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Attorneys for Defendant
San Francisco Herb & Natural Food Co. dba
Nature's Herb Company

ENGROSSED
FILED
ALAMEDA COUNTY

OCT 30 2014

CLERK OF THE SUPERIOR COURT
YOLANDA ESTRADA

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

ENVIRONMENTAL RESEARCH CENTER,
INC.,

Plaintiff,

v.

SAN FRANCISCO HERB & NATURAL
FOOD CO. dba NATURE'S HERB
COMPANY; and DOES 1-50, inclusive,

Defendants.

CASE NO. RG12653042

ASSIGNED FOR ALL PURPOSES TO
JUDGE George C. Hernandez, Jr.
DEPARTMENT 17

STIPULATED CONSENT JUDGMENT

1
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3 **I. INTRODUCTION**

4 1.1 On October 22, 2012, Plaintiff Environmental Research Center (“ERC”), a non-profit
5 corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for
6 Injunctive Relief and Civil Penalties (“Complaint”) pursuant to the provisions of California’s Safe
7 Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.5, *et*
8 *seq.* (also known as and hereinafter referred to as “Proposition 65”), against Defendant SAN
9 FRANCISCO HERB & NATURAL FOOD CO. dba NATURE’S HERB COMPANY (“SAN
10 FRANCISCO HERB” or “Defendant”). ERC and SAN FRANCISCO HERB are hereinafter sometimes
11 referred to individually as a “Party” or collectively as the “Parties”.

12
13 1.2 ERC is a California non-profit corporation dedicated to, among other causes, helping
14 safeguard the public from health hazards by reducing the use and misuse of hazardous and toxic
15 chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate
16 responsibility.

17
18 1.3 SAN FRANCISCO HERB is a California company. The Parties agree there is no dispute
19 that SAN FRANCISCO HERB employs ten or more persons and is a “person in the course of doing
20 business” within the meaning of Proposition 65 for the purposes of this Consent Judgment.

21 1.4 On October 21, 2011 and March 8, 2012, pursuant to California Health and Safety Code
22 § 25249.7(d)(1), ERC served Notices of Violations of Proposition 65 (“Notices of Violations”) on the
23 California Attorney General, other public enforcers, and SAN FRANCISCO HERB. True and correct
24 copies of the Notices of Violations are attached hereto as **Exhibit A**. The Notices of Violations contain
25 allegations that SAN FRANCISCO HERB, without giving a required clear and reasonable warning, have
26 exposed and continue to expose individuals in California to lead, a chemical listed under Proposition 65
27
28

1 as a carcinogen and reproductive toxin, by manufacturing, marketing, distributing and/or selling the
2 products identified in the Notices of Violations. More than 60 days have passed since the service of each
3 of the Notices of Violations, and neither the California Attorney General nor any other public enforcer
4 has filed suit against Defendant with regard to the products identified in the Notices of Violations.
5

6 1.5 The Complaint is based on the October 21, 2011 and March 8, 2012 Notices of Violations
7 and contains allegations that SAN FRANCISCO HERB has exposed and continues to expose persons in
8 California who use and/or handle the products identified in the Notices of Violations to the chemical lead
9 in excess of the exposure levels allowed under Proposition 65 without first providing clear and
10 reasonable warnings, in violation of California Health and Safety Code § 25249.6. SAN FRANCISCO
11 HERB filed an Answer to the Complaint and denies all material allegations, asserts affirmative defenses
12 to the alleged Proposition 65 violations, and specifically denies that those products require Proposition 65
13 warnings or otherwise harm any person.
14

15 1.6 The following forty-one (41) products, which are identified in the Notices of Violations,
16 are the only products covered by this Consent Judgment:

- 17 1. Nature's Herb Co. Fo-ti Root
- 18 2. Nature's Herb Co. Astragalus
- 19 3. Nature's Herb Co. FatLess
- 20 4. Nature's Herb Co. Bob's Blend
- 21 5. Nature's Herb Co. Laxative Blend
- 22 6. Nature's Herb Co. Male Power Formula
- 23 7. Nature's Herb Co. Bee Pollen
- 24 8. Nature's Herb Co. Ginger
- 25 9. Nature's Herb Co. Green Energy
- 26 10. Nature's Herb Co. Gotu Kola
- 27 11. Nature's Herb Co. Eyebright
- 28 12. Nature's Herb Co. Milk Thistle Seed
13. Nature's Herb Co. Burdock Root
14. Nature's Herb Co. Dong Quai
15. Nature's Herb Co. Dandelion Root

