COURT
2014 JUL 18 AM 9:52
CLERK OF THE COURT
BY: _____ DEPUTY CLERK

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10
11 As You Sow, a California Non-Profit Public
Benefit Corporation,
12 Plaintiff,
13
14 v.
15 Garden of Life, LLC., and DOES 1 through
10, inclusive,
16 Defendants.

Case No. **CGC 14-540621**
**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**
California Health and Safety Code § 25249.5
et seq.

1 Plaintiff AS YOU SOW alleges as follows:

2 **I. INTRODUCTION**

3 1. This complaint seeks an injunction and civil penalties to remedy the continuing
4 failure of Garden of Life, LLC. (“Defendant”) to give clear and reasonable warnings to residents
5 of California prior to exposing those residents to products containing lead and cadmium. The
6 State of California has listed lead as a chemical known to cause cancer and birth defects and
7 reproductive harm. Cadmium is listed as a chemicals known to cause birth defects or
8 reproductive harm when ingested. Under the Safe Drinking Water and Toxic Enforcement Act
9 of 1986, Health and Safety Code section 25249.6, also known as “Proposition 65,” businesses
10 must provide persons with a “clear and reasonable warning” before exposing them to such
11 chemicals.

12 **II. PARTIES**

13 2. Plaintiff, As You Sow, is a 501(c)(3) nonprofit organization based in San
14 Francisco, California, and incorporated under the laws of the State of California. As You Sow is
15 dedicated to, among other causes, the protection of the environment, the promotion of human
16 health, the improvement of worker and consumer safety, and environmental education. As You
17 Sow is a “person” pursuant to Health and Safety Code section 25249.11(a). As You Sow brings
18 this action in the interest of the general public pursuant to Health and Safety Code section
19 25249.7.

20 3. Defendant Garden of Life LLC. is a business entity that manufactures, distributes,
21 markets, and/or sells protein powders, which contain lead and cadmium, to consumers within the
22 State of California.

23 4. The true names and capacities of Defendants sued herein as Does 1 through 10 are
24 unknown to plaintiff, who therefore sues them by fictitious names. Plaintiff will amend this
25 complaint to allege the true names and capacities of these Defendants when they have been
26 determined. Each of the fictitiously named Defendants is responsible for the manufacture,
27 distribution, marketing, and/or sale of products containing lead and cadmium to consumers in
28 California.

1 No person in the course of doing business shall knowingly and intentionally
2 expose any individual to a chemical known to the state to cause cancer or
3 reproductive toxicity without first giving clear and reasonable warning to such
individual, except as provided in Health and Safety Code section 25249.10.

4 15. Regulations promulgated to implement Proposition 65 provide that the warning
5 method “must be reasonably calculated, considering the alternative methods available under the
6 circumstances, to make the warning message available to the individual prior to exposure.” 27
7 Cal. Code Regs. § 25601(a).

8 17. Proposition 65 also establishes a procedure by which the state is to develop a list
9 of chemicals “known to the State to cause cancer or reproductive toxicity.” Health & Saf. Code
10 § 25249.8. No warning need be given concerning a listed chemical until one year after the
11 chemical first appears on the list.

12 18. Proposition 65 provides that any person “violating or threatening to violate” the
13 statute may be enjoined in any court of competent jurisdiction. Health & Saf. Code § 25249.7.
14 To “threaten to violate” is defined to mean “to create a condition in which there is a substantial
15 probability that a violation will occur.” Health & Saf. Code § 25249.11(e). In addition,
16 violators are liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a
17 civil action. Health & Saf. Code § 25249.7(b).

18 19. Private actions to enforce Proposition 65 “may be brought by any person in the
19 public interest” if the action is commenced more than sixty days from the date that the person
20 has given notice of an alleged violation of Health and Safety Code sections 25249.5 or 25249.6
21 to the Attorney General, and the District Attorney, City Attorney, or prosecutor in whose
22 jurisdiction the violation occurred and to the alleged violator. A certificate of merit shall be
23 included with the notification to the Attorney General, District Attorney, City Attorney, or
24 prosecutor in each jurisdiction where the violation occurred. If no public prosecutors commence
25 enforcement within sixty days, then the person giving notice may sue.

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

V. FACTS

20. Cadmium is listed under Proposition 65 as a chemical known to the State of California to cause reproductive harm. Lead is listed under Proposition 65 as a chemical known to the State of California to cause reproductive harm and cancer.

21. Defendant manufactures, distributes, markets, and/or sells products that contain lead and cadmium for sale or use in the State of California. Specifically, Defendant sold to consumers in the State of California the following products containing lead and cadmium:

- Garden of Life Raw Protein Beyond Organic Protein Formula Chocolate Cacao Flavor, which is manufactured by Garden of Life LLC and sold in California.
- Garden of Life Raw Protein Beyond Organic Protein Formula Original Flavor, which is manufactured by Garden of Life LLC and sold in California.
- Garden of Life Perfect Food Raw Organic Green Super Food Chocolate Cacao Flavor, which is manufactured by Garden of Life LLC and sold in California.
- Garden of Life Raw Meal Beyond Organic Snack And Meal Replacement Vanilla Spiced Chai Flavor, which is manufactured by Garden of Life LLC and sold in California.

22. Use of the products identified in Paragraph 21, above, results in human exposure to lead and cadmium through direct ingestion when consumers use the products as directed on the label.

23. Defendant knew or reasonably should have known that the product that it manufactured, distributed, marketed, and/or sold contained lead and cadmium. Defendant has intended that individuals use and handle this product. Defendant has had knowledge that individuals use the product that Defendant has manufactured, distributed, marketed, and/or sold. Defendant has knowingly and intentionally exposed individuals to lead and cadmium through its deliberate act(s) of manufacturing, distributing, marketing, and/or selling the product.

24. The product described in this complaint was tested in a certified laboratory, and found to contain sufficiently high levels of lead and cadmium to necessitate clear and reasonable warnings, under Proposition 65, that use of the product results in exposure to a chemical known to the State of California to cause cancer and reproductive harm.

1 5. Grant such other and further relief as the court deems just and proper.

2
3 DATED: July 18, 2014

SHUTE, MIHALY & WEINBERGER LLP

4
5
6 By: 

ELLISON FOLK
LAURA BEATON

7
8 Attorneys for As You Sow

9 607939.2

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28