

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made effective on the date on which it is fully executed (the “Effective Date”) between, on one hand, Environmental Research Center Inc. (“ERC”), and, on the other hand, Golden Flower Chinese Herbs, Inc. and KPC Products, Inc. (referred to collectively as “the Companies” and in the singular as a “Company”). ERC and the Companies are referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1. This Agreement is limited to this Matter, which is defined as all claims and allegations related to the Notices of Violations of California Health & Safety Code §25249.5, *et seq.* (also known as “Proposition 65”) that ERC served on the Companies on May 9, 2011 (the “Notices”), and with respect to the products identified in Exhibit A with respect to each Company (“Covered Products”).

2. The Companies deny the claims asserted in the Notices and deny that the Covered Products require warnings under Proposition 65. The Parties enter into this Agreement in order to achieve a settlement of the disputed claims as stated in Section 1 for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of ERC or the Companies of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Companies of any fact, issue of law or violation of law. Nothing in this Agreement or any document referred to herein, shall be construed as giving rise to any presumption or inference of admission or concession by the Companies as to any fault, wrongdoing or liability whatsoever. The Parties agree that Section 2 shall not diminish or otherwise affect the rights, obligations, responsibilities, and duties of the Parties under this Agreement.

3. In consideration of the following covenants of the Companies, and the other conditions contained in this Agreement, ERC releases the Companies as set forth in Section 7 below:

3.1 Any Covered Products that are manufactured after the Effective Date that a Company thereafter sells in the State of California or distributes into the State of California¹ shall either (1) have a daily lead exposure level of no more than 0.5 micrograms of lead per day (calculated as set forth in Section 3.4.1), or (2) meet the warning requirements set out in Section 3.2.

3.2 If a Company provides a warning pursuant to Section 3.1, the warning shall comply with the requirements of either Section 3.2.1 or 3.2.2.

¹ As used in this Agreement, the term “distribute into the State of California” means to directly ship any of the Covered Products into California for sale in California or to sell or provide any of the Covered Products to any person or entity that a Company knows intends to or will ship any of the Covered Products in and/or into California or sell any of the Covered Products in California.

3.2.1 A Company shall provide the following warning statement (“Warning Statement”):

“[California Proposition 65] WARNING: This product contains [lead,] a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.”

Terms in brackets are optional. However, the words “cancer and” shall be included in the Warning Statement if the maximum recommended daily dose causes an exposure to more than 15 micrograms of lead when taken as directed on the Covered Product’s label (calculated as set forth in Section 3.4.1).

The Warning Statement shall be prominent and displayed securely on either the cap, the label, the unit packaging, or by a sticker securely affixed to the Covered Products with such conspicuousness, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Products. The word “**WARNING**” shall be in all capital letters and in bold print. Apart from the Warning Statement, no additional statement discussing Proposition 65 or lead may be stated within the same physical location as the Warning Statement that appears on the cap, label, unit packaging, or sticker, as applicable.

3.2.2 In the alternative to Section 3.2.1, if a Company sells, distributes, or otherwise provides a Covered Product to a licensed acupuncturist or a licensed health care practitioner (collectively referred to herein as a “Practitioner”) in California who sells, distributes, or otherwise provides the Covered Product to patients, or if a Company sells, distributes or otherwise provides a Covered Product to a distributor who distributes the Covered Product to a Practitioner in California, the Warning Statement may be printed on a piece of paper included with the product packaging provided by the Practitioner to a patient (“Product Insert”). The Product Insert must also specify the name(s) of the Covered Product(s) and the Warning Statement on the Product Insert may refer to products in the plural. The Product Insert must be at least 3 inches by 5 inches in size, and the Warning Statement and names of any Covered Products must be printed on the Product Insert in at least 12 point print.

