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5 Attorneys for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER  
6  
7

**F I L E D**

Superior Court of California  
County of San Francisco

MAR 05 2015

CLERK OF THE COURT

BY: *Sam Harris*  
Deputy Clerk

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

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

12 Plaintiff,

13 v.

14 SUNFOOD CORPORATION and DOES 1-  
15 100,

16 Defendants.  
17

CASE NO. CGC-14-542110

STIPULATED CONSENT JUDGMENT;  
[PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: October 8, 2014  
Trial Date: None set

18  
19 **1. INTRODUCTION**

20 **1.1** On October 8, 2014, Plaintiff Environmental Research Center (“ERC”), a  
21 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by  
22 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)  
23 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.  
24 (“Proposition 65”), against Sunfood Corporation and Does 1-100 (collectively “Sunfood”). In  
25 this action, ERC alleges that the products listed in ERC’s Proposition 65 60-Day Notice of  
26 Violation dated January 31, 2014 (“Notice”) that are manufactured, distributed or sold by  
27 Sunfood contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive  
28

1 toxin, and expose consumers at a level requiring a Proposition 65 warning. The products  
2 currently named in ERC's Complaint are:

- 3 1. Sunfood Super Foods Nutrient-Rich Chlorella Tablets
- 4 2. Sunfood Super Foods Green SuperFood Sun Is Shining
- 5 3. Sunfood Single Plantation Maca
- 6 4. Sunfood Super Foods Mangosteen Fruit Powder
- 7 5. Sunfood Super Foods Nutrient-Rich Red Maca Powder
- 8 6. Sunfood Super Foods Nutrient-Rich Maca Powder
- 9 7. Sunfood Super Foods Sacha Jergon
- 10 8. HealthForce Nutritionals HealthForce SuperFoods Spirulina Manna
- 11 9. HealthForce Nutritionals HealthForce SuperFoods Vitamineral Earth v3.2
- 12 10. HealthForce SuperFoods Greener Grasses Alkalizer Version 2.0
- 13 11. SunWarrior Activated Barley
- 14 12. SunWarrior Ormus SuperGreens
- 15 13. HealthForce Nutritionals Nopal Blood Sugar
- 16 14. HealthForce Detox Liver Rescue 4+
- 17 15. HealthForce Nutritionals Fruits Of The Earth Version 2.0
- 18 16. SunWarrior Classic Protein Raw Vegan Vanilla
- 19 17. SunWarrior Protein Raw Vegan Natural
- 20 18. SunWarrior Classic Protein Raw Vegan Chocolate

21 **1.2** The Complaint is based on allegations contained in ERC's Notice of Violation,  
22 dated January 31, 2014, that was served on the California Attorney General, other public  
23 enforcers, and Sunfood ("Notice"). A true and correct copy of the Notice is attached as Exhibit  
24 A and is hereby incorporated by reference. More than 60 days have passed since the Notice  
25 was mailed and uploaded onto the Attorney General's website, and no designated governmental  
26 entity has filed a complaint against Sunfood with regard to the Covered Products or the alleged  
27 violations.

1           **1.3**     On or around October 15, 2014, ERC will issue an additional Proposition 65 60  
2 Day Notice of Violations (“NOVII”) to Sunfood that will be served on the California Attorney  
3 General, other public enforcers, and Sunfood regarding the lead content in the following additional  
4 products: (19) Sunfood Super Foods Pure Spirulina Crunchies (20) Sunfood Super Foods Protein  
5 Rich Sacha Inchi Powder 2.5 lb 21) Sunfood Super Foods Pure Vanilla Powder 22) Sunfood  
6 Super Foods Sweet Mesquite Powder 23) Sunfood Super Foods Himalayan Shilajit Powder 24)  
7 Sunfood Super Foods Rice Bran Solubles Tocotrienols 25) and Sunfood Superfoods Chocolate  
8 Cacao Powder (collectively “Additional Products”). A true and correct copy of the NOV II is  
9 attached as Exhibit B and is hereby incorporated by reference. The parties have stipulated to allow  
10 Plaintiff to amend the Complaint to add the Additional Products upon expiration of the 60 day  
11 notice period after service of the NOVII. All twenty five (25) products listed in Section 1.1 and  
12 1.3 shall be addressed by this Consent Judgment and shall hereinafter be referred to individually as  
13 “Covered Product” or collectively as “Covered Products.”

