



13183137

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 ENVIRONMENTAL RESEARCH CENTER

**FILED**  
 ALAMEDA COUNTY  
 AUG 14 2015

CLERK OF THE SUPERIOR COURT  
 By *Christine Johnson*  
 Deputy

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10 Attorney for Defendant  
 RIVER CANYON RETREAT, INC. dba EARTH  
 11 CIRCLE ORGANICS

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

15 ENVIRONMENTAL RESEARCH  
 16 CENTER, a California non-profit  
 corporation,  
 17 Plaintiff,  
 18 v.  
 19 RIVER CANYON RETREAT, INC. dba  
 20 EARTH CIRCLE ORGANICS and DOES 1-  
 21 100  
 22 Defendants.

CASE NO. RG14746349  
 STIPULATED CONSENT JUDGMENT;  
 ORDER  
 Health & Safety Code § 25249.5 et seq.  
 Action Filed: October 30, 2014  
 Trial Date: None set

23  
 24 1. INTRODUCTION

25 1.1 On October 30, 2014, Plaintiff Environmental Research Center ("ERC"), a non-  
 26 profit corporation, as a private enforcer, and in the public interest, initiated this action by filing  
 27 a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
2 ("Proposition 65"), against River Canyon Retreat, Inc. dba Earth Circle Organics and Dues 1-  
3 100 (collectively "ECO"). In this action, ERC alleges that a number of products  
4 manufactured, distributed or sold by ECO contain lead, a chemical listed under Proposition 65  
5 as a carcinogen and reproductive toxin, and expose consumers to this chemical at a level  
6 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a  
7 "Covered Product" or collectively as "Covered Products") are: (1) River Canyon Retreat, Inc.  
8 Earth Circle Organics Raw Organic Spirulina Powder; (2) River Canyon Retreat, Inc. Earth  
9 Circle Organics Raw Organic Spirulina Tablets 250 mg; (3) River Canyon Retreat, Inc. Earth  
10 Circle Foods Raw Chloroella & Spirulina Tablets 250 mg; (4) River Canyon Retreat, Inc. Earth  
11 Circle Organics Raw Organic Dehydrated Alfalfa Grass Powder; (5) River Canyon Retreat, Inc.  
12 Earth Circle Organics Organic Balinese Cacao Powder; and (6) River Canyon Retreat, Inc.  
13 Earth Circle Foods Raw Chloroella Tablets 250 mg.

14 1.2 ERC and ECO are hereinafter referred to individually as a "Party" or  
15 collectively as the "Parties."

16 1.3 ERC is a California non-profit corporation dedicated to, among other causes,  
17 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
18 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
19 encouraging corporate responsibility.

20 1.4 For purposes of this Consent Judgment, the Parties agree that ECO is a business  
21 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a  
22 "person in the course of business" within the meaning of Proposition 65. ECO manufactures,  
23 distributes and sells the Covered Products.

24 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation  
25 dated May 23, 2014, that was served on the California Attorney General, other public  
26 enforcers, and ECO ("Notice"). A true and correct copy of the Notice is attached as Exhibit A  
27 and is hereby incorporated by reference. More than 60 days have passed since the Notice was  
28

1 mailed and uploaded to the Attorney General's website, and no designated governmental entity  
2 has filed a complaint against ECO with regard to the Covered Products or the alleged  
3 violations.

4 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes  
5 persons in California to lead without first providing clear and reasonable warnings in violation  
6 of California Health and Safety Code section 25249.6. ECO denies all material allegations  
7 contained in the Notice and Complaint.

8 1.7 The Parties have entered into this Consent Judgment in order to settle,  
9 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
10 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
11 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
12 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,  
13 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
14 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
15 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
16 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
17 purpose.

18 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall  
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
20 other or future legal proceeding unrelated to these proceedings.

21 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as  
22 a Judgment by this Court.

