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7  
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9 Environmental Research Center, Inc.

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

12 ENVIRONMENTAL RESEARCH  
13 CENTER, INC. a California non-profit  
14 corporation,

15 Plaintiff,

16 v.

17 OXYFRESH WORLDWIDE, INC.,  
18 OXYFRESH WORLDWIDE, INC. dba LIFE  
19 SHOTZ, OXYFRESH.COM/21 TEN, INC.,  
20 and DOES 1-100,

21 Defendants.

22 **CASE NO. RG16840102**  
23 [Judge: Hon. Julia Spain-Dept. 19]

24 **NOTICE OF ENTRY OF JUDGMENT**

25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

26 NOTICE IS HEREBY GIVEN that on February 3, 2017, the Court entered and approved  
27 the settlement by Stipulated Consent Judgment in the above-entitled matter. A true and correct  
28 copy the Stipulated Consent Judgment and Order are attached hereto as Exhibit A.

Dated: February 6, 2017

ENVIRONMENTAL RESEARCH CENTER, INC.

  
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Anne Barker  
In-House Counsel

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# EXHIBIT A



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BY FAX

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Attorney for Defendants  
OXYFRESH WORLDWIDE, INC., and  
OXYFRESH.COM/21 TEN, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH  
CENTER, INC. a non-profit California  
corporation,  
  
Plaintiff,  
  
v.  
  
OXYFRESH WORLDWIDE, INC., a  
Wyoming corporation,  
OXYFRESH.COM/21 TEN, INC., a  
Washington corporation and DOES 1-25,  
inclusive,  
  
Defendants.

CASE NO. RG16840102  
STIPULATED CONSENT JUDGMENT  
Health & Safety Code § 25249.5 *et seq.*  
Action Filed: November 18, 2016  
Trial Date: None set

FILED  
ALAMEDA COUNTY

FEB - 3 2017

CLERK OF THE SUPERIOR COURT  
*[Signature]*  
Deputy

1     **1. INTRODUCTION**

2           **1.1**     On November 18, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"),  
3 a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by  
4 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the  
5 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),  
6 against Oxyfresh Worldwide, Inc., Oxyfresh.com/21 Ten, Inc. (collectively "Oxyfresh") and  
7 Does 1-25. In this action, ERC alleges that the following products (referred to hereinafter  
8 individually as a "Covered Product" or collectively as "Covered Products"), distributed or sold  
9 by Oxyfresh contain the chemical(s) identified below that are listed under Proposition 65 as  
10 carcinogens and reproductive toxins, and expose consumers to these chemicals at a level  
11 requiring a Proposition 65 warning: Life Shotz LS-Vibe Chiseled Chocolate (lead and cadmium)  
12 and Life Shotz LS-Vibe Viva Vanilla (lead).

13           **1.2**     ERC and Oxyfresh are hereinafter referred to individually as a "Party" or  
14 collectively as the "Parties."

15           **1.3**     ERC is a California non-profit corporation dedicated to, among other causes,  
16 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
17 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
18 encouraging corporate responsibility.

19           **1.4**     For purposes of this Consent Judgment, the Parties agree that each Oxyfresh  
20 defendant is a business entity, each of which has employed ten or more persons at all times  
21 relevant to this action, and qualifies as a "person in the course of business" within the meaning of  
22 Proposition 65. Oxyfresh distributes and sells the Covered Products.

23           **1.5**     The Complaint is based on allegations contained in ERC's Notice of Violation  
24 dated August 28, 2015, that was served on the California Attorney General, other public  
25 enforcers, and Oxyfresh ("Notice"). A true and correct copy of the Notice is attached as  
26 **Exhibit A** and is hereby incorporated by reference. More than sixty (60) days have passed  
27 since the Notice was mailed and uploaded to the Attorney General's website, and no designated

1 governmental entity has filed a complaint against Oxyfresh with regard to the Covered Products  
2 or the alleged violations.

3 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes  
4 persons in California to lead and cadmium without first providing clear and reasonable  
5 warnings in violation of California Health and Safety Code section 25249.6. Oxyfresh denies  
6 all material allegations contained in the Notice and Complaint.

7 1.7 The Parties have entered into this Consent Judgment in order to settle,  
8 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
9 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
10 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
11 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,  
12 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
13 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
14 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
15 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
16 purpose.

