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15 Attorneys for Mountain Rose  
16 MOUNTAIN ROSE, INC. dba MOUNTAIN ROSE HERBS

17 SUPERIOR COURT OF CALIFORNIA  
18 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

19 ENVIRONMENTAL RESEARCH  
20 CENTER, a California non-profit  
21 corporation,

22 Plaintiff,

23 v.

24 MOUNTAIN ROSE, INC. dba  
25 MOUNTAIN ROSE HERBS,

26 Defendant.

Case No. 2013-00660148-CU-MC-CJC  
Hon. Gregory H. Lewis

**[PROPOSED] STIPULATED  
CONSENT JUDGMENT**

27 **1. INTRODUCTION**

28 1.1 On July 1, 2013, Plaintiff Environmental Research Center (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive Relief and Civil Penalties (“Complaint”) pursuant to the provisions of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California

1 Health and Safety Code § 25249.5, *et seq.* (also known as and hereinafter referred to as  
2 “Proposition 65”), against Mountain Rose, Inc. dba Mountain Rose Herbs (“Mountain Rose”).  
3 ERC and Mountain Rose are hereinafter sometimes referred to individually as a “Party” or  
4 collectively as the “Parties”.

5 1.2 ERC is a California non-profit corporation dedicated to, among other causes,  
6 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
7 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
8 encouraging corporate responsibility.

9 1.3 Mountain Rose is an Oregon corporation, qualified to do business in the State of  
10 California. At all times relevant to this action, Mountain Rose has employed ten or more persons,  
11 and is a “person in the course of doing business” within the meaning of Proposition 65.

12 1.4 On March 8, 2012, pursuant to California Health and Safety Code  
13 § 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 (“Notice of Violations”)  
14 on the California Attorney General, other public enforcers, and Mountain Rose. A true and  
15 correct copy of the Notice of Violations is attached hereto as Exhibit A. The Notice of Violations  
16 contains allegations that Mountain Rose, without giving a required clear and reasonable warning,  
17 has exposed and continues to expose individuals in California to lead, a chemical listed under  
18 Proposition 65 as a carcinogen and reproductive toxin, by manufacturing, marketing, distributing  
19 and/or selling the following fourteen (14) products:

- 20 1) Mountain Rose Herbs Shatavari Root
- 21 2) Mountain Rose Herbs Schisandra Berry
- 22 3) Mountain Rose Herbs Fo-Ti Root
- 23 4) Mountain Rose Herbs Valerian Root
- 24 5) Mountain Rose Herbs Gotu Kola Leaf
- 25 6) Mountain Rose Herbs Cramp Bark
- 26 7) Mountain Rose Herbs Triphala
- 27 8) Mountain Rose Herbs Dong Quai Root
- 28 9) Mountain Rose Herbs Epimedium Leaf

- 1                   10) Mountain Rose Herbs Meno Care
- 2                   11) Mountain Rose Herbs Liver Care
- 3                   12) Mountain Rose Herbs Cleanse Care
- 4                   13) Mountain Rose Herbs Memory Care
- 5                   14) Mountain Rose Herbs Fo-Ti Root Powder

6           These fourteen (14) products are hereinafter referred to collectively as the “Covered Products”.  
7           Neither the California Attorney General nor any other public enforcer has filed suit against  
8           Mountain Rose with regard to the Covered Products or the alleged violations.

9                   1.5     More than 60 days after service of the March 8, 2012 Notice of Violations, ERC  
10           filed the Complaint, which is based on the March 8, 2012 Notice of Violations and contains  
11           allegations that Mountain Rose has exposed and continues to expose persons in California who  
12           use and/or handle the Covered Products to the chemical lead in excess of the exposure levels  
13           allowed under Proposition 65 without first providing clear and reasonable warnings, in violation  
14           of California Health and Safety Code § 25249.6. Mountain Rose denies all material, factual and  
15           legal allegations contained in the Notice of Violations and the Complaint, maintains that all  
16           Covered Products that the company sold and distributed in California have been and are in  
17           compliance with all laws, including Proposition 65, asserts numerous affirmative defenses to the  
18           allegations of violations, and specifically denies that the Covered Products require Proposition  
19           65 warnings.

20                   1.6     The Parties enter into this Consent Judgment pursuant to a settlement of disputed  
21           claims between them as alleged in the Notice of Violations and Complaint for the purposes of  
22           avoiding prolonged and costly litigation.