- 1 16. Nature's Herb Co. Ginkgo Biloba
- 2 17. Nature's Herb Co. My Helping Heart
- 3 18. Nature's Herb Co. Female Hormone Balance
- 4 19. Nature's Herb Co. Detox
- 5 20. Nature's Herb Co. Healthy Kidney & Bladder
- 6 21. Nature's Herb Co. Fasting Blend
- 7 22. ■ Nature's Herb Co. Ginseng, Chinese
- 8 23. Nature's Herb Co. Licorice
- 9 24. Nature's Herb Co. Eleuthro Root
- 10 25. Nature's Herb Co. Colon Cleansing
- 11 26. Nature's Herb Co. Healthy Hair, Skin, And Nail
- 12 27. Nature's Herb Co. Kudzu Root
- 13 28. Nature's Herb Co. Standardized Green Tea
- 14 29. Nature's Herb Co. Relaxing
- 15 30. ■ Nature's Herb Co. Stress Relief Formula
- 16 31. Nature's Herb Co. Support for Aging Men
- 17 32. Nature's Herb Co. Suma Root
- 18 33. ■ Nature's Herb Co. Passion Flower
- 19 34. Nature's Herb Co. Uva Ursi
- 20 35. ■ Nature's Herb Co. Support for Aging Women
- 21 36. Nature's Herb Co. Valerian Root
- 22 37. Nature's Herb Co. Red Clover
- 23 38. Nature's Herb Co. Neem Leaf
- 24 39. Nature's Herb Co. Psyllium Husk
- 25 40. Nature's Herb Co. Psyllium Seed
- 26 41. Nature's Herb Co. Watercress

27 These forty-one (41) products are hereinafter referred to collectively as "Covered Products."

28 1.7 SAN FRANCISCO HERB denies and disputes the claims asserted in the Notices of Violations and the Complaint. Furthermore, SAN FRANCISCO HERB contends that any lead present in the Covered Products is the result of naturally occurring levels, as provided for in California Code of Regulations, Title 27, Section 25501(a). Furthermore, SAN FRANCISCO HERB maintains that all of its products satisfy applicable federal standards and requirements.

1 1.8 The Parties enter into this Consent Judgment in order to settle disputed claims between
2 them and to avoid prolonged and costly litigation.

3 1.9 Nothing in this Consent Judgment, nor compliance with this Consent Judgment, shall
4 constitute or be construed as an admission by the Parties of any fact, issue of law, or violation of law, at
5 any time, for any purpose. Nothing in this Consent Judgment shall be construed as giving rise to any
6 presumption or inference of admission or concession or waiver of a defense by SAN FRANCISCO
7 HERB as to any fault, wrongdoing or liability whatsoever, including, but not limited to, any alleged
8 violation of Proposition 65.

9
10 1.10 Except as expressly provided herein, nothing in this Consent Judgment shall prejudice,
11 waive or impair any right, remedy or defense that the Parties may have in any other or further legal
12 proceedings. This paragraph shall not diminish or otherwise affect the obligations, responsibilities, and
13 duties of any Party to this Consent Judgment.

14
15 1.11 The "Effective Date" of this Consent Judgment shall be June 30, 2014.

16 1.12 The only products covered by this Consent Judgment are the Covered Products, and the
17 only chemical covered by this Consent Judgment is the chemical lead as related to the Covered Products
18 only. No provision of this Consent Judgment shall apply to SAN FRANCISCO HERB's operations
19 outside of the State of California unless, and only to the extent that, such operations result in shipment or
20 sale of Covered Products into California.

21
22 **2. JURISDICTION AND VENUE**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction
24 over the subject matter of this action and personal jurisdiction over the Parties, that venue is proper in this
25 Court, and that this Court has jurisdiction to enter a Consent Judgment pursuant to the terms set forth
26 herein.

