

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("this Agreement") is made effective on the date last executed herein ("Effective Date") between Environmental Research Center Inc. ("ERC") and Wakunaga of America Co., LTD ("Wakunaga"). ERC and Wakunaga are hereinafter referred to collectively as "the Parties." The Parties agree that in consideration of the following terms and conditions contained herein, and for such other good and valuable consideration, the sufficiency of which is hereby acknowledged, 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 Wakunaga on August 5, 2011 ("the Notice"), and the following products identified below ("the Covered Products").

- **Wakunaga of America Co. LTD Kyo-Green**
- **Wakunaga of America Co. LTD Kyo-Red Antioxidant Superfruit Blend Powdered Mix Supplement**
- **Wakunaga of America Co. LTD Kyo-Green Harvest Blend Immune Defense Powdered Drink Mix**
- **Wakunaga of America Co. LTD Kyo-Green Energy Powdered Drink Mix**
- **Wakunaga of America Co. LTD Kyo-Chlorella Antioxidant**

2. The Parties enter into this Agreement in order to achieve a settlement of the claims as stated in Section 1 for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission by the Parties of any fact, issue of law, or violation of law. Wakunaga disputes the claims raised by ERC and contends that its settlement of this matter has been based upon economic considerations. The Parties agree that this Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. In consideration of the following covenants of Wakunaga, and the other conditions contained in this Agreement, and for such other good and valuable consideration, the sufficiency of which is hereby acknowledged, ERC releases Wakunaga as set forth in Section 6 below:

a. Wakunaga agrees that all Covered Products produced and offered for sale in California (and offered for sale to a third party for retail sale in California) on and after the Effective Date, shall, to the best of its knowledge, comply with California law, including Proposition 65.

b. Beginning on the Effective Date, Wakunaga shall not manufacture for sale in the State of California, distribute into the State of California, or directly sell the Covered Products in the State of California, which expose a person to a daily dose of lead more than 0.5 micrograms per day when the maximum suggested dose is taken as directed on the Covered Product's label, unless each such unit of the Covered Products bears the following warning statement on its individual unit label packaging or by sticker securely affixed on the product:

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

c. The term "cancer" shall be included in the warning only if the maximum recommended daily dose stated on the Covered Product's label results in an exposure of more than 15 micrograms of lead.

d. The warning statement set forth in Section 3b. shall be prominent and displayed securely on either the cap, the unit packaging, or by a securely affixed hang tag on 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.

e. Wakunaga represents that during periods when the Covered Products were placed in the stream of commerce it was a person in the course of doing business because it employed 10 or more employees.

4. In full and final satisfaction of civil penalties, payment in lieu of further civil penalties, attorney's fees and costs, ERC's expenses, and consulting fees and costs of investigation, Wakunaga shall make a total payment of \$52,000.00 ("Total Settlement Amount") to ERC. Said payment shall be for the following:

a. As a portion of the Total Settlement Amount, \$6,750.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$5,062.50) 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% (\$1,687.50) of the civil penalty.

b. As a portion of the Total Settlement Amount, \$20,253.00 shall be considered a payment to ERC in lieu of further civil penalties for activities such as (1) funding the investigating, researching and testing of consumer products that may contain Proposition 65 listed chemicals; (2) funding grants to California non-profit foundations/entities dedicated to public health (3) funding ERC's Got Lead? Program to assist consumers in testing products for lead content; (4) funding post-settlement monitoring of past consent judgments; (5) funding to maintain ERC's database of lead-free products, Proposition 65-compliant products, and contaminated products; (6) funding to track and catalog Proposition 65 complaints and contamination-free sources of ingredients used in the products ERC tests; and (7) funding the continued enforcement of Proposition 65 matters which address contaminated ingestible products, similar to the subject matter of this Action.

c. As a portion of the Total Settlement Amount, \$14,102.00 shall be considered a reimbursement to ERC for its reasonable investigation and consulting costs associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this matter to Wakunaga's attention, and negotiating a settlement in the public interest.

As a portion of the Total Settlement Amount, \$9,695.00 shall be considered payment to William Wraith as reimbursement of ERC's attorney's fees, and \$1,200.00 shall be considered payment to Karen Evans as reimbursement of ERC's attorney's fees.

d. Pursuant to Section 4, Wakunaga agrees to remit the Total Settlement Amount of \$52,000.00 to William Wraith within 15 days of the Effective Date. Wakunaga shall make this payment by check made payable to "The Wraith Law Client Trust Account" and sent by first-class registered or certified mail, or overnight delivery, to William F. Wraith, Esq., Wraith Law, 16485 Laguna Canyon Road, Suite 250, Irvine, CA 92618.

e. Wakunaga's failure to remit the Total Settlement Amount on or before its due date shall be deemed a material breach of this Agreement.

5. Other than set forth above in Section 4(d), Wakunaga and ERC shall bear any and all of their own costs, expenses, and attorneys' fees related to this matter.

