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10 ENVIRONMENTAL RESEARCH CENTER

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14 Sacramento, CA 95814

15 Attorney for Defendant
16 KROEGER HERB PRODUCTS CO., INC.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF ALAMEDA

19 ENVIRONMENTAL RESEARCH
20 CENTER, a California non-profit
21 corporation,

22 Plaintiff,

23 v.

24 KROEGER HERB PRODUCTS CO., INC.,
25 a Colorado Corporation

26 Defendant.

27 CASE NO. RG15758601

28 STIPULATED CONSENT JUDGMENT:
[REDACTED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: February 13, 2015

Trial Date: None set

1 INTRODUCTION

1.1 On February 13, 2015, Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 et seq. ("Proposition 65"), against KROEGER HERB PRODUCTS CO., INC. ("KROEGER HERB"). In this action, ERC alleges that a number of products manufactured, distributed or sold by

ENDORSED
FILED
ALAMEDA COUNTY

JUN 10 2015

K. McCoy, Exec. Off./Clerk

1 KROEGER HERB contain lead, a chemical listed under Proposition 65 as a carcinogen and
2 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
3 warning. These products (referred to hereinafter individually as a "Covered Product" or
4 collectively as "Covered Products") are:

- 5 1) Kroeger Herb Products Co. Inc. Men's Special
- 6 2) Kroeger Herb Products Co. Inc. Complete Concentrates Bilberry
- 7 3) Kroeger Herb Products Co. Inc. Complete Concentrates Chastetree Berry
- 8 4) Kroeger Herb Products Co. Inc. Candida Formula #1
- 9 5) Kroeger Herb Products Co. Inc. Gallbladder Care
- 10 6) Kroeger Herb Products Co. Inc. Candida Liver Care
- 11 7) Kroeger Herb Products Co. Inc. Complete Concentrates Rhodiola Rosea
- 12 8) Kroeger Herb Products Co. Inc. BloodToner
- 13 9) Kroeger Herb Products Co. Inc. Digestive Enzyme
- 14 10) Kroeger Herb Products Co. Inc. Complete Concentrates Red Clover
- 15 11) Kroeger Herb Products Co. Inc. Brain Care Blend
- 16 12) Kroeger Herb Products Co. Inc. SPK Formula
- 17 13) Kroeger Herb Products Co. Inc. Thyroid Care
- 18 14) Kroeger Herb Products Co. Inc. VYR-33 Defense
- 19 15) Kroeger Herb Products Co. Inc. Women's Gold
- 20 16) Kroeger Herb Products Co. Inc. X 40
- 21 17) Kroeger Herb Products Co. Inc. Candida Formula #2
- 22 18) Kroeger Herb Products Co. Inc. Enzymes
- 23 19) Kroeger Herb Products Co. Inc. Chem X
- 24 20) Kroeger Herb Products Co. Inc. Healthy Gut
- 25 21) Kroeger Herb Products Co. Inc. Female Balance
- 26 22) Kroeger Herb Products Co. Inc. Eye Formula
- 27 23) Kroeger Herb Products Co. Inc. HPX Formula
- 28 24) Kroeger Herb Products Co. Inc. Sinus Blend
- 25) Kroeger Herb Products Co. Inc. FNG Care
- 26) Kroeger Herb Products Co. Inc. Olive Leaf
- 27) Kroeger Herb Products Co. Inc. Serenity
- 28) Kroeger Herb Products Co. Inc. Turmeric
- 29) Kroeger Herb Products Co. Inc. Kolester
- 30) Kroeger Herb Products Co. Inc. Metal X
- 31) Kroeger Herb Products Co. Inc. Liver Formula
- 32) Kroeger Herb Products Co. Inc. INF Blend
- 33) Kroeger Herb Products Co. Inc. Ruma Care
- 34) Kroeger Herb Products Co. Inc. PA Formula
- 35) Kroeger Herb Products Co. Inc. Rascal
- 36) Kroeger Herb Products Co. Inc. Pollution X

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

1 1.3 ERC alleges that Defendant KROEGER HERB qualifies as a “person in the
2 course of doing business” as that term is defined in Health and Safety Code section
3 25249.11(b).

