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 ENVIRONMENTAL RESEARCH CENTER, INC.

FILED
 ALAMEDA COUNTY
 JUN 3 2019
 CLERK OF THE SUPERIOR COURT
 By *[Signature]*
ENDORSED
FILED
 ALAMEDA COUNTY

JUN 07 2019
 CLERK OF THE SUPERIOR COURT
 By *[Signature]*
 Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF ALAMEDA

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

Plaintiff,

vs.

HEALTH MATTERS AMERICA, INC.,
 individually and doing business as
 ORGANIC TRADITIONS, a Delaware
 corporation; ADVANTAGE HEALTH
 MATTERS INC., individually and doing
 business as ORGANIC TRADITIONS, a
 Canadian corporation

Defendants.

CASE NO. RG18931680

ASSIGNED FOR ALL PURPOSES TO:
 JUDGE JO-LYNNE Q. LEE
 Dept. 18

~~PROPOSED~~ **STIPULATED**
CONSENT JUDGMENT [REVISED]

Health & Safety Code § 25249.5 *et seq.*

Date: June 6, 2019
 Time: 3:00 p.m.
 Reservation No. R-2061283
 Case Filed: December 11, 2018
 Trial Date: None

1. INTRODUCTION

1.1 On December 11, 2018, Plaintiff Environmental Research Center, Inc. ("Plaintiff" or "ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against HEALTH MATTERS AMERICA, INC.,

1 individually and doing business as ORGANIC TRADITIONS ("HEALTH MATTERS
2 AMERICA" or "Defendant"), and ADVANTAGE HEALTH MATTERS INC., individually
3 and doing business as ORGANIC TRADITIONS ("ADVANTAGE HEALTH MATTERS").
4 In this action, ERC alleges that a number of products manufactured, distributed, or sold in
5 California by HEALTH MATTERS AMERICA contain lead and lead compounds ("lead")
6 and/or cadmium and cadmium compounds ("cadmium"), chemicals listed under Proposition 65
7 as carcinogens and reproductive toxins, and expose consumers to these chemicals at a level
8 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a
9 "Covered Product" or collectively as "Covered Products") are: (1) Organic Traditions Maca
10 For Women With Probiotics (lead) (including UPC 6 27733 00273 8), (2) Organic Traditions
11 Maca For Men With Probiotics (lead) (including UPC 6 27733 00272 1), (3) Organic
12 Traditions Smooth Movement Probiotic Fiber Blend With Turmeric (lead) (including UPC 6
13 27733 00499 2), (4) Organic Traditions Turmeric Latte With Probiotics And Saffron (lead)
14 (including UPC 6 27733 00134 2), (5) Organic Traditions Moringa Leaf Powder (lead)
15 (including UPC 6 27733 01060 3), (6) Organic Traditions Chlorella Powder (lead) (including
16 UPC 6 27733 01210 2), (7) Organic Traditions Wheat Grass Juice Powder (including UPC 6
17 27733 01240 9) (lead), (8) Organic Traditions Spirulina Powder (lead) (including UPC 6 27733
18 01230 0), (9) Organic Traditions Barley Grass Juice Powder (lead) (including UPC 6 27733
19 01250 8), (10) Organic Traditions Premium Matcha Green Tea (lead) (including UPC 6 27733
20 00494 7), (11) Organic Traditions Macaccino Drink Mix (lead, cadmium) (including UPC 6
21 27733 00489 3), (12) Organic Traditions Maca X-6 Black And Red-Purple (lead) (including
22 UPC 6 27733 00270 7), (13) Organic Traditions Probiotic Super Greens With Turmeric (lead)
23 (including UPC 6 27733 00501 2), (14) Organic Traditions Triphala Powder (lead) (including
24 UPC 6 27733 00370 4), (15) Organic Traditions Ashwagandha Root Powder (lead) (including
25 UPC 6 27733 00390 2), (16) Organic Traditions Amla Berry Powder (lead) (including UPC 6
26 27733 00420 6), (17) Organic Traditions Baobab Fruit Powder (lead) (including UPC 6 27733
27 00915 7), (18) Organic Traditions Turmeric Powder (lead) (including UPC 6 27733 00430 5),
28 (19) Organic Traditions Cacao Powder (cadmium) (including UPC 6 27733 00207 3), and (20)

1 Organic Traditions Golden Flax Seeds (cadmium) (including UPC 6. 27733 00551 7).
2 ADVANTAGE HEALTH MATTERS, a Canadian company, maintains that it does not
3 distribute or sell Covered Products in California.

4 1.2 ERC and HEALTH MATTERS AMERICA are hereinafter referred to
5 individually as a "Party" or collectively as the "Parties."