23 1.10 As a result of ERC's NOV of May 23, 2014, ECO represents that it has taken the  
24 following actions regarding the Covered Products: 1) Raw Organic Spirulina Powder-  
25 temporarily discontinued October 28, 2014 and then reintroduced into the California marketplace  
26 in approximately late February 2015 with a Proposition 65 warning; 2) Raw Organic Spirulina  
27 Tablets-discontinued sales in California as of April 2014; 3) Raw Chlorrella & Spirulina Tablets-

1 discontinued sales in California as of July 2014; 4) Raw Organic Dehydrated Alfalfa Grass  
2 Powder-temporarily discontinued sales in California in July 2014, reintroduced in February 2015  
3 with a corrected serving size on the label of 2.5 grams (previously erroneously labeled 3.0  
4 grams); 5) Organic Balinese Cocoa Powder-temporarily suspended sales in California then  
5 reintroduced in late February 2015 with the corrected serving size on the label of 2 teaspoons  
6 equating to 4 grams (previously erroneously labeled 5 teaspoons equating to 15 g); and 6) Raw  
7 Chlorella Tablets-temporarily suspended sales in California, re-introduced into the California  
8 market in January 2015 with corrected serving size on label of 1 gram nationwide (previously  
9 erroneously labeled as 6 grams).

10 **2. JURISDICTION AND VENUE**

11 For purposes of this Consent Judgment and any further court action that may become  
12 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
13 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
14 over ECO as to the acts alleged in the Complaint, that venue is proper in Alameda County, and  
15 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all  
16 claims up through and including the Effective Date which were or could have been asserted in this  
17 action based on the facts alleged in the Notice and Complaint.

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

19 **3.1** Beginning on the Effective Date, ECO shall be permanently enjoined from  
20 manufacturing for sale in the State of California, "Distributing into the State of California", or  
21 directly selling in the State of California, any Covered Product which exposes a person to a  
22 "Daily Exposure Level" of more than 0.5 micrograms per day when the maximum suggested  
23 dose is taken as directed on the Covered Product's label, unless it meets the warning  
24 requirements under Section 3.2.

25 **3.2 3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
26 of California" shall mean to directly ship a Covered Product into California for sale in  
27

1 California or to sell a Covered Product to a distributor that ECO knows will sell the Covered  
2 Product in California.

3 3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure  
4 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
5 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
6 product (using the largest serving size appearing on the product label) multiplied by servings of  
7 the product per day (using the largest number of servings in a recommended dosage appearing  
8 on the product label or, if there is no recommendation regarding servings per day appearing on  
9 the label, then the serving size per day for purposes of the consent judgment shall be one),  
10 which equals micrograms of lead exposure per day.

11 **3.1. Clear and Reasonable Warnings**

12 If ECO is required to provide a warning pursuant to Section 3.1, the following warning  
13 must be utilized:

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

16 ECO shall use the phrase "cancer and" in the warning only if the maximum daily dose  
17 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
18 the quality control methodology set forth in Section 3.4.

19 The warning shall be securely affixed to or printed upon the container or label of each  
20 Covered Product. In addition, if the Covered Products are ever sold over ECO's website, the  
21 warning shall appear on ECO's checkout page on its website for California consumers  
22 identifying any Covered Product, and also appear prior to completing checkout on ECO's  
23 website when a California delivery address is indicated for any purchase of any Covered  
24 Product.

25 The warning shall be at least the same size as the largest of any other health or safety  
26 warnings also appearing on its website or on the label or container of ECO's product packaging  
27 and the word "WARNING" shall be in all capital letters and in bold print. No conflicting or  
28

1 diminishing statement regarding Proposition 65 may accompany the warning.

2 ECO must display the above warnings with such conspicuousness, as compared with other  
3 words, statements, or design of the label or container, as applicable, to render the warning likely to  
4 be read and understood by an ordinary individual under customary conditions of purchase or use  
5 of the product.

### 6 3.3 Reformulated Covered Products

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

### 11 3.4 Testing and Quality Control Methodology

12 3.4.1 Beginning within one year of the Effective Date, ECO shall arrange for  
13 lead testing of the Covered Products at least once a year for a minimum of three (3) consecutive  
14 years by arranging for testing of five randomly selected samples of each of the Covered  
15 Products, in the form intended for sale to the end-user, which ECO intends to sell or is  
16 manufacturing for sale in California, directly selling to a consumer in California or  
17 "Distributing into California." The testing requirement does not apply to any of the Covered  
18 Products for which ECO has provided the warning specified in Section 3.2. If tests conducted  
19 pursuant to this Section demonstrate that no warning is required for a Covered Product during  
20 each of three consecutive years, then the testing requirements of this Section will no longer be  
21 required as to that Covered Product.

22 3.4.2 For purposes of measuring the "Daily Lead Exposure Level", the  
23 average lead detection result of the five (5) randomly selected samples of the Covered Products  
24 will be controlling.