23                   1.7     By execution of this Consent Judgment, Mountain Rose does not admit any facts  
24           or conclusions of law suggesting or demonstrating any violations or the applicability of  
25           Proposition 65, or any other statutory, common law or equitable requirements relating to the  
26           Covered Products. Nothing in this Consent Judgment, or compliance with this Consent  
27           Judgment, shall constitute or be construed as an admission by the Parties of any fact, issue of  
28

1 law, or violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall be  
2 construed as giving rise to any presumption or inference of admission or concession or waiver of  
3 a defense by Mountain Rose as to any fault, wrongdoing or liability whatsoever, including, but  
4 not limited to, any alleged violation of Proposition 65.

5 1.8 Except as expressly provided herein, nothing in this Consent Judgment shall  
6 prejudice, waive or impair any right, remedy or defense that the Parties may have in any other or  
7 further legal proceedings. This paragraph shall not diminish or otherwise affect the obligations,  
8 responsibilities, and duties of any Party to this Consent Judgment.

9 1.9 The "Effective Date" of this Consent Judgment shall be the date this Consent  
10 Judgment is entered by the Court.

11 1.10 The only products covered by this Consent Judgment are the Covered Products,  
12 and the only chemical covered by this Consent Judgment is the chemical lead as related to the  
13 Covered Products.

## 14 **2. JURISDICTION AND VENUE**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
16 jurisdiction over them as to the allegations contained in the Complaint, that venue is proper in  
17 this Court, and that this Court has jurisdiction to enter this Consent Judgment.

## 18 **3. INJUNCTIVE RELIEF**

19 3.1 On and after the Effective Date, Mountain Rose shall be permanently enjoined  
20 from manufacturing for sale in California, distributing into California, or directly selling to any  
21 consumer located in California any of the Covered Products that have a daily lead exposure rate  
22 of more than 0.5 micrograms of lead, calculated using the following formula: micrograms of lead  
23 per gram of product, multiplied by grams of product per serving of the product (using the largest  
24 serving size appearing on the product label), multiplied by servings of product per day (using the  
25 largest recommended number of servings per day appearing on the product label), which equals  
26 micrograms of lead exposure per day, unless the Covered Products contain warnings as specified  
27 in Section 3.2. The term "distributing into California" means to ship any of the Covered  
28 Products into California for sale in California or to sell or provide any of the Covered Products to

1 any person or entity Mountain Rose knows intends to or will ship any of the Covered Products  
2 into or sell any of the Covered Products in California.

3 **3.2 Clear and Reasonable Warnings**

4 For those Covered Products that are subject to the warning requirement of Section  
5 3.1, Mountain Rose shall provide the following warning (“Warning”) as specified below:  
6

7 **[California Residents Proposition 65] WARNING [California Proposition 65]:**

8 This product contains [lead,] a chemical known to the State of California to cause [cancer  
9 and] birth defects or other reproductive harm.

10 The text in brackets is optional, except that the term “cancer and” must be included if the  
11 minimum daily dose recommended on the label contains more than 15 micrograms (“mcg”) of  
12 lead as determined by the quality control methodology set forth in Section 3.3. The Warning  
13 shall be displayed with such conspicuousness, as compared with other words, statements,  
14 designs, or devices on the packaging or container as to render it likely to be read and understood  
15 by an ordinary individual prior to use. The Warning shall be at least the same size as the largest  
16 of any other health or safety warnings for the Covered Product on the packaging or container,  
17 and the word “WARNING” shall be in all capital letters and in bold print. If the warning is to  
18 be affixed to the product with a sticker, a permanent adhesive shall be used. No other statements  
19 may accompany the Proposition 65 Warning.

