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11 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 28 2015

CLERK OF THE SUPERIOR COURT  
By Christina Momon, Deputy

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

15 CENTER FOR ENVIRONMENTAL HEALTH, ) Case No. 15-770932  
16 Plaintiff, )  
17 v. ) ~~PROPOSED~~ CONSENT  
18 SPACE JAM JUICE LLC, et al., ) JUDGMENT AS TO SMOKE  
19 Defendants. ) TOKES, LLC  
20 )

21 **1. INTRODUCTION**

22 **1.1.** This Consent Judgment is entered into by Plaintiff Center for Environmental  
23 Health, a non-profit corporation (“CEH”), and Smoke Tokes, LLC (“Settling Defendant”) to  
24 settle claims asserted by CEH against Settling Defendant as set forth in the operative Complaint  
25 in the matter *Center for Environmental Health v. Space Jam Juice LLC, et al.*, Alameda County  
26 Superior Court Case No. RG-15-770932 (the “Action”). CEH and Settling Defendant are referred  
27 to collectively as the “Parties.”

1           **1.2.**    On February 5, 2015, CEH served 60-Day Notices of Violation (the “Notices”)  
2 relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986, California  
3 Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) on Settling Defendant, the California  
4 Attorney General, the District Attorneys of every County in the State of California, and the City  
5 Attorneys for every City in State of California with a population greater than 750,000. The  
6 Notices allege violations of Proposition 65 with respect to the presence of nicotine in liquid for  
7 use with electronic cigarette devices and electronic cigarette devices designed for use with  
8 nicotine-containing liquids manufactured, distributed, and/or sold by Settling Defendant.

9           **1.3.**    Settling Defendant is a corporation that employs ten (10) or more persons<sup>1</sup> and that  
10 manufactures, distributes, and/or sells Covered Products (as defined herein) in the State of  
11 California or has done so in the past.

12           **1.4.**    For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
13 Court has jurisdiction over the allegations of violations contained in the Notices and Complaint  
14 and personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint; (ii)  
15 venue is proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this  
16 Consent Judgment as a full and final resolution of all claims which were or could have been  
17 raised in the Complaint based on the facts alleged in the Notices and Complaint with respect to  
18 Covered Products manufactured, distributed, and/or sold by Settling Defendant.

19           **1.5.**    The Parties enter into this Consent Judgment as a full and final settlement of all  
20 claims which were or could have been raised in the Complaint arising out of the facts or conduct  
21 related to Settling Defendant alleged therein. By execution of this Consent Judgment and  
22 agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or  
23 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an  
24 admission by the Parties of any fact, conclusion of law, or violation of law. Settling Defendant  
25 denies the material, factual, and legal allegations in the Notices and Complaint and expressly

26 \_\_\_\_\_  
27 <sup>1</sup> Settling Defendant asserts that it did not employ ten (10) or more persons until approximately  
November 2014.

1 deny any wrongdoing whatsoever. Except as specifically provided herein, nothing in this  
2 Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense any  
3 of the Parties may have in this or any other pending or future legal proceedings. This Consent  
4 Judgment is the product of negotiation and compromise and is accepted by the Parties solely for  
5 purposes of settling, compromising, and resolving issues disputed in this Action.

6 **2. DEFINITIONS**

7 **2.1.** “Covered Products” means “Covered Liquid Products” and “Covered Device  
8 Products.”

9 **2.2.** “Covered Liquid Products” means nicotine-containing liquid for use with  
10 electronic cigarette devices manufactured, distributed, and/or sold by Settling Defendant in  
11 California.

12 **2.3.** “Covered Device Products” means electronic cigarette devices, also known as  
13 tanks and vape pens, which contain nicotine or are designed and intended for use with nicotine-  
14 containing liquid, manufactured, distributed, and/or sold by Settling Defendant in California.

15 **2.4.** “Effective Date” means the date on which the Court enters this Consent Judgment.

16 **3. INJUNCTIVE RELIEF**

17 **3.1. Clear and Reasonable Warnings for Covered Liquid Products.** As of the  
18 Effective Date, no Covered Liquid Product may be manufactured for sale, distributed or sold in  
19 California unless such Covered Liquid Product has a clear and reasonable warning on the outer  
20 label of the product. The warning shall state the following:

21 **WARNING:** This product contains nicotine, a chemical known to the State  
22 of California to cause birth defects or other reproductive harm.