6 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
7 causes, helping safeguard the public from health hazards by reducing the use and misuse of
8 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
9 and encouraging corporate responsibility.

10 1.4 For purposes of this Consent Judgment only, the Parties agree that Defendant is a
11 business entity which has employed ten or more persons at certain times relevant to this action,
12 and qualifies as a "person in the course of doing business" within the meaning of Proposition 65.
13 Plaintiff alleges that HEALTH MATTERS AMERICA manufactures, distributes, and/or sells the
14 Covered Products in California.

15 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
16 dated September 20, 2018 that was served on the California Attorney General, other public
17 enforcers, and HEALTH MATTERS AMERICA ("Notice"). A true and correct copy of the 60-
18 Day Notice dated September 20, 2018 is attached hereto as Exhibit A and incorporated herein
19 by reference. More than 60 days have passed since the Notice was served on the Attorney
20 General, public enforcers, and HEALTH MATTERS AMERICA, and to the best of the Parties'
21 knowledge no designated government entity has filed a Complaint or is diligently prosecuting
22 an action against HEALTH MATTERS AMERICA or ADVANTAGE HEALTH MATTERS
23 with regard to the Covered Products or the alleged violations.

24 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes
25 persons in California to lead and lead compounds and/or cadmium and cadmium compounds
26 without first providing clear and reasonable warnings in violation of Proposition 65. Defendant
27 expressly denies any violation of Proposition 65 and asserts that all detectible levels of lead
28 and/or cadmium (if any) in the Covered Products are the result of naturally occurring lead

1 and/or cadmium as set forth in California Code of Regulations, Title 27, Section 25501(a).
2 Defendant also expressly asserts that the Covered Products comply with all other applicable
3 health and safety laws, are manufactured using good manufacturing practices, and that
4 Defendant does not intentionally add lead, cadmium, or any other harmful chemical to the
5 Covered Products. HEALTH MATTERS AMERICA denies all material allegations contained
6 in the Notice and Complaint.

7 **1.7** This Consent Judgment resolves claims that are denied and disputed by
8 Defendant. The Parties have entered into this Consent Judgment pursuant to a full and final
9 settlement of any and all claims between the Parties to avoid prolonged and costly litigation.
10 Defendant denies the material factual and legal allegations contained in the Notice and
11 Complaint and maintains that all products it has manufactured, distributed and/or sold in
12 California (including but not limited to the Covered Products) have been and are in compliance
13 with all applicable laws, including Proposition 65, and are safe for their intended use. Nothing
14 in this Consent Judgment shall constitute or be construed as an admission by Defendant of any
15 fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or liability; including
16 without limitation, any admission concerning any alleged violation of Proposition 65, nor shall
17 this Consent Judgment be offered or admitted as evidence against either Party in any
18 administrative or judicial proceeding or litigation in any court, agency, or forum, except with
19 respect to an action seeking to enforce the terms of this Consent Judgment, or as otherwise
20 required by law. This Section 1.7, however, shall not diminish or otherwise affect the
21 obligations, responsibilities, and duties of any Party to this Consent Judgment.

22 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
23 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
24 current or future legal proceeding unrelated to these proceedings.

25 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
26 a Judgment by this Court.

27 **2. JURISDICTION AND VENUE**

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

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

8 3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

9 3.1 Beginning on the Effective Date, HEALTH MATTERS AMERICA shall be
10 permanently enjoined from manufacturing for sale in the State of California, "Distributing into
11 the State of California," or directly selling in the State of California, any Covered Products
12 which expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead
13 per day and/or "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per
14 day unless it complies with the warning requirements set forth in Section 3.2. Defendant shall
15 not be required to provide any of the Warnings specified in Section 3.2 for any Covered
16 Product that qualifies as a Conforming Covered Product pursuant to Section 3.3.

17 3.1.1 As used in this Consent Judgment, the term "Distributing into the State
18 of California" shall mean to directly ship a Covered Product into California for sale in
19 California, or to sell a Covered Product to a distributor that HEALTH MATTERS AMERICA
20 knows or has reason to know will sell the Covered Product in California.

21 3.1.2 For purposes of this Consent Judgment only, the Parties agree that the
22 "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using
23 the following formula: micrograms of lead per gram of product, multiplied by grams of
24 product per serving of the product (using the largest serving size appearing on the product
25 label), multiplied by servings of the product per day (using the largest number of recommended
26 daily servings appearing on the label), which equals micrograms of lead exposure per day. If
27 the label contains no recommended daily servings, then the number of recommended daily
28 servings shall be one.