14           **1.4**     ERC’s Notice and Complaint allege that use of the Covered Products exposes  
15 persons in California to lead without first providing clear and reasonable warnings in violation  
16 of California Health and Safety Code section 25249.6. Sunfood denies all material allegations  
17 contained in the Notice and Complaint.

18           **1.5**     ERC is a California non-profit corporation dedicated to, among other causes,  
19 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
20 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
21 encouraging corporate responsibility.

22           **1.6**     Sunfood is a business entity that, at all relevant times for the purpose of this  
23 Consent Judgment, employed ten or more persons and qualified as a “person in the course of  
24 business” within the meaning of Proposition 65. Sunfood manufactures, distributes and sells the  
25 Covered Products.

26           **1.7**     ERC and Sunfood are referred to individually as “Party” or collectively as the  
27 “Parties.”

1           **1.8** The Parties have entered into this Consent Judgment in order to settle,  
2 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
3 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
4 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
5 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,  
6 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
7 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
8 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
9 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
10 purpose.

11           **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall  
12 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
13 other or future legal proceeding unrelated to these proceedings.

14           **1.10** The Effective Date of this Consent Judgment is the date on which it is entered as  
15 a Judgment by this Court.

16           **2. JURISDICTION AND VENUE**

17           For purposes of this Consent Judgment and for any further court action that may become  
18 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
19 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
20 over Sunfood as to the acts alleged in the Complaint, that venue is proper in San Francisco  
21 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
22 resolution of all claims up through and including the Effective Date which were or could have  
23 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

25           **3.1** Beginning on the Effective Date, Sunfood shall be permanently enjoined from  
26 manufacturing for sale in the State of California to California customers, "Distributing into the  
27 State of California" to California customers, or directly selling in the State of California to  
28 California customers, any Covered Product which exposes a person to a "Daily Exposure

1 Level” of more than 0.5 micrograms per day when the maximum suggested dose is taken as  
2 directed on the Covered Product’s label, unless it meets the warning requirements under  
3 Section 3.2.

4           3.1.1 As used in Consent Judgment, the term “Distributing into the State of  
5 California” shall mean to directly ship a Covered Product into California that Sunfood knows is  
6 for sale in California or to sell a Covered Product to a distributor that Sunfood knows will sell  
7 the Covered Product in California.

8           3.1.2 For purposes of this Consent Judgment, “Daily Lead Exposure Level”  
9 shall be measured in micrograms, and shall be calculated using the following formula:  
10 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
11 product (using the largest serving size appearing on the product label), multiplied by servings  
12 of the product per day (using the largest number of servings in a recommended dosage  
13 appearing on the product label), which equals micrograms of lead exposure per day.

### 14           3.2 Clear and Reasonable Warnings

15           If Sunfood is required to provide a warning pursuant to Section 3.1, the following warning  
16 must be utilized:

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

19 Sunfood shall use the phrase “cancer and” in the warning only if the maximum daily dose  
20 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
21 the quality control methodology set forth in Section 3.4.

