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4 Attorney for Plaintiff
5 Environmental Research Center, Inc.

6
7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**

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

12 Plaintiff,

13 v.

14 ESSANTE ORGANICS, LLC and DOES 1-
15 25, Inclusive,

16 Defendants.

Case No. RG16842657

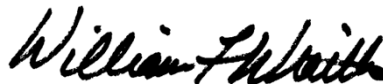
NOTICE OF ENTRY OF JUDGMENT

17 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

18 PLEASE TAKE NOTICE that the Court has entered Judgment in the above-entitled
19 matter. A true and correct copy of the Judgment is attached hereto as Exhibit 1.
20

21 Dated: April 22, 2017

WRAITH LAW



22 By: _____

23 William F. Wraith
24 Attorney for Plaintiff
25 Environmental Research Center, Inc.
26

EXHIBIT 1



14960752

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7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.
9

FILED
ALAMEDA COUNTY

APR 04 2017

CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

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

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

14 Plaintiff,

15 v.

16 ESSANTE ORGANICS, LLC and DOES 1-25,
17 Inclusive,

18 Defendants.
19

CASE NO. RG16842657

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 et seq.

Action Filed: December 16, 2016
Trial Date: None set

20 **1. INTRODUCTION**

21 1.1 On December 16, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a
22 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
23 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the
24 provisions of California Health and Safety Code section 25249.5 et seq. ("Proposition 65"),
25 against ESSANTE ORGANICS, LLC ("ESSANTE") and DOES 1-25. In this action, ERC
26 alleges that a number of products manufactured, distributed, or sold by ESSANTE contain lead,
27 a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
28 consumers to this chemical at a level requiring a Proposition 65 warning. These products

(referred to hereinafter individually as a "Covered Product" or collectively as "Covered Products") are:

- 1) Essanté Organics 7.365 PH Shake Chocolate Kiss
- 2) Essanté Organics 7.365 PH Shake Ice Cream Rave
- 3) Essante Worldwide EG Earth Greens
- 4) Essanté Organics Bee Natural
- 5) Essante Worldwide EG Earth Greens

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

1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

1.5 The Complaint is based on allegations contained in ERC's Notice of Violation dated October 4, 2016 that was served on the California Attorney General, other public enforcers, and ESSANTE ("Notice"). A true and correct copy of the 60-Day Notice dated October 4, 2016 is attached hereto as Exhibit A and is incorporated herein by reference. More than 60 days have passed since the Notice was served on the Attorney General, public enforcers, and ESSANTE and no designated governmental entity has filed a complaint against ESSANTE with regard to the Covered Products or the alleged violations.

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

1 1.7 The Parties have entered into this Consent Judgment in order to settle,
2 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
3 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
4 be construed as an admission by any of the Parties or by any of their respective officers,
5 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
6 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
7 violation of law.

8 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
10 current or future legal proceeding unrelated to these proceedings.

11 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
12 a Judgment by this Court.

13 2. JURISDICTION AND VENUE

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

21 3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

22 3.1 Beginning on the Effective Date, ESSANTE shall be permanently enjoined from
23 manufacturing for sale in the State of California, "Distributing into the State of California", or
24 directly selling in the State of California, any Covered Products which exposes a person to a
25 "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the
26 warning requirements under Section 3.2.

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

1 California or to sell a Covered Product to a distributor that ESSANTE knows or has reason to
2 know will sell the Covered Product in California.

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

9 3.2 Clear and Reasonable Warnings

10 If ESSANTE is required to provide a warning pursuant to Section 3.1, the following
11 warning must be utilized ("Warning"):

12 ▲ **WARNING:** This product can expose you to chemicals including [lead] which is known to
13 the State of California to cause [cancer and] birth defects or other reproductive harm. For
14 more information go to www.P65Warnings.ca.gov.

15 ESSANTE shall use the phrase "cancer and" in the Warning only if the "Daily Lead Exposure
16 Level" is greater than 15 micrograms of lead as determined pursuant to the quality control
17 methodology set forth in Section 3.4.

