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FILED BY FAX
 ALAMEDA COUNTY
 July 22, 2015
 CLERK OF
 THE SUPERIOR COURT
 By Burt Moskaira, Deputy
 CASE NUMBER:
RG15778780

4 Attorneys for Plaintiff
 5 Environmental Research Center

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 8 SUPERIOR COURT OF CALIFORNIA
 9 COUNTY OF ALAMEDA

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

14 Plaintiffs,

15 vs.

16 LIVING ECOLOGY INC, LIVING
 ECOLOGY MANUFACTURING INC.
 17 and DOES 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. (“Plaintiff”) brings this action in the
 21 interests of the general public and, on information 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 cadmium, a substance known to the State of California to cause
 27 cancer, birth defects and other reproductive harm.

28 2. Defendants have manufactured, packaged, distributed, marketed, sold and/or have

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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 cadmium 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. Organic Food Bar Inc. Raw Organic Food Bar Cinnamon Raisin
- 7 2. Organic Food Bar Inc. Raw Organic Food Bar Chocolatey Chocolate Chip
- 8 3. Organic Food Bar Inc. Organic Food Bar High Energy Protein
- 9 4. Organic Food Bar Inc. Organic Food Bar High Energy Vegan
- 10 5. Organic Food Bar Inc. Organic Food Bar Vegan Protein Vanilla

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

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

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

20 5. Plaintiff seeks injunctive relief enjoining Defendants from the continued
21 manufacturing, packaging, distributing, marketing and/or selling of THE PRODUCTS for sale or
22 use in California without first providing clear and reasonable warnings, within the meaning of
23 Proposition 65, regarding the risks of cancer, birth defects and other reproductive harm posed by
24 exposure to cadmium through the use and/or handling of THE PRODUCTS. Plaintiff seeks an
25 injunctive order compelling Defendants to bring each of its business practices into compliance
26 with Proposition 65 by providing clear and reasonable warnings to each individual who may be
27 exposed to cadmium from the use and/or handling of THE PRODUCTS. Plaintiff also seeks an
28 order compelling Defendants to identify and locate each individual person who in the past has

1 purchased THE PRODUCTS, and to provide to each such purchaser a clear and reasonable
2 warning that the use of THE PRODUCTS will cause exposures to cadmium.

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

6 JURISDICTION AND VENUE

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

11 8. This Court has jurisdiction over Defendants because, based on information and
12 belief, each Defendant is a business having sufficient minimum contacts with California, or
13 otherwise intentionally availing itself of the California market through the marketing,
14 distribution and/or sale of THE PRODUCTS in the State of California to render the exercise of
15 jurisdiction over it by the California courts consistent with traditional notions of fair play and
16 substantial justice.

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

22 PARTIES

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

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

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

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

6 14. Each Defendant manufactured, packaged, distributed, marketed, sold and/or has
7 otherwise been involved in the chain of commerce, and continues to manufacture, package,
8 distribute, market, sell and/or otherwise continue to be involved in the chain of commerce of
9 THE PRODUCTS for sale or use in California. Plaintiff alleges on information and belief that
10 each Defendant employs ten or more persons, and is thus each a “person in the course of doing
11 business” within the meaning of Proposition 65.

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

22 16. Plaintiff is informed and believes and thereon alleges that each Defendant is in
23 some manner responsible for the events set forth in this Complaint and proximately caused the
24 injuries and damages to Plaintiff as alleged in this Complaint.

25 **STATUTORY BACKGROUND**

26 17. The People of the State of California have declared in Proposition 65 their right
27 “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
28 reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

1 18. To effect this goal, Proposition 65 requires that individuals be provided with a
2 “clear and reasonable warning” before being exposed to substances listed by the State of
3 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
4 part:

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

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

14 FACTUAL BACKGROUND

15 20. On May 1, 1997, the State of California officially listed the chemical cadmium as
16 a chemical known to cause reproductive toxicity. Cadmium became subject to the warning
17 requirement one year later and was therefore subject to the “clear and reasonable” warning
18 requirements for Proposition 65 beginning on May 1, 1998. (27 CCR § 25000, *et seq.*; H&S
19 Code §25249.5, *et seq.*) Due to the high toxicity of cadmium, the maximum allowable dose
20 level for cadmium is 4.1 ug/day (micrograms a day) for reproductive toxicity. (27 CCR
21 § 25805(b).)

22 21. On October 1, 1987, the State of California officially listed the chemicals
23 cadmium and cadmium compounds as chemicals known to cause cancer. Cadmium and
24 cadmium compounds became subject to the warning requirement one year later and were
25 therefore subject to the “clear and reasonable” warning requirements of Proposition 65 beginning
26 on October 1, 1988 (27 CCR § 25000, *et seq.*; H&S Code §25249.6 *et seq.*).

27 22. Plaintiff is informed and believes, and based on such information and belief,
28 alleges THE PRODUCTS have been marketed, distributed and/or sold to individuals in

1 California without the requisite clear and reasonable warnings before, on, and April 10, 2012.
2 THE PRODUCTS continue to be marketed, distributed and sold in California without the
3 requisite warning information.