17 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall  
18 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
19 other or future legal proceeding unrelated to these proceedings.

20 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as  
21 a Judgment by this Court.

22 **2. JURISDICTION AND VENUE**

23 For purposes of this Consent Judgment and any further court action that may become  
24 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
25 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
26 over Oxyfresh as to the acts alleged in the Complaint, that venue is proper in Alameda County,  
27 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of

1 all claims up through and including the Effective Date which were or could have been asserted in  
2 this action based on the facts alleged in the Notice and Complaint.

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

4 **3.1** Beginning four months after the Effective Date ("Compliance Date"), Oxyfresh  
5 shall be permanently enjoined from manufacturing for sale in the State of California,  
6 "Distributing into the State of California", or directly selling in the State of California, any  
7 Covered Product which exposes a person to a "Daily Lead Exposure Level" of more than 0.5  
8 micrograms per day of lead or "Daily Cadmium Exposure Level" of 4.10 micrograms per day  
9 of cadmium when the maximum suggested dose is taken as directed on the Covered Product's  
10 label excluding any naturally occurring lead (as defined in section 3.1.2 below), unless it meets  
11 the warning requirements under Section 3.2.

12 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
13 of California" shall mean to directly ship a Covered Product into California for sale in  
14 California or to sell a Covered Product to a distributor that Oxyfresh knows will sell the  
15 Covered Product in California.

16 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure  
17 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
18 micrograms of lead per gram of product, minus the amounts of lead listed in Table 3.1.2 below  
19 (which for purposes of this Consent Judgment shall be treated as naturally occurring),  
20 multiplied by the number of grams of product per serving of the product (using the largest  
21 serving size appearing on the product label), multiplied by servings of the product per day  
22 (using the largest number of servings in a recommended dosage appearing on the product  
23 label), which equals micrograms of lead exposure per day. If Oxyfresh seeks to subtract out any  
24 amounts of naturally occurring lead listed in Table 3.1.2, Oxyfresh shall provide ERC with the  
25 name of the Covered Product that Oxyfresh contends contains naturally occurring lead, and a  
26 complete list showing all the ingredients in that Covered Product including the ingredients from  
27 Table 3.1.2 that are contained in the Covered Product, as well as the percentage and the amount

1 in grams per serving of each ingredient in the Covered Product. Oxyfresh may update this  
2 information from time to time and will be entitled to submit this information to ERC  
3 confidentially.

4 **TABLE 3.1.2**

5

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Elemental Calcium	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram
Cocoa-powder	1.0 micrograms/gram

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17 **3.1.3** The "Daily Cadmium Exposure Level" shall be measured in micrograms,  
18 and shall be calculated using the following formula: micrograms of cadmium per gram of  
19 product, multiplied by grams of product per serving of the product (using the largest serving  
20 size appearing on the product label), multiplied by servings of the product per day (using the  
21 largest number of servings in a recommended dosage appearing on the product label), which  
22 equals micrograms of cadmium exposure per day.

23 **3.2 Clear and Reasonable Warnings**

24 If Oxyfresh is required to provide a warning pursuant to Section 3.1, the following warning  
25 must be utilized:

26 Prior to August 30, 2018, either of the below warnings may be utilized:

27 **WARNING:** This product contains lead [and cadmium], [a] chemical[s] known to the

1 State of California to cause [cancer and] birth defects or other reproductive harm.

2 After August 30, 2018, the following warning must be utilized:

3 **WARNING:** This product can expose you to chemicals including lead [and cadmium]  
4 which [is][are] known to the State of California to cause [cancer and] birth defects or other  
5 reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

6 Oxyfresh shall use the phrase "cancer and" in the warning if the maximum daily dose  
7 recommended on the label contains more than fifteen (15) micrograms of lead as determined  
8 pursuant to the quality control methodology set forth in Section 3.4. As specified by the terms in  
9 the brackets above, the warning shall properly identify whether lead, cadmium or both chemicals  
10 are present in the Covered Products.

11 Oxyfresh shall provide the Warning on at least one of the following locations: (1) on the  
12 checkout page of its website for California consumers; (2) in an email sent to the California  
13 consumer that confirms his or her purchase of the Covered Products following the placement of  
14 an order (the "Confirmation"); (3) on the container, cap, or label of each Covered Product; 4) on  
15 inserts in boxes of Covered Products shipped into California; or 5) on the packing list in boxes of  
16 Covered Products shipped to California.

