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FILED
ALAMEDA COUNTY

MAR 09 2012

CLERK OF THE SUPERIOR COURT
 By [Signature] Deputy

5 Attorneys for Plaintiff
 ENVIRONMENTAL RESEARCH CENTER
 6 Margaret Carew Toledo (SBN 181227)
 7 MENNEMEIER, GLASSMAN & STROUD LLP
 8 980 9th Street, Suite 1700
 Sacramento, CA 95814
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10 Attorneys for Defendant
 11 BARLEAN'S ORGANIC OILS, LLC

12
 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 14 COUNTY OF ALAMEDA

16
 17 ENVIRONMENTAL RESEARCH CENTER,
 a California non-profit corporation,

18 Plaintiff,

19 v.

20 BARLEAN'S ORGANIC OILS, LLC and
 21 DOES 1-100;

22 Defendants.

CASE NO. RG11599984

^{FBM}
~~PROPOSED~~ STIPULATED CONSENT
 JUDGMENT; ~~PROPOSED~~ ORDER

^{FBM}
 Health & Safety Code § 25249.5 et seq.

ACTION FILED: October 14, 2011
 TRIAL DATE: None Set
 HEARING DATE: March 9, 2012
 TIME: 9:00 a.m.
 DEPT.: 25

1 **1. INTRODUCTION**

2 1.1 On October 14, 2011, Plaintiff Environmental Research Center (“ERC”), a non-
3 profit corporation, as a private enforcer and in the public interest, initiated this action by filing its
4 Complaint for civil penalties pursuant to the provisions of California Health & Safety Code
5 section 25249.5, *et seq.* (“Proposition 65”) against Defendant Barlean’s Organic Oils, LLC
6 (“Barlean’s”). ERC alleges that certain products (“Covered Products”) manufactured, distributed
7 and sold by Barlean’s contain lead, a chemical listed under Proposition 65 as a carcinogen and
8 reproductive toxin, and require a Proposition 65 warning. The Covered Products are listed by
9 name in Exhibit A to this Consent Judgment. ERC and Barlean’s shall sometimes be referred to
10 individually as a “Party” or collectively as the “Parties.”

11 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
12 helping safeguard the public from health hazards by bringing about a reduction in the use and
13 misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and
14 employees and encouraging corporate responsibility. ERC has diligently prosecuted this matter
15 and is settling this case in the public interest.

16 1.3 Barlean’s employs ten or more persons. Barlean’s distributes and sells the Covered
17 Products.

18 1.4 The Complaint is based on allegations contained in the Notice of Violation dated
19 January 14, 2011, served on the California Attorney General, other public enforcers, and
20 Barlean’s, by ERC. A true and correct copy of the Notice of Violation is attached hereto as
21 Exhibit B. No public enforcer has filed suit against Barlean’s with regard to the Covered Products
22 or the alleged violations. After receiving the Notice of Violation, Barlean’s reformulated the
23 Covered Products so that the maximum daily dose recommended on the label contains no more
24 than 0.5 micrograms of lead.

25 1.5 ERC’s Notice of Violation and the Complaint in this action allege that Barlean’s
26 exposes persons in California to lead without first providing clear and reasonable warnings, in
27 violation of California Health & Safety Code section 25249.6. Barlean’s denies all material
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1 allegations of the Notice of Violation and the Complaint, has asserted numerous affirmative
2 defenses, and specifically denies that the Covered Products require a Proposition 65 warning or
3 otherwise cause harm to any person.

4 1.6 The Parties have entered into this Consent Judgment in order to settle, compromise
5 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this
6 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission
7 by any of the Parties, or by any of their respective officers, directors, shareholders, employees,
8 agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees,
9 customers, distributors, wholesalers, or retailers, of any fact, conclusion of law, issue of law,
10 violation of law, fault, wrongdoing, or liability, including without limitation, any admission
11 concerning any alleged violation of Proposition 65 nor shall this Consent Judgment be offered or
12 admitted as evidence in any administrative or judicial proceeding or litigation in any court,
13 agency, or forum, except in an action seeking to enforce the terms of this Consent Judgment or for
14 purposes of issue or claim preclusion or any other similar defense.