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2 3.1.3 For purposes of this Consent Judgment only, the Parties agree that the
3 “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be calculated
4 using the following formula: micrograms of cadmium per gram of product, multiplied by
5 grams of product per serving of the product (using the largest serving size appearing on the
6 product label), multiplied by servings of the product per day (using the largest number of
7 recommended daily servings appearing on the label), which equals micrograms of cadmium
8 exposure per day. If the label contains no recommended daily servings, then the number of
9 recommended daily servings shall be one.

10 3.2 Clear and Reasonable Warnings

11 If HEALTH MATTERS AMERICA is required to provide a warning pursuant to Section
12 3.1, one of the following warnings must be utilized (“Warning”):

13 OPTION 1

14 [California Proposition 65] **WARNING:** Consuming this product can expose you to
15 chemicals including [lead] [and] [cadmium] which is [are] known to the State of California
16 to cause [cancer and] birth defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov/food.

17 For Option 1, HEALTH MATTERS AMERICA shall use the phrase “cancer and” in the
18 Warning if HEALTH MATTERS AMERICA has reason to believe that the “Daily Lead Exposure
19 Level” is greater than 15 micrograms of lead as determined pursuant to the quality control
20 methodology set forth in Section 3.4 or if HEALTH MATTERS AMERICA has reason to believe
21 that another Proposition 65 chemical is present which may require a cancer warning. As identified
22 in the brackets, the warning shall appropriately reflect whether there is lead or cadmium present in
23 each of the Covered Products. The use of “California Proposition 65” in the Warning is optional.

24 OPTION 2

25 In the alternative, HEALTH MATTERS AMERICA may elect to use the following short
26 form Warning:

27  [California Proposition 65] **WARNING:** Cancer and Reproductive Harm -
28 www.P65Warnings.ca.gov.

1 For **Option 2**, a symbol consisting of a black exclamation point in a yellow equilateral
2 triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size no
3 smaller than the height of the word "WARNING." Where the sign, label or shelf tag for the
4 product is not printed using the color yellow, the symbol may be printed in black and white.
5 Language in brackets is optional.

6 Regardless of whether **Option 1** or **Option 2** is used, for sales in retail stores or "brick and
7 mortar" locations, the Warning shall be securely affixed to or printed upon the package, container
8 or label of each Covered Product. If the Warning is provided on the label, it must be set off from
9 other surrounding information and enclosed in a box.

10 For any Covered Product sold over the internet, the Warning shall appear prominently on
11 the product display page, or on the checkout page when a California delivery address is indicated
12 for any purchase of any Covered Product. An asterisk or other identifying method must be
13 utilized to identify which products on the checkout page are subject to the Warning if more than
14 one product is being purchased. The Warning may also be provided by a clearly marked hyperlink
15 labeled "[California Proposition 65] WARNING" (the word "WARNING" shall be in all capital
16 letters and bold print) on the product display page prior to purchase of the Covered Product so
17 long as the hyperlink goes directly to a Warning that complies with **Option 1** or **Option 2**
18 (language in brackets is optional).

19 The Warning shall be at least the same size as the largest of any other health or safety
20 warnings also appearing on the website or on the label or container of HEALTH MATTERS
21 AMERICA's product packaging and the word "WARNING" shall be in all capital letters and in
22 bold print. No statements intended to or likely to have the effect of diminishing the impact of, or
23 reducing the clarity of, the Warning on the average lay person shall accompany the Warning.
24 Further, no statements may accompany the Warning that state or imply that the source of the listed
25 chemical has an impact on or results in a less harmful effect of the listed chemical.

26 HEALTH MATTERS AMERICA must display the above Warning with such
27 conspicuousness, as compared with other words, statements or designs on the packaging, label or
28 container, or on its website, if applicable, to render the Warning likely to be read and understood

1 by an ordinary individual under customary conditions of purchase or use of the product.

2 3.3 Conforming Covered Products

3 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
4 Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level"
5 is no more than 4.1 micrograms of cadmium per day as determined by the quality control
6 methodology described in Section 3.4.

7 3.4 Testing and Quality Control Methodology

8 3.4.1 For any Covered Product that HEALTH MATTERS AMERICA intends
9 to sell in California without a Warning, beginning within one year of the Effective Date,
10 HEALTH MATTERS AMERICA shall arrange for lead and cadmium testing of the Covered
11 Product at least once a year for a minimum of three consecutive years by arranging for testing of
12 three randomly selected samples of the Covered Product, in the form intended for sale to the
13 end-user, which HEALTH MATTERS AMERICA intends to sell or is manufacturing for sale in
14 California, directly selling to a consumer in California, or "Distributing into the State of
15 California." If the tests conducted pursuant to this Section demonstrate that no Warning is
16 required for the Covered Product during each of the three consecutive years (the Three Year
17 Testing Period), then the testing requirements of this Section will no longer be required as to that
18 Covered Product. HEALTH MATTERS AMERICA may thereafter test at least one sample from
19 each production lot of the Covered Product for purposes of determining whether the Covered
20 Product requires a Warning if sold in California. However, if HEALTH MATTERS AMERICA
21 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the
22 Covered Products during the Three Year Testing Period, HEALTH MATTERS AMERICA shall
23 test that Covered Product annually for at least two (2) consecutive years after such change is
24 made, but in no event shall the total testing period be for less than three years.

