RICHARD M. FRANCO (CBN 170970)
LAW OFFICE OF RICHARD M. FRANCO
6500 Estates Drive
Oakland, CA 94611
Ph: 510-684-1022
Email: rick@rfrancolaw.com

Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

AMY P. LALLY, SBN 198555
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles. California 90013-1010
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

Attorney for Defendant
KAY'S PROCESSING, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH CENTER, INC., a non-profit California corporation, Plaintiff, vs. KAY'S PROCESSING LLC, a Minnesota limited liability company, Defendant.	CASE NO. RG17871414 **STIPULATED CONSENT JUDGMENT** Health & Safety Code § 25249.5 *et seq.* Action Filed: August 14, 2017 Trial Date: None set

1. INTRODUCTION

On August 14, 2017, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against KAY'S PROCESSING, LLC ("KAY'S PROCESSING"). In this action, ERC alleges that a number of

products manufactured, distributed, or sold by KAY'S PROCESSING contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose 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:

- Kay's Naturals Inc. Protein Pretzel Sticks Cinnamon Toast
- Kay's Naturals Inc. Protein Chips Crispy Parmesan
- Kay's Naturals Inc. Protein Cereal Apple Cinnamon
- Kay's Naturals Inc. Protein Kruncheeze White Cheddar Cheese
- Kay's Naturals Inc. Protein Cereal Honey Almond
- Kay's Naturals Inc. Protein Cookie Bites Cinnamon Almond
- Kay's Naturals Inc. Protein Chips Chili Nacho Cheese
- Kay's Naturals Inc. Protein Snack Mix Sweet BBQ Mix
- Kay's Naturals Inc. Protein Cereal French Vanilla
- Kay's Naturals Inc. Protein Puffs Almond Delight
- Kay's Naturals Inc. Protein Pretzel Sticks Jalapeno Honey Mustard
- Kay's Naturals Inc. Protein Cookie Bites Honey Almond
- Kay's Naturals Inc. Protein Cookie Bites Mocha Espresso
- Kay's Naturals Inc. Protein Puffs Mac & Cheese
- Kay's Naturals Inc. Protein Pretzel Sticks Original Flavor

1.1 ERC and KAY'S PROCESSING are hereinafter referred to individually as a "Party" or collectively as the "Parties."

1.2 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.

1.3 For purposes of this Consent Judgment, the Parties agree that KAY'S PROCESSING 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. KAY'S PROCESSING manufactures, distributes, and/or sells the Covered Products.

1.4 The Complaint is based on allegations contained in ERC's Notice of Violation dated March 24, 2017 that was served on the California Attorney General, other public enforcers, and KAY'S PROCESSING ("Notice"). A true and correct copy of the 60-Day Notice dated March 24, 2017 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 KAY'S PROCESSING and no designated governmental entity has filed a complaint against KAY'S PROCESSING with regard to the Covered Products or the alleged violations.

1.5 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. KAY'S PROCESSING denies all material allegations contained in the Notice and Complaint.

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

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

1.8 The Effective Date of this Consent Judgment is the date on which notice is given that it has been entered as a Judgment by this Court.

2. JURISDICTION AND VENUE

For purposes of this Consent Judgment and any further court action that may become

necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction over KAY'S PROCESSING as to the acts alleged in the Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims up through and including the Effective Date which were or could have been asserted in this action based on the facts alleged in the Notice and Complaint.

3. INJUNCTIVE RELIEF, REFORMULATION, AND WARNINGS

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

3.1.1 As used in this Consent Judgment, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that KAY'S PROCESSING knows or has reason to know will sell the Covered Product in California.

3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals micrograms of lead exposure per day. If no recommended daily serving size is provided on the label, then the daily serving size shall equal one.