(a) When a Company has previously or is currently selling, distributing or otherwise providing a Covered Product to a Practitioner in California, by no later than thirty (30) days after the Effective Date, that Company shall send by first class mail or overnight delivery a letter instructing the Practitioner to provide the Product Insert to any patient to which the Practitioner sells, dispenses, or otherwise provides the Covered Product. In the letter, the Company shall request that the Practitioner respond with a written acknowledgement that it will comply with the Company’s instructions. If a Company initiates a new account with a Practitioner in California, it must provide the letter immediately with the paperwork needed to initiate the relationship.

(b) When a Company has previously or is currently selling, distributing, or otherwise providing a Covered Product to a distributor who distributes the Covered Product to a Practitioner in California, by no later than thirty (30) days after the

Effective Date, the Company shall send by First class mail or overnight delivery a letter instructing the distributor to request that the Practitioner provide the Product Insert to any patient to which the Practitioner sells, dispenses or otherwise provides the Covered Product. In the letter, the Company shall request that the distributor respond with a written acknowledgement that it will comply with the Company's instructions. If a Company initiates a new account with a distributor in California, it must provide the letter immediately with the paperwork needed to initiate the relationship.

(c) Within 30 days of providing the original instructions to either a Practitioner or a distributor, the Companies shall send a follow-up communication to those Practitioners or distributors who did not within 30 days send the acknowledgement. By no later than ninety (90) days after the Effective Date if the Companies have not received an acknowledgement from those Practitioners or distributors, then the Companies will not sell Covered Products to such entities until the Company verifies that compliance with the terms of subsection 3.2.2(a) are achieved, unless a Company thereafter uses the warning method under Section 3.2.1 or unless the Covered Products meet the reformulation standard in Section 3.3. The Companies shall maintain files demonstrating compliance with this provision, including the communications sent and receipts of any acknowledgements from Practitioners.

(d) If a Company learns that a Practitioner has failed to provide the warning in accordance with this subsection 3.2.2, or that a distributor has failed to request a Practitioner to provide the warning in accordance with subsection 3.2.2, a Company will no longer sell Covered Products to such entity until the Company verifies that compliance with the terms of subsection 3.2.2 are achieved, unless a Company thereafter uses the warning method under Section 3.2.1 or unless the Covered Products meet the reformulation standard in Section 3.3.

(e) If a Company complies with the terms of this subsection 3.2.2, it shall not be found to have violated this Agreement where a Practitioner fails to provide the warning in accordance with this Agreement.

3.2.3 The Companies represent that they have a policy prohibiting certain customers from reselling products through retail website sales. If a Company learns that an entity is nonetheless making unauthorized sales, a Company shall send a letter to the entity instructing them to cease all such sales. Any such unauthorized sales shall not be deemed a violation of this Agreement by a Company as long as a Company takes the actions required in this Section 3.2.3 upon learning of the sales.

3.3 A Reformulated Covered Product is one for which the maximum recommended daily serving on the label contains no more than 0.5 micrograms of lead per day as determined by the quality control methodology described in Section 3.4.

3.4 Testing and Quality Control Methodology

3.4.1 Prior to a Company's first distribution or sale of a Covered Product in California after the Effective Date, and for three (3) consecutive years thereafter, at least once per year, the Companies shall arrange for the lead testing of five (5) randomly-selected samples of three separate lots (or from the maximum number of lots that are available for testing if there are fewer than three (3) lots available) for each Covered Product to confirm whether the maximum recommended daily dose contains no more than 0.5 micrograms of lead when taken pursuant to the directions on the Covered Product's label. For purposes of this Agreement, daily lead exposure levels 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. The Companies shall test samples in the form intended for the end-user to be distributed or sold to California consumers. Upon fifteen (15) days of receipt of written request by ERC, a Company shall provide ERC with documentation related to testing undertaken pursuant to Section 3.4 and shall include the lot identification numbers of the lots tested.