23 The warning shall not be preceded by, surrounded by, or include any additional words or phrases  
24 that contradict, obfuscate, or otherwise undermine the warning. The warning statement shall be  
25 prominently displayed on the Covered Liquid Product with such conspicuousness, as compared  
26 with other words, statements, or designs as to render it likely to be read and understood by an  
27 ordinary individual prior to sale. To the extent that other warning statements are included on the

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1 outer label of a Covered Liquid Product, the warning required herein shall be separated from the  
2 other warnings by a line that is at least the same height as a line of text on the label. For internet,  
3 catalog, or any other sale where the consumer is not physically present and cannot see a warning  
4 displayed on the Covered Liquid Product prior to purchase or payment, the warning statement  
5 shall be displayed in such a manner that it is likely to be read and understood as being applicable  
6 to the Covered Liquid Product being purchased prior to the authorization of or actual payment.  
7 Placement of the warning statement at the bottom of an internet webpage that offers multiple  
8 products for sale does not satisfy the requirements of this Section.

9 **3.1.1. Specifications to Suppliers of Covered Liquid Products.** Within thirty  
10 (30) days following the Effective Date, to the extent it has not already done so, Settling  
11 Defendant shall issue specifications to each of its suppliers of Covered Liquid Products by  
12 certified mail. These specifications shall require all Covered Liquid Products purchased by  
13 Settling Defendant to have a clear and reasonable Proposition 65 warning on the outer label of  
14 such Products.

15 **3.2. Clear and Reasonable Warnings for Covered Device Products.** As of the  
16 Effective Date, no Covered Device Product may be manufactured for sale, distributed or sold in  
17 California unless such Covered Device Product has a clear and reasonable warning on the outer  
18 packaging of the product. For Covered Device Products that contain nicotine, the warning shall  
19 state the following:

20 **WARNING:** Use of this product will expose you to nicotine, a chemical  
21 known to the State of California to cause birth defects or other reproductive  
22 harm.

23 For Covered Device Products that do not contain nicotine, but are designed for use with nicotine-  
24 containing products, the warning shall state the following:

25 **WARNING:** Use of this product with nicotine-containing liquid will  
26 expose you to nicotine, a chemical known to the State of California to  
27 cause birth defects or other reproductive harm.

1 The warning shall not be preceded by, surrounded by, or include any additional words or phrases  
2 that contradict, obfuscate, or otherwise undermine the warning. The warning statement shall be  
3 prominently displayed on the outer packaging of the Covered Device Product with such  
4 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
5 read and understood by an ordinary individual prior to sale. To the extent that other warning  
6 statements are included on the outer packaging of a Covered Device Product, the warning  
7 required herein shall be separated from the other warnings by a line that is at least the same height  
8 as a line of text on the label. For internet, catalog, or any other sale where the consumer is not  
9 physically present and cannot see a warning displayed on the Covered Device Product prior to  
10 purchase or payment, the warning statement shall be displayed in such a manner that it is likely to  
11 be read and understood as being applicable to the Covered Device Product being purchased prior  
12 to the authorization of or actual payment. Placement of the warning statement at the bottom of an  
13 internet webpage that offers multiple products for sale does not satisfy the requirements of this  
14 Section.

15 **3.2.1. Specifications to Suppliers of Covered Device Products.** Within thirty  
16 (30) days following the Effective Date, to the extent it has not already done so, Settling  
17 Defendant shall issue specifications to each of its suppliers of Covered Device Products by  
18 certified mail. These specifications shall require all Covered Device Products purchased by  
19 Settling Defendant to have a clear and reasonable Proposition 65 warning on the outer label of  
20 such Products.

21 **3.3. Optional Additional Injunctive Provisions.** In order for Settling Defendant to be  
22 eligible for any waiver of the additional penalty/payment in lieu of penalty payments set forth in  
23 Section 4.1.5 below, to the extent that it has not already done so, Settling Defendant shall  
24 undertake one or more of the additional actions below. A Settling Defendant opting to be bound  
25 by this Section must provide CEH with a written election stating which optional provision(s) it is  
26 agreeing to implement.

1                   **3.3.1. Prohibition on Flavored Covered Products Targeted to Appeal To**  
2 **Minors.** Settling Defendant shall instruct its suppliers that it will not sell or accept flavored  
3 Covered Products that are specifically and exclusively targeted to appeal to minors.