25 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a  
26 laboratory method that complies with the performance and quality control factors appropriate  
27 for the method used, including limit of detection, qualification, accuracy, and precision that

1 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
2 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
3 method subsequently agreed to in writing by the Parties.

4           3.4.4 All testing pursuant to this Consent Judgment shall be performed by an  
5 independent third party laboratory certified by the California Environmental Laboratory  
6 Accreditation Program or an independent third-party laboratory that is registered with the  
7 United States Food & Drug Administration.

8           3.4.5 Nothing in this Consent Judgment shall limit ECO's ability to conduct,  
9 or require that others conduct, additional testing of the Covered Products, including the raw  
10 materials used in their manufacture.

11           3.4.6 ECO shall retain all test results and documentation for a period of five  
12 years from the date of each test.

13       **4. SETTLEMENT PAYMENT**

14           4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil  
15 penalties, attorney's fees, and costs, ECO shall make a total payment of \$85,000.00 ("Total  
16 Settlement Amount") to ERC which shall be made in three payments as follows:

- 17           • \$28,333.00 due five (5) days from the Effective Date
- 18           • \$28,333.00 due thirty-five (35) days from the Effective Date
- 19           • \$28,334.00 due sixty (65) days from the Effective Date

20 ECO shall make these payments by wire transfer to ERC's escrow account, for which ERC will  
21 give ECO the necessary account information. The Total Settlement Amount shall be  
22 apportioned as follows:

23           4.2 \$31,430.00 shall be considered a civil penalty pursuant to California Health and  
24 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$23,572.50) of the civil penalty to the  
25 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
26 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
27 Code §25249.12(c). ERC will retain the remaining 25% (\$7,857.50) of the civil penalty.

1           4.3     \$1,565.89 shall be distributed to ERC as reimbursement to ERC for reasonable  
2 costs incurred in bringing this action.

3           4.4     \$23,714.00 shall be distributed to ERC in lieu of further civil penalties, for the  
4 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
5 includes work, analyzing, researching and testing consumer products that may contain  
6 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
7 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
8 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
9 donation of \$1,185.00 to Global Community Monitor to address reducing toxic chemical  
10 exposures in California.

11           4.5     \$13,480.00 shall be distributed to Michael Freund as reimbursement of ERC's  
12 attorney's fees, \$1,822.50 shall be distributed to Ryan Hoffman as reimbursement of ERC's  
13 attorney's fees, while \$12,987.61 shall be distributed to ERC for its in-house legal fees.

14           **5.     MODIFICATION OF CONSENT JUDGMENT**

15           5.1     This Consent Judgment may be modified only (i) by written stipulation of the  
16 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
17 judgment.

18           5.2     If ECO seeks to modify this Consent Judgment under Section 5.1, then ECO  
19 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and  
20 confer regarding the proposed modification in the Notice of Intent, then ERC must provide  
21 written notice to ECO within thirty days of receiving the Notice of Intent. If ERC notifies ECO  
22 in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and confer in  
23 good faith as required in this Section. The Parties shall meet in person or via telephone within  
24 thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty days of  
25 such meeting, if ERC disputes the proposed modification, ERC shall provide to ECO a written  
26 basis for its position. The Parties shall continue to meet and confer for an additional thirty (30)  
27



1 days in an effort to resolve any remaining disputes. Should it become necessary, the Parties  
2 may agree in writing to different deadlines for the meet-and-confer period.

3       **5.3** In the event that ECO initiates or otherwise requests a modification under  
4 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
5 Consent Judgment, ECO shall reimburse ERC its costs and reasonable attorney's fees for the  
6 time spent in the meet-and-confer process and filing and arguing the motion or application.

7       **5.4** Where the meet-and-confer process does not lead to a joint motion or  
8 application in support of a modification of the Consent Judgment, then either Party may seek  
9 judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs  
10 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
11 means a party who is successful in obtaining relief more favorable to it than the relief that the  
12 other party was amenable to providing during the Parties' good faith attempt to resolve the  
13 dispute that is the subject of the modification.

14       **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
15       **JUDGMENT**

16       **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
17 this Consent Judgment.