3.4.2 Pursuant to Section 3, any such testing shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals, an independent third-party laboratory that is registered with the United States Food & Drug Administration, or any other accredited laboratory. A Company may perform this testing itself only if it provides to ERC proof that its laboratory meets the requirements in this Section 3.4. Testing for lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method agreed upon in writing by the Parties. Nothing in this Agreement shall limit the Companies' ability to conduct or require that others conduct additional testing of the Covered Products, including raw materials used in their manufacture.

3.4.3 For purposes of Section 3, the term "no more than 0.5 micrograms of lead per day" means that the second highest lead detection result of the five (5) samples tested pursuant to Section 3.4 yields a daily exposure of no more than 0.5 micrograms of lead.

3.4.4 The requirements of Section 3.4 are not applicable to any Covered Products for which a Company has provided the warning as specified in Section 3.2.

3.4.5 The Companies shall retain copies of their test data for testing performed under Section 3.4 for a period of at least five (5) years from the Effective Date.

3.5 The requirements of Section 3 shall apply to a Company for any time in which that a Company is a "person in the course of doing business," as that term is defined in Health and Safety Code Section 25249.11(b).

4. The Companies shall collectively make a total payment of \$90,000 (“Total Settlement Amount”) to ERC. Sections 4.1-4.4 below describe the agreed partition of the Total Settlement Amount.

4.1 As a portion of the Total Settlement Amount, \$13,852 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$10,389) 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 §25249.12(c). ERC will retain the remaining 25% (\$3,463) of the civil penalty.

4.2 As a portion of the Total Settlement Amount, \$25,597 shall be considered a reimbursement to ERC for its reasonable work, analysis, and consulting costs associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of bringing this matter to Companies’ attention and negotiating a settlement.

4.3 \$28,126 shall be considered payment in lieu of civil penalties, for day-to-day business activities such as (1) continued enforcement of Proposition 65, which includes work, analyzing, researching and testing consumer products that may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are the subject of this Matter; and (2) the continued monitoring of past consent judgments and settlements to ensure companies are in compliance with Proposition 65.

4.4 As a portion of the Total Settlement Amount, \$22,425 shall be considered reimbursement to ERC for its attorneys’ fees of Philip T. Emmons (\$18,412.50), Karen A Evans (\$1,012.50) and Richard Drury (\$3,000).

4.5 Pursuant to Section 4, the Companies shall collectively pay the Total Settlement Amount within five business days of the Effective Date. The Total Settlement Amount may be paid through one or more check(s) and/or wire transfer(s) that individually or collectively total the Total Settlement Amount. Any check pursuant to Section 4.5 shall be payable to “Environmental Research Center” and sent by first class registered or certified mail, or overnight delivery, to ERC at: Environmental Research Center, 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108. For any wire transfer pursuant to Section 4.5, it shall be to ERC’s escrow account, for which ERC will give the Companies the necessary account information.

4.6 In the event the Companies fail to remit the payment owed under Section 4 of this Settlement Agreement on or before the due date, the Companies shall be deemed to be in material breach of their obligations under this Agreement.

5. Except as expressly set forth in Section 4, this Agreement, the Companies and ERC shall bear their own costs, expenses, and attorneys’ fees related to the Matter.

6. This Agreement may be modified only by written agreement of the Parties.

7. Releases

ERC, on behalf of itself, its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives, fully releases and discharges the Companies, their subsidiaries, parent companies, affiliates (including those companies that are under common ownership and/or common control), shareholders, directors, members, managers, officers, employees, attorneys, customers (not including private label customers), distributors, wholesalers, retailers, and all entities and individuals in the stream of commerce, and the predecessors, successors and assigns of any of them (collectively, the "Releasees"), from all claims, actions, suits, demands, liabilities, damages, penalties, fees, costs and expenses (collectively, "Claims") asserted, or that could have been asserted, for any alleged violations of Proposition 65, or any other statutory or common law, arising from the failure to provide warnings for any alleged exposures to lead, or for causing alleged exposures to lead, in Covered Products manufactured before the Effective Date (the "Released Claims").