25 3.4.2 For purposes of measuring the "Daily Lead Exposure Level" and the
26 "Daily Cadmium Exposure Level," the arithmetic mean of the lead detection results of the three
27 (3) randomly selected samples of the Covered Products will be controlling for all purposes under
28 this Consent Judgment.

1 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
2 laboratory method that complies with the performance and quality control factors appropriate
3 for the method used, including limit of detection, qualification, accuracy, and precision that
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
5 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

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

10 3.4.5 Nothing in this Consent Judgment shall limit HEALTH MATTERS
11 AMERICA's ability to conduct, or require that others conduct, additional testing of the
12 Covered Products, including the raw materials used in their manufacture. Nothing in this
13 Consent Judgment shall require HEALTH MATTERS AMERICA to produce any such
14 additional testing, not otherwise required by this Consent Judgment, to ERC.

15 3.4.6 Within thirty (30) days of ERC's written request, HEALTH MATTERS
16 AMERICA shall deliver lab reports obtained pursuant to Section 3.4 to ERC. HEALTH
17 MATTERS AMERICA shall retain all test results and documentation for a period of two (2)
18 years from the date of each test, or such longer period as may be required by law or good
19 manufacturing practices. Any test results provided hereunder shall be maintained in strict
20 confidence by ERC and subject to a reasonable confidentiality agreement if requested by
21 HEALTH MATTERS AMERICA. No production of test reports is required under this Consent
22 Judgment for Covered Products for which a Warning is provided pursuant to Section 3.2
23 continuously and uninterrupted after the Effective Date. The Parties agree that the obligations
24 of this Section 3.4.6 are mutually exclusive from and not dependant on any obligations imposed
25 by Section 6.

26 3.4.7 The testing requirements of Section 3.4 do not apply to any Covered
27 Product for which HEALTH MATTERS AMERICA has provided the Warning specified in
28 Section 3.2 continuously and uninterrupted after the Effective Date; however, in the event

1 HEALTH MATTERS AMERICA ceases to provide the Warning specified in Section 3.2,
2 HEALTH MATTERS AMERICA shall be required to comply with the testing requirements of
3 this section beginning immediately after the date the Warning ceases to be provided or one year
4 after the Effective Date, whichever date is later.

5 **4. SETTLEMENT PAYMENT**

6 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
7 attorney's fees and expenses, investigative costs, and any other claim for monetary relief of any
8 kind, HEALTH MATTERS AMERICA shall make a total payment of \$60,250 ("Total
9 Settlement Amount") to ERC in three periodic payments (the "Periodic Payments") according
10 to the following payment schedule ("Due Dates"):

- 11 • Payment 1 -- \$20,084 within 5 days of the Effective Date
- 12 • Payment 2 -- \$20,083 within 35 days of the Effective Date
- 13 • Payment 3 -- \$20,083 within 65 days of the Effective Date

14 HEALTH MATTERS AMERICA shall make each Periodic Payment by wire transfer to
15 ERC's account, for which ERC will give HEALTH MATTERS AMERICA the necessary
16 account information. ERC shall have sole responsibility for disbursing the Total Settlement
17 Amount, which shall be apportioned as follows:

18 **4.2** \$9,410.96 shall be paid in complete resolution of any claim for civil penalties
19 pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75%
20 (\$7,058.22) of the civil penalty payment to the Office of Environmental Health Hazard
21 Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund
22 in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the
23 remaining 25% (\$2,352.74) of the civil penalty.

24 **4.3** \$6,144.32 shall be distributed to ERC as complete reimbursement to ERC for its
25 reasonable costs incurred in bringing this action.

26 **4.4** \$6,245.05 shall be distributed to ERC as an Additional Settlement Payment
27 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
28 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly

1 caused by Defendant in this matter. These activities are detailed below and support ERC's
2 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
3 supplement products in California. ERC's activities have had, and will continue to have, a direct
4 and primary effect within the State of California because California consumers will be benefitted
5 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements
6 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
7 the products.