27 **3. INJUNCTIVE RELIEF**

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3.1 Compliance Date

The "Compliance Date" of this Consent Judgment shall be five (5) days after this Consent Judgment is entered by the Court.

3.2 Warnings

On and after the Compliance Date, Defendant shall be permanently enjoined from manufacturing for sale in California, Distributing into California, in any way arranging for or participating in the sale to any consumer located in California, or directly selling to any consumer located in California any of the Covered Products without complying with one or more of the warning methods set forth in Sections 3.2 to 3.4.(d) below. The term "Distributing into California" means to ship any of the Covered Products into California for sale in California or to sell or provide any of the Covered Products to any person or entity SAN FRANCISCO HERB knows intends to or will ship any of the Covered Products into or sell the Covered Products in California.

3.3 On-Product Warning

The following warning shall be permanently affixed to or printed on each product label:

WARNING: This product contains a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.

The words "cancer and" shall only be used if the maximum daily dose recommended on the label contains more than 15 micrograms of lead. The warning shall be prominently affixed to or printed on the product label with such conspicuousness, as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warning shall be at least the same size as the largest of any other health or safety warnings on the product label, and the word "WARNING" shall be in capital letters and in bold print. The warning shall be contained in the same section of the product

1 label that states other safety warnings concerning the use of the product if such other safety warnings are
2 on the product label. If the warning is affixed to the product with a sticker, SAN FRANCISCO HERB
3 must use a permanent adhesive. No other statements relating to Proposition 65 or lead may accompany
4 the warning. Nothing in this Settlement Agreement shall be construed to require SAN FRANCISCO
5 HERB to continue to provide a warning for Covered Products hereunder if SAN FRANCISCO HERB
6 modifies or reformulates the Covered Products so the amount of lead contained in the Covered Products
7 is below the threshold required for a warning under Proposition 65. SAN FRANCISCO HERB shall
8 provide ERC with a minimum of thirty (30) days notice prior to discontinuation of a warning for Covered
9 Products pursuant to this Section.
10

11 **3.3 Warning for Internet and Telephone Orders**

12 For sales of Covered Products made directly to consumers, such as through telephone orders,
13 Internet sales, or other methods by which Covered Products are shipped directly to California consumers,
14 the warning language above shall be provided in a clear and reasonable manner on the paper invoice or a
15 shipping package insert when a SAN FRANCISCO HERB product is shipped to a California address.
16 The warning will be displayed in a conspicuous manner, as compared to other words, statements, designs
17 or devices on an invoice, or shipping package insert. For shipping package inserts, the insert would be a
18 minimum size of 5" by 7". The warning language on an invoice or shipping package insert would be at
19 least the same size as the largest of any other health or safety warnings that appear on the invoice or
20 shipping package insert. If no other health or safety warnings appear on the invoice or shipping package
21 insert, the warning language type size will be at least as tall as the largest letter or numeral used in the
22 name or price of the product printed on the shipping invoice. In the alternative, SAN FRANCISCO
23 HERB can provide the warning on the outside packaging or container of each unit in compliance with
24 Section 3.2 or, for Internet orders, by displaying the warning in a clear and reasonable manner at the time
25 the customer enters a California shipping address when placing an order for SAN FRANCISCO HERB
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1 products. Where the Proposition 65 warning is provided by means whereby the consumer is unable to
2 view the warning prior to purchase, such as through an invoice or shipping package or insert, SAN
3 FRANCISCO HERB will allow a consumer to return the product subject to the warning for a full refund
4 with no extra charge or shipping or handling fee for any Covered Product(s) purchased from SAN
5 FRANCISCO HERB.
6

7 **3.7 Products in the Stream of Commerce**

8 The injunctive relief set forth in Section 3 shall not apply to any of the Covered Products that are
9 put into the stream of commerce prior to the Compliance Date.