17 For a Warning appearing on the checkout page, insert, packing list, or in the  
18 Confirmation, Oxyfresh shall identify with an asterisk (or some other identifying method) each  
19 Covered Product to which the Warning applies and Oxyfresh shall not include a Warning  
20 without identifying the Covered Products to which the Warning applies.

21 Apart from the Warning, no additional statement regarding Proposition 65 or lead may be  
22 stated within the same physical location as the Warning that appears on the checkout page or in  
23 the Confirmation. The preceding prohibition in this paragraph does not apply to a url reference  
24 to a webpage or to other correspondence with the consumer.

25 For a Warning appearing on the container, cap, or label of the Covered Products, the  
26 Warning shall be securely affixed to or printed upon the container, cap, or label of the Covered  
27 Products.



1 If Oxyfresh provides the Warning in an insert, Oxyfresh shall provide one insert Warning  
2 for each Covered Product in a box or one insert warning that lists all of the Covered Products in  
3 the box. The insert Warning will be a minimum of 5 inches x 7 inches. If the insert is provided  
4 in an insert or packing list, the Covered Products may be returned by the consumer for a refund  
5 within 30 days of the invoice date if the consumer references the Warnings as a reason for the  
6 return. If Oxyfresh provides the Warning on an insert or packing slip, the Warning must be  
7 present on the front of the insert.

8 Oxyfresh must display the above with such conspicuousness, as compared with other  
9 words, statements, or designs of the label, container, cap, Confirmation or website, as applicable,  
10 to render the Warning likely to be read and understood by an ordinary individual under  
11 customary conditions of purchase or use of the product. The Warning appearing on the website,  
12 Confirmation, label, container, or cap shall be at least the same size as the largest of any other  
13 health or safety warnings correspondingly appearing on the website, Confirmation, label,  
14 container, or cap, as applicable, of such product, and the word "WARNING" shall be in all  
15 capital letters and in bold print.

### 16 3.3 Reformulated Covered Products

17 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" or  
18 "Daily Cadmium Exposure Level" when the maximum suggested dose is taken as directed on the  
19 Reformulated Covered Product's label, contains no more than 0.5 micrograms of lead per day  
20 (excluding any lead defined as naturally occurring pursuant to section 3.1.2) or 4.10 micrograms  
21 of cadmium per day as determined by the quality control methodology described in Section 3.4.

### 22 3.4 Testing and Quality Control Methodology

23 3.4.1 Beginning within one year of the Compliance Date, Oxyfresh shall  
24 arrange for lead and cadmium testing of the Covered Products at least once a year for a  
25 minimum of five (5) consecutive years by arranging for testing of five (5) randomly selected  
26 samples of each of the Covered Products, in the form intended for sale to the end-user, which  
27 Oxyfresh intends to sell or is manufacturing for sale in California, directly selling to a

1 consumer in California or "Distributing into California." If tests conducted pursuant to this  
2 Section demonstrate that no warning is required for a Covered Product during each of five (5)  
3 consecutive years, then the testing requirements of this Section will no longer be required as to  
4 that Covered Product. However, if during or after the five-year period, Oxyfresh changes  
5 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered  
6 Products, Oxyfresh shall test that Covered Product at least once after such change is made. The  
7 above testing requirements do not apply to any of the Covered Products for which Oxyfresh has  
8 provided the warning specified in Section 3.2.

9           3.4.2 For purposes of measuring the "Daily Lead Exposure Level" or "Daily  
10 Cadmium Exposure Level", the highest lead or cadmium detection result of the five (5)  
11 randomly selected samples of the Covered Products will be controlling.

12           3.4.3 All testing pursuant to this Consent Judgment shall be performed using a  
13 laboratory method that complies with the performance and quality control factors appropriate  
14 for the method used, including limit of detection, qualification, accuracy, and precision that  
15 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
16 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
17 method subsequently agreed to in writing by the Parties.

18           3.4.4 All testing pursuant to this Consent Judgment shall be performed by an  
19 independent third party laboratory certified by the California Environmental Laboratory  
20 Accreditation Program or an independent third-party laboratory that is registered with the  
21 United States Food & Drug Administration.

22           3.4.5 Nothing in this Consent Judgment shall limit Oxyfresh's ability to  
23 conduct, or require that others conduct, additional testing of the Covered Products, including  
24 the raw materials used in their manufacture.