8 Based on a review of past years' actual budgets, ERC is providing the following list of
9 activities ERC engages in to protect California consumers through Proposition 65 citizen
10 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
11 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
12 supplement products that may contain lead and/or cadmium and are sold to California
13 consumers. This work includes continued monitoring and enforcement of past consent judgments
14 and settlements to ensure companies are in compliance with their obligations thereunder, with a
15 specific focus on those judgments and settlements concerning lead and/or cadmium. This work
16 also includes investigation of new companies that ERC does not obtain any recovery through
17 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining
18 ERC's Voluntary Compliance Program by acquiring products from companies, developing and
19 maintaining a case file, testing products from these companies, providing the test results and
20 supporting documentation to the companies, and offering guidance in warning or implementing a
21 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT
22 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the
23 numbers of contaminated products that reach California consumers by providing access to free
24 testing for lead in dietary supplement products (Products submitted to the program are screened
25 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,
26 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
27 that submitted the product).

28 ERC shall be fully accountable in that it will maintain adequate records to document and

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

5 4.5 \$9,714.52 shall be distributed to Lozeau Drury LLP as complete reimbursement
6 of any and all attorney's fees and expenses they have incurred as ERC's attorney's in this
7 matter, while \$18,735.15 shall be distributed to ERC as complete reimbursement for any and
8 all of its in-house legal fees and expenses it has incurred in this matter. In addition, ERC shall
9 be solely responsible for distributing \$10,000 of the Total Settlement Amount to the Moore
10 Law Firm, P.C. on behalf of HEALTH MATTERS AMERICA as complete reimbursement of
11 any SPFC claim for monetary relief of any kind, including but not limited to, any and all
12 attorney's fees and expenses, investigative costs, testing costs, and any other cost or expense
13 incurred by the Moore Law Firm, P.C. and/or Safe Products for Californians, LLC ("SPFC")
14 related in any way to SPFC's 60-day notice and subsequent complaint filed against HEALTH
15 MATTERS AMERICA alleging violations of Proposition 65 related to HEALTH MATTERS
16 AMERICA'S Moringa powder in the case of *Safe Products for Californians, LLC v. Health*
17 *Matters America, Inc., et al*, Santa Clara County Superior Court Case No. 18CV336011, in
18 furtherance of a resolution of that case. ERC shall pay the \$10,000 to SPFC in three
19 installments of \$3,333.33 on the same payment schedule that HEALTH MATTERS
20 AMERICA pays the Total Settlement Amount to ERC as set forth in Section 4.1. Except as
21 explicitly provided herein, each Party shall bear its own fees and costs, including attorneys'
22 fees and in-house legal fees.

23 4.6 In the event that HEALTH MATTERS AMERICA fails to remit the any of the
24 Periodic Payments owed pursuant to Section 4.1 of this Consent Judgment on or before the
25 applicable Due Date, HEALTH MATTERS AMERICA shall be deemed to be in material
26 breach of its obligations under this Consent Judgment. ERC shall provide written notice of the
27 delinquency to HEALTH MATTERS AMERICA via electronic mail. If HEALTH MATTERS
28 AMERICA fails to deliver the delinquent payment within five (5) days from the written notice,

1 the Total Settlement Amount, less any amounts previously paid pursuant to Section 4.1, shall
2 be immediately due and owing and shall accrue interest at the statutory judgment interest rate
3 provided in the California Code of Civil Procedure section 685.010. Additionally, HEALTH
4 MATTERS AMERICA agrees to pay ERC's reasonable attorney's fees and costs for any
5 successful efforts to collect any payment(s) due under this Consent Judgment.

6 **5. MODIFICATION OF CONSENT JUDGMENT**

7 **5.1** This Consent Judgment may be modified as to injunctive terms only by:
8 (i) written stipulation of the Parties and upon entry by the Court of a modified consent
9 judgment or (ii) motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the
10 Court of a modified consent judgment.

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

24 **5.3** In the event that HEALTH MATTERS AMERICA initiates or otherwise requests
25 a modification under Section 5.1, and the meet and confer process leads to a joint motion or
26 application for a modification of the Consent Judgment, HEALTH MATTERS AMERICA
27 shall reimburse ERC its costs and reasonable attorney's fees for the time spent in the meet-and-
28 confer process and filing and arguing the motion or application. ERC shall provide HEALTH

1 MATTERS AMERICA with documentation sufficient to support any such claimed attorney's
2 fees and costs.

3 5.4 Where the meet-and-confer process does not lead to a joint motion or
4 application in support of a modification of the Consent Judgment, then either Party may seek
5 judicial relief on its own.

6 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
7 **JUDGMENT**

8 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
9 this Consent Judgment.