3.2 Clear and Reasonable Warnings

If KAY'S PROCESSING is required to provide a warning pursuant to Section 3.1, the following warning must be utilized ("Warning"):

WARNING: Consuming this product can expose you to chemicals including lead which is

[are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

or a safe harbor warning that may be set forth in a successor to Cal. Code of Regs., tit. 27, section 25607.2 KAY'S PROCESSING shall use the phrase "cancer and" in the Warning if KAY'S PROCESSING has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead or if KAY'S PROCESSING has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

The Warning shall be securely affixed to or printed upon the container or label of each Covered Product. In addition, for any Covered Product sold over the internet by KAY's PROCESSING, the Warning shall appear on the checkout page, in a pop-up window, or on the product detail page when a California delivery address is indicated for any purchase of any Covered Product. An asterisk or other identifying method must be utilized to identify which products being purchased are subject to the Warning.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on its website or on the label or container of KAY'S PROCESSING's product packaging and the word "**WARNING**" shall be in all capital letters and in bold print. The Warning will not contain statements indicating that the chemicals in the Covered Products are naturally occurring.

KAY'S PROCESSING must display the above Warning with such conspicuousness, as compared with other words, statements, design of the label, container, or on its website, as applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

3.3 Reformulated Covered Products

A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per day.

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, additional settlement payments, attorney's fees, and costs, KAY'S PROCESSING shall make a total payment of $50,000.00

("Total Settlement Amount") in 4 equal monthly installment payments of $12,500.00 each. The first monthly installment payment of $12,500.00 is due to ERC within 5 business days of the Effective Date. The 3 remaining monthly installment payments of $12,500.00 are due within 5 business days of the monthly anniversary of the Effective Date ("Due Dates"). KAY'S PROCESSING shall make these payments by wire transfer to ERC's escrow account, for which ERC will give KAY'S PROCESSING the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.2 $11,219.56 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% ($8,414.67) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% ($2,804.89) of the civil penalty.

4.3 $1,413.92 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 $8,414.65 shall be distributed to ERC as an Additional Settlement Payment ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly caused by KAY'S PROCESSING in this matter. ERC represents that these activities are detailed below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC represents that its activities have had, and will continue to have, a direct and primary effect within the State of California because California consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary supplements and/or by providing clear and reasonable warnings to California consumers prior to ingestion of the products.

ERC represents that based on a review of past years' actual budgets, ERC is providing the following list of activities ERC engages in to protect California consumers through Proposition 65 citizen enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and

testing dietary supplement products that may contain lead and are sold to California consumers. This work includes continued monitoring and enforcement of past consent judgments and settlements to ensure companies are in compliance with their obligations thereunder, with a specific focus on those judgments and settlements concerning lead. This work also includes investigation of new companies that ERC does not obtain any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products from companies, developing and maintaining a case file, testing products from these companies, providing the test results and supporting documentation to the companies, and offering guidance in warning or implementing a self-testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated products that reach California consumers by providing access to free testing for lead in dietary supplement products (Products submitted to the program are screened for ingredients which are suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer that submitted the product).

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

4.5 $15,075.00 shall be distributed to the Law Office of Richard M. Franco as reimbursement of ERC's attorney's fees, while $13,876.87 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

4.6 In the event that KAY'S PROCESSING fails to remit a payment owed under Section 4 of this Consent Judgment on or before the relevant Due Dates, KAY'S PROCESSING shall be deemed to be in material breach of its obligations under this Consent

Judgment. ERC shall provide written notice of the delinquency to KAY'S PROCESSING via electronic mail. If KAY'S PROCESSING fails to deliver the delinquent payment within five (5) days from the written notice, the Total Settlement Amount shall be immediately due and owing and shall accrue interest at the statutory judgment interest rate provided in the California Code of Civil Procedure section 685.010. Additionally, KAY'S PROCESSING agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under this Consent Judgment.

5. MODIFICATION OF CONSENT JUDGMENT

5.1 This Consent Judgment may be modified only as to injunctive terms (i) by written stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a modified consent judgment.