22           Sunfood shall provide the warning on all of the following: 1) on Sunfood’s checkout page  
23 on its website for California consumers identifying each Covered Product. A second warning  
24 shall appear prior to completing checkout on the website when a California delivery address is  
25 indicated. The purchaser shall be required to accept the warning prior to completing checkout for  
26 any of the Covered Products being sold.; 2) on an insert warning contained in each individual box  
27 of product shipped to a California consumer that shall identify the Covered Products and be a  
28 minimum of 5 inches x 7 inches; 3) on Sunfood’s receipt/invoice in boxes of Covered Products

1 shipped to California consumers which shall identify each of the Covered Products and be present  
2 on the front of the receipt/invoice; and 4) on the label of Sunfood's products in retail stores in  
3 California.

4 The warning shall be at least the same size as the largest of any other health or safety  
5 warnings correspondingly appearing on the label, container, receipt, invoice, website, or insert,  
6 and the word "WARNING" shall be in all capital letters and in bold print. No other statements  
7 about Proposition 65 or lead may accompany the warning.

8 Sunfood must display the above warnings with such conspicuousness, as compared with  
9 other words, statements, or design of the label or container, as applicable, to render the warning  
10 likely to be read and understood by an ordinary individual under customary conditions of purchase  
11 or use of the product.

### 12 **3.3 Reformulated Covered Products**

13 A Reformulated Covered Product is one for which the Daily Exposure Level when the  
14 maximum suggested dose is taken as directed on the Reformulated Covered Product's label,  
15 contains no more than 0.5 micrograms of lead per day as determined by the quality control  
16 methodology described in Section 3.4.

### 17 **3.4 Testing and Quality Control Methodology**

18 **3.4.1** All testing pursuant to this Consent Judgment shall be performed using a  
19 laboratory method that complies with the performance and quality control factors appropriate  
20 for the method used, including limit of detection, qualification, accuracy, and precision that  
21 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)  
22 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
23 method subsequently agreed upon in writing by the Parties.

24 **3.4.2** All testing pursuant to this Consent Judgment shall be performed by an  
25 independent third-party laboratory certified by the California Environmental Laboratory  
26 Accreditation Program or an independent third-party laboratory that is registered with the  
27 United States Food & Drug Administration. Nothing in this Consent Judgment shall limit  
28

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

3 **4. SETTLEMENT PAYMENT**

4 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
5 penalties, attorney's fees, and costs, Sunfood shall make a total payment of \$72,000.00  
6 ("Total Settlement Amount") to ERC payable in four (4) consecutive monthly installments with  
7 the first payment to be made within 5 days of the Effective Date. Sunfood shall make these  
8 payments by wire transfer to ERC's escrow account, for which ERC will give Sunfood the  
9 necessary account information.

10 **4.2** As a portion of the Total Settlement Amount, \$17,234.00 shall be considered  
11 a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit  
12 75% (\$12,925.50) of the civil penalty to the Office of Environmental Health Hazard  
13 Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund  
14 in accordance with California Health and Safety Code §25249.12(c). ERC will retain the  
15 remaining 25% (\$4,308.50) of the civil penalty.

16 **4.3** (A) \$3,564.57 shall be distributed to Environmental Research Center as  
17 reimbursement to ERC for reasonable costs incurred as a result of work in bringing this action;  
18 and (B) \$13,000.68 shall be distributed to Environmental Research Center in lieu of further  
19 civil penalties, for the day-to-day business activities such as (1) continued enforcement of  
20 Proposition 65, which includes work, analyzing, researching and testing consumer products that  
21 may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible  
22 products that are the subject matter of the current action; (2) the continued monitoring of past  
23 consent judgments and settlements to ensure companies are in compliance with Proposition 65;  
24 and (3) giving a donation of \$650.00 to the As You Sow to address reducing toxic chemical  
25 exposures in California.

26 **4.4** \$16,000.00 shall be distributed to Karen Evans as reimbursement of ERC's  
27 attorney's fees, \$540.00 shall be distributed to Michael Freund as reimbursement of ERC's  
28 attorney's fees, and \$4,365.00 shall be distributed to Ryan Hoffman as reimbursement of

1 ERC's attorney's fees, while \$17,295.75 shall be distributed to ERC as reimbursement of its in-  
2 house legal fees.

3 **5. MODIFICATION OF CONSENT JUDGMENT**

4 **5.1** This Consent Judgment may be modified only (i) by written stipulation of  
5 the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
6 judgment.