10 6.2 If, after the Effective Date, ERC alleges that any Covered Product fails to
11 qualify as a Conforming Covered Product (for which ERC alleges that no Warning has been
12 provided), then ERC shall inform HEALTH MATTERS AMERICA in a reasonably prompt
13 manner. When informing HEALTH MATTERS AMERICA of the alleged violation, ERC shall
14 provide HEALTH MATTERS AMERICA with copies of its test reports and other relevant
15 supporting information, including purchase receipts and product photographs, sufficient to
16 permit HEALTH MATTERS AMERICA to identify the Covered Product(s) at issue and the lot
17 number(s) of the Covered Product(s) in question. HEALTH MATTERS AMERICA shall,
18 within thirty (30) days following such notice, provide ERC with testing information, from an
19 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
20 demonstrating HEALTH MATTERS AMERICA's compliance with the Consent Judgment,
21 and any other information demonstrating that HEALTH MATTERS AMERICA is not in
22 violation of this Consent Judgment. The Parties shall first attempt to resolve the matter prior to
23 ERC taking any further legal action. This Consent Judgment may only be enforced by the
24 Parties hereto, and enforcement of this Consent Judgment, including any associated attorneys'
25 fees and costs, if applicable, is the only remedy for alleged violations hereof. Any test results
26 or other information provided hereunder shall be maintained in strict confidence by the Parties
27 and subject to a reasonable confidentiality agreement if requested by either of the Parties.
28

1 **7. APPLICATION OF CONSENT JUDGMENT**

2 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
3 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
4 divisions, franchisees, licensees, customers (excluding private labelers) , distributors, wholesalers,
5 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application
6 to any Covered Product which is originally distributed or sold outside the State of California and
7 which Defendant does not know or have reason to know will be resold or redistributed into the
8 State of California or used by California consumers in California.

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

10 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
11 on behalf of itself and in the public interest, and HEALTH MATTERS AMERICA and its
12 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
13 divisions, affiliates (including, but not limited to, ADVANTAGE HEALTH MATTERS),
14 suppliers, franchisees, licensees, customers (not including private label customers of HEALTH
15 MATTERS AMERICA), distributors, wholesalers, retailers (including, but not limited to,
16 Amazon, Vita Cost, T.J. .Maxx of CA, LLC, and Burlington Coat Factory and its affiliates),
17 and all other upstream and downstream entities in the distribution chain of any Covered
18 Product, and the predecessors, successors, and assigns of any of them (collectively, "Released
19 Parties"). ERC, on behalf of itself and in the public interest, hereby fully releases and
20 discharges the Released Parties from any and all claims, actions, causes of action, suits,
21 demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have
22 been asserted from the handling, use, or consumption of the Covered Products, as to any
23 alleged violation of Proposition 65 or its implementing regulations arising from the failure to
24 provide Proposition 65 warnings on the Covered Products regarding lead and lead compounds
25 and/or cadmium and cadmium compounds for Covered Products manufactured, distributed, or
26 sold through the Effective Date.

27 **8.2** ERC on its own behalf only, and HEALTH MATTERS AMERICA on its
28 own behalf only, further waive and release any and all claims they may have against each other

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

5 8.3 It is possible that other claims not known to the Parties, arising out of the facts
6 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
7 discovered. ERC on behalf of itself only, and HEALTH MATTERS AMERICA on behalf of
8 itself only, acknowledge that this Consent Judgment is expressly intended to cover and include
9 all such claims up through and including the Effective Date, including all rights of action
10 therefore. ERC and HEALTH MATTERS AMERICA acknowledge that the claims released in
11 Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waive California
12 Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542
13 reads as follows:

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

18 ERC on behalf of itself only, and HEALTH MATTERS AMERICA on behalf of itself only,
19 acknowledge and understand the significance and consequences of this specific waiver of
20 California Civil Code section 1542, and on behalf of themselves and their past and current
21 representatives and attorneys, expressly waive and relinquish any and all rights and benefits
22 that they may have under, or which may be conferred on them by, the provisions of Section
23 1542 of the California Civil Code as well as under any other state or federal statute or common
24 law principle of similar effect, to the fullest extent that they may lawfully waive such rights or
25 benefits pertaining to the released matters. In furtherance of such intention, the release hereby
26 given shall be and remain in effect as a full and complete release notwithstanding the
27 discovery or existence of any such additional or different claims or facts arising out of the
28 released matters.

1 8.4 Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
3 and lead compounds and/or cadmium and cadmium compounds in the Covered Products as set
4 forth in the Notice and Complaint.

5 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or
6 environmental exposures arising under Proposition 65, nor shall it apply to any of HEALTH
7 MATTERS AMERICA's products other than the Covered Products.

8 8.6 Within thirty (30) days of ERC's receipt of the settlement payment set forth in
9 Section 4, ERC shall file and serve a dismissal with prejudice from the action as to
10 ADVANTAGE HEALTH MATTERS. The parties agree to a mutual waiver of costs in
11 connection with the dismissal.