6. In consideration of the following covenant of ERC, and the other conditions contained in this Agreement, ERC releases Wakunaga as set forth in this section below.

a. ERC, on behalf of its and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors and assigns, and legal representatives, and acting on its own behalf, releases Wakunaga from all claims for violations of Proposition 65 through the Effective Date based on exposure to Lead from the Covered Products as set forth in the Notice served on Wakunaga on August 5, 2011.

b. The Parties hereby agree that this Settlement Agreement & Release applies to Wakunaga, and fully releases Wakunaga, its parents, subsidiaries, affiliates (including those companies that are under common ownership and/or common control), shareholders, directors, members, managers, officers, employees, and attorneys, and each entity to whom each of them directly or indirectly distributed or sold the Covered Products, including but not limited to manufacturers, distributors, wholesalers, customers, retailers, franchisees, and any other person or entity in the course of doing business who distributed, marketed or sold the Covered Products (excluding private labelers) from all claims asserted in the Notice.

c. ERC and Wakunaga each releases and waives any claims they may have against each other, and their shareholders, officers, directors, members, managers, employees, agents, representatives, and attorneys ("the Releasees") for all actions or statements made or undertaken by the Releasees in connection with the Notice.

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

8. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice of Violation or the Complaint and relating to lead in the Covered Products that were manufactured before the Effective Date will develop or be discovered. ERC, on behalf of itself

only, acknowledges that this Consent Judgment acknowledges the claims released herein may include unknown claims, and nevertheless waives California Civil Code Section 1542 as to any such unknown claims. California Civil Code Section 1542 reads as follows:

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

ERC, on behalf of itself only, acknowledges and understands the significance and consequences of this specific waiver of California Civil Code section 1542.

9. No later than thirty (30) days after the execution of this Agreement, ERC shall submit to the California Attorney General an electronic Report of Settlement and will provide to the California Attorney General the fully signed copy of this Agreement. ERC shall provide Wakunaga with written evidence, if any, provided by the Attorney General confirming the report of the settlement. 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. The Parties agree that they shall use their best efforts to cooperate with the California Attorney General's office and support this settlement, correct any deficiencies, and address any questions, in the event the Attorney General objects or otherwise has any concerns concerning the Settlement. ERC further agrees that should the California Attorney General's Office request it, it shall submit to the California Attorney General a Report of Settlement on Form JUS 1501, attached as Exhibit A hereto, or on such other form or in such manner as may be prescribed or required by the California Attorney General, with a copy of the fully signed Agreement, within fifteen (15) days therefrom or such earlier time as may be required by the California Attorney General's Office, and shall provide Wakunaga with written evidence of the submission and a receipt of the above-mentioned document by the California Attorney General. If within 120 days of execution of this Agreement the California Attorney General's Office rejects the Settlement, despite the Parties' best efforts, cannot resolve the concerns, Wakunaga reserves the right to request the return of the Total Settlement Amount from ERC and that ERC shall turn over such sums to Wakunaga regardless of how such funds have been used by ERC.

10. Each of the Parties and their attorneys agree that it shall keep the terms and conditions of this Agreement confidential, and that except for any reporting obligations set forth in this Agreement, and those to the California Attorney General and/or California courts, it shall not discuss or disclose the terms or conditions of, the negotiations leading up to, or the positions of the parties in arriving at, this Agreement with any person other than their respective attorneys, representatives, and accountants, each of whom shall be advised to keep such information confidential, unless compelled to do so by legal process, in which case such party shall give at least thirty (30) days advance written notice of the proceedings to the other party, or that which is reasonable under the circumstances. This paragraph is meant to include any Plaintiff or Defense Proposition 65 Bar conference or discussion regarding the other party and their attorneys. Each Party individually further agrees that it will not make a report or complaint against the other to any governmental or enforcement agency or bureau.

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11. ERC agrees that should it, in the future, believe that Wakunaga has violated and/or is in the process of violating Proposition 65 or similar statute, before sending a formal notice of same to Wakunaga, ERC agrees that it shall first provide informal written notice to Wakunaga and a three-month opportunity to change any formulation and/or provide warnings consistent with California law before taking further action. Wakunaga shall be responsible for the reasonable costs (not to exceed \$2,000) incurred by ERC in providing such informal notice, provided such informal notice is based on sufficient evidence to prove a violation of Proposition 65 by Wakunaga.

12. 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.

13. 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.

14. 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 this Agreement. It is conclusively presumed all of the Parties participated equally in the preparation and drafting of this Agreement.

15. 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. If any provision, term or section of this Agreement is determined to be unenforceable, such provision, term or section may be modified so that the unenforceable provision, term or section is enforceable to the greatest extent possible.

16. 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.

17. The Parties acknowledge that they have a right to consult an attorney and they have consulted their respective 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.


18. 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 for its attorney fees in addition to any other legally recoverable costs.

19. 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.

20. Each of the individuals who executes this Agreement represents and warrants they have the authority to execute this document and bind the party for whom they execute to the terms and conditions of this Agreement, and have read, understand, and agree to all of the terms and conditions in this Settlement Agreement.

DATED: 4/8/13

WAKUNAGA OF AMERICA, CO., LTD.

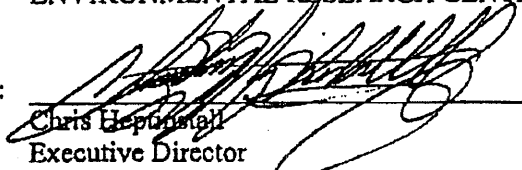
By: 
Signature

Hiromichi Sumiyoshi
Print Name Here

President
Print Title Here

DATED: 3/22/2013

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 
Chris Hepburn
Executive Director