4 1.4 KROEGER HERB is a Colorado corporation. KROEGER HERB denies that it
5 qualifies as a “person in the course of doing business” as that term is defined in Health and
6 Safety Code section 25249.11(b).

7 1.5 ERC and KROEGER HERB are referred to individually as a “Party” or
8 collectively as the “Parties.”

9 1.6 The Complaint is based on allegations contained in ERC’s Notice of Violation
10 dated August 29, 2014, that was served on the California Attorney General, other public
11 enforcers, and KROEGER HERB (“Notice”). A true and correct copy of the Notice is attached
12 as Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the
13 Notice was mailed and uploaded to the Attorney General’s website, and no designated
14 governmental entity has filed a complaint against KROEGER HERB with regard to the
15 Covered Products or the alleged violations.

16 1.7 ERC’s Notice and Complaint allege that use of the Covered Products exposes
17 persons in California to lead without first providing clear and reasonable warnings in violation
18 of California Health and Safety Code section 25249.6. KROEGER HERB denies all material
19 allegations contained in the Notice and Complaint.

20 1.8 The Parties have entered into this Consent Judgment in order to settle,
21 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
22 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
23 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
24 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
25 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
26 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
27 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
28 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any

1 purpose.

2 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
3 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
4 other or future legal proceeding unrelated to these proceedings.

5 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered as
6 a Judgment by this Court.

7 **2. JURISDICTION AND VENUE**

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

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

16 **3.1** Beginning on the Effective Date, but only at times KROEGER HERB qualifies
17 as a "person in the course of doing business" as that term is defined in Health and Safety Code
18 section 25249.11(b), KROGER HERB shall be permanently enjoined from manufacturing for
19 sale in the State of California, "Distributing into the State of California", or directly selling in
20 the State of California, any Covered Product which exposes a person to a "Daily Exposure
21 Level" of more than 0.5 micrograms per day when the maximum suggested dose is taken as
22 directed on the Covered Product's label, unless it meets the warning requirements under
23 Section 3.2.

24 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of
25 California" shall mean to directly ship a Covered Product into California for sale in California or
26 to sell a Covered Product to a distributor the KROEGER HERB knows will sell the Covered
27 Product in California.

1 3.1.2 For the sole purpose of this Consent Judgment, the "Daily Lead
2 Exposure Level" shall be measured in micrograms, and shall be calculated using the following
3 formula: micrograms of lead per gram of product, multiplied by grams of product per serving
4 of the product (using the largest serving size appearing on the product label), multiplied by
5 servings of the product per day (using the largest number of servings in a recommended dosage
6 appearing on the product label), which equals micrograms of lead exposure per day.

7 **3.2 Clear and Reasonable Warnings**

8 If KROEGER HERB is required to provide a warning pursuant to Section 3.1:

9 The following warning must be utilized:

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

12 KROEGER HERB shall use the phrase "cancer and" in the warning only if the "Daily Lead
13 Exposure Level" exceeds 15 micrograms of lead exposure per day. KROEGER HERB shall
14 provide the warning on the following: 1) on the checkout page of Hannah's Herb Shop and
15 KROEGER HERB's retail website for California consumers identifying each Covered Product to
16 which the warning applies. A second warning shall appear prior to completing checkout on the
17 website when a California delivery address is indicated. The purchaser shall be required to accept
18 the warning prior to completing checkout for any of the Covered Products being sold; and 2) on
19 the label or container of KROEGER HERB's product packaging for each Covered Product
20 distributed into the State of California as defined in Section 3.1.1.

21 The warning shall be at least the same size as the largest of any other health or safety
22 warnings also appearing on its website or on the label or container of KROEGER HERB's product
23 packaging and the word "WARNING" shall be in all capital letters and in bold print. No other
24 statements about Proposition 65 or lead may accompany the warning.