18       **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
19 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
20 inform ECO in a reasonably prompt manner of its test results and provide ECO with testing  
21 information from an independent third-party laboratory, including information sufficient to  
22 permit ECO to identify the Covered Products at issue. ECO shall, within (30) thirty days  
23 following such notice, provide ERC with testing information, from an independent third-party  
24 laboratory meeting the requirements of Sections 3.4.1 and 3.4.2, demonstrating ECO's  
25 compliance with the Consent Judgment, if warranted. If ECO contends that it has  
26 demonstrated compliance with this Consent Judgment as elaborated by this Section 6.2 and  
27 ERC agrees ECO has demonstrated compliance, ERC will not take any further legal action  
28

1 against ECO.

2 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

10 8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on  
11 behalf of itself and in the public interest, and ECO, of any alleged violation of Proposition 65 or  
12 its implementing regulations for failure to provide Proposition 65 warnings of exposure to lead  
13 from the handling, use, or consumption of the Covered Products and fully resolves all claims  
14 that have been or could have been asserted in this action up to and including the Effective Date  
15 for failure to provide Proposition 65 warnings for the Covered Products. ERC, on behalf of  
16 itself and in the public interest, hereby discharges ECO and its respective officers, directors,  
17 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,  
18 franchisees, licensees, customers (not including private label customers of ECO), distributors,  
19 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain  
20 of any Covered Product, and the predecessors, successors and assigns of any of them  
21 (collectively, "Released Parties"), from any and all claims, actions, causes of action, suits,  
22 demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have  
23 been asserted, as to any alleged violation of Proposition 65 arising from the failure to provide  
24 Proposition 65 warnings on the Covered Products regarding lead.

25 8.2 ERC on its own behalf only, on one hand, and ECO on its own behalf only, on  
26 the other, further waive and release any and all claims they may have against each other for all  
27 actions or statements made or undertaken in the course of seeking or opposing enforcement of  
28

1 Proposition 65 in connection with the Notice or Complaint up through and including the  
2 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
3 right to seek to enforce the terms of this Consent Judgment.

4 **8.3** It is possible that other claims not known to the Parties arising out of the facts  
5 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be  
6 discovered. ERC on behalf of itself only, on one hand, and ECO, on the other hand,  
7 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
8 claims up through the Effective Date, including all rights of action therefore. ERC and ECO  
9 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown  
10 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
11 claims. California Civil Code section 1542 reads as follows:

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

17 ERC on behalf of itself only, on the one hand, and ECO, on the other hand, acknowledge and  
18 understand the significance and consequences of this specific waiver of California Civil Code  
19 section 1542.

20 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
21 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
22 in the Covered Products as set forth in the Notice and the Complaint.

23 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
24 environmental exposures arising under Proposition 65, nor shall it apply to any of ECO's  
25 products other than the Covered Products.

## 26 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

1     **10.    GOVERNING LAW**

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

4           In the event that Proposition 65 is repealed or preempted or if any of the provisions of this  
5 Consent Judgment are rendered inapplicable or are no longer required as a result of any such  
6 repeal or preemption as to the Covered Products, then ECO may provide written notice to ERC of  
7 any asserted change in the law, and shall have no further obligations pursuant to this Consent  
8 Judgment with respect to, and to the extent that, the Covered Products are so affected.

9     **11.    PROVISION OF NOTICE**

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

13 **FOR ENVIRONMENTAL RESEARCH CENTER:**

14 Chris Heptinstall, Executive Director, Environmental Research Center  
15 3111 Camino Del Rio North, Suite 400  
16 San Diego, CA 92108  
17 Tel: (619) 500-3090  
18 Email: chris\_erc501c3@yahoo.com

19 With a copy to:

20 Michael Freund  
21 Ryan Hoffman  
22 Michael Freund & Associates  
23 1919 Addison Street, Suite 105  
24 Berkeley, CA 94704  
25 Telephone: (510) 540-1992  
26 Facsimile: (510) 540-5543

27 **RIVER CANYON RETREAT, INC. dba  
28 EARTH CIRCLE ORGANICS**

Herb Heller  
Earth Circle Organics  
355 Crown Point Circle, Suite D  
Grass Valley, CA 95945

1  
2 With copies to:

3 Melissa A. Jones  
4 Stoel Rives LLP  
5 500 Capitol Mall, Suite 1600  
6 Sacramento, CA 95814  
7 melissa.jones@stoel.com

8 Robert Rymek  
9 The Law Office of Robert Rymek  
10 735 Sunrise Avenue - Suite 115  
11 Roseville, CA 95661

12  
13 **12. COURT APPROVAL**

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

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

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

22 **13. EXECUTION AND COUNTERPARTS**

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

26 **14. DRAFTING**

27 The terms of this Consent Judgment have been reviewed by the respective counsel for each  
28 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,

1 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
2 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
3 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
4 equally in the preparation and drafting of this Consent Judgment.