15 1.7 Except as expressly set forth herein, nothing in this Consent Judgment shall
16 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
17 other or future legal proceeding unrelated to these proceedings.

18 1.8 The Effective Date of this Consent Judgment shall be the date on which it is
19 entered as a judgment by this Court.

20 2. **JURISDICTION AND VENUE**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
23 over Barlean's as to the acts alleged in the Complaint, that venue is proper in the County of
24 Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
25 resolution of all claims which were or could have been asserted in this action based on the facts
26 alleged in the Notice of Violation or the Complaint. This Consent Judgment shall have no
27 application or effect on Barlean's for Covered Products or other products manufactured,
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1 distributed or sold by or on behalf of Barlean's to consumers outside of the state of California.

2 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

3 3.1 On and after the Effective Date, Barlean's shall be permanently enjoined from
4 manufacturing for sale in California, distributing into California, or directly selling to a
5 consumer in California any Covered Product for which the maximum daily dose recommended
6 on the label contains more than 0.5 micrograms of lead, unless such Covered Product complies
7 with the warning requirement set forth in Section 3.2 below. "Distributing into California"
8 means to directly ship a Covered Product into California for sale in California or to sell a
9 Covered Product to a distributor that Barlean's knows will sell the Covered Product in
10 California. This injunction shall not apply to products which Barlean's puts into the stream of
11 commerce before the Effective Date.

12 3.2 Clear and Reasonable Warnings. For those Covered Products that are subject to the
13 warning requirement of Section 3.1, Barlean's shall provide the following warning as specified
14 below:

15 **WARNING:** The product contains [lead,] a chemical known to the State of
16 California to cause [cancer and] birth defects or other reproductive harm.

17 The text in brackets in the warning above is optional, except that the term "cancer" must be
18 included only if the maximum dose recommended on the label contains more than 15 micrograms
19 of lead.

20 3.3 Testing.

21 (a) Once a year, on or before the anniversary of the entry of the Consent Judgment,
22 Barlean's shall test, or require its supplier to test, five (5) randomly selected samples of each
23 Covered Product (in the form intended for sale to the end-user) for lead content. This testing
24 requirement does not apply to a Covered Product for which Barlean's has provided the warning
25 specified in Section 3.2 since the Effective Date or during the preceding year.

26 (b) Testing for lead shall be performed using Inductively Coupled Plasma-Mass
27 Spectrometry ("ICP-MS") and closed-vessel, microwave-assisted digestion employing high-purity
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1 reagents or any other testing method subsequently agreed upon in writing by the Parties.

2 (c) All testing pursuant to this Consent Judgment shall be performed by a laboratory
3 certified by the California Environmental Laboratory Accreditation Program or a laboratory that is
4 registered with the United States Food & Drug Administration.

5 (d) Barlean's shall provide any test results within fifteen (15) business days of any
6 written request from ERC and Barlean's shall retain all test results and documentation for a period
7 of four years from the date of the test.

8 (e) Barlean's shall test the Covered Products for a minimum of three (3) years. If tests
9 conducted pursuant to this Consent Judgment demonstrate that no warning is required for a
10 Covered Product during each of three (3) consecutive years, then the testing requirements of this
11 Section 3.3 are no longer required as to that Covered Product. However, if after the three (3) year
12 period Barlean's changes ingredient suppliers for any of the Covered Products and/or reformulates
13 any of the Covered Products, Barlean's shall test that Covered Product at least once after such
14 change is made.

15 **4. SETTLEMENT PAYMENT**

16 4.1 In full and final satisfaction of all potential civil penalties, payment in lieu of civil
17 penalties, attorney's fees, and costs, Barlean's shall make a total payment of \$70,000.00, payable
18 to the Law Office of Michael Freund (counsel for ERC), within ten (10) business days of receiving
19 the Notice of Entry of this Consent Judgment. Michael Freund shall be responsible for allocating
20 and sending the payments to the other recipients as follows:

21 4.2 \$10,000.00 as civil penalties pursuant to California Health & Safety Code section
22 25249.7(b)(1). Of this amount, \$7,500.00 shall be payable to OEHHA, and \$2,500.00 shall be
23 payable to ERC. Cal. Health & Safety Code §§ 25249.12(c)(1) & (d). ERC's counsel shall
24 forward the civil penalty payment to OEHHA, and send a copy of the transmittal letter to counsel
25 for Barlean's.