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

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

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

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

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

21 **FIRST CAUSE OF ACTION**

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

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

25 29. On April 10, 2015, Plaintiff sent a 60-Day Notice of Proposition 65 Violations to
26 the requisite public enforcement agencies (“Notice of Violations”). The Notice of Violations was
27 issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the
28 statute’s implementing regulations regarding the notices of violations to be given to certain

1 public enforcement agencies and to the violator. The Notice of Violations was issued as follows:

2 1. Defendants LIVING ECOLOGY INC. and LIVING ECOLOGY
3 MANUFACTURING INC. and the California Attorney General were provided a
4 copy of the Notice of Violations, along with a Certificates of Merit by the
5 attorney for the noticing party stating that there is a reasonable and meritorious
6 cause for this action. The requisite county district attorneys and city attorneys
7 were provided a copy of the Notice of Violations and Certificates of Merit.

8 2. Defendants LIVING ECOLOGY INC. and LIVING ECOLOGY
9 MANUFACTURING INC. were provided with the Notice of Violations, a copy
10 of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of
11 1986 (Proposition 65): A Summary," which is also known as Appendix A to Title
12 27 of CCR § 25903.

13 3. The California Attorney General was provided, with the Notice of Violations,
14 additional factual information sufficient to establish a basis for the Certificates of
15 Merit, including the identity of the persons consulted with and relied on by the
16 certifier, and the facts, studies, or other data reviewed by those persons, pursuant
17 to H&S Code §§25249.7(d)(1) and 25249.7(h)(2).

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

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

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

8 32. By the above-described acts, Defendants have violated H&S Code §25249.6 and
9 are therefore subject to an injunction ordering Defendants to stop violating Proposition 65, and to
10 provide required warnings to consumers and other individuals who will purchase, use and/or
11 handle THE PRODUCTS.

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

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

17 35. Wherefore, Plaintiff prays judgment against Defendants, as set forth hereafter.

18 **SECOND CAUSE OF ACTION**

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

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

22 37. On April 10, 2015, Plaintiff sent a 60-Day Notice of Proposition 65 Violations to
23 the requisite public enforcement agencies (“Notice of Violations”). The Notice of Violations was
24 issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and the
25 statute’s implementing regulations regarding the notices of violations to be given to certain
26 public enforcement agencies and to the violator. The Notice of Violations was issued as follows:

- 27 1. Defendants LIVING ECOLOGY INC. and LIVING ECOLOGY
28 MANUFACTURING INC. and the California Attorney General were provided

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1 copies of the Notice of Violations, along with a Certificates of Merit by the
2 attorney for the noticing party stating that there is a reasonable and meritorious
3 cause for this action. The requisite county district attorneys and city attorneys
4 were provided a copy of the Notice of Violations and Certificates of Merit.

5 2. Defendants LIVING ECOLOGY INC. and LIVING ECOLOGY

6 MANUFACTURING INC. were provided with the Notice of Violations, a copy
7 of a document entitled "The Safe Drinking Water and Toxic Enforcement Act of
8 1986 (Proposition 65): A Summary," which is also known as Appendix A to Title
9 27 of CCR § 25903.

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

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

18 39. By committing the acts alleged in this Complaint, Defendants at all times relevant
19 to this action, and continuing through the present, have violated and continue to violate H&S
20 Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing
21 individuals who use or handle THE PRODUCTS to the chemical cadmium at levels exceeding
22 allowable exposure levels without Defendants first giving clear and reasonable warnings to such
23 individuals pursuant to H&S Code §§25249.6 and 25249.11(f). Defendants have manufactured,
24 packaged, distributed, marketed, sold and/or have otherwise been involved in the chain of
25 commerce of, and continue to manufacture, package, distribute, market, sell and/or otherwise
26 continue to be involved in the chain of commerce of THE PRODUCTS, which have been, are,
27 and will be used and/or handled by individuals in California, without Defendants providing clear
28 and reasonable warnings, within the meaning of Proposition 65, regarding the risks of cancer,

1 birth defects and other reproductive harm posed by exposure to cadmium through the use and/or
2 handling of THE PRODUCTS. Furthermore, Defendants have threatened to violate H&S Code
3 §25249.6 by THE PRODUCTS being marketed, offered for sale, sold and/or otherwise provided
4 for use and/or handling to individuals in California.

5 40. By the above-described acts, Defendants are liable, pursuant to H&S Code
6 §25249.7(b), for a civil penalty of \$2,500 per day for each violation of H&S Code §25249.6
7 relating to THE PRODUCTS.

8 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

16 **PRAYER FOR RELIEF**

17 Wherefore, Plaintiff prays for the following relief against Defendants LIVING
18 ECOLOGY INC. and LIVING ECOLOGY MANUFACTURING INC.:

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

25 B. An assessment of civil penalties against each Defendant, pursuant to Health &
26 Safety 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: July 21, 2015

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

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