

1 Michael Freund SBN 99687
2 Ryan Hoffman SBN 283297
3 Michael Freund & Associates
4 1919 Addison Street, Suite 105
5 Berkeley, CA 94704
6 Telephone: (510) 540-1992
7 Facsimile: (510) 540-5543

**ENDORSED
FILED
ALAMEDA COUNTY**

JUN 08 2016

CLERK OF THE SUPERIOR COURT
By _____ Deputy

8 Attorneys for Plaintiff
9 ENVIRONMENTAL RESEARCH CENTER, INC.

10 Corrie L. Plant SBN 247358
11 Pillsbury Winthrop Shaw Pittman LLP
12 725 South Figueroa Street, Suite 2800
13 Los Angeles, CA 90017
14 Telephone: (213) 488-7100
15 Facsimile: (213) 629-1033

16 Attorney for Defendants
17 CHOSEN FOODS, INC.; CHOSEN FOODS, LLC

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

18 ENVIRONMENTAL RESEARCH
19 CENTER, INC. a California non-profit
20 corporation,

Plaintiff,

v.

21 CHOSEN FOODS, INC., CHOSEN
22 FOODS, LLC, and DOES 1-100

Defendants.

CASE NO. **RG16798895** T.C.

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 5, 2016
Trial Date: None set

1. INTRODUCTION

1.1 On January 5, 2016, Plaintiff Environmental Research Center, Inc. ("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 Chosen Foods, Inc., Chosen Foods, LLC, and Does 1-100

1 (collectively "Chosen Foods"). In this action, ERC alleges a product manufactured,
2 distributed or sold by Chosen Foods contains lead, a chemical listed under Proposition 65 as a
3 carcinogen and reproductive toxin, and exposes consumers to this chemical at a level requiring
4 a Proposition 65 warning. This product (referred to hereinafter as the "Covered Product") is:
5 Chosen Foods Inc. Meta Powder.

6 1.2 ERC and Chosen Foods are hereinafter referred to individually as a "Party" or
7 collectively as the "Parties."

8 1.3 ERC is a California non-profit corporation dedicated to, among other causes,
9 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
10 and toxic chemicals, facilitating a safe environment for consumers and employees, and
11 encouraging corporate responsibility.

12 1.4 For purposes of this Consent Judgment, the Parties agree that Chosen Foods is a
13 business entity that has employed ten or more persons at all times relevant to this action, and
14 qualifies as a "person in the course of business" within the meaning of Proposition 65. Chosen
15 Foods manufactures, distributes and sells the Covered Product.

16 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
17 dated June 15, 2015, that was served on the California Attorney General, other public
18 enforcers, and Chosen Foods ("Notice"). A true and correct copy of the Notice is attached as
19 Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the
20 Notice was mailed and uploaded to the Attorney General's website, and no designated
21 governmental entity has filed a complaint against Chosen Foods with regard to the Covered
22 Product or the alleged violations.

23 1.6 ERC's Notice and Complaint allege that use of the Covered Product exposes
24 persons in California to lead without first providing clear and reasonable warnings in violation
25 of California Health and Safety Code section 25249.6. Chosen Foods denies all material
26 allegations contained in the Notice and Complaint.

27 1.7 The Parties have entered into this Consent Judgment in order to settle,
28 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.

1 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
2 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
3 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
4 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
5 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
6 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
7 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
8 purpose.

9 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
10 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
11 other or future legal proceeding unrelated to these proceedings.

12 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
13 a Judgment by this Court.

14 **2. JURISDICTION AND VENUE**

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

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

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

1 3.1.1 As used in this Consent Judgment, the term "Distributing into the State
2 of California" shall mean to directly ship a Covered Product into California for sale in
3 California or to sell a Covered Product to a distributor that Chosen Foods knows will sell the
4 Covered Product in California.

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

11 **3.2 Clear and Reasonable Warnings**

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

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

16 Chosen Foods 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, for any Covered Product sold over Chosen Foods' website, the
21 warning shall appear on Chosen Foods' checkout page on its website for California consumers
22 identifying the Covered Product, and also appear prior to completing checkout on Chosen Foods'
23 website when a California delivery address is indicated for any purchase of the Covered Product.