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

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

15 **16. ENTIRE AGREEMENT, AUTHORIZATION**

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

22 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
23 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
24 explicitly provided herein, each Party shall bear its own fees and costs.

25 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY**  
26 **OF CONSENT JUDGMENT**

27 This Consent Judgment has come before the Court upon the request of the Parties. The  
28

1 Parties request the Court to fully review this Consent Judgment and, being fully informed  
2 regarding the matters which are the subject of this action, to:

3 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
4 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has  
5 been diligently prosecuted, and that the public interest is served by such settlement; and

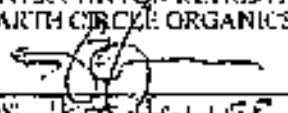
6 (2) Make the findings pursuant to California Health and Safety Code section  
7 25249.7(d)(4), approve the Settlement, and approve this Consent Judgment.

8 IT IS SO STIPULATED:

9 Dated: 6/12/ 2015

ENVIRONMENTAL RESEARCH  
CENTER  
By:   
Chris Beath, Executive Director

12 Dated: June 11 2015

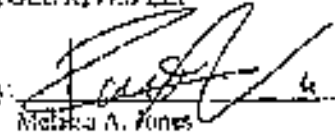
RIVER CANYON RETREAT, INC. dba  
EARTH CIRCLE ORGANICS  
By:   
Lisa Helzer  
President/CEO

16 APPROVED AS TO FORM:

17 Dated: \_\_\_\_\_ 2015

MICHAEL FREUND & ASSOCIATES  
By: \_\_\_\_\_  
Michael Freund  
Ryan Hoffman  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

22 Dated: June 11 2015

STOEL RIVES LLP  
for By:   
Melissa A. Jones  
Attorney for Defendant River Canyon  
Retreat, Inc. dba Earth Circle Organics.

1 Parties request the Court to fully review this Consent Judgment and, being fully informed  
2 regarding the matters which are the subject of this action, to:

3 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
4 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has  
5 been diligently prosecuted, and that the public interest is served by such settlement; and

6 (2) Make the findings pursuant to California Health and Safety Code section  
7 25249.7(d)(4), approve the Settlement, and approve this Consent Judgment.

8 **IT IS SO STIPULATED:**


9 Dated: \_\_\_\_\_, 2015

ENVIRONMENTAL RESEARCH  
CENTER

By: \_\_\_\_\_  
Chris Napinstall, Executive Director

12 Dated: June 11, 2015

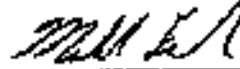
RIVER CANYON RETREAT, INC. dba  
EARTH CIRCLE ORGANICS

By:   
It: PRESIDENT/COO

16 **APPROVED AS TO FORM:**

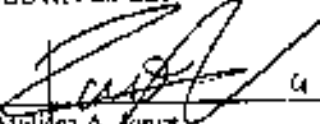
17 Dated: June 11, 2015

MICHAEL FREUND & ASSOCIATES

By:   
Michael Freund  
Ryan Hoffman  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

22 Dated: June 11, 2015

STOEL RIVES LLP

for By:   
Melissa A. Jones  
Attorney for Defendant River Canyon  
Retreat, Inc. dba Earth Circle Organics



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**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED

Dated: AUG 14 2015, 2015

  
\_\_\_\_\_  
Judge of the Superior Court

**EXHIBIT A**

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.3543

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL  
Denise Ferlich Hoffman, Esq.

May 23, 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 ("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:

**River Canyon Retreat Inc. dba Earth Circle Organics**

**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) River Canyon Retreat, Inc. Earth Circle Organics Raw Organic Spirulina Powder – Lead
- 2) River Canyon Retreat, Inc. Earth Circle Organics Raw Organic Spirulina Tablets 250 mg – Lead
- 3) River Canyon Retreat, Inc. Earth Circle Foods Raw Chlorella & Spirulina Tablets 250 mg – Lead
- 4) River Canyon Retreat, Inc. Earth Circle Organics Raw Organic Dehydrated Alfalfa Grass Powder – Lead
- 5) River Canyon Retreat, Inc. Earth Circle Organics Organic Bolivian Cacao Powder - Lead
- 6) River Canyon Retreat, Inc. Earth Circle Foods Raw Chlorella Tablets 250 mg – 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.