4                   **3.3.2. Prohibition on Sales and Advertising to Minors.** If Settling Defendant  
5 opts to participate in Section 3.3, Settling Defendant shall not sell Covered Products to persons  
6 younger than eighteen (18) years of age and shall take reasonable steps to prevent the sale of  
7 Covered Products to such persons, including, but not limited to, the following measures:

8                   **3.3.2.1.** Settling Defendant shall implement one or more systems to  
9 ensure that no one who purchases Covered Products from Settling Defendant's website is a  
10 minor. The system shall be put into place within ninety (90) days of the Effective Date.<sup>2</sup>

11                   **3.3.2.2.** Settling Defendant shall not use consumer advertisements  
12 that target minors. Specifically, Settling Defendant will not use models or images of people that  
13 appear to be younger than eighteen (18) years of age, cartoons, art, fashion, or music that is  
14 intended and designed to appeal to people under the legal smoking age in advertisements or  
15 promotional materials which directly target consumers and appear in California, including on the  
16 Internet. Notwithstanding the foregoing, the Settling Defendant's use of the trademark logo that  
17 is the subject of U.S. Trademark Registration No. 4,319,871, shall not be considered a breach of  
18 this provision.

19                   **3.3.3. Prohibition on Health and Safety Claims.** If Settling Defendant opts to  
20 participate in Section 3.3, Settling Defendant shall not sell any Covered Products that make health  
21 and/or safety claims, unless such claims have been reviewed and approved by the Federal Food  
22 and Drug Administration.

23                   **3.3.4. Dissolution of Optional Additional Injunctive Provisions.** The optional  
24 injunctive provisions set forth in Section 3.3 shall automatically terminate and shall be of no  
25 further force or effect after five (5) years following the Effective Date.

26 \_\_\_\_\_  
27 <sup>2</sup> Plaintiff acknowledges that Settling Defendant has implemented an age-verification system for  
visitors to its website, which satisfies the requirements of this provision.

1 **4. PAYMENTS**

2 **4.1.** Settling Defendant shall initially pay to CEH the total sum of \$20,000, which shall  
3 be allocated as set forth in this Section and in more detail on Exhibit A:

4 **4.1.1.** \$635 as a civil penalty pursuant to California Health & Safety Code §  
5 25249.7(b), such money to be apportioned by CEH in accordance with California Health &  
6 Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of  
7 Environmental Health Hazard Assessment). This civil penalty shall be paid in one (1) check on  
8 the date set forth in Exhibit A and shall be made payable to the Center for Environmental Health.

9 **4.1.2.** \$953 as a payment in lieu of civil penalty pursuant to California Health &  
10 Safety Code § 25249.7(b) and California Code of Regulations, Title 11, § 3203(b). CEH will use  
11 such funds to continue its work educating and protecting people from exposures to toxic  
12 chemicals. CEH may also use a portion of such funds to monitor compliance with this Consent  
13 Judgment and to purchase and test Settling Defendant's products to confirm compliance. In  
14 addition, as part of its Community Environmental Action and Justice Fund, CEH will use four  
15 percent (4%) of such funds to award grants to grassroots environmental justice groups working to  
16 educate and protect the public from exposures to toxic chemicals. The method of selection of  
17 such groups can be found at the CEH website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). This payment in lieu  
18 of civil penalty shall be paid in one (1) check on the date set forth in Exhibit A and shall be made  
19 payable to the Center for Environmental Health.

20 **4.1.3.** \$18,412 as a reimbursement of a portion of CEH's reasonable attorneys'  
21 fees and costs. This total shall be divided into two amounts: (1) \$16,412 to the Lexington Law  
22 Group; and (2) \$2,000 to the Center for Environmental Health. These amounts shall be paid in  
23 one (1) check made payable to the Center for Environmental Health and four (4) separate checks  
24 made payable to the Lexington Law Group on the dates set forth in Exhibit A.

25 **4.1.4.** The payments required under Sections 4.1.1-4.1.3 shall be delivered on or  
26 before the dates set forth in Exhibit A. All checks shall be delivered to Mark Todzo at Lexington  
27 Law Group at the address set forth in Section 8.1.2.