5.2 If either party seeks to modify this Consent Judgment under Section 5.1, then that party must provide written notice to the other party of its intent ("Notice of Intent") and seek to meet and confer regarding the proposed modification. The Parties shall meet in person or via telephone within thirty (30) days of the Notice of Intent. Should it become necessary, the Parties may agree in writing to different deadlines for the meet-and-confer period.

5.3 In the event that a party initiates or otherwise requests a modification under Section 5.1, and the meet and confer process leads to a joint motion or application of the Consent Judgment, the party requesting the modification shall prepare, file, and argue the motion or application.

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

6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT

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

6.2 If ERC alleges, based on its test data, 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 KAY'S PROCESSING in a reasonably prompt manner of its test results, including information sufficient to permit KAY'S PROCESSING to identify the Covered Products at issue. KAY'S PROCESSING shall, within thirty (30) days following such notice, provide ERC with any relevant testing and other information demonstrating KAY'S PROCESSING'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 any Covered Product 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 KAY'S PROCESSING and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of KAY'S PROCESSING), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Product, including but not limited to Kay's Naturals, Inc. and the predecessors, successors, and assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, 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 KAY'S PROCESSING on its own behalf only, further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice and Complaint up through and including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

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

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER 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.

ERC on behalf of itself only, and KAY'S PROCESSING on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

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

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

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.

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

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

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

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

With a copy to:
RICHARD M. FRANCO
LAW OFFICE OF RICHARD M. FRANCO
6500 Estates Drive
Oakland, CA 94611
Ph: 510-684-1022
Email: rick@rfrancolaw.com

KAY'S PROCESSING, LLC

Massoud Kazemzadeh, Manager
100 1st Ave., SE
Clara City, MN 56222
Email: massoud@ kaysprocess.com

With a copy to:
AMY P. LALLY
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles. California 90013-1010
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

12. COURT APPROVAL

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.

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

13. EXECUTION AND COUNTERPARTS

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

14. DRAFTING

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

15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

16. ENFORCEMENT

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

17. ENTIRE AGREEMENT, AUTHORIZATION

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

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

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

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

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

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

IT IS SO STIPULATED:

Dated: 3/28/, 2017

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

Dated: 3-25-, 2017

KAY'S PROCESSING, LLC

By: _____
Massoud Kazemzadeh, Manager

APPROVED AS TO FORM:

Dated: _____, 2017

LAW OFFICE OF RICHARD M. FRANCO

By: _____
Richard M. Franco
Attorney for Plaintiff Environmental Research Center, Inc.

Dated: _____, 2017

SIDLEY AUSTIN LLP

By: _____
Amy P. Lally
Attorney for Defendant Kay's Processing, LLC

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2017

_____
Judge of the Superior Court

IT IS SO STIPULATED:

Dated _____, 2017

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

Dated: 8-25-, 2017

KAY'S PROCESSING, LLC

By: _____
Massoud Kazemzadeh, Manager

APPROVED AS TO FORM:

Dated: 9/1, 2017

LAW OFFICE OF RICHARD M. FRANCO

By: _____
Richard M. Franco
Attorney for Plaintiff Environmental Research Center, Inc.

Dated: 9-1, 2017

SIDLEY AUSTIN LLP

By _____
Amy P. Lally
Attorney for Defendant Kay's Processing, LLC

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: Nov. 9, 2017

_____
Judge of the Superior Court

EXHIBIT A

LAW OFFICE OF RICHARD M. FRANCO

6500 ESTATES DRIVE
OAKLAND, CA 94611
510.684.1022
RICK@RFRANCOLAW.COM

VIA CERTIFIED MAIL

Current CEO or President
Kay's Processing, LLC
100 1st Avenue, SE
Clara City, MN 56222

Current CEO or President
Kay's Processing, LLC
Post Office Box 669
Clara City, MN 56222

Current CEO or President
Kay's Processing, LLC
235 7th Avenue
Granite Falls, MN 56241

Current CEO or President
Kay's Processing, LLC
Post Office Box 202233
Bloomington, MN 55420