25 KROEGER HERB must display the above warnings with such conspicuousness, as
26 compared with other words, statements, or design of the label or container, as applicable, to render
27 the warning likely to be read and understood by an ordinary individual under customary conditions
28 of purchase or use of the product.

1 **3.3 Reformulated Covered Products**

2 A Reformulated Covered Product is one for which the "Daily Exposure Level" exceeds no
3 more than 0.5 micrograms of lead exposure per day.

4 **3.4 Testing and Quality Control Methodology**

5 **3.4.1** Beginning on the Effective Date, but only at times KROEGER HERB
6 qualifies as a "person in the course of doing business" as that term is defined in Health and
7 Safety Code section 25249.11(b), KROEGER HERB shall comply with this Section 3.4.

8 **3.4.2** All testing pursuant to this Consent Judgment shall be performed using a
9 laboratory method that complies with the performance and quality control factors appropriate
10 for the method used, including limit of detection, qualification, accuracy, and precision that
11 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)
12 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
13 method subsequently agreed upon in writing by the Parties.

14 **3.4.3** All testing pursuant to this Consent Judgment shall be performed by an
15 independent third-party laboratory certified by the California Environmental Laboratory
16 Accreditation Program or an independent third-party laboratory that is registered with the
17 United States Food & Drug Administration. Nothing in this Consent Judgment shall limit
18 KROEGER HERB's ability to conduct, or require that others conduct, additional testing of the
19 Covered Products, including the raw materials used in their manufacture.

20 **3.4.4** KROEGER HERB shall arrange, for at least five consecutive years and at
21 least once per year, for the lead testing of five randomly selected samples of each Covered
22 Product in the form intended for sale to the end-user to be distributed or sold to California.
23 KROEGER HERB shall continue testing so long as the Covered Products are sold in California
24 or sold to a third party for retail sale in California. If tests conducted pursuant to this Section
25 demonstrate that no warning is required for a Covered Product during each of five consecutive
26 years, then the testing requirements of this Section will no longer be required as to that Covered
27 Product. However, if after the five-year period, KROEGER HERB changes ingredient suppliers
28 for any of the Covered Products and/or reformulates any of the Covered Products, KROEGER

1 HERB shall test that Covered Product at least once after such change is made, and send those
2 test results to ERC within 10 working days of receiving the test results. The testing
3 requirements discussed in Section 3.4 are not applicable to any Covered Product for which
4 KROEGER HERB has provided the warning as specified in Section 3.2.

5 **3.4.5** Beginning on the Effective Date and continuing for a period of five years
6 thereafter, KROEGER HERB shall arrange for copies of all laboratory reports with results of
7 testing for lead content under Section 3.4 to be automatically sent by the testing laboratory
8 directly to ERC within ten working days after completion of that testing. These reports shall be
9 deemed and treated by ERC as confidential information under the terms of the confidentiality
10 agreement entered into by the Parties. KROEGER HERB shall retain all test results and
11 documentation for a period of five years from the date of each test.

12 **4. SETTLEMENT PAYMENT**

13 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
14 penalties, attorney's fees, and costs, KROEGER HERB shall make a total payment of
15 \$75,000.00 ("Total Settlement Amount") to ERC divided into six equal consecutive monthly
16 payments of \$12,500.00 with the first payment due and owing within 5 days of the Effective
17 Date followed by five (5) consecutive monthly payment due on the same day of the month as
18 the day of the month the first payment was due (e.g. if the first payment is due on the 15th of the
19 month, the second payment would be due on the 15th of the following month). KROEGER
20 HERB shall make this payment by wire transfer to ERC's escrow account, for which ERC will
21 give KROEGER HERB the necessary account information. The Total Settlement Amount
22 shall be apportioned as follows:

23 **4.2** \$25,772.00 shall be considered a civil penalty pursuant to California Health
24 and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$19,329.00) 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% (\$6,443.00) of the civil penalty.

1 4.3 \$3,790.09 shall be distributed to Environmental Research Center as
2 reimbursement to ERC for reasonable costs incurred in bringing this action; and \$19,446.07
3 shall be distributed to Environmental Research Center 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 \$972.00 to the As You Sow to address reducing toxic chemical exposures in
10 California.

