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FILED BY FAX
 ALAMEDA COUNTY

April 29, 2016

CLERK OF
 THE SUPERIOR COURT
 By Burt Moskaira, Deputy

CASE NUMBER:

RG16813816

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 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF ALAMEDA**

10 ENVIRONMENTAL RESEARCH CENTER,
 11 INC., a non-profit California corporation,

12 Plaintiff,

13 v.

14 HALLELUJAH ACRES, INCORPORATED
 individually and doing business as
 15 HALLELUJAH DIET and DOES 1-25,
 Inclusive,

16 Defendant.
 17

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 Plaintiff Environmental Research Center, Inc. ("PLAINTIFF" or "ERC") brings this
 20 action in the interests of the general public and, on information and belief, hereby alleges:

21 **INTRODUCTION**

22 1. This action seeks to remedy the continuing failure of Defendant HALLELUJAH
 23 ACRES, INCORPORATED individually and doing business as HALLELUJAH DIET, and
 24 DOES 1-25 (collectively referred to as "HALLELUJAH" or "DEFENDANT") to warn
 25 consumers in California that they are being exposed to lead, a substance known to the State of
 26 California to cause cancer, birth defects, and other reproductive harm. HALLELUJAH

1 manufactures, packages, distributes, markets, and/or sells in California the following products
2 containing lead (collectively, the “PRODUCTS”):

- 3 1) Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Original
- 4 2) Hallelujah Acres Inc. Fiber Cleanse
- 5 3) Hallelujah Acres Inc. HD Hallelujah Diet Fiber Cleanse Green Apple
- 6 4) Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Alfalfa Free
- 7 5) Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Berry
- 8 6) Hallelujah Acres Inc. Fiber Cleanse Lemon
- 9 7) Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Mint
- 10 8) Hallelujah Acres Inc. HD Hallelujah Diet Fiber Cleanse Original
- 11 9) Hallelujah Acres Inc. HD Hallelujah Diet Beetmax
- 12 10) Hallelujah Acres Inc. HD Hallelujah Diet Advanced SuperFood Plain
- 13 11) Hallelujah Acres Inc. HD Hallelujah Diet Advanced SuperFood Berry
- 14 Flavored
- 15 12) Hallelujah Acres Inc. HD Hallelujah Diet Triomax
- 16 13) Hallelujah Acres Inc. HD Hallelujah Diet Organic Essential Protein

17 2. Lead (hereinafter, the “LISTED CHEMICAL”) is a substance known to the State¹
18 of California to cause cancer, birth defects, and other reproductive harm.

19 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED
20 CHEMICAL at levels requiring a “clear and reasonable warning” under California's Safe
21 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”)
22 §25249.5, *et seq.* (also known as “Proposition 65”). HALLELUJAH has failed to provide the
23 health hazard warnings required by Proposition 65.

24 4. HALLELUJAH’S past sales and continued manufacturing, packaging,
25 distributing, marketing and/or sales of the PRODUCTS without the required health hazard

26 _____
¹ All statutory and regulatory references herein are to California law, unless otherwise specified.

1 warnings, cause individuals to be involuntarily and unwittingly exposed to levels of the
2 LISTED CHEMICAL that violate Proposition 65.

3 5. PLAINTIFF seeks injunctive relief enjoining HALLELUJAH from the
4 continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS
5 in California without provision of clear and reasonable warnings regarding the risks of cancer,
6 birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICAL
7 through the use and/or handling of the PRODUCTS. PLAINTIFF seeks an injunctive order
8 compelling HALLELUJAH to bring its business practices into compliance with Proposition 65
9 by providing a clear and reasonable warning to each individual who has been and who in the
10 future may be exposed to the LISTED CHEMICAL from the use of the PRODUCTS.
11 PLAINTIFF also seeks an order compelling HALLELUJAH to identify and locate each
12 individual person who in the past has purchased the PRODUCTS, and to provide to each such
13 purchaser a clear and reasonable warning that the use of the PRODUCTS will cause exposures
14 to the LISTED CHEMICAL.

15 6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil
16 penalties up to the maximum civil penalty of \$2,500 per day per exposure authorized by
17 Proposition 65 to remedy HALLELUJAH'S failure to provide clear and reasonable warnings
18 regarding exposures to the LISTED CHEMICAL.