25           3.4.6 Beginning on the Compliance Date and continuing for a period of five  
26 (5) years, Oxyfresh shall arrange for copies of all laboratory reports with results of testing for  
27 lead and cadmium content under Section 3.4.1 to be automatically sent by the testing laboratory.

1 directly to ERC within ten (10) business days after completion of the testing. Oxyfresh shall  
2 retain all test results and documentation for a period of five (5) years from the date of each test.

#### 3 4. SETTLEMENT PAYMENT

4 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil  
5 penalties, attorney's fees, and costs, Oxyfresh shall make a total payment of \$75,000.00 ("Total  
6 Settlement Amount"). The Total Settlement Amount shall be paid in a total of six consecutive  
7 monthly payments. The first payment of \$12,500.00 shall be due and owing five (5) business  
8 days after the Effective Date. The next five (5) consecutive equal monthly payments of  
9 \$12,500.00 shall follow in thirty day increments from the first payment ("Due Dates").  
10 Oxyfresh shall make this payment by wire transfer to ERC's escrow account, for which ERC  
11 will give Oxyfresh the necessary account information. The Total Settlement Amount shall be  
12 apportioned as follows:

13 4.2 \$26,876.20 shall be considered a civil penalty pursuant to California Health and  
14 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$20,157.15) of the civil penalty to the  
15 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
16 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
17 Code §25249.12(c). ERC will retain the remaining 25% (\$6,719.05) of the civil penalty.

18 4.3 \$2,493.78 shall be distributed to ERC as reimbursement to ERC for reasonable  
19 costs incurred in bringing this action.

20 4.4 \$20,157.12 shall be distributed to ERC as an Additional Settlement Payment  
21 ("ASP"), pursuant to California Code of Regulations, title 27, sections 3203, subdivision (d) and  
22 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
23 caused by Defendant in this matter. These activities are detailed below and support ERC's  
24 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
25 supplement products in California. ERC's activities have had, and will continue to have, a direct  
26 and primary effect within the State of California because California consumers will be benefitted  
27 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements

1 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of  
2 the products.

3 Based on a review of past years' actual budgets, ERC is providing the following list of  
4 activities ERC engages in to protect California consumers through Proposition 65 citizen  
5 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
6 activities: (1) ENFORCEMENT (55-70%): obtaining, shipping, analyzing, and testing dietary  
7 supplement products that may contain lead and/or cadmium and are sold to California  
8 consumers; continued monitoring and enforcement of past consent judgments and settlements to  
9 ensure companies are in compliance with their obligations thereunder, with a specific focus on  
10 those judgments and settlements concerning lead and/or cadmium (which necessarily includes  
11 additional work purchasing, processing, analyzing and testing consumer products; litigating  
12 matters that result in defaults, bankruptcies, or dismissals; (2) VOLUNTARY COMPLIANCE  
13 PROGRAM (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring  
14 products from companies, developing and maintaining a case file, testing products from these  
15 companies, providing the test results and supporting documentation to the companies, and  
16 offering guidance in implementing a self-testing program for lead and/or cadmium in dietary  
17 supplement products; (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got  
18 Lead?" Program which reduces the numbers of contaminated products that reach California  
19 consumers by providing access to free testing for lead in dietary supplement products (Products  
20 submitted to the program are screened for ingredients which are suspected to be contaminated,  
21 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and the  
22 results shared with the consumer that submitted the product); (4) DONATION: from this  
23 settlement, a donation of \$1,008.00 to As You Sow will be provided to address reducing toxic  
24 chemical exposures in California and following up with the recipient to ensure the funds are  
25 utilized in a manner that is consistent with ERC's mission and stated purpose of the Donation;  
26 (5) PUBLIC OUTREACH (up to 5%): public outreach programs including maintaining ERC's  
27 blog, website, and social media accounts; (6) SPECIAL PROJECTS (10-20%): projects

1 including obtaining expert and legal opinions not specific to any one case that are necessary to  
2 the continued private enforcement of Proposition 65 (7) SCHOLARSHIPS (up to 5%);  
3 scholarships for college students in California who have been or are currently diagnosed with  
4 cancer or who are pursuing an environmental health science major; and (8) PRODUCT  
5 DATABASE (up to 5%); maintaining a database with all products sold to California consumers  
6 that ERC has tested for lead, cadmium, or arsenic.