11 4.4 \$13,015.39 shall be distributed to LOZEAU DRURY LLP as reimbursement
12 of ERC's attorney's fees, while \$12,976.45 shall be distributed to ERC for its in-house legal
13 fees.

14 **5. MODIFICATION OF CONSENT JUDGMENT**

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

18 5.2 If KROEGER HERB seeks to modify this Consent Judgment under Section
19 5.1, then KROEGER HERB must provide written notice to ERC of its intent ("Notice of
20 Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of
21 Intent, then ERC must provide written notice to KROEGER HERB within thirty days of
22 receiving the Notice of Intent. If ERC notifies KROEGER HERB in a timely manner of ERC's
23 intent to meet and confer, then the Parties shall meet and confer in good faith as required in this
24 Section. The Parties shall meet in person or via telephone within thirty (30) days of ERC's
25 notification of its intent to meet and confer. Within thirty days of such meeting, if ERC
26 disputes the proposed modification, ERC shall provide to KROEGER HERB a written basis for
27 its position. The Parties shall continue to meet and confer for an additional thirty (30) days in
28

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

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

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

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

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

19 6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated
20 Covered Product (for which ERC alleges that no warning has been provided but required under
21 the terms of this Consent Judgment), then ERC shall inform KROEGER HERB in a reasonably
22 prompt manner of its test results, including information sufficient to permit KROEGER HERB
23 to identify the Covered Products at issue. KROEGER HERB shall, within thirty days following
24 such notice, provide ERC with testing information, from an independent third-party laboratory
25 meeting the requirements of Sections 3.4, demonstrating KROEGER HERB's compliance with
26 the Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior
27 to ERC taking any further legal action.

1 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

9 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
10 on behalf of itself and in the public interest, and KROEGER HERB, of any alleged violation of
11 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
12 exposure to lead from the handling, use, or consumption of the Covered Products and fully
13 resolves all claims that have been or could have been asserted in this action up to and including
14 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.
15 ERC, on behalf of itself and in the public interest, hereby discharges KROEGER HERB and its
16 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
17 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label
18 customers of KROEGER HERB), distributors, wholesalers, retailers, and all other upstream and
19 downstream entities in the distribution chain of any Covered Product, and the predecessors,
20 successors and assigns of any of them (collectively, "Released Parties"), from any and all
21 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and
22 expenses asserted, or that could have been asserted, as to any alleged violation of Proposition
23 65 arising from the failure to provide Proposition 65 warnings on the Covered Products
24 regarding lead.

25 **8.2** ERC on its own behalf only, on one hand, and KROEGER HERB on its own
26 behalf only, on the other, further waive and release any and all claims they may have against
27 each other for all actions or statements made or undertaken in the course of seeking or opposing
28 enforcement of Proposition 65 in connection with the Notice or Complaint up through and

1 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit
2 any Party's right to seek to enforce the terms of this Consent Judgment.

3 8.3 It is possible that other claims not known to the Parties arising out of the
4 facts alleged in the Notice or the Complaint and relating to the Covered Products will develop
5 or be discovered. ERC on behalf of itself only, on one hand, and KROEGER HERB, on the
6 other hand, acknowledge that this Consent Judgment is expressly intended to cover and include
7 all such claims up through the Effective Date, including all rights of action therefore. ERC and
8 KROEGER HERB acknowledge that the claims released in Sections 8.1 and 8.2 above may
9 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any
10 such unknown claims. California Civil Code section 1542 reads as follows:

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

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

19 8.4 Compliance with the terms of this Consent Judgment shall be deemed to
20 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
21 in the Covered Products as set forth in the Notice and the Complaint.

22 8.5 Nothing in this Consent Judgment is intended to apply to any occupational
23 or environmental exposures arising under Proposition 65, nor shall it apply to any of
24 KROEGER HERB's products other than the Covered Products.