12 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

15 **10. GOVERNING LAW**

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

18 **11. PROVISION OF NOTICE**

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

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

23 Chris Heptinstall, Executive Director, Environmental Research Center
24 3111 Camino Del Rio North, Suite 400
25 San Diego, CA 92108
26 Ph: (619) 500-3090
27 Email: chris_erc501c3@yahoo.com

28 With a copy to:

MICHAEL R. LOZEAU
RICHARD T. DRURY

1 LOZEAU | DRURY LLP
2 410 12th Street, Suite 250
3 Oakland, CA 94607
4 Ph: 510-836-4200
5 Fax: 510-836-4205
6 Email: michael@lozeaudrury.com
7 richard@lozeaudrury.com

8 **FOR HEALTH MATTERS AMERICA, INC., individually and doing business as**
9 **ORGANIC TRADITIONS**

10 Alexandra Ziefman
11 Health Matters America, Inc.
12 2501 Broadway
13 Buffalo, NY 14227

14 With a copy to:

15 James Robert Maxwell, Esq.
16 Rogers Joseph O'Donnell, P.C.
17 311 California Street
18 San Francisco, CA 94104
19 Email: jmaxwell@rjo.com

20 **12. COURT APPROVAL**

21 **12.1** Upon the full execution of this Consent Judgment by the Parties, ERC shall
22 notice a Motion for Court Approval. The Parties shall use their best efforts to support entry of
23 this Consent Judgment.

24 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
25 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
26 prior to the hearing on the motion.

27 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
28 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.

1 **14. DRAFTING**

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

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

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

15 **16. ENTIRE AGREEMENT, AUTHORIZATION**

16 16.1 This Consent Judgment contains the sole and entire agreement and
17 understanding of the Parties with respect to the entire subject matter herein, and any and all
18 prior discussions, negotiations, commitments, and understandings related hereto. No
19 representations, oral or otherwise, express or implied, other than those contained herein have
20 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
21 herein, shall be deemed to exist or to bind any Party.

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

24 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
25 **CONSENT JUDGMENT**

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

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

4 (2) Make the required findings pursuant to California Health and Safety Code section
5 25249.7(f)(4), and approve this Consent Judgment.

6 **IT IS SO STIPULATED:**

7 Dated: 6/3/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 

Chris Heron, Executive Director

12 Dated: _____, 2019

HEALTH MATTERS AMERICA, INC.,
individually and doing business as ORGANIC
TRADITIONS

By: _____

Its: _____

17 **APPROVED AS TO FORM:**

18 Dated: 6/3, 2019

LOZEAU | DRURY LLP

By: 

Michael R. Lozeau

Attorneys for Plaintiff Environmental
Research Center, Inc.

22 Dated: _____, 2019

ROGERS JOSEPH O'DONNELL

By: _____

J. Robert Maxwell

Attorneys for Defendants Health Matters
America, Inc. and Advantage Health
Matters Inc.

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

4 (2) Make the required findings pursuant to California Health and Safety Code section
5 25249.7(f)(4), and approve this Consent Judgment.

6 **IT IS SO STIPULATED:**

7 Dated: _____, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

9 By: _____
10 Chris Heptinstall, Executive Director

11
12 Dated: June 3rd, 2019

HEALTH MATTERS AMERICA, INC.,
individually and doing business as ORGANIC
TRADITIONS

14 Alexandra Mamalider
15 By: Alexandra Mamalider
16 Its: Director, Business Strategy

17 **APPROVED AS TO FORM:**

18 Dated: _____, 2019

LOZEAU | DRURY LLP

19 By: _____
20 Michael R. Lozeau
21 Attorneys for Plaintiff Environmental
Research Center, Inc.

22 Dated: 6/3, 2019

ROGERS JOSEPH O'DONNELL

23 By: _____
24 J. Robert Maxwell
25 Attorneys for Defendants Health Matters
26 America, Inc. and Advantage Health
27 Matters Inc.
28

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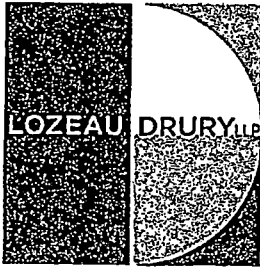
IT IS SO ORDERED, ADJUDGED AND DECREED.

Td.