18 The Warning shall be provided on the invoice in boxes of Covered Products shipped to
19 California. ESSANTE shall provide one invoice Warning for each Covered Product in a box or
20 one invoice Warning that lists all of the Covered Products in the box. The Covered Products
21 may be returned by the consumer for a refund within 30 days of the invoice date at no cost to the
22 consumer if the consumer references the Warning as a reason for the return. The Warning must
23 be present on the front of the invoice.

24 The Warning shall be at least the same size as the largest of any other health or safety
25 warnings also appearing on the invoice and the word "WARNING" shall be in all capital letters
26 and in bold print. No statements intended to or likely to have the effect of diminishing the impact
27 of, or reducing the clarity of, the Warning on the average lay person shall accompany the Warning.
28 Further no statements may accompany the Warning that state or imply that the source of the listed
29 chemical has an impact on or results in a less harmful effect of the listed chemical.

1 ESSANTE must display the above Warning with such conspicuousness, as compared with
2 other words and statements on the invoice, to render the Warning likely to be read and understood
3 by an ordinary individual under customary conditions of purchase or use of the product.

4 3.3 Reformulated Covered Products

5 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no
6 greater than 0.5 micrograms of lead per day as determined by the quality control methodology
7 described in Section 3.4.

8 3.4 Testing and Quality Control Methodology

9 3.4.1 Beginning within one year of the Effective Date, ESSANTE shall
10 arrange for lead testing of the Covered Products at least once a year for a minimum of five
11 consecutive years by arranging for testing of five randomly selected samples of each of the
12 Covered Products, in the form intended for sale to the end-user, which ESSANTE intends to
13 sell or is manufacturing for sale in California, directly selling to a consumer in California or
14 "Distributing into the State of California." If tests conducted pursuant to this Section
15 demonstrate that no Warning is required for a Covered Product during each of five consecutive
16 years, then the testing requirements of this Section will no longer be required as to that Covered
17 Product. However, if during or after the five-year testing period, ESSANTE changes ingredient
18 suppliers for any of the Covered Products and/or reformulates any of the Covered Products,
19 ESSANTE shall test that Covered Product annually for at least four (4) consecutive years after
20 such change is made.

21 3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the highest
22 lead detection result of the five (5) randomly selected samples of the Covered Products will be
23 controlling.

24 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
25 laboratory method that complies with the performance and quality control factors appropriate
26 for the method used, including limit of detection, qualification, accuracy, and precision that
27 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
28 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing

1 method subsequently agreed to in writing by the Parties and approved by the Court through
2 entry of a modified consent judgment.

3 3.4.4 All testing pursuant to this Consent Judgment shall be performed by an
4 independent third party laboratory certified by the California Environmental Laboratory
5 Accreditation Program or an independent third-party laboratory that is registered with the
6 United States Food & Drug Administration.

7 3.4.5 Nothing in this Consent Judgment shall limit ESSANTE's ability to
8 conduct, or require that others conduct, additional testing of the Covered Products, including
9 the raw materials used in their manufacture.

10 3.4.6 Within thirty (30) days of ERC's written request, ESSANTE shall
11 deliver lab reports obtained pursuant to Section 3.4 to ERC. ESSANTE shall retain all test
12 results and documentation for a period of five years from the date of each test.

13 **4. SETTLEMENT PAYMENT**

14 4.1 In full satisfaction of all potential civil penalties, additional settlement payments,
15 attorney's fees, and costs, ESSANTE shall make a total payment to ERC of \$40,000.00 ("Total
16 Settlement Amount") in six monthly installments plus 8% per annum simple interest on the
17 balance remaining after the first payment. The Total Settlement Amount including interest
18 shall be paid on the following schedule ("Due Dates"):

19 \$6,666.67 due within 5 days of the Effective Date

20 \$6,888.89 due within 35 days of the Effective Date

21 \$6,844.45 due within 65 days of the Effective Date

22 \$6,800.00 due within 95 days of the Effective Date

23 \$6,755.56 due within 125 days of the Effective Date

24 \$6,711.09 due within 155 days of the Effective Date

25 4.2 ESSANTE shall make these payments by wire transfer to ERC's escrow
26 account, for which ERC will give ESSANTE the necessary account information. The Total
27 Settlement Amount shall be apportioned as follows:
28

1 4.3 \$7,611.95 shall be considered a civil penalty pursuant to California Health and
2 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$5,708.96) of the civil penalty to the
3 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
4 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
5 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,902.99) of the civil penalty.