25 9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

28 10. GOVERNING LAW

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

1 **11. PROVISION OF NOTICE**

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

5 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

6 Chris Heptinstall, Executive Director, Environmental Research Center
7 3111 Camino Del Rio North, Suite 400
8 San Diego, CA 92108
9 Tel: (619) 500-3090
10 Email: chris_erc501c3@yahoo.com

11 With a copy to:

12 RICHARD T. DRURY
13 REBECCA L. DAVIS
14 LOZEAU | DRURY LLP
15 410 12th Street, Suite 250
16 Oakland, CA 94607
17 Ph: 510-836-4200
18 Fax: 510-836-4205
19 Email: richard@lozeaudrury.com

20 **FOR KROEGER HERB PRODUCTS CO., INC.:**

21 Thomas M. Brown, President
22 Kroeger Herb Products Co., Inc.
23 805 Walnut Street
24 Boulder, CO 80302
25 Email: tom@kroegerherb.com

26 With a copy to:

27 MELISSA JONES
28 STOEL RIVES, LLP
500 Capitol Mall, Suite 1600
Sacramento, Ca 95814
Ph: 916-319-4649
Fax: 916-447-4781
Email: melissa.jones@stoel.com

1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent
6 Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and
7 if possible prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

15 The terms of this Consent Judgment have been reviewed by the respective counsel for each
16 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms with
17 counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent
18 Judgment entered thereon, the terms and provisions shall not be construed against any Party.

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

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

1 **16. ENTIRE AGREEMENT, AUTHORIZATION**

2 16.1 This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter herein, and any and all
4 prior discussions, negotiations, commitments and understandings related hereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
7 herein, shall be deemed to exist or to bind any Party.

8 16.2 Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
10 explicitly provided herein, each Party shall bear its own fees and costs.

11 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
12 **CONSENT JUDGMENT**

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

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

19 (2) Make the findings pursuant to California Health and Safety Code section
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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1 IT IS SO STIPULATED:

2 Dated: 4/10/, 2015

ENVIRONMENTAL RESEARCH
CENTER

By: [Signature]
Chris Herpin, Executive Director

5 Dated: 4-10-, 2015

KROEGER HERB PRODUCTS CO., INC.

By: [Signature]
Its: President

9 APPROVED AS TO FORM:

11 Dated: 4/12/, 2015

LOZEAU | DRURY LLP

By: [Signature]
Richard T. Drury
Rebecca L. Davis
Attorneys for Plaintiff Environmental
Research Center

16 Dated: April 10, 2015

STOEL RIVES, LLP

for By: [Signature]
Melissa A. Jones
Attorneys for Defendant Kroeger Herb
Product Co., Inc.

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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: June 10, 2015



Judge of the Superior Court

EXHIBIT A

EXHIBIT A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
richard@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
Kroeger Herb Products Co., Inc.
805 Walnut Street
Boulder, CO 80302

Thomas M. Brown
(Kroeger Herb Products Co., Inc.'s
Registered Agent for Service of Process)
805 Walnut Street
Boulder, CO 80302

VIA PRIORITY MAIL

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

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

Dear Addressees:

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

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

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

Kroeger Herb Products Co., Inc.

