

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (this "Agreement") is entered into by and between Environmental Research Center ("ERC") and Kan Herb Company ("KAN"). ERC and KAN are hereinafter referred to collectively as "the Parties." ERC is a California non-profit organization. KAN is a California company with its principal place of business at Santa Cruz, California. For purposes of this Agreement, KAN acknowledges that it is currently a business with more than ten employees, and is a "person in the course of doing business" within the meaning of The Safe Drinking Water and Toxic Enforcement Act of 1986, *California Health & Safety Code* section 25249.5 *et seq.* ("Proposition 65").

1.2 Definitions

Whereas KAN sells the Covered Products to Authorized Distributors, Authorized Retailers and to consumers upon recommendation or prescription from an Authorized Retailer, and does not otherwise release the Covered Products for unrestricted sale to the general public.

1.2.1 The word "Authorized" as used herein shall mean "under contractual agreement with Kan Herb Company."

1.2.2 The word "Distributor" as used herein shall mean "a company that purchases the Covered Products from KAN, and sells the Covered Products to an Authorized Retailer," as those terms are defined herein.

1.2.3 The word "Retailer" as used herein shall mean "a healthcare practitioner with an active, current license to practice and who sells or provides any of the Covered Products to an end-user as a result of a professional therapeutic relationship established between the practitioner and the end-user on the basis of a personal consultation, for the purpose of providing healthcare assistance."

1.2.4 The word "lot" as used herein shall mean "one manufacturing cycle of one Covered Product," which lot is designated by an individual number assigned by KAN, so that

each lot of each Covered Product will have its own unique identification number affixed on every bottle of the Covered Product for the lot.

1.3 General Allegation

ERC alleges that through the manufacture, distribution, and/or sale of herbal supplements in California, KAN violated the provisions of Proposition 65 by knowingly and intentionally exposing persons to lead, a chemical known to cause cancer and reproductive toxicity, without providing a clear and reasonable warning to such persons.

1.4 Product Description

The products covered by this Agreement ("Covered Products") are set forth below, and are broadly described as herbal supplement products, which allegedly contain lead and which are manufactured, imported, distributed and/or sold in California by KAN and others.

Kan Herb Company Kan Herbals Compassionate Sage
Kan Herb Company Kan Herbals Arouse Vigor
Kan Herb Company Kan Herbals Meridian Passage
Kan Herb Company Kan Herbals Initial Defense
Kan Herb Company Kan Herbals Quell Fire
Kan Herb Company Kan Herbals Quiet Contemplative
Kan Herb Company Kan Herbals Meridian Comfort
Kan Herb Company Kan Herbals Early Comfort
Kan Herb Company Kan Herbals Dispel Invasion
Kan Herb Company Kan Herbals Prosperous Farmer
Kan Herb Company Kan Herbals Dynamic Warrior
Kan Herb Company Kan Herbals Gracious Power
Kan Herb Company Kan Herbals Restore Integrity
Kan Herb Company Kan Herbals One Mind
Kan Herb Company Kan Herbals Gather Vitality
Kan Herb Company Kan Herbals Meridian Circulation
Kan Herb Company Kan Herbals Relaxed Wanderer
Kan Herb Company Kan Herbals Temper Fire
Kan Herb Company Kan Herbals Women's Rhythm
Kan Herb Company Kan Herbals Restore Integrity
Kan Herb Company Kan Herbals Gather Vitality
Kan Herb Company Kan Essentials Chinese Herbal Formula Urinary Support Formula
Kan Herb Company Kan Essentials Chinese Herbal Formula Cool The Blood
Kan Herb Company Kan Essentials Chinese Herbal Formula Four Marvels
Kan Herb Company Kan Essentials Chinese Herbal Formula Blood's Palace
Kan Herb Company Kan Essentials Chinese Herbal Formula Dispel Stasis In The Palace Of Blood
Kan Herb Company Kan Traditionals Yin Qiao

Kan Herb Company Kan Traditionals Gastrodia & Uncaria Wind Relief
Kan Herb Company Kan Traditionals Nourish Jade Yang
Kan Herb Company Kan Traditionals Copticlear
Kan Herb Company Kan Traditionals Gan Mao Ling
Kan Herb Company Kan Traditionals Bi Yan Pian
Kan Herb Company Kan Traditionals Clear The Lower Palace
Kan Herb Company Kan Traditionals Augmented Four Substances
Kan Herb Company Kan Traditionals Fragrant Jade
Kan Herb Company Kan Traditionals Calm Dragon Formula
Kan Herb Company Kan Traditionals Kudzu Releasing Formula
Kan Herb Company Kan Traditionals Two Immortals
Kan Herb Company Kan Traditionals Derma Wind Release
Kan Herb Company Kan Traditionals Antiphlogistic Formula
Kan Herb Company Kan Traditionals Coptidetox
Kan Herb Company Kan Traditionals Li Dan Support

1.5 Notices of Proposition 65 Violation

On or about May 9, 2011 and June 14, 2011, ERC served KAN, the California Attorney General, and other public enforcement agencies with Notices of Violations (the "Notices") that provided KAN and such public enforcement agencies with notice alleging that KAN was in violation of *California Health & Safety Code* § 25249.6 for failing to warn consumers and customers that the Covered Products exposed users in California to lead. No public enforcement agency has prosecuted the allegations set forth in either of the Notices.