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1                   **4.1.5.** In the event that Settling Defendant elects not to certify its compliance with  
2 one or more of the optional provisions in Section 3.3 in accordance with that Section, on the date  
3 specified in Exhibit A, Settling Defendant must make an additional payment for each provision  
4 not certified, as follows: (i) \$3,000 if Settling Defendant elects to not participate in Section 3.3.1;  
5 (ii) \$3,750 if Settling Defendant elects to not participate in Section 3.3.2; and (iii) \$3,750 if  
6 Settling Defendant elects to not participate in Section 3.3.3. Each of these payments shall be paid  
7 in two (2) separate checks, each payable to the Center for Environmental Health, to be allocated  
8 as follows:

9                   **4.1.5.1.** Forty percent (40%) shall constitute a penalty pursuant to  
10 California Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in  
11 accordance with California Health & Safety Code § 25249.12 (25% to CEH and 75% to the State  
12 of California's Office of Environmental Health Hazard Assessment).

13                   **4.1.5.2.** Sixty percent (60%) shall constitute a payment in lieu of civil  
14 penalty pursuant to California Health & Safety Code § 25249.7(b) and California Code of  
15 Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and  
16 protecting people from exposures to toxic chemicals. CEH may also use a portion of such funds  
17 to monitor compliance with this Consent Judgment and to purchase and test Settling Defendant's  
18 products to confirm compliance. In addition, as part of its Community Environmental Action and  
19 Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots  
20 environmental justice groups working to educate and protect the public from exposures to toxic  
21 chemicals. The method of selection of such groups can be found at the CEH website at  
22 [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

23                   **5. ENFORCEMENT OF CONSENT JUDGMENT**

24                   **5.1.** CEH may, by motion or application for an order to show cause before the Superior  
25 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.  
26 Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH  
27 shall provide Settling Defendant with a Notice of Violation and a copy of any test results which

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1 purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding  
2 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,  
3 including providing Settling Defendant with a reasonable opportunity of at least thirty (30) days  
4 to cure any alleged violation. Should such attempts at informal resolution fail, CEH may file its  
5 enforcement motion or application. Such right to cure shall come without any monetary payment.  
6 However, the prevailing party on any motion to enforce this Consent Judgment shall be entitled to  
7 its reasonable attorney's fees and costs incurred as a result of such motion or application. This  
8 Consent Judgment may only be enforced by the Parties.

9 **6. MODIFICATION OF CONSENT JUDGMENT**

10 **6.1.** This Consent Judgment may only be modified by written agreement of CEH and  
11 Settling Defendant, or upon motion of CEH or Settling Defendant as provided by law.

12 **7. CLAIMS COVERED AND RELEASE**

13 **7.1.** This Consent Judgment is a full, final, and binding resolution between CEH acting  
14 in the public interest and Settling Defendant and Settling Defendant's parents, officers, directors,  
15 shareholders, divisions, subdivisions, subsidiaries, and their respective successors and assigns  
16 ("Defendant Releasees") and all entities to whom they distribute or sell or have distributed or sold  
17 Covered Products including, but not limited to, distributors, wholesalers, customers, retailers,  
18 franchisees, cooperative members, and licensees ("Downstream Defendant Releasees"), of all  
19 claims alleged in the Complaint in this Action arising from any violation of Proposition 65 that  
20 have been or could have been asserted in the public interest against Settling Defendant and  
21 Downstream Defendant Releasees, regarding the failure to warn about exposure to nicotine in the  
22 Covered Products manufactured, distributed, or sold by Settling Defendant prior to the Effective  
23 Date.

24 **7.2.** CEH, for itself, releases, waives, and forever discharges any and all claims alleged  
25 in the Complaint against Settling Defendant and Downstream Defendant Releasees arising from  
26 any violation of Proposition 65 that have been or could have been asserted regarding the failure to  
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1 warn about exposure to nicotine in connection with Covered Products manufactured, distributed,  
2 or sold by Settling Defendant prior to the Effective Date.

3           **7.3.** Compliance with the terms of this Consent Judgment by Settling Defendant and  
4 the Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Settling  
5 Defendant and Downstream Defendant Releasees with respect to any alleged failure to warn  
6 about nicotine in Covered Products manufactured, distributed, or sold by Settling Defendant after  
7 the Effective Date.