10 **3.8 Calculation of Lead Levels**

11 (a) In complying with Sections 3.2 to 3.3, SAN FRANCISCO HERB shall not be required to
12 provide any of the warnings specified therein for any Covered Product if the maximum daily dose or
13 serving recommended on the Covered Product's label contains no more than 0.5 mcg of lead per day as
14 defined herein. For purposes of determining whether the maximum daily dose of a Covered Product
15 contains no more than 0.5 mcg of lead, three (3) randomly selected samples of that Covered Product (in
16 the form intended for distribution or sale to an end-user in California) shall be tested. As used in this
17 Consent Judgment, "no more than 0.5 mcg of lead per day" means that the samples of Covered Products
18 tested by SAN FRANCISCO HERB pursuant to this Consent Judgment each result in a daily exposure of
19 no more than 0.5 mcg per day using the following formula: micrograms of lead per gram of Covered
20 Product, multiplied by grams of product per serving of the Covered Product (using the largest serving
21 size appearing on the product label), multiplied by servings of product per day (using the largest
22 recommended number of servings per day appearing on the product label), which equals micrograms of
23 lead per day. Before SAN FRANCISCO HERB' first distribution or sale of a Covered Product without a
24 warning after the Effective Date, and continuing for at least three (3) years thereafter, at least once every
25 year, SAN FRANCISCO HERB shall test the Covered Products sold without a warning for lead content
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1 in the manner provided for in this Consent Judgment.

2 **3.9 Reformulation and Testing Methodology**

3 (a) On and after the Compliance Date, if the formula of any Covered Product is altered by
4 either the inclusion of a new ingredient or an increase in the percentage of an existing ingredient, or if
5 any ingredient in a Covered Product is sourced from a different supplier, and such change materially
6 impacts or is reasonably likely to materially impact SAN FRANCISCO HERB' warning requirement set
7 forth in Sections 3.2 to 3.4 above, SAN FRANCISCO HERB shall have three (3) randomly selected
8 samples of that Covered Product (in the form intended for distribution or sale to an end-user in
9 California) tested according to the requirements of this Section to determine whether a warning is
10 required. For purposes of determining which warning, if any, is required under Sections 3.2 to 3.3, the
11 highest lead detection result of the randomly selected samples of the Covered Products will be
12 controlling.
13

14 (b) All testing is to be performed by a laboratory certified by the California Environmental
15 Laboratory Accreditation Program or a laboratory registered with the United States Food and Drug
16 Administration. Testing under this section shall be performed using Inductively Coupled Plasma-Mass
17 Spectrometry (ICP-MS), or any other testing method agreed upon in writing by the Parties.
18

19 (c) If testing is required pursuant to Section 3.9(a) and the result requires a change in the
20 warning presently in use and approved by both Parties at the time of this writing for a product, SAN
21 FRANCISCO HERB shall forward to ERC the copies of all test results and laboratory report
22 documentation relating to the testing for lead content of each of the lots of Covered Products within
23 twenty (20) working days after receipt by SAN FRANCISCO HERB of the test results.
24

25 (d) For purposes of this Section 3.9, daily lead exposure levels shall be measured in
26 micrograms and shall be calculated as set forth in Section 3.8 above.
27

28 (e) Nothing in this Consent Judgment shall limit SAN FRANCISCO HERB's ability to

1 conduct, or require that others conduct, additional testing of the Covered Products including the raw
2 materials used in their manufacture.

3 (f) The testing and sampling methodology set forth above is a result of negotiation and
4 compromise, and is accepted by the Parties for the purposes of settling, compromising, and resolving the
5 issues in this matter, including future compliance with this Consent Judgment, and shall not be used for
6 any purpose or in any other matter, except for the purposes of determining future compliance with this
7 Consent Judgment.
8

9 **4. SETTLEMENT PAYMENT**

10 **4.1 Total Payment**

11 In full and final satisfaction of ERC's expenses and ERC's attorney fees, SAN FRANCISCO
12 HERB shall, within twenty (20) business days after the Effective Date, make a total payment in the
13 amount of \$25,000. SAN FRANCISCO HERB shall make this payment by wire transfer to ERC's
14 escrow account, for which ERC will give SAN FRANCISCO HERB the necessary account information.
15 This payment will be held in trust by ERC pending entry of this Consent Judgment by the Court.
16 Sections 4.2 – 4.3 below describe the agreed partition of the total Settlement amount.
17