19 **JURISDICTION AND VENUE**

20 7. This Court has jurisdiction over this action pursuant to California Constitution
21 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes
22 except those given by statute to other trial courts." The statute under which this action is
23 brought does not specify any other basis for jurisdiction.

24 8. This Court has jurisdiction over HALLELUJAH because, based on information
25 and belief, HALLELUJAH is a business having sufficient minimum contacts with California,
26 or otherwise intentionally availing itself of the California market through the distribution and

1 sale of the PRODUCTS in the State of California to render the exercise of jurisdiction over it
2 by the California courts consistent with traditional notions of fair play and substantial justice.

3 9. Venue in this action is proper in the Alameda Superior Court because
4 HALLELUJAH has violated California law in the County of Alameda.

5 **PARTIES**

6 10. PLAINTIFF is a non-profit corporation organized under California's
7 Corporation Law. ERC is dedicated to, among other causes, reducing the use and misuse of
8 hazardous and toxic substances, consumer protection, worker safety, and corporate
9 responsibility.

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

12 12. Defendant HALLELUJAH ACRES, INCORPORATED individually and doing
13 business as HALLELUJAH DIET is a North Carolina corporation which ERC alleges on
14 information and belief is a person within the meaning of H&S Code §25249.11(a).

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

21 14. Defendants DOES 1-25 are named herein under fictitious names, as their true
22 names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon
23 alleges, that each of said DOES has manufactured, packaged, distributed, marketed, sold and/or
24 has otherwise been involved in the chain of commerce of, and continues to manufacture,
25 package, distribute, market, sell, and/or otherwise be involved in the chain of commerce of the
26 PRODUCTS for sale or use in California, and/or is responsible, in some actionable manner, for

1 the events and happenings referred to herein, either through its conduct or through the conduct
2 of its agents, servants or employees, or in some other manner, causing the harms alleged
3 herein. Plaintiff will seek leave to amend this Complaint to set forth the true names and
4 capacities of DOES when ascertained.

5 15. Plaintiff is informed and believes and thereon alleges that each Defendant is in
6 some manner responsible for the events set forth in this Complaint and proximately caused the
7 injuries and damages to Plaintiff as alleged in this Complaint.

8 **STATUTORY BACKGROUND**

9 16. The People of the State of California have declared in Proposition 65 their right
10 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
11 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

12 17. To effect this goal, Proposition 65 requires that individuals be provided with a
13 "clear and reasonable warning" before being exposed to substances listed by the State of
14 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
15 part:

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

18 18. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release
19 of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
20 knowledge that the discharge, release or exposure is unlawful is required.” (27 California
21 Code of Regulations (“CCR”) § 25102(n).)

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

1 §25249.7.)

2 **FACTUAL BACKGROUND**

3 20. On February 27, 1987, the State of California officially listed the chemical lead
4 as a chemical known to cause reproductive toxicity. Lead became subject to the warning
5 requirement one year later and was therefore subject to the “clear and reasonable” warning
6 requirements of Proposition 65 beginning on February 27, 1988. (27 CCR § 25000, *et seq.*;
7 H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum allowable dose
8 level for lead is 0.5 ug/day (micrograms a day) for reproductive toxicity. (27 CCR
9 § 25805(b).)

10 21. On October 1, 1992, the State of California officially listed the chemicals lead
11 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became
12 subject to the warning requirement one year later and were therefore subject to the “clear and
13 reasonable” warning requirements of Proposition 65 beginning on October 1, 1993 (27 CCR §
14 25000, *et seq.*; H&S Code §25249.6 *et seq.*). Due to the carcinogenicity of lead, the no
15 significant risk level for lead is 15 ug/day (micrograms a day). (27 CCR § 25705(b)(1).)

16 22. On August 28, 2015, PLAINTIFF sent a 60-Day Notice of Proposition 65
17 (“Notice”) violations to the requisite public enforcement agencies, and to HALLELUJAH.
18 The Notice was issued pursuant to, and in compliance with, the requirements of H&S Code
19 §25249.7(d) and the statute's implementing regulations regarding the notice of the violations to
20 be given to certain public enforcement agencies and to the violators. A true and correct copy
21 of the 60-Day Notice is attached hereto as **Exhibit A** and incorporated by reference. The
22 Notice was issued as follows:

- 23 a. HALLELUJAH and the California Attorney General were provided copies
24 of the Notices of Violations, along with a Certificate of Merit by the
25 attorney for the noticing party stating that there is a reasonable and
26 meritorious cause for this action. The requisite county district attorneys and

1 city attorneys were provided copies of the Notices of Violations and
2 Certificates of Merit.