7 ERC will maintain adequate records to document that the funds paid as an ASP are spent  
8 on the activities described herein. ERC shall provide the Attorney General, within thirty days of  
9 any request, copies of documentation demonstrating how such funds have been spent.

10 4.5 \$25,472.90 shall be distributed to ERC for its in-house legal fees.

11 4.6 In the event that Oxyfresh fails to remit the Total Settlement Payment owed  
12 under Section 4 of this Consent Judgment on or before the Due Date, Oxyfresh shall be deemed  
13 to be in material breach of its obligations under this Consent Judgment. ERC shall provide  
14 written notice of the delinquency to Oxyfresh via electronic mail. If Oxyfresh fails to deliver  
15 the Total Settlement Payment within five (5) days from the written notice, the Total Settlement  
16 Payment shall become immediately due and payable and shall accrue interest at the statutory  
17 judgment interest rate provide in the Code of Civil Procedure section 685.010. Additionally,  
18 Oxyfresh agrees to pay ERC's reasonable attorney fees and costs for any efforts to collect the  
19 payment due under this Consent Judgment.

## 20 5. MODIFICATION OF CONSENT JUDGMENT

21 5.1 This Consent Judgment may be modified only (i) by written stipulation of the  
22 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
23 judgment.

24 5.2 If Oxyfresh seeks to modify this Consent Judgment under Section 5.1, then  
25 Oxyfresh must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to  
26 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must  
27 provide written notice to Oxyfresh within thirty (30) days of receiving the Notice of Intent. If

1 ERC notifies Oxyfresh in a timely manner of ERC's intent to meet and confer, then the Parties  
2 shall meet and confer in good faith as required in this Section. The Parties shall meet in person  
3 or via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.  
4 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall  
5 provide to Oxyfresh a written basis for its position. The Parties shall continue to meet and  
6 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should  
7 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-  
8 confer period.

9 5.3 In the event that either Party initiates or otherwise requests a modification under  
10 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
11 Consent Judgment, the initiating Party shall reimburse the non-initiating Party its costs and  
12 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
13 arguing the motion or application, provided, however, that these fees and costs shall not exceed  
14 \$10,000.00 total without the prior written consent of the initiating Party.

15 5.4 Where the meet-and-confer process does not lead to a joint motion or  
16 application in support of a modification of the Consent Judgment, then either Party may seek  
17 judicial relief on its own.

18 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
19 **JUDGMENT**

20 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
21 this Consent Judgment.

22 6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated  
23 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
24 inform Oxyfresh in a reasonably prompt manner of its test results, including information  
25 sufficient to permit Oxyfresh to identify the Covered Products at issue. Oxyfresh shall, within  
26 thirty (30) days following such notice, provide ERC with testing information, from an  
27 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,

1 demonstrating Oxyfresh's compliance with the Consent Judgment, if warranted. The Parties  
2 shall first attempt to resolve the matter prior to ERC taking any further legal action.

3 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

24 **8.2** ERC on its own behalf only, on one hand, and Oxyfresh on its own behalf  
25 only, on the other, further waive and release any and all claims they may have against each  
26 other for all actions or statements made or undertaken in the course of seeking or opposing  
27 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 facts  
4 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be  
5 discovered. ERC on behalf of itself only, on one hand, and Oxyfresh, on the other hand,  
6 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
7 claims up through the Effective Date, including all rights of action therefore. ERC and  
8 Oxyfresh acknowledge that the claims released in Sections 8.1 and 8.2 above may include  
9 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
10 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  
            KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
            OR HER SETTLEMENT WITH THE DEBTOR.

14 ERC on behalf of itself only, on the one hand, and Oxyfresh, on the other hand, acknowledge  
15 and understand the significance and consequences of this specific waiver of California Civil  
16 Code section 1542.

17       **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
18 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
19 and cadmium in the Covered Products as set forth in the Notice and the Complaint.

20       **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
21 environmental exposures arising under Proposition 65, nor shall it apply to any of Oxyfresh's  
22 products other than the Covered Products.

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

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

### 26   **10. GOVERNING LAW**

27           The terms and conditions of this Consent Judgment shall be governed by and construed in



1 accordance with the laws of the State of California.