20 **3.3** Mountain Rose may reformulate the Covered Products to reduce the lead content  
21 to below levels requiring a Proposition 65 warning, in which case the Parties agree that the  
22 Covered Products may be offered for sale in California without the warnings discussed in this  
23 Consent Judgment. If Mountain Rose contends that a Covered Product has been so reformulated,  
24 then at least once each year, Mountain Rose shall undertake testing of any reformulated Covered  
25 Product on which it does not intend to place a warning label discussed in paragraph 3.2 above.  
26 Mountain Rose (itself or through another) shall test at least five (5) randomly-selected samples of  
27 each such reformulated Covered Product for lead content, to confirm whether the daily dose is  
28 more or less than 0.5 micrograms of lead when taken as directed on the Product’s label. For  
purposes of determining whether a warning, if any, is required pursuant to paragraph 1, the  
highest lead detection result of the five (5) randomly selected samples of the reformulated

1 Covered Products will be controlling. For purposes of this Consent Judgment, daily lead  
2 exposure levels shall be measured in micrograms and shall be calculated using the following  
3 formula: micrograms of lead per gram of product, multiplied by grams of product per serving of  
4 the product (using the largest serving size appearing on the product label), multiplied by servings  
5 of product per day (using the largest recommended number of servings per day appearing on the  
6 product label), which equals micrograms of lead exposure per day. All testing pursuant to this  
7 Consent Judgment shall be performed by an independent, third-party laboratory certified by the  
8 California Environmental Laboratory Accreditation Program for the analysis of heavy metals or  
9 a laboratory that is approved by, accredited by, or registered with the United States Food & Drug  
10 Administration for the analysis of heavy metals. The method of selecting samples for testing  
11 must comply with the regulations of the Food and Drug Administration as set forth in Title 21,  
12 Part 111, Subpart E of the Code of Federal Regulations, including section 111.80(c). Testing for  
13 lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and  
14 closed-vessel, microwave-assisted digestion employing high-purity reagents<sup>1</sup> or any other testing  
15 method agreed upon in writing by the parties. Nothing in this Consent Judgment shall limit  
16 Mountain Rose's ability to conduct, or require that others conduct, additional testing of the  
17 Covered Products, reformulated or otherwise, including the raw materials used in their  
18 manufacture. This Consent Judgment, including the testing and sampling methodology set forth  
19 in this paragraph, is the result of negotiation and compromise, and is accepted by the Parties for  
20 purposes of settling, compromising, and resolving issues disputed in this Action, including future  
21 compliance by Mountain Rose with this Consent Judgment, and shall not be used for any other  
22 purpose, or in any other matter and, except for the purpose of determining future compliance  
23 with this Consent Judgment, shall not constitute an adoption or employment of a method of  
24 analysis for a listed chemical in a specific medium as set forth in 27 California Code of  
25 Regulations § 25900(g). For the first two (2) years from the date of this Consent Judgment,  
26 Mountain Rose shall provide test results and documentation for any reformulated Covered  
27 Product to ERC within thirty (30) working days of completion of the testing; thereafter upon  
written request from ERC, and shall retain all test results and documentation for a period of four  
(4) years from the date of each test.

28 <sup>1</sup> See Mindak, W.R., Cheng, J., Canas, B.J., & Bolger, P.M. Lead in Women's and Children's Vitamins,  
J. Agric. Food Chem. 2008, 56, 6892-96.

1           3.4     The requirements set forth above will only apply to any time during which  
2 Mountain Rose is a “person in the course of doing business,” as that term is defined in Health  
3 and Safety Code § 25249.11(b).

4  
5           **3.5     Products in the Stream of Commerce**

6           The injunctive relief set forth in Section 3 shall not apply to any of the Covered Products  
7 that Mountain Rose put into the stream of commerce before the Effective Date. On the Effective  
8 Date, Mountain Rose shall provide ERC with the last lot number and expiration date for each of  
9 the Covered Products in the stream of commerce as of the Effective Date.

10          **4.     SETTLEMENT PAYMENT**

11           **4.1     Total Payment**

12           In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,  
13 ERC’s expenses and costs of litigation, and ERC’s attorney fees, Mountain Rose shall, within 10  
14 days after the Effective Date, issue a single check in the amount of \$55,000.00 (“Total  
15 Settlement Amount”), made payable to “Environmental Research Center – ERC Escrow  
16 Account,” and send the check by first-class registered or certified mail, or overnight delivery,  
17 directly to ERC at the following address:

18                     Environmental Research Center  
19                     3111 Camino Del Rio North, Suite 400  
20                     San Diego, CA 92108

21           Mountain Rose shall also issue a single IRS Federal Tax Form 1099 for the above payment to  
22 ERC. Sections 4.2-4.5 below describe the agreed partition of the Total Settlement Amount.