ERC also, on behalf of itself, its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives, hereby releases the Releasees from any and all known and unknown Released Claims. It is possible that other Claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Covered Products will develop or be discovered. ERC acknowledges that this Agreement is expressly intended to cover and include all such Claims. ERC has full knowledge of the contents of California Civil Code section 1542. ERC waives California Civil Code section 1542 as to any such unknown Released 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 acknowledges and understands the significance and consequences of this specific waiver of California Civil Code Section 1542.

7.1 Compliance with the requirements of Section 3 of this Agreement shall be deemed to constitute compliance by any Releasee with Proposition 65 with respect to any lead in the Covered Products.

7.2 ERC, on its own behalf, and Companies, on the other hand, release and waive any claims they may have against each other, and their shareholders, officers, directors, members, managers, employees, agents, representatives, and attorneys for all actions or statements made or undertaken by any Party, or any of their shareholders, officers, directors, members, managers, employees, agents, representatives, and attorneys in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notices.

7.3 Nothing in this Release is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of the Companies' products other than the Covered Products.

7.4 Nothing herein shall be construed as diminishing the Companies' continuing obligations to comply with Proposition 65.

8. After execution of this Agreement, ERC will submit to the California Attorney General a Report of Settlement. In addition, ERC will provide to the California Attorney General a signed copy of this Agreement. The Parties acknowledge and agree that the Parties shall provide as much information as is requested by the California Attorney General, or any other governmental agency, regarding this Matter, the Parties' settlement, and this Agreement.

9. If a dispute arises with respect to either Party's compliance with the terms of this Agreement entered by the Court, the Parties shall meet and confer to attempt to resolve the dispute informally in good faith. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is filed, however, the prevailing Party may recover its costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing Party" means a Party who is successful in obtaining relief more favorable to it than the relief that the other Party was amenable to providing during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

10. Provision of Notice

10.1 All notices required to be given to either Party to this Agreement by the other shall be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

FOR ENVIRONMENTAL RESEARCH CENTER:

Chris Heptinstall, Executive Director
Environmental Research Center
3111 Camino del Rio North, Suite 400
San Diego, CA 92108

With a copy to:

Philip T. Emmons
Law Office of Philip T. Emmons
1990 N. California Blvd., 8th Floor
Walnut Creek, CA 94596

Karen Evans
Coordinating Counsel
Environmental Research Center
4218 Biona Place
San Diego, CA 92116
Telephone: (619) 640-8100

FOR GFCH:
John Scott
Golden Flower Chinese Herbs, Inc.
2724 Vassar Place Northeast
Albuquerque, NM 87107
With a copy to:

Trenton H. Norris
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
Telephone: (415) 471-3100
Facsimile: (415) 471-3400

FOR KPC:
Jason Tsai
KPC Products, Inc.
16 Goddard
Irvine, CA 92618
With a copy to:

Trenton H. Norris
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
Telephone: (415) 471-3100
Facsimile: (415) 471-3400

11. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by all Parties.

12. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, affiliates, officers, directors, employees, agents, servants, heirs, executors, successors, and assigns.

13. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

14. If any provision, term, or section of this Agreement is found to be invalid, illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full force and effect and remain binding on the Parties. If any provision, term, or section of this Agreement is determined to be unenforceable, then such provision, term, or section may be modified so that the unenforceable provision, term, or section is enforceable to the greatest extent possible.

15. This Agreement shall be deemed to have been entered into in the State of California, and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

16. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

17. Any legal action to enforce this Agreement shall be brought in any county of the State of California, any of which is deemed to be the proper venue for such legal action. The prevailing party in any such legal action shall be entitled to recover its attorneys' fees in addition to any other legally recoverable costs.

18. This Agreement may be signed in counterparts, which taken together shall be deemed to constitute one document. A facsimile or pdf signature of this Agreement shall be construed as valid as the original signature. A facsimile, e-mail or other copy of this signed Agreement or any signed counterpart shall be deemed to be an original.

19. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

DATED: _____

GOLDEN FLOWER CHINESE HERBS, INC.

By: _____

John Scott

Title:

DATED: _____

KPC PRODUCTS, INC.

By: _____

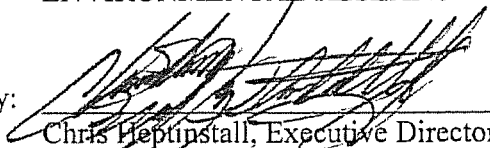
Jason Tsai

Title:

DATED: 9/2/2014

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____


Chris Heptinstall, Executive Director

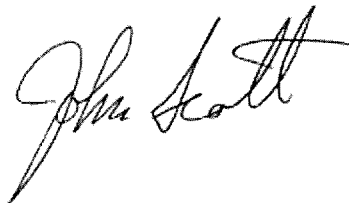
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19. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

DATED: 9/2/2014

GOLDEN FLOWER CHINESE HERBS, INC.

By: .



John Scott
Title: President, Golden Flower Chinese Herbs

DATED: _____

KPC PRODUCTS, INC.

By: _____

Jason Tsai
Title:

DATED: _____

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____

Chris Heptinstall, Executive Director

19. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

DATED: _____

GOLDEN FLOWER CHINESE HERBS, INC.

By: _____

John Scott

Title:

DATED: 9/2/2014

KPC PRODUCTS, INC.

By: _____ 

Jason Tsai

Title: Consultant

DATED: _____

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____

Chris Heptinstall, Executive Director

EXHIBIT A

Covered Products as Golden Flower Chinese Herbs, Inc.

Golden Flower Chinese Herbs Jing Qi Formula
Golden Flower Chinese Herbs Intestinal Fungus Formula
Golden Flower Chinese Herbs Amber Stone- Transforming formula
Golden Flower Chinese Herbs Zhong Gan Ling Formula
Golden Flower Chinese Herbs Andrographis Formula
Golden Flower Chinese Herbs Chase Wind, Penetrate Bone Formula
Golden Flower Chinese Herbs Sea of Qi Formula
Golden Flower Chinese Herbs Two Immortals Formula
Golden Flower Chinese Herbs Astragalus & Ligustrum Formula
Golden Flower Chinese Herbs Rehmannia & Scrophularia Formula
Golden Flower Chinese Herbs Buplerum & Tang Kuei Formula
Golden Flower Chinese Herbs Blood Palace Formula

Covered Products as to KPC Products, Inc.

KPC Products Inc. KPC Herbs Ba Wei Dai Xia Fang Tangkuei Eight Herb Formula
KPC Products Inc. KPC Herbs Chai Hu Qing Gan Tang Bupleurum & Rehmannia Combination
KPC Products Inc. KPC Herbs Qin Jiao Bie Jia San Chin-chiu & Tortoise Shell Formula
KPC Products Inc. KPC Herbs Sang Ju Yin Morus & Chrysanthemum Combination
KPC Products Inc. KPC Herbs Fu Yuan Huo Xue Tang Tangkuei & Persica Combination
KPC Products Inc. KPC Herbs Shen Ling Bai Zhu San Ginseng & Atractylodes Formula
KPC Products Inc. KPC Herbs Pu Ji Xiao Du Yin Scute & Cimicifuga Combination
KPC Products Inc. KPC Herbs Liu Jun Zi Tang Major Six Herb Combination
KPC Products Inc. KPC Herbs Qing Wei San Coptis & Rehmannia Formula
KPC Products Inc. Decocto Autumn Peace Rejuvenation Series
KPC Products Inc. Decocto Body Enhancer Awakening Series
KPC Products Inc. Decocto Throat Support
KPC Products Inc. Decocto Menstrual Support
KPC Products Inc. Decocto Immunity Refresher Vitality Series
KPC Products Inc. Decocto Immunity Support