1.6 No Admissions or Findings

KAN denies the material, factual and legal allegations contained in ERC's Notices, and maintains that all products that it has sold and distributed in California, including the Covered Products, have been and are in compliance with all applicable laws, including Proposition 65. By execution of this Agreement, KAN does not admit any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65, or any other statutory, common law or equitable requirements relating to the Covered Products. Nothing in this Agreement shall be construed as an admission by KAN of any fact, finding, issue of law, or violation of law. The Parties agree that this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

1.7 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF

2.1 Generally

2.1.1 On and after the Effective Date, KAN shall be permanently enjoined from manufacturing for sale in California, distributing into California, selling to any consumer located in California, supplying its Authorized Distributors or Authorized Retailers that have shipping addresses in California, or supplying its Authorized Distributors or Authorized Retailers that ship or sell to any person or entity located in California, any of the Covered Products that have a daily lead exposure rate of more than 0.5 micrograms of lead, unless: (a) each individual product (in the form intended for sale to the end-user) bears one of the warning statements specified in Section 2.2 on its individual unit label or unit packaging, or (b) such Authorized Distributors or Authorized Retailers have agreed with KAN that if they sell or provide any of the Covered Products to end-users located in California, they will affix warnings in accordance with the requirements set forth in Section 2.2 on all Covered Products so sold or provided.

2.1.2 For purposes of Section 2.1.1, the term "distributing into California" means shipping any of the Covered Products to: (a) any person or entity located in California; or (b) any Authorized Distributor or Authorized Retailer selling or providing any of the Covered Products to any person or entity located in California.

2.1.3 At least once each calendar quarter, KAN shall conduct an Internet search to determine if any unauthorized persons or entities are offering any of KAN's Covered Products for sale or shipment via the Internet or by any other means. For any unauthorized persons or entities so identified, and for which a mailing address can be obtained, KAN shall send a letter identifying the Covered Products for which Proposition 65 warnings consistent with Section 2.2 are required for California consumers. KAN shall keep records of such correspondence for a period of three (3) years. KAN shall make reasonable efforts to bar such unauthorized persons or entities from purchasing KAN's products.

2.1.4 If at any time after the execution of this Agreement, KAN sells its products directly to end-users at retail, or to others not defined in Section 1.2, then KAN shall ensure that any of the Covered Products sold at retail in California that have a daily lead exposure rate of more than 0.5 micrograms of lead (in the form intended for sale to the end-user) bears one of the warning statements specified in Section 2.2 on its individual unit label or unit packaging.

2.2 Clear and Reasonable Warnings

If the daily lead exposure level is greater than 0.5 micrograms (mcg) for any lot of the Covered Products, the following warning shall be provided:

WARNING: This product contains chemicals known to the State of California to cause birth defects or other reproductive harm.

If the daily lead exposure level is greater than 15 micrograms (mcg) for any lot of the Covered Products, the following warning shall be provided:

WARNING: This product contains chemicals known to the State of California to cause cancer, or birth defects or other reproductive harm.

The warning shall be prominently and securely affixed to or printed upon the product label so as to be clearly conspicuous, as compared with other statements or designs on the label, so as to render it likely to be read and understood by an ordinary purchaser or user of the product. If the warning is to be affixed to the product with a sticker, a permanent adhesive shall be used. The Parties acknowledge that KAN is required under the terms of a consent judgment entered in the Superior Court of San Francisco to include a Chinese translation of the required Proposition 65 warnings. KAN represents that such Chinese language is an accurate translation of the required warning. Other than this Chinese translation, and a reference to the official Proposition 65 government website to obtain additional information, no other statements relating to Proposition 65 may accompany the warning.

2.3 Testing

2.3.1 As of the Effective Date, for three (3) consecutive lots, KAN shall test one sample of each lot of the Covered Product (in the form intended for sale to the end-user) for lead content to determine which warning, if any, is required. Additionally, as of the Effective Date, KAN agrees to conduct lead testing of three (3) consecutive lots of the Covered Products (in the form intended for sale to the end-user) if the ratio, or proportionate amount, of any individual ingredient in the formula of the Covered Products is altered or sourced from a different supplier.