23           **4.2     Civil Penalty**

24           As a portion of the Total Settlement Amount, \$6,750 shall be considered a civil penalty  
25 pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75%  
26 (\$5,062.50) of the civil penalties to the Office of Environmental Health Hazard Assessment  
27 (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance  
28 with California Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be  
sent to Mountain Rose’s counsel. ERC will retain the remaining 25% (\$1,687.50) of the civil

1 penalty.

2 **4.3 Payment in Lieu of Further Civil Penalties**

3 \$20,250 shall be considered a payment to ERC in lieu of further civil penalties for  
4 activities such as: (1) funding the analysis, research, and testing of consumer products that may  
5 contain Proposition 65 listed chemicals; (2) funding grants or donations to California non-profit  
6 foundations/entities dedicated to eliminating public exposure to toxic chemicals and substances;  
7 and (3) funding the continued day to day business of enforcement of Proposition 65 matters  
8 which address contaminated ingestible products, similar to the subject matter of this Action.

9 **4.4 Reimbursement of Expenses and Costs**

10 As a portion of the Total Settlement Amount, \$15,500 shall be considered a  
11 reimbursement to ERC for its reasonable investigation costs associated with the enforcement of  
12 Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this  
13 matter to Mountain Rose's attention, litigating and negotiating a settlement in the public interest.

14 **4.5 Attorney Fees**

15 \$9,000 of the Settlement Payment shall be allocated by ERC as payment to Karen Evans,  
16 Esq. as reimbursement for ERC's attorneys' fees and \$3,500 shall be allocated by ERC as  
17 payment to Bill Wraith, Esq. as reimbursement for ERC's attorneys' fees.

18 **5. COSTS AND FEES**

19 Except as expressly set forth in Section 4 above, each Party shall bear its own attorneys'  
20 fees, costs and expenses in this Action.

21 **6. RELEASE**

22 6.1 ERC, acting in its individual capacity on its own behalf and acting in its  
23 representative capacity in the public interest, permanently and fully releases Mountain Rose, and  
24 its respective officers, directors, shareholders, employees, agents, representatives, parents,  
25 subsidiaries, divisions, subdivisions, affiliates, franchisees, licensees, successors, assigns and  
26 attorneys, not including retailers, distributors, resellers, and private-label customers of Mountain  
27 Rose ("Released Parties"), from all claims for violations of Proposition 65 up through the  
28 Effective Date based on exposure to lead from the Covered Products as set forth in the Notices of



1 Violations and the Complaint.

2           6.2 Compliance with the terms of this Consent Judgment constitutes compliance with  
3 Proposition 65 with respect to exposures to lead from the Covered Products.

4           6.3 ERC on behalf of itself only, on the one hand, and Mountain Rose, on the other  
5 hand, release and waive all claims they may have against each other and their respective officers,  
6 directors, employees, agents, representatives and attorneys for any statements or actions made or  
7 undertaken by them or their respective officers, directors, employees, agents, representatives and  
8 attorneys in connection with the Notice of Violations or this action.

9           6.4 Nothing in this release is intended to apply to any occupational or environmental  
10 exposures arising under Proposition 65, or of any of Mountain Rose's products other than the  
11 Covered Products.

12 **7. MOTION FOR COURT APPROVAL**

13           7.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice,  
14 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California  
15 Code of Regulations § 3000, *et seq.* This motion shall be served upon Mountain Rose and upon  
16 the California Attorney General. Mountain Rose and ERC shall use their best efforts to support  
17 entry of this Consent Judgment in the form submitted to the Court for approval.

18           7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the  
19 California Attorney General objects in writing to any term in this Consent Judgment or files an  
20 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely  
21 manner prior to the hearing on the motion. If the concern of the California Attorney General is  
22 not resolved prior to the hearing on the motion, any Party may withdraw from this Consent  
23 Judgment prior to the date of the hearing, with notice to all Parties in accordance with Paragraph  
24 17 below and notice to the California Attorney General's Office, and upon such notice this  
25 Consent Judgment shall be null and void.

26           7.3 This Consent Judgment shall be effective only after it has been entered by the  
27 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for  
28 any purpose.