6 4.4 \$2,994.75 shall be distributed to ERC as reimbursement to ERC for reasonable
7 costs incurred in bringing this action.

8 4.5 \$5,708.95 shall be distributed to ERC as an Additional Settlement Payment
9 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
10 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
11 caused by Defendant in this matter. These activities are detailed below and support ERC's
12 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
13 supplement products in California. ERC's activities have had, and will continue to have, a direct
14 and primary effect within the State of California because California consumers will be benefitted
15 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
16 providing clear and reasonable warnings to California consumers prior to ingestion of the
17 products.

18 Based on a review of past years' actual budgets, ERC is providing the following list of
19 activities ERC engages in to protect California consumers through Proposition 65 citizen
20 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
21 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
22 supplement products that may contain lead and are sold to California consumers. This work
23 includes continued monitoring and enforcement of past consent judgments and settlements to
24 ensure companies are in compliance with their obligations thereunder, with a specific focus on
25 those judgments and settlements concerning lead. This work also includes investigation of new
26 companies that ERC does not obtain any recovery through settlement or judgment; (2)
27 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
28 Compliance Program by acquiring products from companies, developing and maintaining a case

1 file, testing products from these companies, providing the test results and supporting
2 documentation to the companies, and offering guidance in warning or implementing a self-
3 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up
4 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
5 products that reach California consumers by providing access to free testing for lead in dietary
6 supplement products (Products submitted to the program are screened for ingredients which are
7 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
8 qualified laboratory for testing, and the results shared with the consumer that submitted the
9 product).

10 ERC shall be fully accountable in that it will maintain adequate records to document and
11 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
12 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
13 shall provide the Attorney General, within thirty days of any request, copies of documentation
14 demonstrating how such funds have been spent.

15 4.6 \$7,875.00 shall be distributed to William F. Wraith as reimbursement of ERC's
16 attorney's fees, while \$15,809.35 shall be distributed to ERC for its in-house legal fees. Except
17 as explicitly provided herein, each Party shall bear its own fees and costs.

18 4.6 In the event that ESSANTE fails to remit any settlement payment owed under
19 Section 4 of this Consent Judgment on or before its respective Due Date, ESSANTE shall be
20 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
21 provide written notice of the delinquency to ESSANTE via electronic mail. If ESSANTE fails
22 to deliver the past due settlement payment within five (5) days from the written notice, the
23 Total Settlement Amount shall become immediately due and owing and shall accrue interest at
24 the statutory judgment interest rate provided in the California Code of Civil Procedure section
25 685.010. Additionally, ESSANTE agrees to pay ERC's reasonable attorney's fees and costs for
26 any efforts to collect the payment due under this Consent Judgment.

1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by
3 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a
4 modified consent judgment.

5 5.2 If ESSANTE seeks to modify this Consent Judgment under Section 5.1, then
6 ESSANTE must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
7 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
8 provide written notice to ESSANTE within thirty (30) days of receiving the Notice of Intent. If
9 ERC notifies ESSANTE in a timely manner of ERC's intent to meet and confer, then the
10 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
11 person or via telephone within thirty (30) days of ERC's notification of its intent to meet and
12 confer. Within thirty (30) days of such meeting, if ERC disputes the proposed modification,
13 ERC shall provide to ESSANTE a written basis for its position. The Parties shall continue to
14 meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.
15 Should it become necessary, the Parties may agree in writing to different deadlines for the
16 meet-and-confer period.