2.3.2 All testing is to be performed by a laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the United States Food & Drug Administration for the analysis of heavy metals. Testing under this section shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and closed-vessel, microwave-assisted digestion employing high-purity reagents, or other testing methods recommended at the time of the testing by the California Attorney General's Office, or any other testing method agreed upon in writing by the Parties. Each sample to be tested shall be randomly selected using a sound statistical sampling plan and shall be identified in KAN's request to the laboratory for testing as being submitted pursuant to this Agreement.

2.3.3 If testing is required pursuant to Section 2.3.1, KAN shall forward to ERC copies of all test results and related laboratory report documentation relating to the testing for lead content of each of the lots of Covered Products within fifteen (15) working days after receipt by KAN of the test results. Copies shall be forwarded to ERC at the location indicated in Section 3.1.3 of this Settlement Agreement.

2.3.4 KAN shall have no duty to continue the testing required under Section 2.3.1 after the testing of a minimum of three (3) consecutive lots. Any requirement to provide test results shall not extend beyond five (5) years from the Effective Date.

2.3.5 For purposes of this Agreement, daily lead exposure levels 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 recommended number of servings per day appearing on the product label), which equals micrograms of lead exposure per day.

2.3.6 Nothing in this Agreement shall limit KAN's ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

2.4 Additional Compliance Measures

2.4.1 KAN's shipping invoices for Covered Products to Authorized Distributors or Authorized Retailers that have shipping addresses in California, or directly supplied to its Authorized Distributors or Authorized Retailers that ship or sell to any person or entity located in California, shall include a statement informing such Authorized Distributors and Authorized Retailers that Covered Products shipped to a California address must have Proposition 65 warning stickers affixed thereto, and must direct them not to remove any Proposition 65 warning stickers.

2.4.2 As to Authorized Distributors with which KAN has distributor agreements, as of the Effective Date of this Agreement, KAN shall incorporate into the distributor agreements an addendum requiring the Authorized Distributor to comply with Proposition 65 in the manner described in Section 2.1.

2.4.3 As to Authorized Distributors with which KAN may enter into distributor agreements after the Effective Date of this Agreement, KAN shall include in their distributor agreements a term requiring the Authorized Distributor to comply with Proposition 65 in the manner described in Section 2.1.

2.4.4 As to Authorized Retailers with which KAN has retailer agreements as of the Effective Date of this Agreement, KAN shall send a letter to each Authorized Retailer instructing the Authorized Retailer to comply with Proposition 65 in the manner described in Section 2.1, and requiring the Authorized Retailer to acknowledge this obligation as a term of its retailer agreement. Authorized Retailers that order Covered Products electronically from KAN's

website must agree as a condition of sale in the process of placing the electronic order to comply with Proposition 65 in the manner described in Section 2.1.

2.4.5 As to Authorized Retailers with which KAN may enter into retailer agreements after the Effective Date of this Agreement, KAN shall include in their retailer agreements a term requiring the Authorized Retailers to comply with Proposition 65 in the manner described in Section 2.1. Authorized Retailers that order Covered Products electronically from KAN's website must agree as a condition of sale in the process of placing the electronic order to comply with Proposition 65 in the manner described in Section 2.1.

2.4.6 KAN shall provide to all of its Authorized Distributors and Authorized Retailers such Proposition 65 warning stickers as may be necessary to comply with Proposition 65 in the manner described in Section 2.1.

2.4.7 KAN agrees to monitor Authorized Distributors and Authorized Retailers for compliance.

2.4.7.a If KAN learns through such monitoring or any other source that any such Authorized Retailers have failed to affix warnings in accordance with the requirements set forth in Section 2.2 on any Covered Products they sell or provide to end-users located in California, then KAN will stop selling, shipping and providing the Covered Products to such Authorized Retailer.

2.4.7.b If KAN learns through such monitoring that an Authorized Distributor has removed or failed to affix warnings in accordance with the requirements set forth in Section 2.2, and the Addendum to the Distribution Agreement already signed by KAN and such Authorized Distributor, KAN agrees to take the following steps: If KAN should conclude that any removal or failure to affix warnings is knowing and intentional, then KAN agrees to stop selling, shipping, and providing all Covered Products to such Authorized Distributor. If KAN should conclude that any removal or failure to affix warnings is not knowing and intentional, then KAN shall notify such Authorized Distributor by letter that Proposition 65 and its Distribution Agreement with KAN require that the Proposition 65 warning stickers be affixed, and that if such Authorized Distributor does not certify in writing its compliance within thirty

(30) days, then KAN will henceforth affix all required Proposition 65 warning stickers prior to shipping further Covered Products to such Authorized Distributor.