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

28 Chosen Foods must display the above warnings with such conspicuousness, as compared

1 with other words, statements, or design of the label or container, as applicable, to render the
2 warning likely to be read and understood by an ordinary individual under customary conditions of
3 purchase or use of the product.

4 **3.3 Reformulated Covered Product**

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

9 **3.4 Testing and Quality Control Methodology**

10 **3.4.1** Beginning within one year of the Effective Date, Chosen Foods shall
11 arrange for lead testing of the Covered Product at least once a year for a minimum of five
12 consecutive years by arranging for testing of five randomly selected samples of the Covered
13 Product, in the form intended for sale to the end-user, which Chosen Foods intends to sell or is
14 manufacturing for sale in California, directly selling to a consumer in California or
15 "Distributing into California." The testing requirement does not apply to any Covered Product
16 for which Chosen Foods has provided the warning specified in Section 3.2. If tests conducted
17 pursuant to this Section demonstrate that no warning is required for the Covered Product during
18 each of five consecutive years, then the testing requirements of this Section will no longer be
19 required as to the Covered Product. However, if during or after the five-year testing period,
20 Chosen Foods changes ingredient suppliers for the Covered Product and/or reformulates the
21 Covered Product, Chosen Foods shall test that Covered Product annually for at least four (4)
22 consecutive years after such change is made.

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

26 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
27 laboratory method that complies with the performance and quality control factors appropriate
28 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 Chosen Foods' ability to
9 conduct, or require that others conduct, additional testing of the Covered Product, including the
10 raw materials used in their manufacture.

11 3.4.6 Beginning on the Effective Date and continuing for a period of five
12 years, Chosen Foods shall arrange for copies of all laboratory reports with results of testing for
13 lead content under Section 3.4.1 to be automatically sent by the testing laboratory directly to
14 ERC within ten days after completion of the testing. Chosen Foods shall retain all test results
15 and documentation for a period of five years from the date of each test.

16 **4. SETTLEMENT PAYMENT**

17 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil
18 penalties, attorney's fees, and costs, Chosen Foods shall make a total payment of \$40,000.00
19 ("Total Settlement Amount") to ERC within 5 days of the Effective Date. Chosen Foods shall
20 make this payment by wire transfer to ERC's escrow account, for which ERC will give Chosen
21 Foods the necessary account information. The Total Settlement Amount shall be apportioned
22 as follows:

23 4.2 \$16,472.00 shall be considered a civil penalty pursuant to California Health and
24 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$12,354.00) 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% (\$4,118.00) of the civil penalty.

1 **4.3** \$291.87 shall be distributed to ERC as reimbursement to ERC for reasonable
2 costs incurred in bringing this action.

3 **4.4** \$12,202.43 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 \$608.00 to the As You Sow to address reducing toxic chemical exposures in
10 California.

11 **4.5** \$900.00 shall be distributed to Michael Freund as reimbursement of ERC's
12 attorney's fees, \$4,775.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
13 attorney's fees, while \$5,358.70 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 Chosen Foods seeks to modify this Consent Judgment under Section 5.1, then
19 Chosen Foods must provide written notice to ERC of its intent ("Notice of Intent"). If ERC
20 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
21 must provide written notice to Chosen Foods within thirty days of receiving the Notice of
22 Intent. If ERC notifies Chosen Foods in a timely manner of ERC's intent to meet and confer,
23 then the Parties shall meet and confer in good faith as required in this Section. The Parties
24 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent
25 to meet and confer. Within thirty days of such meeting, if ERC disputes the proposed
26 modification, ERC shall provide to Chosen Foods a written basis for its position. The Parties
27 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
28 remaining disputes. Should it become necessary, the Parties may agree in writing to different

1 deadlines for the meet-and-confer period.

2 **5.3** In the event that Chosen Foods initiates or otherwise requests a modification
3 under Section 5.1, and the meet and confer process leads to a joint motion or application of the
4 Consent Judgment, Chosen Foods shall reimburse ERC its costs and reasonable attorney's fees
5 for the time spent in the meet-and-confer process and filing and arguing the motion or
6 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 the 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 Chosen Foods in a reasonably prompt manner of its test results, including information
21 sufficient to permit Chosen Foods to identify the Covered Product at issue. Chosen Foods shall,
22 within thirty days following such notice, provide ERC with testing information, from an
23 independent third-party laboratory meeting the requirements of Sections 3.4.1 and 3.4.2,
24 demonstrating Chosen Foods' compliance with the Consent Judgment, if warranted. The
25 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

26 **7. APPLICATION OF CONSENT JUDGMENT**

27 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
28 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,

1 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
2 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
3 application to any Covered Product which is distributed or sold exclusively outside the State of
4 California and which is not used by California consumers.