2 **11. PROVISION OF NOTICE**

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

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

7 Chris Heptinstall, Executive Director, Environmental Research Center  
8 3111 Camino Del Rio North, Suite 400  
9 San Diego, CA 92108  
10 Tel: (619) 500-3090  
11 Email: chris\_erc501c3@yahoo.com

11 **OXYFRESH WORLDWIDE, INC.,**  
12 **and**  
13 **OXYFRESH.COM/21 TEN, INC.**

14 Richard Brooke  
15 Chief Executive Officer  
16 Oxyfresh.com/21 Ten, Inc.  
17 1875 Lakewood Drive  
18 3<sup>rd</sup> Floor  
19 Coeur d'Alene, ID 83814

20 With a copy to:  
21 Stephen L. Marsh  
22 Stefanie Warren  
23 Dentons US LLP  
24 4655 Executive Drive, Suite 700  
25 San Diego, CA 92121  
26 Telephone: (619) 236-1414  
27 Facsimile: (619) 645-5363  
28 stephen.marsh@dentons.com  
stefanie.warren@dentons.com

24 **12. COURT APPROVAL**

25 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
26 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
27 Consent Judgment.

1           **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
2 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
3 prior to the hearing on the motion.

4           **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
5 void and have no force or effect.

6           **13. EXECUTION AND COUNTERPARTS**

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

10          **14. DRAFTING**

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

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 and confer in person, by telephone, and/or in  
22 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be  
23 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

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

1 representations, oral or otherwise, express or implied, other than those contained herein have  
2 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
3 herein, shall be deemed to exist or to bind any Party.

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

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

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

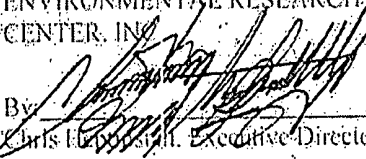
12 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
13 equitable settlement of all matters raised by the allegations of the Complaint; that the matter has  
14 been diligently prosecuted, and that the public interest is served by such settlement; and

15 (2) Make the findings pursuant to California Health and Safety Code section  
16 25249.7(1)(4), approve the Settlement, and approve this Consent Judgment.

17  
18 **IT IS SO STIPULATED:**

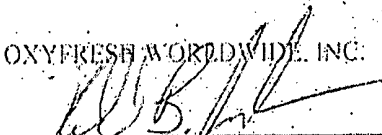
19  
20 Dated: 11/28/ 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Elwood, Jr., Executive Director

21  
22  
23  
24 Dated: 11/29/2016 2016

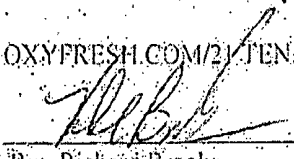
OXYFRESH WORLDWIDE, INC.

By:   
Richard Brooke  
Its: Chief Executive Officer

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Dated: 11/29 2016

OXYFRESH.COM/21/TEN, INC.

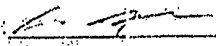


By: Richard Brooke  
Its: Chief Executive Officer

APPROVED AS TO FORM:

Dated: 11-29 2016

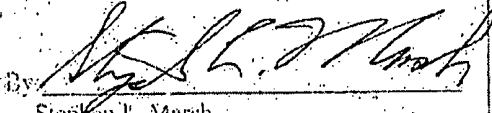
ENVIRONMENTAL RESEARCH CENTER, INC.

By: 

Anne Barker  
In-House Counsel

Dated: 29 Nov. 2016

DENTONS US LLP



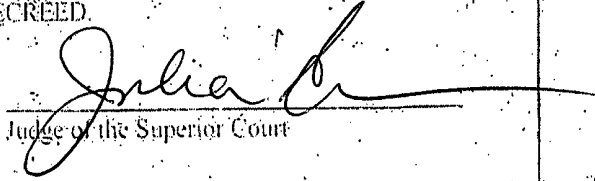
Stephen L. Marsh  
Stefanie Warren  
Attorneys for Defendants Oxyfresh  
Worldwide, Inc., and Oxyfresh.com/21  
Ten, Inc.

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: 2/3/17 2017

  
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

Case Number : RG16840102

Case name: Environmental Research Center vs. Oxyfresh Worldwide, Inc.

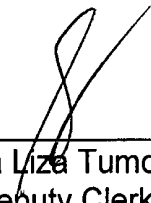
DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the **STIPULATED CONSENT JUDGMENT** filed on February 3, 2017 was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 6, 2017.