18 **4.2 Reimbursement of Expenses and Costs**

19 As a portion of the Total Settlement Amount, \$8,750 shall be considered a reimbursement to ERC
20 for its reasonable costs associated with the enforcement of Proposition 65 and other expenses and costs
21 incurred as a result of bringing this matter to the attention of SAN FRANCISCO HERB, and litigating
22 and negotiating a settlement in the public interest.
23

24 **4.3 Attorney Fees**

25 As a portion of the Total Settlement Amount, \$16,250 shall be considered a reimbursement to
26 ERC for its attorney fees (\$8,500 for attorney fees of Karen A. Evans, and \$7,750 for attorney fees of
27 Philip T. Emmons).
28

1 **5. COSTS AND FEES**

2 Except as expressly set forth herein in Section 4, each Party shall bear its own attorneys' fees,
3 costs and expenses in this action.

4 **6. RELEASE**

5 6.1 ERC and its agents (including its attorneys), acting on its own behalf and in the public
6 interest, releases SAN FRANCISCO HERB, and its respective officers, directors, shareholders,
7 employees, agents, representatives, parents, subsidiaries, divisions, subdivisions, affiliates, franchisees,
8 licensees, predecessors, successors, assigns, attorneys, suppliers, manufacturers, distributors, wholesalers,
9 retailers and all other entities (excluding private label customers of SAN FRANCISCO HERB) in the
10 distribution chain of the Covered Products ("Released Parties"), from any and all claims, including
11 without limitation, all actions and causes of action in law or in equity, suits, liabilities, demands,
12 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
13 investigation fees, expert fees, and attorneys' fees) for violations of Proposition 65 up through the
14 Compliance Date for alleged exposures to lead from the Covered Products as set forth in the Notices of
15 Violations and the Complaint.
16
17

18 6.2 Compliance with the terms of this Consent Judgment constitutes compliance with
19 Proposition 65 with respect to any and all alleged exposures to lead from the Covered Products as set
20 forth in the Notices of Violations and the Complaint.
21

22 6.3 ERC, on behalf of itself, its past and current agents, representatives, attorneys, successors
23 and/or assignees and not in its representative capacity, provides a general release herein which shall be
24 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,
25 costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character
26 or kind, known or unknown, suspected or unsuspected against the Released Parties relating to Covered
27 Products manufactured, distributed, and/or sold by SAN FRANCISCO HERB prior to the Compliance
28

1 Date. ERC acknowledges that it is familiar with section 1542 of the California Civil Code, which
2 provides as follows:

3
4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
5 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
6 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
7 WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
8 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.
9

10 ERC, in its individual capacity and *not* in its representative capacity, and on behalf of itself, its past and
11 current agents, representatives, attorneys, successors and/or assignees expressly and knowingly waives
12 and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it
13 by the provisions of section 1542 of the California Civil Code, as well as under any other state or federal
14 statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such
15 rights or benefits pertaining to the released matters.
16

17 6.4 ERC on behalf of itself only, on the one hand, and SAN FRANCISCO HERB, on the
18 other hand, release and waive all claims they may have against each other and their respective officers,
19 directors, employees, agents, representatives and attorneys for any statements or actions made or
20 undertaken by them or their respective officers, directors, employees, agents, representatives and
21 attorneys in connection with the Notice of Violations or this action.
22

23 6.5 Nothing in this release is intended to apply to any occupational or environmental
24 exposures arising under Proposition 65, nor shall it apply to any products other than the Covered
25 Products.