VIA ELECTRONIC MAIL

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

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

VIA ELECTRONIC MAIL

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

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

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

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

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

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

VIA ELECTRONIC MAIL

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

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

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

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

VIA ELECTRONIC MAIL

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

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA PRIORITY MAIL

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

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

Dear Addressees:

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

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

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

Kay's Processing, LLC

The products that are the subject of this notice have been identified as exceeding allowable levels for the chemical lead, when used individually or as part of a meal plan as directed by the company. These products and the chemical in those products are as follows:

1. **Kay's Naturals Inc. Protein Pretzel Sticks Cinnamon Toast - Lead**
2. **Kay's Naturals Inc. Protein Cereal Apple Cinnamon - Lead**
3. **Kay's Naturals Inc. Protein Kruncheeze White Cheddar Cheese - Lead**
4. **Kay's Naturals Inc. Protein Cereal Honey Almond - Lead**
5. **Kay's Naturals Inc. Protein Cookie Bites Cinnamon Almond - Lead**
6. **Kay's Naturals Inc. Protein Snack Mix Sweet BBQ Mix - Lead**
7. **Kay's Naturals Inc. Protein Cereal French Vanilla - Lead**
8. **Kay's Naturals Inc. Protein Puffs Almond Delight - Lead**
9. **Kay's Naturals Inc. Protein Pretzel Sticks Jalapeno Honey Mustard - Lead**
10. **Kay's Naturals Inc. Protein Chips Chili Nacho Cheese - Lead**
11. **Kay's Naturals Inc. Protein Cookie Bites Honey Almond – Lead**
12. **Kay's Naturals Inc. Protein Cookie Bites Mocha Espresso - Lead**
13. **Kay's Naturals Inc. Protein Puffs Mac & Cheese - Lead**
14. **Kay's Naturals Inc. Protein Pretzel Sticks Original Flavor - Lead**
15. **Kay's Naturals Inc. Protein Chips Crispy Parmesan - Lead**

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

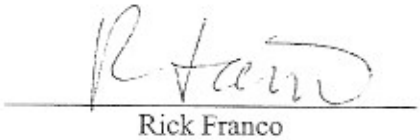
This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which has exposed and continues to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the recommended use (individually or as part of a meal plan as directed by the company) of these products by consumers. The route of exposure to lead has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since March 24, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

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

Sincerely,



Rick Franco

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Kay's Processing, LLC)
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 Kay's Processing, LLC

I, Rick Franco, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: March 24, 2017

Rick Franco

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 March 24, 2017, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Kay's Processing, LLC
100 1st Avenue, SE
Clara City, MN 56222

Current CEO or President
Kay's Processing, LLC
235 7th Avenue
Granite Falls, MN 56241

Current CEO or President
Kay's Processing, LLC
Post Office Box 669
Clara City, MN 56222

Current CEO or President
Kay's Processing, LLC
Post Office Box 202233
Bloomington, MN 55420

On March 24, 2017, 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 March 24, 2017, 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 each of the parties listed below:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On March 24, 2017, 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 March 24, 2017, 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 92401

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

CLERK'S CERTIFICATE OF SERVICE BY MAIL
CCP 1013a(3)

CASE NAME: Environmental Research Center, Inc. vs. Kay's Processing LLC
ACTION NO.: RG17871414

I certify that, I am not a party to the within action. I served the foregoing **STIPULATED CONSENT JUDGMENT** by depositing a true copy thereof in the United States mail in Oakland, California in a sealed envelope with postage fully prepaid thereon addressed to:

Richard M. Franco
Law Office of Richard M. Franco
6500 Estates Drive
Oakland, CA 94611

Amy P. Lally
Sidley Austin LLP
555 West Fifth Street, Ste. 4000
Los Angeles, CA 90013

I declare under penalty of perjury that the following is true and correct

Executed on November 9, 2017 at Oakland, California.

Chad Finke,
Executive Officer/Clerk

by Angel Logan
Deputy Clerk