Chad Finke, Executive Officer/Clerk of the Superior Court

By: \_\_\_\_\_

  
Ana Liza Tumonong  
Deputy Clerk

Anne Barker, Esq.  
Environmental Research Center, Inc.  
3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108

Stephen Marsh, Esq.  
Dentons US LLP  
4655 Executive Drive, Suite 700  
San Diego, CA 92121



## Environmental Research Center

3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
619-500-3090

August 28, 2015

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of 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:

**Oxyfresh Worldwide, Inc.**  
**Oxyfresh Worldwide, Inc. dba Life Shotz**  
**Oxyfresh.com/21 Ten, Inc.**

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

**Life Shotz LS-Vibe Chiseled Chocolate – Lead, Cadmium**  
**Life Shotz LS-Vibe Viva Vanilla – 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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while Cadmium and Cadmium Compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

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

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least August 28, 2012, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

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

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



---

Chris Heptinstall  
Executive Director  
Environmental Research Center

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Oxyfresh World Wide, Inc., Oxyfresh Worldwide, Inc. dba Life Shotz, Oxyfresh.com/21 Ten, Inc. 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 Oxyfresh World Wide, Inc., Oxyfresh Worldwide, Inc. dba Life Shotz, and Oxyfresh.com/21 Ten, Inc.**

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged 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 the Executive Director for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged 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: August 28, 2015

---

Chris Heptinstall



**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 28, 2015, 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 President or CEO  
Oxyfresh Worldwide, Inc.  
1875 North Lakewood Drive, #3  
Coeur D’Alene, ID 83814

Richard B. Brooke  
(Oxyfresh.com/21 Ten, Inc.’s Registered Agent  
for Service of Process only)  
1875 North Lakewood Drive, Suite 300  
Coeur D’Alene, ID 83814

Current President or CEO  
Oxyfresh Worldwide, Inc. dba Life Shotz  
1875 North Lakewood Drive, #3  
Coeur D’Alene, ID 83814

Northwest Registered Agents, LLC  
(Oxyfresh Worldwide, Inc.’s Registered Agent  
for Service of Process only)  
401 Ryland Street, Suite 200-A  
Reno, NV 89502

Current President or CEO  
Oxyfresh.com/21 Ten, Inc.  
1875 North Lakewood Drive, #3  
Coeur D’Alene, ID 83814

Tyler Wilson  
Wilson Law Group LLC  
(Oxyfresh.com/21 Ten, Inc.’s Registered Agent  
for Service of Process only)  
18610 East 32<sup>nd</sup> Avenue  
GreenAcres, WA 99016

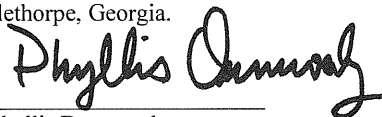
Current President or CEO  
Oxyfresh Worldwide, Inc. dba Life Shotz  
3100 Reeves Road  
Plainfield, IN 46168

On August 28, 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  
Post Office Box 70550  
Oakland, CA 94612-0550

On August 28, 2015, 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 28, 2015, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

**Service List**

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2nd Street Woodland, CA 95695
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	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, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Mateo County 400 County Ctr., 3rd 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, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	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, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	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, 16th Floor San Jose, CA 95113
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009	
District Attorney, Los Angeles County 210 West Temple Street, Suite 1800 Los Angeles, CA 90012	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103		

## APPENDIX A

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

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

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

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

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The "Governor's List."*** Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

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

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

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

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies; for example, when exposures are sufficiently low (see below). The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***Prohibition from discharges into drinking water.*** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

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

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

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

***Governmental agencies and public water utilities.*** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

***Businesses with nine or fewer employees.*** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed as known to the State to cause cancer (“carcinogens”), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA’s website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by a 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA’s website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

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

**Discharges that do not result in a “significant amount” of the listed chemical entering into any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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

## *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

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

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

Revised: July, 2012

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

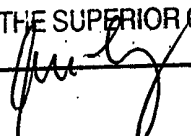


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**FILED**  
ALAMEDA COUNTY

FEB - 3 2017

CLERK OF THE SUPERIOR COURT

E.  Deputy

BY FAX

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

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

Plaintiff,

v.