8           **8. PROVISION OF NOTICE**

9           **8.1.** When any Party is entitled to receive any notice under this Consent Judgment, the  
10 notice shall be sent by first class and electronic mail as follows:

11                   **8.1.1. Notices to Settling Defendant.** The persons for Settling Defendant to  
12 receive notices pursuant to this Consent Judgment shall be:

13                                   President  
14                                   Smoke Tokes, LLC  
15                                   3330 E. 3rd St., Unit A  
16                                   Los Angeles, CA 90013  
17                                   sales@smoketokes.com

17           With copy, not constituting notice to:

18                                   Imran F. Vakil  
19                                   Nexio Law Firm  
20                                   245 Fischer Avenue, Suite C3  
21                                   Costa Mesa, CA 92626  
22                                   ivakil@nexiolaw.com

23                   **8.1.2. Notices to Plaintiff.** The persons for CEH to receive notices pursuant to  
24 this Consent Judgment shall be:

25                                   Mark Todzo  
26                                   Lexington Law Group  
27                                   503 Divisadero Street  
28                                   San Francisco, CA 94117  
                                      mtodzo@lexlawgroup.com

**8.2.** Any Party may modify the person and address to whom the notice is to be sent by  
sending the other Parties notice by first class and electronic mail.

1       **9.       COURT APPROVAL**

2               **9.1.**     This Consent Judgment shall become effective on the Effective Date, provided  
3 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
4 Settling Defendant shall support approval of such Motion.

5               **9.2.**     If this Consent Judgment is not entered by the Court, it shall be of no force or  
6 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
7 purpose.

8       **10.     GOVERNING LAW AND CONSTRUCTION**

9               **10.1.**     The terms and obligations arising from this Consent Judgment shall be construed  
10 and enforced in accordance with the laws of the State of California.

11       **11.     ENTIRE AGREEMENT**

12               **11.1.**     This Consent Judgment contains the sole and entire agreement and understanding  
13 of CEH and Settling Defendant with respect to the entire subject matter hereof, and any and all  
14 prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
15 merged herein and therein.

16               **11.2.**     There are no warranties, representations, or other agreements between CEH and  
17 Settling Defendant except as expressly set forth herein. No representations, oral or otherwise,  
18 express or implied, other than those specifically referred to in this Consent Judgment have been  
19 made by any Party hereto.

20               **11.3.**     No other agreements not specifically contained or referenced herein, oral or  
21 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
22 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
23 any of the Parties hereto only to the extent that they are expressly incorporated herein.

24               **11.4.**     No supplementation, modification, waiver, or termination of this Consent  
25 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

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11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

**12. RETENTION OF JURISDICTION**

12.1. This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

**13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

**14. NO EFFECT ON OTHER SETTLEMENTS**

14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

**15. EXECUTION IN COUNTERPARTS**

15.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

**IT IS SO STIPULATED:  
CENTER FOR ENVIRONMENTAL HEALTH**

  
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Charlie Pizarro  
Associate Director

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**SMOKE TOKES, LLC**

  
\_\_\_\_\_  
Signature

RAMEL CASHMAN  
\_\_\_\_\_  
Printed Name

CEO  
\_\_\_\_\_  
Title

**IT IS SO ORDERED:**

Dated: 6/28/16, 2016

GEORGE C. HERNANDEZ, JR.  
Judge of the Superior Court

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**EXHIBIT A**  
**Settlement Payments and Allocations**

**Total Settlement Payment:** \$30,500

**Payment 1: Total \$5,000 - Due April 1, 2016**

Payment 1 Allocations:

Civil Penalty:	\$635
Payment in Lieu of Civil Penalty:	\$953
Attorneys' Fees and Costs to CEH:	\$2,000
Attorneys' Fees and Costs to LLG:	\$1,412

**Payment 2: Total \$5,000 - Due May 1, 2016**

Payment 2 Allocations:

Attorneys' Fees and Costs to LLG:	\$5,000
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**Payment 3: Total \$5,000 – Due June 1, 2016**

Payment 3 Allocations:

Attorneys' Fees and Costs to LLG:	\$5,000
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**Payment 4: Total \$5,000 – Due July 1, 2016**

Payment 4 Allocations:

Attorneys' Fees and Costs to LLG:	\$5,000
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**Payment 5: Total \$10,500 (or \$3,000 if payments pursuant to 3.3.2 and 3.3.3 are waived) – Due August 1, 2016**

Payment 5 Allocations:

<i>Waivable</i> Civil Penalty:	\$4,200 total (or \$1,200 if payments pursuant to 3.3.2 and 3.3.3 are waived)
<i>Waivable</i> Payment in Lieu of Civil Penalty:	\$6,300 total (or \$1,800 if payments pursuant to 3.3.2 and 3.3.3 are waived)