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Kroeger Herb Products Co. Inc. Men's Special - Lead**
2. **Kroeger Herb Products Co. Inc. Complete Concentrates Bilberry - Lead**
3. **Kroeger Herb Products Co. Inc. Complete Concentrates Chastetree Berry - Lead**
4. **Kroeger Herb Products Co. Inc. Candida Formula #1- Lead**
5. **Kroeger Herb Products Co. Inc. Gallbladder Care - Lead**
6. **Kroeger Herb Products Co. Inc. Candida Liver Care - Lead**
7. **Kroeger Herb Products Co. Inc. Complete Concentrates Rhodiola Rosea - Lead**
8. **Kroeger Herb Products Co. Inc. BloodToner - Lead**
9. **Kroeger Herb Products Co. Inc. Digestive Enzyme - Lead**
10. **Kroeger Herb Products Co. Inc. Complete Concentrates Red Clover - Lead**
11. **Kroeger Herb Products Co. Inc. Brain Care Blend - Lead**
12. **Kroeger Herb Products Co. Inc. SPK Formula - Lead**
13. **Kroeger Herb Products Co. Inc. Thyroid Care - Lead**
14. **Kroeger Herb Products Co. Inc. VYR-33 Defense - Lead**
15. **Kroeger Herb Products Co. Inc. Women's Gold - Lead**
16. **Kroeger Herb Products Co. Inc. X 40 - Lead**
17. **Kroeger Herb Products Co. Inc. Candida Formula #2 - Lead**
18. **Kroeger Herb Products Co. Inc. Enzymes - Lead**
19. **Kroeger Herb Products Co. Inc. Chem X - Lead**
20. **Kroeger Herb Products Co. Inc. Healthy Gut - Lead**
21. **Kroeger Herb Products Co. Inc. Female Balance - Lead**
22. **Kroeger Herb Products Co. Inc. Eye Formula - Lead**
23. **Kroeger Herb Products Co. Inc. HPX Formula - Lead**
24. **Kroeger Herb Products Co. Inc. Sinus Blend - Lead**
25. **Kroeger Herb Products Co. Inc. FNG Care - Lead**
26. **Kroeger Herb Products Co. Inc. Olive Leaf - Lead**
27. **Kroeger Herb Products Co. Inc. Serenity - Lead**
28. **Kroeger Herb Products Co. Inc. Turmeric - Lead**
29. **Kroeger Herb Products Co. Inc. Kolester - Lead**
30. **Kroeger Herb Products Co. Inc. Metal X - Lead**
31. **Kroeger Herb Products Co. Inc. Liver Formula - Lead**
32. **Kroeger Herb Products Co. Inc. INF Blend - Lead**
33. **Kroeger Herb Products Co. Inc. Ruma Care - Lead**
34. **Kroeger Herb Products Co. Inc. PA Formula - Lead**
35. **Kroeger Herb Products Co. Inc. Rascal - Lead**
36. **Kroeger Herb Products Co. Inc. Pollution X - 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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available.

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ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since August 29, 2011, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Kroeger Herb Products Co., Inc. and its Registered Agent for Service of Process only)

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

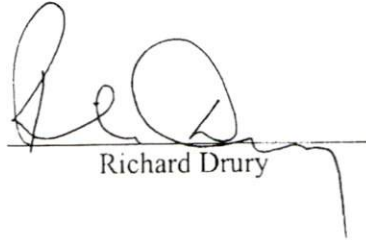
CERTIFICATE OF MERIT

**Re: Environmental Research Center's Notice of Proposition 65 Violations by
Kroeger Herb Products Co., Inc.**

I, Richard Drury, declare:

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

Dated: August 29, 2014


Richard Drury

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 August 29, 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 U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Kroeger Herb Products Co., Inc.
805 Walnut Street
Boulder, CO 80302

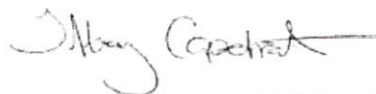
Thomas M. Brown
(Kroeger Herb Products Co., Inc.'s
Registered Agent for Service of Process)
805 Walnut Street
Boulder, CO 80302

On August 29, 2014, I electronically served the following documents: **NOTICE OF VIOLATIONS, 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 August 29, 2014, I served the following documents: **NOTICE OF VIOLATIONS, 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 August 29, 2014, in Fort Oglethorpe, Georgia.



Tiffany Caphart

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

August 29, 2014

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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
Fresno, CA 93721

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

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

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

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

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

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

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

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

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
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 94903

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

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

District Attorney, Merced County
550 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 1131
Salinas, CA 93902

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

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
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

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

District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

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

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

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

District Attorney, San Francisco County
850 Bryant Street, Suite 322
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 450
San Luis Obispo, CA 93408

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

District Attorney, Santa Barbara County
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
1355 West Street
Redding, CA 96001

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

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

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

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

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

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
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

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

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

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,
16th Floor
San Jose, CA 95113