7 **5.2** If Sunfood seeks to modify this Consent Judgment under Section 5.1, then  
8 Sunfood must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to  
9 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must  
10 provide written notice to Sunfood within thirty days of receiving the Notice of Intent. If ERC  
11 notifies Sunfood in a timely manner of ERC's intent to meet and confer, then the Parties shall  
12 meet and confer in good faith as required in this Section. The Parties shall meet in person or  
13 via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.  
14 Within thirty days of such meeting, if ERC disputes the proposed modification, ERC shall  
15 provide to Sunfood a written basis for its position. The Parties shall continue to meet and  
16 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should  
17 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-  
18 confer period.

19 **5.3** In the event that Sunfood initiates or otherwise requests a modification under  
20 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
21 Consent Judgment, Sunfood shall reimburse ERC its costs and reasonable attorney's fees for  
22 the time spent in the meet-and-confer process and filing and arguing the motion or application.

23 **5.4** Where the meet-and-confer process does not lead to a joint motion or  
24 application in support of a modification of the Consent Judgment, then either Party may seek  
25 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and  
26 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
27 means a party who is successful in obtaining relief more favorable to it than the relief that the  
28

1 other party was amenable to providing during the Parties' good faith attempt to resolve the  
2 dispute that is the subject of the modification.

3 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
4 **JUDGMENT**

5 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or  
6 terminate this Consent Judgment.

7 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
8 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
9 inform Sunfood in a reasonably prompt manner of its test results, including information  
10 sufficient to permit Sunfood to identify the Covered Products at issue. Sunfood shall, within  
11 thirty days following such notice, provide ERC with testing information, from an independent  
12 third-party laboratory meeting the requirements of Sections 3.4.1 and 3.4.2, demonstrating  
13 Defendant's compliance with the Consent Judgment, if warranted. The Parties shall first  
14 attempt to resolve the matter prior to ERC taking any further legal action.

15 **7. APPLICATION OF CONSENT JUDGMENT**

16 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
17 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
18 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,  
19 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
20 application to Covered Products which are distributed or sold exclusively outside the State of  
21 California and which are not used by California consumers.

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

23 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
24 on behalf of itself and in the public interest, and Sunfood, of any alleged violation of  
25 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of  
26 exposure to lead from the handling, use, or consumption of the Covered Products and fully  
27 resolves all claims that have been or could have been asserted in this action up to and including  
28 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.

1 ERC, on behalf of itself and in the public interest, hereby discharges Sunfood and its respective  
2 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
3 affiliates, suppliers, franchisees, licensees, customers (not including private label customers of  
4 Sunfood), distributors, wholesalers, retailers, and all other upstream and downstream entities in  
5 the distribution chain of any Covered Product, and the predecessors, successors and assigns of  
6 any of them (collectively, "Released Parties"), from any and all claims, actions, causes of  
7 action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that  
8 could have been asserted, as to any alleged violation of Proposition 65 arising from the failure  
9 to provide Proposition 65 warnings on the Covered Products regarding lead.

10 **8.2** The Parties further waive and release any and all claims they may have  
11 against each other for all actions or statements made or undertaken in the course of seeking or  
12 opposing enforcement of Proposition 65 in connection with the Notice or Complaint up through  
13 and including the Effective Date, provided, however, that nothing in Section 8 shall affect or  
14 limit any Party's right to seek to enforce the terms of this Consent Judgment.