3 b. HALLELUJAH was provided, with the Notices of Violations, a copy of a
4 document entitled “The Safe Drinking Water and Toxic Enforcement Act of
5 1986 (Proposition 65): A Summary,” which is also known as Appendix A to
6 Title 27 of CCR § 25903.

7 c. The California Attorney General was provided, with the Notices of
8 Violations, additional factual information sufficient to establish a basis for
9 the Certificates of Merit, including the identity of the persons consulted with
10 and relied on by the certifier, and the facts, studies, or other data reviewed
11 by those persons, pursuant to H&S Code §§25249.7(d)(1) and
12 25249.7(h)(2).

13 23. At least 60-days have elapsed since PLAINTIFF sent the NOTICE to
14 HALLELUJAH. The appropriate public enforcement agencies have failed to commence and
15 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against
16 HALLELUJAH based on the allegations herein.

17 24. Plaintiff is informed and believes, and based on such information and belief,
18 alleges the PRODUCTS have been marketed, distributed, and/or sold to individuals in
19 California allegedly been sold by HALLELUJAH for use in California without the requisite
20 clear and reasonable warnings before, on, and after August 28, 2012. The PRODUCTS
21 continue to be distributed and sold in California without the requisite warning information.

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

1 clear and reasonable warning.'

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

4 34. Continuing commission by HALLELUJAH of the acts alleged above will
5 irreparably harm the citizens of the State of California, for which harm they have no plain,
6 speedy, or adequate remedy at law.

7 35. Wherefore, PLAINTIFF prays for judgment against HALLELUJAH, as set forth
8 hereafter.

9 **SECOND CAUSE OF ACTION**
10 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
11 **PRODUCTS described in PLAINTIFF's NOTICE)**
12 **Against HALLELUJAH**

13 36. PLAINTIFF re-alleges and incorporates by reference each and every preceding
14 allegation and paragraph as though fully set forth in this cause of action.

15 37. By committing the acts alleged in this Complaint, HALLELUJAH at all times
16 relevant to this action, and continuing through the present, has violated H&S Code §25249.6
17 by, in the course of doing business, knowingly and intentionally exposing individuals who use
18 or handle the PRODUCTS set forth in the Notice to the LISTED CHEMICAL, without first
19 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§
20 25249.6 and 25249.11(f).

21 38. By the above-described acts, HALLELUJAH is liable, pursuant to H&S Code
22 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to
23 the LISTED CHEMICAL from the PRODUCTS.

24 39. Wherefore, PLAINTIFF prays for judgment against HALLELUJAH, as set
25 forth hereafter.

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1 **THE NEED FOR INJUNCTIVE RELIEF**

2 40. PLAINTIFF re-alleges and incorporates by this reference each and every
3 preceding allegation and paragraph as though fully set forth in this cause of action.

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

9 **PRAYER FOR RELIEF**

10 Wherefore, PLAINTIFF accordingly prays for the following relief:

11 A. A preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
12 enjoining HALLELUJAH, its agents, employees, assigns and all persons acting in concert or
13 participating with HALLELUJAH, from distributing or selling the PRODUCTS in California
14 without first providing a clear and reasonable warning, within the meaning of Proposition 65,
15 that the users and/or handlers of the PRODUCTS are exposed to the LISTED CHEMICAL;

16 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling
17 DEFENDANTS to identify and locate each individual who has purchased the PRODUCTS
18 since August 28, 2012, and to provide a warning to such person that the use of the
19 PRODUCTS will expose the user to chemicals known to cause birth defects and other
20 reproductive harm;

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

23 D. An award to PLAINTIFF of its reasonable attorney's fees and costs pursuant to
24 California Code of Civil Procedure §1021.5 or the substantial benefit theory;

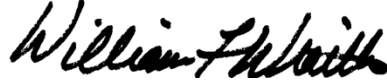
25 E. An award of costs of suit herein; and

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1 F. Such other and further relief as may be just and proper.
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4 Dated: April 29, 2016

WRAITH LAW



6 By: _____

7 WILLIAM F. WRAITH
8 Attorney for Plaintiff
9 Environmental Research
10 Center
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EXHIBIT A