1 **8. RETENTION OF JURISDICTION**

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

4 **9. MODIFICATION OF CONSENT JUDGMENT**

5 9.1 This Consent Judgment after its entry by the Court may be modified only upon  
6 written agreement or stipulation of the Parties and upon entry of a modified Consent Judgment  
7 by the Court thereon. ERC is entitled to reasonable attorney's fees and costs for any  
8 modification of the Consent Judgment initiated or requested by Mountain Rose.

9  
10 **10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO  
11 RESOLVE DISPUTES**

12 In the event a dispute arises with respect to any Party's compliance with the terms  
13 and/or conditions of this Consent Judgment after its entry by the Court, the Party seeking  
14 compliance of another Party shall make a good faith attempt to resolve the dispute by conferring  
15 with the other Party in person, by telephone or by written communication before seeking relief  
16 from the Court. If the dispute is not resolved after such an attempt, this Consent Judgment may  
17 be enforced in this Court pursuant to Code of Civil Procedure § 664.4 or any other valid  
18 provision of the law. The prevailing party in any such dispute brought in a court for enforcement  
19 of this Settlement Agreement shall be awarded all reasonable costs and attorney's fees. As used  
20 in the preceding sentence, the term "prevailing party" means a party who is successful in  
21 obtaining relief more favorable to it than the relief the other party was agreeable to providing  
22 during the Parties' good faith attempt to resolve the dispute that is the subject of such an  
23 enforcement proceeding and/or action.

24 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

25 In the event that, after entry of this Consent Judgment in its entirety, any of the provisions  
26 hereof are subsequently held by a court to be unenforceable, the validity of the enforceable  
27 provisions shall not be adversely affected.

28 **12. GOVERNING LAW**

1           The terms of this Consent Judgment shall be governed by the laws of the State of  
2 California and apply within the State of California.

3 **14. DRAFTING**

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

12 **15. ENTIRE AGREEMENT**

13           This Consent Judgment contains the sole and entire agreement and understanding of the  
14 Parties with respect to the entire subject matter hereof, and supersedes and replaces any and all  
15 prior agreements or understandings, written or oral, with regard to the matters set forth herein.  
16 No other agreements or understandings not specifically referred to herein, oral or otherwise, shall  
17 be deemed to exist or to bind any of the Parties.

18 **16. EXECUTION IN COUNTERPARTS**

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

22 **17. NOTICES**

23           All notices required by this Consent Judgment to be given to any Party shall be sent by  
24 first-class registered or certified mail, or overnight delivery, to the following:

25  
26 **FOR ERC:**

27  
28 Chris Heptinstall, Executive Director  
Environmental Research Center

1 3111 Camino Del Rio North, Suite 400  
2 San Diego, CA 92108

3  
4 Karen A. Evans  
5 Law Office of Karen A. Evans  
6 4218 Biona Place  
7 San Diego, CA 92116  
8 Ph: (619) 640-8100  
9 Email: [kaevans.erc@gmail.com](mailto:kaevans.erc@gmail.com)

10 **FOR MOUNTAIN ROSE:**

11 Julie Bailey, President  
12 Mountain Rose, Inc.  
13 35859 Highway 58  
14 Pleasant Hill, OR 97455

15 Robert S. Schuda  
16 McKenna Long & Aldridge LLP  
17 300 South Grand Avenue 14th Floor  
18 Los Angeles, CA 90071-3124  
19 Ph: (213) 688-1000  
20 Fax: (213) 243-6330  
21 Email: [rschuda@mckennalong.com](mailto:rschuda@mckennalong.com)

22 **18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

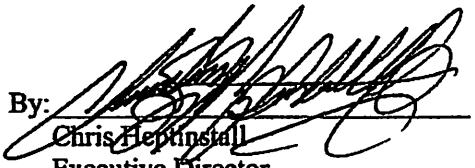
23 Each person signing this Consent Judgment on behalf of a Party certifies that he or she is  
24 fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment  
25 on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party,  
26 and to legally bind that Party to this Consent Judgment. Each person signing this Consent  
27 Judgment on behalf of a Party represents and warrants that he or she has read and understands  
28 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on  
behalf of that Party.