26 4.3 \$30,250.00 in lieu of further civil penalties, payable to ERC, for activities such as
27 (1) investigating, researching and testing consumer products that may contain Proposition 65 listed
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1 chemicals; (2) awarding grants to California non-profit foundations/entities dedicated to public
2 health; (3) funding the ERC Eco Scholarship Fund for high school students in California interested
3 in pursuing an education in the field of environmental sciences; (4) funding ERC's Voluntary
4 Compliance Program to work with companies not subject to Proposition 65 to reformulate their
5 products to reduce potential consumer exposures; (5) funding ERC's RxY Program to assist
6 various medical personnel to provide testing assistance to independent distributors of various
7 products; (6) funding ERC's Got Lead? Program to assist consumers in testing products for lead;
8 (7) post-settlement monitoring of past consent judgments; and (8) the continued enforcement of
9 Proposition 65.

10 4.4 \$10,000.00 payable to ERC, as reimbursement to ERC for reasonable investigation
11 costs associated with the enforcement of Proposition 65 and other costs incurred as a result of
12 investigating, bringing this matter to Barlean's attention, litigating and negotiating this settlement
13 in the public interest.

14 4.5 \$15,750.00 payable to Michael Freund and \$4,000.00 payable to Karen Evans as
15 reimbursement of ERC's attorney's fees.

16 **5. MODIFICATION OF CONSENT JUDGMENT**

17 This Consent Judgment may be modified only by written agreement and stipulation of the
18 Parties, or upon noticed motion filed by any Party, followed by entry of a modified consent
19 judgment by the Court.

20 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
21 **JUDGMENT**

22 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate
23 this Consent Judgment.

24 6.2 Only after it complies with Section 10 below, any Party may, by motion or
25 application for an order to show cause filed with this Court, enforce the terms and conditions
26 contained in this Consent Judgment. The prevailing party may request that the Court award its
27 reasonable attorneys' fees and costs associated with such motion or application.

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1 **7. APPLICATION OF CONSENT JUDGMENT**

2 This Consent Judgment shall apply to, be binding upon and benefit the Parties, and their
3 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
4 divisions, affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers,
5 retailers, and all other entities in the distribution chain of any Covered Product, the predecessors,
6 successors and assigns of any of them, and the general public.

7 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

8 8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on
9 behalf of itself, the general public, and in the public interest, and Barlean's, of any alleged
10 violation of Proposition 65 or its implementing regulations, and fully and finally resolves all
11 claims that have been or could have been asserted in this action against Barlean's for failure to
12 provide Proposition 65 warnings for the Covered Products regarding lead. ERC, on behalf of
13 itself, the general public, and in the public interest, hereby releases and discharges Barlean's and
14 its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
15 divisions, affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers,
16 retailers, and all other entities in the distribution chain of any Covered Product, and the
17 predecessors, successors and assigns of any of them (collectively, "Released Parties"), from any
18 and all claims asserted, or that could have been asserted, in this action arising from or related to
19 the alleged failure to provide Proposition 65 warnings for the Covered Products regarding lead.

20 8.2 ERC, on behalf of itself only, hereby releases and discharges the Released Parties
21 from any and all known and unknown past, present, and future rights, claims, causes of action,
22 suits, damages, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees, costs,
23 and expenses arising from or related to the claims asserted, or that could have been asserted, under
24 state or federal law, regarding the presence of lead in the Covered Products or the facts alleged in
25 the Notice of Violation or the Complaint, including without limitation any and all claims
26 concerning exposure of any person to lead in the Covered Products.

27 8.3 Compliance with the terms of this Consent Judgment shall constitute compliance
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1 by the Released Parties with Proposition 65 with respect to alleged exposures to lead contained in
2 the Covered Products.