15 **8.3** It is possible that other claims not known to the Parties arising out of the  
16 facts alleged in the Notice or the Complaint and relating to the Covered Products will develop  
17 or be discovered. The Parties acknowledge that this Consent Judgment is expressly intended to  
18 cover and include all such claims up through the Effective Date, including all rights of action  
19 therefore. The Parties acknowledge that the claims released in Sections 8.1 and 8.2 above may  
20 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any  
21 such unknown claims. California Civil Code section 1542 reads as follows:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
23 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
24 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
25 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
26 OR HER SETTLEMENT WITH THE DEBTOR.

27 The Parties acknowledge and understand the significance and consequences of this specific  
28 waiver of California Civil Code section 1542.

1           **8.4**       Compliance with the terms of this Consent Judgment shall be deemed to  
2 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures  
3 to lead in the Covered Products as set forth in the Notice and the Complaint.

4           **8.5**       Nothing in this Consent Judgment is intended to apply to any occupational  
5 or environmental exposures arising under Proposition 65, nor shall it apply to any of Sunfood's  
6 products other than the Covered Products.

7           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10          **10. GOVERNING LAW**

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

13          **11. PROVISION OF NOTICE**

14          All notices required to be given to either Party to this Consent Judgment by the other shall  
15 be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified  
16 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

17  
18          **FOR ENVIRONMENTAL RESEARCH CENTER:**

19 Chris Heptinstall, Executive Director, Environmental Research Center  
20 3111 Camino Del Rio North, Suite 400  
21 San Diego, CA 92108  
22 Tel: (619) 500-3090  
23 Email: chris\_erc501c3@yahoo.com

24  
25          With a copy to:

26 Michael Freund

27 Ryan Hoffman

28 Michael Freund & Associates

1 1919 Addison Street, Suite 105

2 Berkeley, CA 94704

3 Telephone: (510) 540-1992

4 Facsimile: (510) 540-5543

5  
6 **FOR SUNFOOD CORPORATION**

7 **Robert DeuPree, President/CEO**

8 **1830 Gillespie Way, Suite 101**

9 **El Cajon, CA 92020**

10 **(619) 596-7979 x 316**

11  
12 **12. COURT APPROVAL**

13 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
14 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
15 Consent Judgment.

16 **12.2** If the California Attorney General object to any term in this Consent  
17 Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and  
18 if possible prior to the hearing on the motion.

19 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
20 void and have no force or effect.

21 **13. EXECUTION AND COUNTERPARTS**

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

25 **14. DRAFTING**

26 The terms of this Consent Judgment have been reviewed by the respective counsel for each  
27 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms with  
28 counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent

1 Judgment entered thereon, the terms and provisions shall not be construed against any Party.

2 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

3 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
4 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to  
5 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of  
6 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is  
7 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As  
8 used in the preceding sentence, the term "prevailing party" means a party who is successful in  
9 obtaining relief more favorable to it than the relief that the other party was amenable to providing  
10 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement  
11 action.

12 **16. ENTIRE AGREEMENT, AUTHORIZATION**

13 **16.1** This Consent Judgment contains the sole and entire agreement and  
14 understanding of the Parties with respect to the entire subject matter herein, and any and all  
15 prior discussions, negotiations, commitments and understandings related hereto. No  
16 representations, oral or otherwise, express or implied, other than those contained herein have  
17 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
18 herein, shall be deemed to exist or to bind any Party.

19 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
20 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
21 explicitly provided herein, each Party shall bear its own fees and costs.

22 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
23 **CONSENT JUDGMENT**

24 This Consent Judgment has come before the Court upon the request of the Parties. The  
25 Parties request the Court to fully review this Consent Judgment and, being fully informed  
26 regarding the matters which are the subject of this action, to:

27 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
28 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has

1 been diligently prosecuted, and that the public interest is served by such settlement; and

2 (2) Make the findings pursuant to California Health and Safety Code section  
3 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