JOHANNES O. LEE

A

EXHIBIT A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
michael@lozeaudrury.com

VIA CERTIFIED MAIL

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
2501 Broadway Street, Ste 2
Buffalo, NY 14227

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
3215 Broadway St.
Cheektowaga, NY 14227

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
125 Galleria Drive #1482
Cheektowaga, NY 14225

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
2501 Broadway Street, #19-20
Buffalo, NY 14227

Current President or CEO
Advantage Health Matters Inc.,
individually and doing business
as Organic Traditions
8-250 Shields Court
Markham, ON L3R 9W7
Canada

VIA CERTIFIED MAIL

Current President or CEO
Advantage Health Matters Inc.,
individually and doing business
as Organic Traditions
5787 Steeles Avenue West
North York, ON M9L 2W3
Canada

Corporations and Companies, Inc.
(Registered Agent for Health Matters
America, Inc., individually and doing
business as Organic Traditions)
910 Foulk Road, Ste 201
Wilmington, DE 19803

VIA ELECTRONIC MAIL

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
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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

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
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

Mark Ankcorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

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

Christopher Dalbey, Deputy District
Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

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

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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

VIA ELECTRONIC MAIL

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 FIRST CLASS 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 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 names of the Companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Health Matters America, Inc., individually and doing business as Organic Traditions
Advantage Health Matters Inc., individually and doing business as Organic Traditions

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. Organic Traditions Maca For Women With Probiotics - Lead
2. Organic Traditions Maca For Men With Probiotics - Lead
3. Organic Traditions Smooth Movement Probiotic Fiber Blend With Turmeric - Lead
4. Organic Traditions Turmeric Latte With Probiotics And Saffron - Lead
5. Organic Traditions Moringa Leaf Powder - Lead
6. Organic Traditions Chlorella Powder - Lead
7. Organic Traditions Wheat Grass Juice Powder - Lead
8. Organic Traditions Spirulina Powder - Lead
9. Organic Traditions Barley Grass Juice Powder - Lead
10. Organic Traditions Premium Matcha Green Tea - Lead

11. Organic Traditions Macaccino Drink Mix – Lead, Cadmium
12. Organic Traditions Maca X-6 Black And Red-Purple - Lead
13. Organic Traditions Probiotic Super Greens With Turmeric - Lead
14. Organic Traditions Triphala Powder - Lead
15. Organic Traditions Ashwagandha Root Powder - Lead
16. Organic Traditions Amla Berry Powder - Lead
17. Organic Traditions Baobab Fruit Powder - Lead
18. Organic Traditions Turmeric Powder - Lead
19. Organic Traditions Cacao Powder - Cadmium
20. Organic Traditions Golden Flax Seeds – Cadmium

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

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

This letter is a notice to the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators 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 Violators.

The Violators have manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or cadmium. The consumer exposures that are the subject of this notice result from the recommended use 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 and/or cadmium. The method of warning should be a warning that appears on the product's label. The Violators violated Proposition 65 because they failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since September 20, 2015, 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 Violators agree in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 20, 2018
Page 5

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 chemicals 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,


Michael Lozeau

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Health Matters America, Inc., individually and doing business as Organic Traditions and Advantage Health Matters Inc., individually and doing business as Organic Traditions and their 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 Health Matters America, Inc., individually and doing business as Organic Traditions and Advantage Health Matters Inc., individually and doing business as Organic Traditions

I, Michael Lozeau, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am 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 chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 20, 2018


Michael Lozeau

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. 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 September 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
2501 Broadway Street, Ste 2
Buffalo, NY 14227

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
3215 Broadway St.
Cheektowaga, NY 14227

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
125 Galleria Drive #1482
Cheektowaga, NY 14225

Current President or CEO
Health Matters America, Inc., individually
and doing business as Organic Traditions
2501 Broadway Street, #19-20
Buffalo, NY 14227

Current President or CEO
Advantage Health Matters Inc., individually
and doing business as Organic Traditions
8-250 Shields Court
Markham, ON L3R 9W7
Canada

Current President or CEO
Advantage Health Matters Inc., individually
and doing business as Organic Traditions
5787 Steeles Avenue W
North York, ON M9L 2W3
Canada

Corporations and Companies, Inc.
(Registered Agent for Health Matters America, Inc.,
individually and doing business as Organic Traditions)
910 Foulk Road, Ste 201
Wilmington, DE 19803

On September 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 September 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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:

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

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

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

Mark Ankcorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

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

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

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

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

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.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

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

Christopher Dalbey, Deputy District Attorney
Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 20, 2018
Page 9

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

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

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

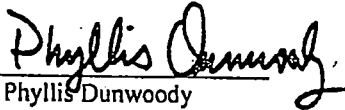
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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On September 20, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 First Class Mail.

Executed on September 20, 2018, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
September 20, 2018
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Service List

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District Attorney,
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San Andreas, CA 95249

District Attorney, Colusa
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Crescent City, CA 95531

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APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

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

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

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

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.