3 8.4 Unknown Claims. It is possible that other injuries, damages, liability, or claims not
4 now known to the Parties arising out of the facts alleged in the Notice of Violation or the
5 Complaint and relating to the Covered Products will develop or be discovered. ERC, on behalf of
6 itself only, acknowledges that this Consent Judgment is expressly intended to cover and include all
7 such injuries, damages, liability, and claims, including all rights of action therefor. ERC has full
8 knowledge of the contents of California Civil Code section 1542. ERC, on behalf of itself only,
9 acknowledges that the claims released in Sections 8.1 and 8.2 above may include unknown claims,
10 and nevertheless waives California Civil Code section 1542 as to any such unknown claims.

11 California Civil Code section 1542 reads as follows:

12
13 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**
14 **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS**
15 **OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,**
16 **WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY**
17 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”**

18 ERC, on behalf of itself only, acknowledges and understands the significance and consequences
19 of this specific waiver of California Civil Code section 1542.

20 8.5 ERC, on the one hand, and Barlean’s, on the other hand, release and waive all
21 claims they may have against each other for any statements or actions made or undertaken by
22 them in connection with the Notice of Violation or this action.

23 **9. CONSTRUCTION OF CONSENT JUDGMENT, SEVERABILITY,**

24 9.1 The terms and conditions of this Consent Judgment have been reviewed by the
25 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
26 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
27 construction of this Consent Judgment, the terms and conditions shall not be construed against any
28 Party.

1 9.2 In the event that any of the provisions of this Consent Judgment are held by a court
2 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

3 **10. NOTICE AND CURE**

4 10.1 No motion to enforce this Consent Judgment or application to show cause may be
5 filed by ERC, unless ERC notifies Barlean's of the specific acts alleged to breach this Consent
6 Judgment at least forty-five (45) days before filing and serving any such motion or application.
7 Any notice to Barlean's must contain (1) the name of the product; (2) the lead content of the
8 product, with a copy of the analytical results and description of the testing methodology;
9 (3) specific dates when the product was sold in California; (4) the store or other place at which the
10 product was available for sale to California consumers; and (5) any other evidence or other
11 support for the allegations in the notice.

12 10.2 Within thirty (30) days of receiving the notice described in Section 10.1, Barlean's
13 shall either (1) withdraw the product from sale in California, (2) provide the warning described in
14 Section 3.2 for the product, or (3) refute the information provided under Section 10.1. Should the
15 Parties be unable to resolve the dispute, any Party may seek relief under Section 6 of this Consent
16 Judgment.

17 **11. GOVERNING LAW**

18 The terms and conditions of this Consent Judgment shall be governed by and construed in
19 accordance with the laws of the State of California.

20 **12. PROVISION OF NOTICE**

21 All notices required by this Consent Judgment shall be sent by first-class, registered, or
22 certified mail, or overnight delivery, to the following:

23 **For Environmental Research Center:**
24 Chris Heptinstall, Executive Director
25 Environmental Research Center
26 5694 Mission Center Road, # 199
27 San Diego, CA 92108

26 Michael Bruce Freund
27 Law Offices of Michael Freund
28 1915 Addison Street
Berkeley, CA 94704

1 Karen Evans
2 Coordinating Counsel
3 Environmental Research Center
4 4218 Biona Place
5 San Diego, CA 92116

6 **For Barlean's:**
7 Margaret Carew Toledo
8 Mennemeier, Glassman & Stroud LLP
9 980 9th Street, Suite 1700
10 Sacramento, CA 95814

11 Karen Barlean
12 Chief Financial Officer
13 Barlean's Organic Oils, L.L.C.
14 4936 Lake Terrell Rd.
15 Ferndale, Washington 98248

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17 **13. COURT APPROVAL**

18 13.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be void
19 and have no force or effect.

20 13.2 ERC shall comply with California Health & Safety Code section 25249.7(f) and
21 with Title 11 of the California Code Regulations, section 3003.

22 **14. EXECUTION AND COUNTERPARTS**

23 This Stipulated Consent Judgment may be executed in counterparts, which taken together
24 shall be deemed to constitute one document. A facsimile or pdf signature shall be construed as
25 valid as the original signature.