OXYFRESH WORLDWIDE, INC.,  
OXYFRESH WORLDWIDE, INC. dba LIFE  
SHOTZ, OXYFRESH.COM/21 TEN, INC.,  
and DOES 1-100,

Defendants.

CASE NO. RG16840102

~~PROPOSED~~ STATUTORY FINDINGS  
AND ORDER APPROVING  
PROPOSITION 65  
SETTLEMENT

**Judge: Hon. Julia Spain**  
**Department: 19**  
**Reservation No.: R-1806843**  
**Date: February 8, 2017**  
**Time: 2:00 p.m.**

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This matter having come on calendar pursuant to a regularly noticed motion and the Court having reviewed all the evidence submitted in support of Plaintiff Environmental Research Center, Inc.'s motion in this case, the Court hereby makes the following findings pursuant to Health & Safety Code section 25249.7, subdivision (f)(4):

- 1) Any warnings that may be required by the Stipulated Consent Judgment fully comply with Proposition 65.
- 2) The attorneys' fees provision in the Stipulated Consent Judgment is reasonable under California law;

1 3) The civil penalty imposed by the Stipulated Consent Judgment is reasonable based on  
2 the criteria set forth in Health & Safety Code section 25249.7, subdivision (b)(2) and Cal. Code  
3 Regs., tit. 11, section 3203; and

4 The Court further finds that allocation of the Additional Settlement Payment to ERC is in  
5 the public interest as set forth in California Code of Regulations, title 11, section 3203 subsection  
6 (d).

7 **IT IS HEREBY ORDERED** that the Stipulated Consent Judgment submitted in this  
8 matter is approved.

9 DATED: 2/3/17

  
HON. JULIA SPAIN



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

Case Number : RG16840102

Case name: Environmental Research Center vs. Oxyfresh Worldwide, Inc.

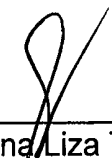
DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the **STATUTORY FINDINGS AND ORDER APPROVING PROPOSITION 65 SETTLEMENT** filed on February 3, 2017 was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on February 6, 2017.

Chad Finke, Executive Officer/Clerk of the Superior Court

By: \_\_\_\_\_

  
Ana Liza Tumonong  
Deputy Clerk

Anne Barker, Esq.  
Environmental Research Center, Inc.  
3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108

Stephen Marsh, Esq.  
Dentons US LLP  
4655 Executive Drive, Suite 700  
San Diego, CA 92121

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3 3111 Camino Del Rio North, Suite 400  
4 San Diego, CA 92108  
5 Ph: 619-500-3090  
6 Fax: 706-858-0326

7 Attorneys for Plaintiff  
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

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

13 Plaintiff,

14 v.

15 OXYFRESH WORLDWIDE, INC.,  
16 OXYFRESH WORLDWIDE, INC. dba LIFE  
17 SHOTZ, OXYFRESH.COM/21 TEN, INC.,  
18 and DOES 1-100,

19 Defendants.

**Case No. RG16840102**

**PROOF OF SERVICE**

20 I am a citizen of the United States, over the age of eighteen years, and not a party to or  
21 interested in the above entitled case. I am an employee of Environmental Research Center,  
22 Inc., and my business address is 3111 Camino Del Rio North, Suite 400, San Diego, CA  
23 92108. I am readily familiar with the business practice for collection and processing of  
24 correspondence. On this February 6, 2017, I served:

25 **1. Notice of Entry of Judgment and Order**

26 ///  
///

1 On the person(s) designated below:

2 Stefanie Warren

3 **Email: Stefanie.warrne@dentons.com**

4 Stephan Marsh:


5 **Email: Stephen.marsh@dentons.com**

6 DENTONS US LLP

7 Attorneys for Defendants OXYFRESH WORLDWIDE, INC., OXYFRESH  
8 WORLDWIDE, INC. dba LIFE SHOTZ, and OXYFRESH.COM/21 TEN, INC.

9  **By email or electronic transmission.** Based on a court order or an agreement of the parties to  
10 accept service by e mail or electronic transmission, I caused the documents to be sent to the persons  
11 at the e mail addresses listed above. I did not receive, within a reasonable time after the  
12 transmission, any electronic message or other indication that the transmission was unsuccessful.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing  
14 is true and correct. Executed February 6, 2017, at San Diego, California.

15   
16 \_\_\_\_\_  
17 Kristen A. O'Bee