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

6 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
7 behalf of itself and in the public interest, and Chosen Foods and its respective officers,
8 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
9 suppliers, franchisees, licensees, customers (not including private label customers of Chosen
10 Foods), distributors, wholesalers, retailers, and all other upstream and downstream entities in
11 the distribution chain of the Covered Product, and the predecessors, successors and assigns of
12 any of them (collectively, "Released Parties"), from any and all claims, actions, causes of
13 action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that
14 could have been asserted from the handling, use, or consumption of the Covered Product, as to
15 any alleged violation of Proposition 65 or its implementing regulations arising from the failure
16 to provide Proposition 65 warnings on the Covered Product regarding lead up to and including
17 the Effective Date.

18 **8.2** ERC on its own behalf only, on one hand, and Chosen Foods on its own behalf
19 only, on the other, further waive and release any and all claims they may have against each
20 other for all actions or statements made or undertaken in the course of seeking or opposing
21 enforcement of Proposition 65 in connection with the Notice or Complaint up through and
22 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit
23 any Party's right to seek to enforce the terms of this Consent Judgment.

24 **8.3** It is possible that other claims not known to the Parties arising out of the facts
25 alleged in the Notice or the Complaint and relating to the Covered Product will develop or be
26 discovered. ERC on behalf of itself only, on one hand, and Chosen Foods, on the other hand,
27 acknowledge that this Consent Judgment is expressly intended to cover and include all such
28 claims up through the Effective Date, including all rights of action therefore. ERC and Chosen

1 Foods acknowledge that the claims released in Sections 8.1 and 8.2 above may include
2 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
3 unknown claims. California Civil Code section 1542 reads as follows:

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

9 ERC on behalf of itself only, on the one hand, and Chosen Foods, on the other hand,
10 acknowledge and understand the significance and consequences of this specific waiver of
11 California Civil Code section 1542.

12 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
13 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
14 in the Covered Product as set forth in the Notice and the Complaint.

15 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
16 environmental exposures arising under Proposition 65, nor shall it apply to any of Chosen
17 Foods' products other than the Covered Product.

18 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

21 **10. GOVERNING LAW**

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

24 **11. PROVISION OF NOTICE**

25 All notices required to be given to either Party to this Consent Judgment by the other shall
26 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
27 email may also be sent.
28

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

2 Chris Heptinstall, Executive Director, Environmental Research Center
3 3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108
5 Tel: (619) 500-3090
6 Email: chris_erc501c3@yahoo.com

7 With a copy to:

8 Michael Freund
9 Ryan Hoffman
10 Michael Freund & Associates
11 1919 Addison Street, Suite 105
12 Berkeley, CA 94704
13 Telephone: (510) 540-1992
14 Facsimile: (510) 540-5543

15 **CHOSEN FOODS, INC.; CHOSEN FOODS, LLC**

16 Carsten Hagen
17 1747 Hancock St. Ste. A
18 San Diego, CA 92101

19 With a copy to:

20 Corrie L. Plant
21 Pillsbury Winthrop Shaw Pittman LLP
22 725 South Figueroa Street, Suite 2800
23 Los Angeles, CA 90017
24 Telephone: (213) 488-7100
25 Facsimile: (213) 629-1033

26 **12. COURT APPROVAL**

27 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
28 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
Consent Judgment.

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

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

1 **13. EXECUTION AND COUNTERPARTS**

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

5 **14. DRAFTING**

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

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

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

24 **16. ENTIRE AGREEMENT, AUTHORIZATION**

25 **16.1** This Consent Judgment contains the sole and entire agreement and
26 understanding of the Parties with respect to the entire subject matter herein, and any and all
27 prior discussions, negotiations, commitments and understandings related hereto. No
28 representations, oral or otherwise, express or implied, other than those contained herein have

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
2 herein, shall be deemed to exist or to bind any Party.

3 16.2 Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
5 explicitly provided herein, each Party shall bear its own fees and costs.