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

May 23, 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 May 23, 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 unwanted 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 [rthoffman@gmail.com](mailto:rthoffman@gmail.com).**

Sincerely,



Ryan Hoffman

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to River Canyon Retreat Inc. dba Earth Circle Organics 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 River Canyon Retreat Inc. dba Earth Circle Organics**

1, 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.

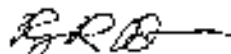
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons 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: May 23, 2014



\_\_\_\_\_  
Ryan Hoffman

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

May 23, 2014

Page 4

**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 Jay 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 May 23, 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 President or CEO  
River Canyon Retreat Inc. dba  
Earth Circle Organics  
355 Crown Point Circle, Suite D  
Grass Valley, CA 95945

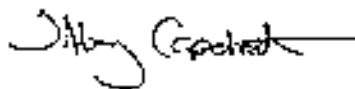
Eric Allen Butler  
(River Canyon Retreat Inc. dba Earth Circle Organics  
Registered Agent for Service of Process)  
355 Crown Point Circle, Suite D  
Grass Valley, CA 95945

On May 23, 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 May 23, 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 Priority Mail.

Executed on May 23, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capchert

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

May 23, 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 95120

District Attorney, Butte County  
708 Court Street  
Jackson, CA 95841

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

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

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

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

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

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

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

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95986

District Attorney, Humboldt County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial County  
940 West Main Street, Ste 102  
El Centro, CA 92521

District Attorney, Inyo County  
200 W. L. de Street  
Beatty, CA 93514

District Attorney, Kern County  
8215 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  
230 South Lassen Street, Ste. B  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Suite 1800H  
Los Angeles, CA 90012

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

District Attorney, Marin County  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94901

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  
150 W. Main 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  
Post Office Box 131  
Salinas, CA 95062

District Attorney, Napa County  
901 Parkway Mall  
Napa, CA 94319

District Attorney, Nevada County  
201 Commercial Street  
Nevada City, CA 95959

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

District Attorney, Placer County  
16813 Justice Center Drive, Ste 240  
Roseville, CA 95678

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

District Attorney, Riverside County  
3960 Orange Street  
Riverside, CA 92503

District Attorney, Sacramento County  
501 'G' Street  
Sacramento, CA 95814

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

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

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

District Attorney, San Francisco County  
850 Bryant Street, Suite 222  
San Francisco, CA 94103

District Attorney, San Joaquin County  
222 E. Weber Ave. Rm 202  
Stockton, CA 95202

District Attorney, San Luis Obispo County  
1035 Palm St, Room 490  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Cir., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1112 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  
1335 West Street  
Redding, CA 96001

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

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

District Attorney, Solano County  
673 Texas Street, Ste 4300  
Fountain, CA 94333

District Attorney, Sonoma County  
600 Administration Drive,  
Room 2321  
Santa Rosa, CA 95403

District Attorney, Stanislaus County  
632 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95334

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 Blvd. Room 224  
Visalia, CA 93291

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

District Attorney, Ventura County  
800 South Victoria Ave, Suite 514  
Ventura, CA 93001

District Attorney, Yuba County  
101 2<sup>nd</sup> Street  
Woodland, CA 95699

District Attorney, Yuba County  
315 Fifth Street, Suite 152  
Marysville, CA 95905

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

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

San Francisco City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Pl.  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 East Santa Clara Street,  
16<sup>th</sup> Floor  
San Jose, CA 95113

## 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 25248.5 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.

<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.

**CLERK'S CERTIFICATE OF MAILING (CCP 1013a)**

I certify that the following is true and correct

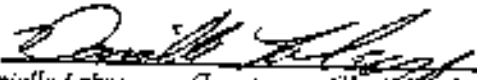
I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 2405 Amador Street, Hayward, California. I served this Stipulated Consent Judgment Order by placing copies in envelope(s) addressed as shown below and then by sealing and placing those for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Hayward, California, following standard court practices.

Freund, Michael  
Michael Freund & Associates  
1919 Addison Street Ste. 105  
Berkeley, CA 94704

Jones, Melissa Ann  
Stoel Rives LLP  
500 Capitol Mall Ste. 1800  
Sacramento, CA 95814

Date 8/14/2015

Executive Officer/Clerk of the Superior Court

By   
Daniella Labrecque, Courtroom Clerk for the  
Honorable Delbert Gee  
Department 510