26 **15. ENTIRE AGREEMENT, AUTHORIZATION**

27 15.1 This Consent Judgment contains the sole and entire agreement and understanding
28 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
negotiations, commitments and understandings related hereto. No representations, oral or
otherwise, express or implied, other than those contained herein have been made by any Party. No
other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or
to bind any of the Parties.

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1 15.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized
2 by the Party he or she represents to stipulate to the terms and conditions of this Consent Judgment,
3 to enter into and execute this Consent Judgment on behalf of the Party represented, and legally to
4 bind that Party to this Consent Judgment. The undersigned have read, understand and agree to all
5 of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each
6 Party shall bear its own fees and costs.

7 **IT IS SO STIPULATED:**

8 ENVIRONMENTAL RESEARCH CENTER
9

10 _____ Dated: _____
11 Chris Heptinstall, Executive

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13 BARLEAN'S ORGANIC OILS, LLC
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15 _____ Dated: _____
16 Karen Barlean, Chief Financial Officer

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18 **APPROVED AS TO FORM:**

19 LAW OFFICE OF MICHAEL FREUND
20

21 _____ Dated: _____
22 Michael Freund, Counsel for ERC

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24 MENNEMEIER, GLASSMAN & STROUD LLP
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26 _____ Dated: _____
27 Margaret Carew Toledo, Counsel for Barlean's

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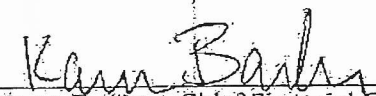
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7 **IT IS SO STIPULATED:**

8 ENVIRONMENTAL RESEARCH CENTER
9

10 _____ Dated: _____
11 Chris Heptinstall, Executive

13 BARLEAN'S ORGANIC OILS, LLC

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15 
16 Karen Barlean, Chief Financial Officer Dated: 12-18-11

18 **APPROVED AS TO FORM:**

19 LAW OFFICE OF MICHAEL FREUND

21 _____ Dated: _____
22 Michael Freund, Counsel for ERC

24 MENNEMEIER, GLASSMAN & STROUD LLP

26 _____ Dated: _____
27 Margaret Carew Toledo, Counsel for Barlean's

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6 Party shall bear its own fees and costs.

7 **IT IS SO STIPULATED:**

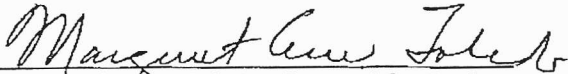
8 ENVIRONMENTAL RESEARCH CENTER

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10 _____ Dated: _____
11 Chris Heptinstall, Executive

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13 BARLEAN'S ORGANIC OILS, LLC
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15 _____ Dated: _____
16 Karen Barlean, Chief Financial Officer

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18 **APPROVED AS TO FORM:**

19 LAW OFFICE OF MICHAEL FREUND
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21 _____ Dated: _____
22 Michael Freund, Counsel for ERC

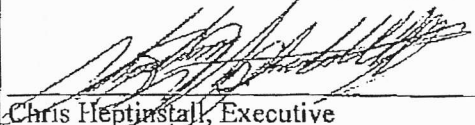
23
24 MENNEMEIER, GLASSMAN & STROUD LLP
25
26  Dated: 12-16-11
27 Margaret Carow Toledo, Counsel for Barlean's

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5 of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each
6 Party shall bear its own fees and costs.

7 **IT IS SO STIPULATED:**

8 ENVIRONMENTAL RESEARCH CENTER

9
10 
11 _____
Chris Heptinstall, Executive

Dated: 12/20/2011


12
13 BARLEAN'S ORGANIC OILS, LLC

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15 _____
16 Karen Barlean, Chief Financial Officer

Dated: _____

17
18 **APPROVED AS TO FORM:**

19 LAW OFFICE OF MICHAEL FREUND

20
21 
22 _____
Michael Freund, Counsel for ERC

Dated: 12/20/11

23
24 MENNEMEIER, GLASSMAN & STROUD LLP

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26 _____
27 Margaret Carew Toledo, Counsel for Barlean's