4 **IT IS SO STIPULATED:**

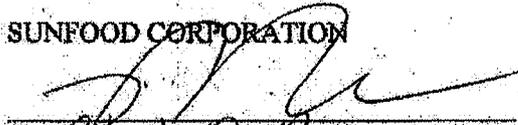
5 Dated: 10/15, 2014

ENVIRONMENTAL RESEARCH  
CENTER

6 By:   
7 Chris Hepinstall, Executive Director

8 Dated: 10/20, 2014

SUNFOOD CORPORATION

9 By:   
10 Its: President

11 **APPROVED AS TO FORM:**

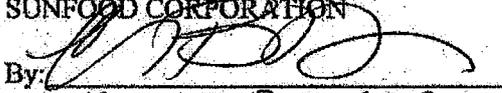
12 Dated: 11/4, 2014

MICHAEL FREUND & ASSOCIATES

13 By:   
14 Michael Freund  
15 Ryan Hoffman  
16 Attorneys for Plaintiff Environmental  
17 Research Center

17 Dated: 11/3, 2014

SUNFOOD CORPORATION

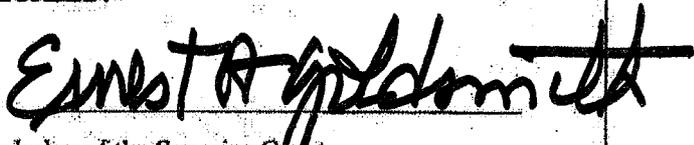
18 By:   
19 Erica B. Peterson  
20 Corporate Counsel

21 **ORDER AND JUDGMENT**

22 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
23 approved and Judgment is hereby entered according to its terms.

24 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

25 Dated: MAR 05 2015, 2014

26   
27 Judge of the Superior Court

28 **ERNEST H. GOLDSMITH**

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

January 31, 2014

**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; Tel. (619) 500-3090. 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:

**Sunfood Corporation**

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

1. Sunfood Super Foods Nutrient-Rich Chlorella Tablets - Lead
2. Sunfood Super Foods Green SuperFood Sun Is Shining - Lead
3. Sunfood Single Plantation Maca - Lead
4. Sunfood Super Foods Mangosteen Fruit Powder - Lead
5. Sunfood Super Foods Nutrient-Rich Red Maca Powder - Lead
6. Sunfood Super Foods Nutrient-Rich Maca Powder - Lead
7. Sunfood Super Foods Sacha Jergon - Lead
8. HealthForce Nutritionals HealthForce SuperFoods Spirulina Manna - Lead
9. HealthForce Nutritionals HealthForce SuperFoods Vitamineral Earth v3.2 - Lead
10. HealthForce SuperFoods Greener Grasses Alkalizer Version 2.0 - Lead
11. SunWarrior Activated Barley - Lead
12. SunWarrior Ormus SuperGreens - Lead

**Exhibit A**

13. HealthForce Nutritionals Nopal Blood Sugar - Lead
14. HealthForce Detox Liver Rescue 4+ - Lead
15. HealthForce Nutritionals Fruits Of The Earth Version 2.0 - Lead
16. SunWarrior Classic Protein Raw Vegan Vanilla - Lead
17. SunWarrior Protein Raw Vegan Natural - Lead
18. SunWarrior Classic Protein Raw Vegan Chocolate- 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 January 31, 2011, 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 Sunfood Corporation and its Registered Agent 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 Sunfood Corporation**

I, Karen A. Evans, declare:

1. This Certificate of Merit accompanies the attached 60-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 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: January 31, 2014



---

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 January 31, 2014, 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:

Current CEO or President  
Sunfood Corporation  
1830 Gillespie Way, Suite 101  
El Cajon, CA 92020

InCorp Services, Inc.  
(Sunfood Corporation's Registered  
Agent for Service of Process)  
5716 Corsa Avenue, Suite 110  
Westlake Village, CA 91362

On January 31, 2014, I electronically 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 party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On January 31, 2014, 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 January 31, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

January 31, 2014

Page 5

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 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, Suite 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, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 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 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3 <sup>rd</sup> 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 City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 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 <sup>th</sup> 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, Suite 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 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive 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 <sup>th</sup> Street, Ste 300 Modesto, CA 95354	
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 <sup>nd</sup> 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 Blvd., Room 224 Visalia, CA 93291	

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), 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 OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. 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 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *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 and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving listed 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 unless an exemption applies; for example, when exposures are sufficiently low (see below). 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. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***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. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***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. This includes all employees, not just those present in California.