6 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
7 **CONSENT JUDGMENT**

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

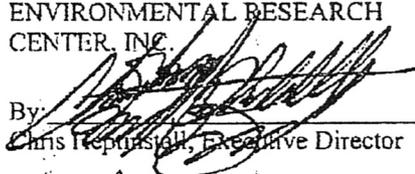
11 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
12 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
13 been diligently prosecuted, and that the public interest is served by such settlement; and

14 (2) Make the findings pursuant to California Health and Safety Code section
15 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

16
17 **IT IS SO STIPULATED:**

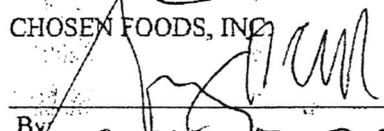
18 Dated: 3/7/ 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

19
20 By: 
Chris Repursell, Executive Director

21 Dated: 3/14 2016

CHOSEN FOODS, INC.

22
23 By: 
24 Its: GEORGE R TODD
25 PRESIDENT
26
27
28

1 Dated: 3-14, 2016

CHOSEN FOODS, LLC


By: GEORGE R. TODD
Its: PRESIDENT

2
3
4
5 **APPROVED AS TO FORM:**

6 Dated: 3/7, 2016

MICHAEL FREUND & ASSOCIATES

7
8 By: 
Michael Freund
Ryan Hoffinan
Attorneys for Plaintiff Environmental
Research Center, Inc.

9
10
11
12 Dated: _____, 2016

PILLSBURY WINTHROP SHAW
PITTMAN LLP

13
14
15 By: _____
Corrie L. Plant
Attorney for Defendants Chosen Foods,
Inc. and Chosen Foods, LLC

16
17
18
19 **ORDER AND JUDGMENT**

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

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

23
24 Dated: _____, 2016

Judge of the Superior Court

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Dated: _____, 2016

CHOSEN FOODS, LLC

By:
Its:

APPROVED AS TO FORM:

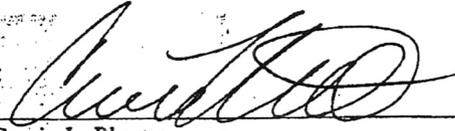
Dated: 3/7, 2016

MICHAEL FREUND & ASSOCIATES

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

Dated: 3/14, 2016

PILLSBURY WINTHROP SHAW
PITTMAN LLP

By: 
Corrie L. Plant
Attorney for Defendants Chosen Foods,
Inc. and Chosen Foods, LLC

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 8, 2016



Judge of the Superior Court
Victoria S. Kolakowski

Michael Freund & Associates

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

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

June 15, 2015

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violators 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 Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Chosen Foods, Inc.
Chosen Foods, LLC**

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

Chosen Foods Inc. Meta Powder – Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of this product. Consequently, the primary route of exposure to this

June 15, 2015

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chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least June 15, 2012, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using this product with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above product in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

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

Sincerely,



Ryan Hoffman

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Chosen Foods, Inc., Chosen Foods, LLC and their Registered Agents for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Chosen Foods, Inc. and Chosen Foods, LLC

I, Ryan Hoffman, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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 Violators 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: June 15, 2015



Ryan Hoffman

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On June 15, 2015, 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
Chosen Foods, Inc.
453 54th Street, Suite 102
San Diego, CA 92114

George Todd
(Chosen Foods, LLC's Registered Agent for Service of Process)
453 54th Street, Suite 102
San Diego, CA 92114

Current President or CEO
Chosen Foods, LLC
453 54th Street, Suite 102
San Diego, CA 92114

National Registered Agents, Inc.
(Chosen Foods, Inc.'s Registered Agent for Service of Process)
160 Greentree Drive, Suite 101
Dover, DE 19904

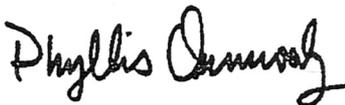
The Corporation Trust Company
(Chosen Foods, LLC's Registered Agent for Service of Process)
1209 Orange Street
Wilmington, DE 19801

On June 15, 2015, I verified 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)** were served on the following party when a true and correct copy thereof was uploaded 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 June 15, 2015, 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 June 15, 2015, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

June 15, 2015

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3 rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA's implementing regulations (see citations below) for further information.

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

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ 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

¹All 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.

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 contaminant² 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.

² 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.

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.