26 **7. MOTION FOR COURT APPROVAL**

27 7.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice, prepare, and
28

1 file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California Code of Regulations
2 § 3000, *et seq.* This motion shall be served upon SAN FRANCISCO HERB and upon the California
3 Attorney General's Office. SAN FRANCISCO HERB and ERC shall use their best efforts to support
4 entry of this Consent Judgment in the form submitted to the Court for approval.
5

6 7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the California
7 Attorney General objects in writing to any term in this Consent Judgment or files an opposition to the
8 motion, the Parties shall use their best efforts to resolve the concern in a timely manner prior to the
9 hearing on the motion. If the concern of the California Attorney General is not resolved prior to the
10 hearing on the motion, any Party may withdraw from this Consent Judgment prior to the date of the
11 hearing, with notice to all Parties in accordance with Paragraph 17 below and notice to the California
12 Attorney General's Office, and upon such notice this Consent Judgment shall be null and void and ERC
13 shall, within ten (10) business days, return the total settlement amount held in escrow to SAN
14 FRANCISCO HERB.
15

16 7.3 Except as to Section 4.1, this Consent Judgment shall be effective only after it has been entered
17 by the Court. If the Court declines to enter this Consent Judgment, this Consent Judgment shall be null
18 and void and ERC shall, within ten (10) business days, return the total settlement amount held in escrow
19 to SAN FRANCISCO HERB.
20

21 8. RETENTION OF JURISDICTION

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

24 9. MODIFICATION OF CONSENT JUDGMENT

25 This Consent Judgment after its entry by the Court may be modified only upon written agreement
26 of the Parties and upon entry of a modified Consent Judgment by the Court thereon.
27

28 10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO

1 **RESOLVE DISPUTES**

2 In the event a dispute arises with respect to any Party's compliance with the terms and/or
3 conditions of this Consent Judgment after its entry by the Court, the Party seeking compliance by another
4 Party shall make a good faith attempt to resolve the dispute by conferring with the other Party in person,
5 by telephone, or by written communication before seeking relief from the Court. If the dispute is not
6 resolved after such an attempt, this Consent Judgment may be enforced in this Court pursuant to Code of
7 Civil Procedure § 664.4 or any other valid provision of the law. The prevailing party in any such dispute
8 brought to this Court for resolution shall be awarded all reasonable costs and attorney's fees. As used in
9 the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief
10 more favorable to it than the relief the other party was agreeable to providing during the Parties' good
11 faith attempt to resolve the dispute that is the subject of such an enforcement proceeding.
12

13
14 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

15 In the event that, after entry of this Consent Judgment in its entirety, any of the provisions hereof
16 are subsequently held by a court to be unenforceable, the validity of the enforceable provisions shall not
17 be adversely affected.

18 **12. GOVERNING LAW**

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

21
22 **13. RELATION TO OTHER ACTIONS**

23 This Consent Judgment shall have no application or effect outside the State of California or on
24 SAN FRANCISCO HERB for the Covered Products or other products distributed or sold by SAN
25 FRANCISCO HERB to consumers outside the State of California.

26 **14. DRAFTING**

27 The terms of this Consent Judgment have been reviewed by the respective legal counsel for the
28

1 Parties prior to its signing, and each Party has had an opportunity to fully discuss the terms and
2 conditions with its legal counsel. The Parties agree that, in any subsequent interpretation or construction
3 of this Consent Judgment, no inference, assumption or presumption shall be drawn, and no provision of
4 this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties
5 and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of this Consent
6 Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and
7 drafting of this Consent Judgment.
8

9 **15. ENTIRE AGREEMENT**

10 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
11 with respect to the entire subject matter hereof, and supersedes and replaces any and all prior agreements
12 or understandings, written or oral, with regard to the matters set forth herein. No other agreements or
13 understandings not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
14 any of the Parties.
15

16 **16. EXECUTION IN COUNTERPARTS**

17 This Consent Judgment may be executed in counterparts, which taken together shall be deemed to
18 constitute one document. A facsimile or pdf signature shall be construed as valid as the original
19 signature.
20

21 **17. NOTICES**

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

24 **FOR ERC:**

25 Chris Heptinstall, Executive Director
26 Environmental Research Center
27 3111 Camino Del Rio North, Suite 400
28 San Diego, CA 92108

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2 Philip T. Emmons (SBN 124902)
3 Law Office of Philip T. Emmons
4 1990 N. California Blvd., 8th Floor
5 Walnut Creek, CA 94596

6 **FOR SAN FRANCISCO HERB**

7 Current CEO or President
8 San Francisco Herb & Natural Food Co. dba Nature's Herb Company
9 47444 Kato Road
10 Fremont, CA 94538