**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" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, 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" divided by a 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in a Food.** Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**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 pass into or probably pass into a source of drinking water, 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" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> See Section 25501(a)(4)

## *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. 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. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action 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 to stop committing the violation.

## *FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

**Michael Freund, Esq.**  
**Ryan Hoffman, Esq.**

OF COUNSEL:  
**Denise Ferkich Hoffman, Esq.**

October 17, 2014

**NOTICE OF VIOLATION 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, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. 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 Health and Safety Code Section 25249.7(d), 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 enclosed with 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:

**Sunfood Corporation**

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

1. **Sunfood Super Foods Pure Spirulina Crunchies - Lead**
2. **Sunfood Super Foods Protein Rich Sacha Inchi Powder 2.5lb - Lead**
3. **Sunfood Super Foods Pure Vanilla Powder - Lead**
4. **Sunfood Super Foods Sweet Mesquite Powder - Lead**
5. **Sunfood Super Foods Himalayan Shilajit Powder - Lead**
6. **Sunfood Super Foods Rice Bran Solubles Tocotrienols - Lead**
7. **Sunfood Superfoods Chocolate Cacao Powder - 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.

**Exhibit B**

October 17, 2014

Page 2

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 17, 2011, 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; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. 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 Violation to my attention at the law office address and telephone number indicated on the letterhead or at [rrhoffma@gmail.com](mailto:rrhoffma@gmail.com).**

Sincerely,



Ryan Hoffman

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Sunfood Corporation and its Registered Agent for Service of Process only)

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

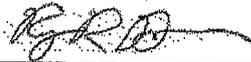
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Sunfood Corporation**

I, Ryan Hoffman, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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 (the noticed party) 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 17, 2014



---

Ryan Hoffman

**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 October 17, 2014, I served the following documents: **NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Sunfood Corporation  
1830 Gillespie Way, Suite 101  
El Cajon, CA 92020

InCorp Services, Inc.  
(Sunfood Corporation's Registered Agent  
for Service of Process)  
Attn: Diane Kalinowski  
5716 Corsa Avenue, Suite 110  
Westlake Village, CA 91362

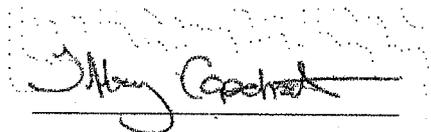
Incorp Services, Inc.  
(Sunfood Corporation's Registered Agent  
for Service of Process)  
2360 Corporate Circle, Suite 400  
Henderson, NV 89074

On October 17, 2014, I electronically 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 party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

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

On October 17, 2014, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on October 17, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

October 17, 2014

Page 5

Service List

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

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

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

District Attorney, Butte County  
25 County Center Drive, Suite 245  
Oroville, CA 95965

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

District Attorney, Colusa County  
346 Fifth Street Suite 101  
Colusa, CA 95932

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

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

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

District Attorney, Fresno County  
2220 Tulare Street, Suite 1000  
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Hanford, CA 93230

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Susanville, CA 96130

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District Attorney, Madera County  
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## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), 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 OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. 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 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *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 and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving listed 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 unless an exemption applies; for example, when exposures are sufficiently low (see below). 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. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***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. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***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. This includes all employees, not just those present in California.

**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" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, 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" divided by a 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in a Food.** Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**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 pass into or probably pass into a source of drinking water, 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" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> See Section 25501(a)(4)

## *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. 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. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action 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 to stop committing the violation.

## *FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.