3. SETTLEMENT PAYMENT

In full and final satisfaction of any claim for ERC's attorney fees and all expenses and costs, KAN shall make a total payment of \$42,500 ("Total Settlement Amount"), as distributed and apportioned below.

3.1 Distributions And Apportionments

3.1.1 As a portion of the Total Settlement Amount, \$15,000 shall be considered a reimbursement to ERC for its reasonable costs associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of bringing this matter to KAN's attention, and negotiating a settlement in the public interest.

3.1.2 As a portion of the Total Settlement Amount, \$27,500 shall be considered a reimbursement to ERC for its attorneys' fees.

3.1.3 Within five (5) business days of the Effective Date, KAN shall pay ERC the Total Settlement Amount by check made payable to "Environmental Research Center" and sent by first-class registered or certified mail, or overnight delivery, directly to ERC at the following address:

ENVIRONMENTAL RESEARCH CENTER
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

In the event that the payment owed under this Agreement is not remitted on or before its due date, KAN shall be deemed to be in default of its obligations under this Agreement and shall become subject to the California statutory interest rate applying to all interest accruing on the unpaid balance due hereunder, beginning on the due date of the funds in default.

4. REIMBURSEMENT OF FEES AND COSTS

KAN shall bear any and all of its own costs, expenses, and attorney fees related to this matter. Except for those payments set forth in this Agreement, KAN shall not be liable for any cost, expenses, or attorneys' fees incurred by ERC.

5. RELEASES

1.1 ERC, acting on its own behalf and in the public interest, releases KAN from all claims for violations of Proposition 65 up through the Effective Date based on exposure to lead from the Covered Products as set forth in the Notices.

1.2 ERC, on its own behalf only, on one hand, and KAN, on the other hand, release and waive any claims they may have against each other, and their officers, directors, employees, agents, representatives, and attorneys for all actions or statements made or undertaken by the Parties and/or their respective officers, directors, employees, agents, representatives, and attorneys in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notices.

In furtherance of the Parties' intention that this Settlement Agreement shall be effective as a full and final accord, satisfaction and release as between ERC, on its own behalf only, and KAN and their past, present and future parents, subsidiaries, divisions, affiliates, successors and predecessors of and from any and all matters arising under Proposition 65, as such claims relate to the alleged failure to warn about exposures to lead contained in the Covered Products, ERC, on its own behalf only, and *not* in any representative capacity, and KAN acknowledge familiarity and understanding of California Civil Code § 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

1.3 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 KAN's products other than the Covered Products.

1.4 Nothing herein shall be construed as diminishing KAN's continuing obligations to comply with Proposition 65.

6. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

After execution of this Agreement, ERC will submit a Report of Settlement to the California Attorney General. In addition, ERC will provide to the California Attorney General the fully 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 the matter, its settlement, and this Agreement.

7. MODIFICATION

This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes and replaces any and 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 to this Agreement.

8. SEVERABILITY OF UNENFORCEABLE PROVISIONS

If any provision, term or section of this Agreement is found to be invalid, illegal or unenforceable, all remaining provisions, terms or sections shall continue in full force and effect and remain binding on the Parties.

9. GOVERNING LAW

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.

10. ENFORCEMENT OF SETTLEMENT AGREEMENT; GOOD FAITH ATTEMPT TO RESOLVE DISPUTE

In the event a dispute arises with respect to any Party's compliance with the terms and/or conditions of this Settlement Agreement after the Effective Date, the Party seeking compliance of another Party shall make a good faith attempt to resolve the dispute by conferring with the other Party in person, by telephone or by written communication before seeking relief from any

court. If the dispute is not resolved after such an attempt, this Settlement Agreement may be enforced by a proceeding and/or action brought in any county in California pursuant to Code of Civil Procedure § 664.4 or any other valid provision of the law. The prevailing party in any such dispute brought in a court for enforcement of this Settlement Agreement shall be awarded all reasonable costs and 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 the other party was agreeable to providing during the Parties' good faith attempt to resolve the dispute that is the subject of such an enforcement proceeding and/or action.

11. COUNTERPARTS; FACSIMILE SIGNATURES

This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail or other copies of this Agreement or any counterparts, shall be deemed to be an original.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement on behalf of the respective party or parties for which they execute this Settlement Agreement.

DATED: 4-24-2013

KAN HERB COMPANY, INC.

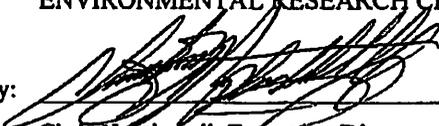
By: 

Print Name: LISE GROLEAU

Title: CEO

DATED: 4/23/2013

ENVIRONMENTAL RESEARCH CENTER

By: 

Chris Heptinstall, Executive Director