Dated: _____

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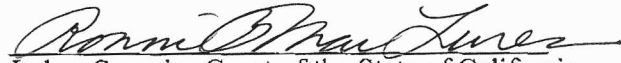
ORDER AND JUDGMENT

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Based upon the Parties' stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: March 9, 2012


Judge, Superior Court of the State of California

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EXHIBIT A

1. Barlean's Greens
2. Barlean's Berry Greens
3. Barlean's Greens Capsules
4. Barlean's Kiwi Strawberry Superfruit Greens
5. Barlean's Cacao Greens Chocolate Silk



Environmental Research Center

5694 Mission Center Road #199
San Diego, CA 92108
619.309.4194

January 14, 2011

VIA CERTIFIED MAIL

Current President or CEO
Barlean's Organic Oils, LLC
4936 Lake Terrell Road
Ferndale, WA 98248

Karen Martin
(Barlean's Organic Oils, LLC's Registered
Agent for Service of Process)
4936 Lake Terrell Road
Ferndale, WA 98248

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The name of the Company covered by this Notice that violated Proposition 65 is:

Barlean's Organic Oils, LLC

The product that is the subject of this Notice and the chemical in that product identified as exceeding allowable levels is:

Barlean's Organic Oils Barlean's Greens Powder Formula/15 Day Supply 132g - Lead

EXHIBIT A

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

January 14, 2011

Page 2

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead as chemical known to cause cancer.

This letter is a Notice to Barlean's Organic Oils, LLC and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving Barlean's Organic Oils, LLC currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, has been provided to the Noticed Company with a copy of this letter.

Barlean's Organic Oils, LLC has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. Barlean's Organic Oils, LLC violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this Notice unless Barlean's Organic Oils, LLC agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC's objectives in pursuing this Notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkeley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



Chris Heptinstall, Executive Director
Environmental Research Center

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Barlean's Organic Oils, LLC and its Registered Agent of Service for Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Barlean's Organic Oils, LLC

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which it is alleged the party identified in the Notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the Notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this Certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 14, 2011



Michael Freund
Attorney for Environmental Research Center

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current President or CEO
Barlean's Organic Oils, LLC
4936 Lake Terrell Road
Ferndale, WA 98248


Karen Martin
(Barlean's Organic Oils, LLC's Registered
Agent for Service of Process)
4936 Lake Terrell Road
Ferndale, WA 98248

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On January 14, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on January 14, 2011, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

District Attorney, Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
708 Court Street, #202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
547 Market Street
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, #1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street
Eureka, CA 95501

District Attorney, Imperial County
939 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Rm 345
Los Angeles, CA 90012

District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin County
3501 Civic Center, Room 130
San Rafael, CA 94903

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced County
2222 M Street
Merced, CA 95340

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Monterey County
230 Church Street, Bldg 2
Salinas, CA 93901

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

District Attorney, Orange County
401 Civic Center Drive West
Santa Ana, CA 92701

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

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District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Riverside County
4075 Main Street, 1st Floor
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 9581

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Room 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Room 325
San Francisco, CA 94103

District Attorney, San Joaquin County
Post Office Box 990
Stockton, CA 95201

District Attorney, San Luis Obispo County
1050 Monterey Street, Room 450
San Luis Obispo, CA 93408

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa Barbara County
1105 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95353

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tulare County
221 S. Mooney Avenue, Room 224
Visalia, CA 93291

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Avenue
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

District Attorney, Yuba County
215 Fifth Street
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Rm 800
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
1 Drive Carlton B Goodlett Place
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

Case Title: Environmental Research Center vs. Barlean's Organic Oils, LLC
Case No. RG11599984

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 1221 Oak Street, Oakland, California. I served the STIPULATED CONSENT JUDGMENT by placing copies in envelopes addressed as shown below and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Michael Freund, Esq.
1919 Addison St., Suite 105
Berkeley, CA 94704

Margaret Carew Toledo
MENNEMEIER, GLASSMAN & STROUD LLP
980 9th St., Suite 1700
Sacramento, CA 95814

Dated: March 12, 2012

Executive Officer/Clerk of the Superior Court



By: *Trinidad R. Bigayan*, Deputy Clerk