11
12 Anthony J. Cortez (SBN 251743)
13 Greenberg Traurig, LLP
14 1201 K Street, Suite 1100
15 Sacramento, CA 95814-3938

16
17 **18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

18 Each person signing this Consent Judgment on behalf of a Party certifies that he or she is fully
19 authorized by that Party to stipulate to the terms and conditions of this Consent Judgment on behalf of
20 that Party, to enter into and execute this Consent Judgment on behalf of that Party, and to legally bind
21 that Party to this Consent Judgment. Each person signing this Consent Judgment on behalf of a Party
22 represents and warrants that he or she has read and understands this Consent Judgment, and agrees to all
23 of the terms and conditions of this Consent Judgment on behalf of that Party.
24

25 **IT IS SO STIPULATED:**

26
27 Dated: 8/28/2014

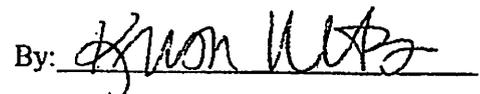
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By: 
Chris Heptinstall
Executive Director

Dated: 7-18-14

SAN FRANCISCO HERB & NATURAL FOOD CO. dba
NATURE'S HERB COMPANY

By: 
Name: KRISTI MELTZER
Title: CEO for SFHN

APPROVED AS TO FORM:

Dated: _____

LAW OFFICE OF KAREN A. EVANS

By: _____
Karen A. Evans
Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER

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By: _____

Chris Heptinstall
Executive Director

Dated: _____

SAN FRANCISCO HERB & NATURAL FOOD CO. dba
NATURE'S HERB COMPANY

By: _____

Name:
Title:

APPROVED AS TO FORM:

Dated: 7-18-14

LAW OFFICE OF KAREN A. EVANS

By: Karen A. Evans

Karen A. Evans
Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER

1 Dated: July 18, 2014

GREENBERG TRAUERIG, LLP

A. Cortez

By: _____

Anthony J. Cortez

Attorneys for Defendant

SAN FRANCISCO HERB & NATURAL FOOD CO. dba

NATURE'S HERB COMPANY

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14 **JUDGMENT**

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

17 IT IS SO ORDERED, ADJUDGED AND DECREED.

18
19
20 Dated: OCT 30 2014

GEORGE C. HERNANDEZ, JR.

Judge of the Superior Court

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27 EXHIBIT A – [Notices of Violations]

EXHIBIT A

LAW OFFICE OF
KAREN A. EVANS

4218 Biona Place
San Diego, CA 92116
Tel: (619) 640-8100
E-Mail: karen.erc@cox.net

October 21, 2011

**NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center ("ERC"), 5694 Mission Center Road #199, San Diego, CA 92108. ERC's Executive Director is Chris Heptinstall. 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.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter "the Violator") is:

San Francisco Herb & Natural Food Company, d/b/a Nature's Herb Company

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

**Nature's Herb Co. Fo-ti Root - Lead
Nature's Herb Co. Astragalus - Lead**

EXHIBIT A

Nature's Herb Co. FatLess - Lead
Nature's Herb Co. Bob's Blend - Lead
Nature's Herb Co. Laxative Blend - Lead
Nature's Herb Co. Male Power Formula - Lead
Nature's Herb Co. Bee Pollen - Lead
Nature's Herb Co. Ginger - Lead
Nature's Herb Co. Green Energy- Lead
Nature's Herb Co. Gotu Kola - Lead
Nature's Herb Co. Eyebright - Lead
Nature's Herb Co. Milk Thistle Seed- Lead
Nature's Herb Co. Burdock Root - Lead
Nature's Herb Co. Dong Quai - Lead
Nature's Herb Co. Dandelion Root - Lead
Nature's Herb Co. Ginkgo Biloba - Lead
Nature's Herb Co. My Helping Heart - Lead
Nature's Herb Co. Female Hormone Balance - Lead
Nature's Herb Co. Detox - Lead
Nature's Herb Co. Healthy Kidney & Bladder - Lead
Nature's Herb Co. Fasting Blend - Lead
Nature's Herb Co. Ginseng, Chinese - Lead
Nature's Herb Co. Licorice - Lead
Nature's Herb Co. Eleuthro Root - Lead
Nature's Herb Co. Colon Cleansing - Lead
Nature's Herb Co. Healthy Hair, Skin, And Nail - Lead
Nature's Herb Co. Kudzu Root - Lead
Nature's Herb Co. Standardized Green Tea - Lead
Nature's Herb Co. Relaxing - Lead
Nature's Herb Co. Stress Relief Formula - Lead
Nature's Herb Co. Support for Aging Men - Lead
Nature's Herb Co. Suma Root - Lead
Nature's Herb Co. Passion Flower - Lead
Nature's Herb Co. Uva Ursi - Lead
Nature's Herb Co. Support for Aging Women - Lead
Nature's Herb Co. Valerian Root - Lead
Nature's Herb Co. Red Clover - Lead
Nature's Herb Co. Neem Leaf - Lead
Nature's Herb Co. Psyllium Husk - Lead
Nature's Herb Co. Psyllium Seed- Lead