17 5.3 In the event that ESSANTE initiates or otherwise requests a modification under
18 Section 5.1, and the meet and confer process leads to a joint motion or application of the
19 Consent Judgment, ESSANTE shall reimburse ERC its costs and reasonable attorney's fees for
20 the time spent in the meet-and-confer process and filing and arguing the motion or application.

21 5.4 Where the meet-and-confer process does not lead to a joint motion or
22 application in support of a modification of the Consent Judgment, then either Party may seek
23 judicial relief on its own.

24 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
25 **JUDGMENT**

26 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
27 this Consent Judgment.

28 6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated

Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall inform ESSANTE in a reasonably prompt manner of its test results, including information sufficient to permit ESSANTE to identify the Covered Products at issue. ESSANTE shall, within thirty (30) days following such notice, provide ERC with testing information, from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating ESSANTE's compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

7. APPLICATION OF CONSENT JUDGMENT

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

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

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

8.2 ERC on its own behalf only, and ESSANTE on its own behalf only, further

1 waive and release any and all claims they may have against each other for all actions or
2 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
3 65 in connection with the Notice and Complaint up through and including the Effective Date,
4 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
5 enforce the terms of this Consent Judgment.

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

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

19 ERC on behalf of itself only, and ESSANTE on behalf of itself only, acknowledge and
20 understand the significance and consequences of this specific waiver of California Civil Code
21 section 1542.

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

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

28 9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

1 **10. GOVERNING LAW**

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

4 **11. PROVISION OF NOTICE**

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

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

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

14 With a copy to:

15 WILLIAM F. WRAITH,
16 WRAITH LAW
17 24422 Avenida de la Carlota, Suite 400
18 Laguna Hills, CA 92653
19 Tel: (949) 452-1234
20 Fax: (949) 452-1102

21 Attorney for Plaintiff
22 ENVIRONMENTAL RESEARCH CENTER, INC.

23 **ESSANTE ORGANICS, LLC**
24 11001 North 24th Avenue
25 Suite 612
26 Phoenix, AZ, 85029

27 **12. COURT APPROVAL**

28 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
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.

1 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
2 void and have no force or effect.

3 **13. EXECUTION AND COUNTERPARTS**

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

7 **14. DRAFTING**

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

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

17 If a dispute arises with respect to either Party's compliance with the terms of this Consent
18 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
19 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
20 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

21 **16. ENFORCEMENT**

22 ERC may, by motion or order to show cause before the Superior Court of Alameda
23 County, enforce the terms and conditions contained in this Consent Judgment. In any action
24 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
25 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
26 To the extent the failure to comply with the Consent Judgment constitutes a violation of
27 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
28 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by

1 law for failure to comply with Proposition 65 or other laws.

2 **17. ENTIRE AGREEMENT, AUTHORIZATION**

3 **17.1** This Consent Judgment contains the sole and entire agreement and
4 understanding of the Parties with respect to the entire subject matter herein, and any and all
5 prior discussions, negotiations, commitments, and understandings related hereto. No
6 representations, oral or otherwise, express or implied, other than those contained herein have
7 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
8 herein, shall be deemed to exist or to bind any Party.

9 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

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

21 **IT IS SO STIPULATED:**

22 Dated: 1/24/, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 

Chris Horsman, Executive Director

1
2 Dated: 11-21-2017, 2017

ESSANTE ORGANICS, LLC

3
4 Michael Wenniger
5 CEO

6
7 APPROVED AS TO FORM:

8 Dated: January 27, 2017

WRAITH LAW

9
10 By: William F. Wraith

11 William F. Wraith
12 Attorney for Plaintiff Environmental
13 Research Center, Inc.

14
15 **ORDER AND JUDGMENT**

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

18 IT IS SO ORDERED, ADJUDGED AND DECREED.

19
20 Dated: 4/4, 2017

21 [Signature]
22 Judge of the Superior Court

WRAITH LAW
24422 AVENIDA DE LA CARLOTA
SUITE 400
LAGUNA HILLS, CA 92653
Tel (949) 452-1234
Fax (949) 452-1102

October 4, 2016

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, 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 products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to 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 Violator identified below.