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_ ENVIRONMENTAL RESEARCH CENTER

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6/20/2013

By:   
Chris Heptinstall  
Executive Director


Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

**APPROVED AS TO FORM:**

Dated: 6-20-13

LAW OFFICE OF KAREN A. EVANS

By:   
Karen A. Evans  
Attorney for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER

Dated: \_\_\_\_\_

McKenna Long & Aldridge LLP

By: \_\_\_\_\_  
Robert S. Schuda  
Attorney for Mountain Rose

**ORDER AND JUDGMENT**

Based on the Parties' stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

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By: \_\_\_\_\_  
Chris Heptinstall  
Executive Director

MOUNTAIN ROSE, INC. dba  
MOUNTAIN ROSE HERBS

Dated: 6-26-13

By: \_\_\_\_\_  
Name: SHAWN DONNILLE  
Title: VICE PRESIDENT

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

LAW OFFICE OF KAREN A. EVANS

By: \_\_\_\_\_  
Karen A. Evans  
Attorney for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER

Dated: 6/27/13

McKenna Long & Aldridge LLP

By: \_\_\_\_\_  
Robert S. Schuda  
Attorney for Mountain Rose

**ORDER AND JUDGMENT**

Based on the Parties' stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_

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Judge of the Superior Court

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EXHIBIT A – [Notice of Violations]

LAW OFFICE OF  
**KAREN A. EVANS**

4218 Biona Place  
San Diego, CA 92116  
Tel: (619) 640-8100  
E-Mail: karen.erc@cox.net

March 8, 2012

**NOTICE OF VIOLATIONS OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. 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.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter “the Violators”) are:

**Mountain Rose, Inc. and Mountain Rose Herbs**

**Consumer Products and Listed Chemicals.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Mountain Rose Herbs Shatavari Root - Lead**  
**Mountain Rose Herbs Schisandra Berry - Lead**  
**Mountain Rose Herbs Fo-Ti Root - Lead**  
**Mountain Rose Herbs Valerian Root - Lead**  
**Mountain Rose Herbs Gotu Kola Leaf - Lead**  
**Mountain Rose Herbs Cramp Bark - Lead**  
**Mountain Rose Herbs Triphala - Lead**  
**Mountain Rose Herbs Dong Quai Root - Lead**  
**Mountain Rose Herbs Epimedium Leaf - Lead**  
**Mountain Rose Herbs Meno Care - Lead**  
**Mountain Rose Herbs Liver Care - Lead**  
**Mountain Rose Herbs Cleanse Care - Lead**



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**Mountain Rose Herbs Memory Care - Lead**  
**Mountain Rose Herbs Fo-Ti Root Powder - Lead**

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

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least March 8, 2010, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



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Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Mountain Rose, Inc. and Mountain Rose Herbs and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by Mountain Rose, Inc. and Mountain Rose Herbs**

I, Karen A. Evans, declare:

1. This Certificate of Merit accompanies the attached 60-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: March 8, 2012

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Karen A. Evans

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On March 8, 2012, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Julie Bailey, President  
Mountain Rose, Inc.  
35859 Highway 58  
Pleasant Hill, OR 97455

Julie Bailey, President  
Mountain Rose Herbs  
P.O. Box 50220  
Eugene, OR 97405

Julie Bailey, President  
Mountain Rose, Inc.  
P.O. Box 50220  
Eugene, OR 97405

Julie Bailey  
(Mountain Rose, Inc.’s Registered  
Agent for Service of Process)  
85472 Dilley Lane  
Eugene, OR 97405

Julie Bailey, President  
Mountain Rose Herbs  
35859 Highway 58  
Pleasant Hill, OR 97455

Julie Bailey  
(Mountain Rose Herbs’ Registered  
Agent for Service of Process)  
P.O. Box 50220  
Eugene, OR 97405

On March 8, 2012, I served the following documents: **NOTICE OF VIOLATION, 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)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On March 8, 2012, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on March 8, 2012, in Fort Oglethorpe, Georgia.



Amber Schaub

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

March 8, 2012

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**Service List**

District Attorney, Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Room 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Room 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Avenue Ventura, CA 93009
District Attorney, Amador County 708 Court Street, #202 Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County Post Office Box 990 Stockton, CA 95201	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Rm 800 Los Angeles, CA 90012
District Attorney, Colusa County 547 Market Street Colusa, CA 95932	District Attorney, Merced County 2222 M Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco City Attorney's Office City Hall, Room 234 1 Drive Carlton B Goodlett Place San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Ste. 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street Eureka, CA 95501	District Attorney, Orange County 401 Civic Center Drive West Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95353	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Avenue, Room 224 Visalia, CA 93291	