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 and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 21, 2008, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. 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 label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to San Francisco Herb & Natural Food Company, d/b/a Nature's Herb Company and their Registered Agents for Service of 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 San Francisco Herb & Natural Food Company, d/b/a Nature's Herb Company

I, Karen A. Evans, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties 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 chemicals that are 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: October 21, 2011



Karen A. Evans

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 October 21, 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:

Nature's Herb Company
47444 Kato Road
Fremont, CA 94538

San Francisco Herb & Natural Food Company
47444 Kato Road
Fremont, CA 94538

James A. Bruen
Registered Agent
240 Stockton Street, Suite 400
San Francisco, CA 94108

On October 21, 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 October 21, 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 October 21, 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.*

October 21, 2011

Page 7

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

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information. Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.
Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens. Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect. Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice. A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

LAW OFFICE OF
KAREN A. EVANS
4218 Biona Place
San Diego, CA 92116
Tel: (619) 640-8100
E-Mail: karen.erc@cox.net

March 8, 2012

**NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108. ERC’s Executive Director is Chris Heptinstall. 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.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter “the Violator”) is:

San Francisco Herb & Natural Food Company, d/b/a Nature’s Herb Company

Consumer Products and Listed Chemicals. The product that is the subject of this notice and the chemical in this product identified as exceeding allowable levels is:

Nature's Herb Co. Watercress – Lead

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 and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of this product. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 8, 2009, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the product. 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 label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using this product with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
March 8, 2012
Page 3

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to San Francisco Herb & Natural Food Company, d/b/a Nature's
Herb Company and their Registered Agents for Service of 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 San Francisco Herb & Natural Food Company, d/b/a Nature's Herb Company

I, Karen A. Evans, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties 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 chemicals that are 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: March 8, 2012



Karen A. Evans

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. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On March 8, 2012, 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 with the postage fully prepaid for delivery by Certified Mail:

Nature's Herb Company
47444 Kato Road
Fremont, CA 94538

San Francisco Herb & Natural Food Company
47444 Kato Road
Fremont, CA 94538

James A. Bruen
Registered Agent
240 Stockton Street, Suite 400
San Francisco, CA 94108

On March 8, 2012, 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 with the postage fully prepaid 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 March 8, 2012, 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 with the postage fully prepaid for delivery by Priority Mail.

Executed on March 8, 2012, in Fort Oglethorpe, Georgia.



Amber Schaub

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
March 8, 2012
Page 6

Service List

District Attorney, Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Room 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Room 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Avenue Ventura, CA 93009
District Attorney, Amador County 708 Court Street, #202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County Post Office Box 990 Stockton, CA 95201	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Rm 800 Los Angeles, CA 90012
District Attorney, Colusa County 547 Market Street Colusa, CA 95932	District Attorney, Merced County 2222 M Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco City Attorney's Office City Hall, Room 234 1 Drive Carlton B Goodlett Place San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Ste. 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street Eureka, CA 95501	District Attorney, Orange County 401 Civic Center Drive West Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95353	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Avenue, Room 224 Visalia, CA 93291	