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

Essante Organics, LLC

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

Essanté Organics 7.365 PH Shake Chocolate Kiss - Lead
Essanté Organics 7.365 PH Shake Ice Cream Rave - Lead
Essante Worldwide EG Earth Greens - Lead
Essanté Organics Bee Natural - Lead
Essante Worldwide EG Earth Greens - Lead

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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.

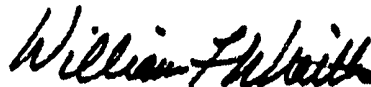
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred 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 October 4, 2013, 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 this known toxic chemical is 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 chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to 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 Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, 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 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 Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Essante Organics, LLC and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by
Essante Organics, LLC**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

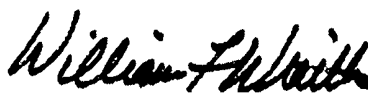
2. I am an attorney for the noticing party.

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

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: October 4, 2016



William F. Wraith

October 4, 2016

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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 October 4, 2016 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Essante Organics, LLC
11001 North 24th Avenue
Suite 612
Phoenix, AZ 85029

Michael Wenniger
(Registered Agent for Essante
Organics, LLC)
1145 West Southern #4
Tempe, AZ 85282

On October 4, 2016, 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 October 4, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

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

October 4, 2016

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Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On October 4, 2016, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on October 4, 2016, in Fort Oglethorpe, Georgia



Phyllis Dunwoody

Service List

District Attorney, Alameda
County
1225 Fallon Street, Suite 900
Oakland, CA 94612

District Attorney, Alpine
County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador
County
708 Court Street, Suite 202
Jackson, CA 95642

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

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

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

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

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

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

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

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

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

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

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

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

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

District Attorney, Los
Angeles County
210 West Temple Street,
Suite 18000
Los Angeles, CA 90012

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

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

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

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

District Attorney, Merced
County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc
County
204 S Court Street, Room
202
Alturas, CA 96101-4020

District Attorney, Mono
County
Post Office Box 617
Bridgeport, CA 93517

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

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

District Attorney, Placer
County
10810 Justice Center Drive,
Ste 240
Roseville, CA 95678

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

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

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

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

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

District Attorney, Santa
Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Cruz
County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

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

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

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

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

District Attorney, Sutter
County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

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

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

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

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

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

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

1 I, William F. Wraith, am an active member of the State Bar of California and not
2 a party to this action. I am a resident or employed in the county where the mailing took
place. My business address is 24422 Avenida de la Carlota, Suite 400, Laguna Hills, CA
92653.

3 On April 22, 2017, I served the foregoing documents described as:

4 **NOTICE OF RULING REGARDING (1) MOTION TO APPROVE**
5 **PROPOSITION 65 SETTLEMENT AND FOR ENTRY OF CONSENT**
6 **JUDGMENT AND (2) MOTION TO FILE CONFIDENTIAL RECORDS UNDER**
7 **SEAL**

8 on the following interested parties in this action in the manner identified below:

9 Michael Wenniger
10 Essante Organics, LLC
11 1145 West Southern #4
12 Tempe, AZ 85282
13 michael@essanteworldwide.com
14 In Pro Per

15 California Dept. of Justice, Office of the Attorney General
16 Proposition 65 Enforcement Reporting
17 Attention: Prop 65 Coordinator
18 1515 Clay Street, Suite 2000
19 Post Office Box 70550
20 Oakland, California 94612-0550

21 [X] **BY MAIL – USPS DEPOSIT:** I deposited the sealed envelope with the United
States Postal service with the postage fully prepaid.

22 [] **BY EMAIL OR ELECTRONIC TRANSMISSION:** I caused the documents to
23 be sent to the persons at the e-mail addresses. I did not receive, within a
24 reasonable time after the transmission, any electronic message or other indication
25 that the transmission was unsuccessful.

26 I declare under penalty of perjury under the laws of the State of California that the above
is true and correct. Executed on April 22, 2017 at Laguna Hills, California.



William F. Wraith