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17 SUN BROTHERS, LLC dba SUNWARRIOR

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF ALAMEDA

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

23 Plaintiff,

24 vs.

25 SUN BROTHERS, LLC dba
26 SUNWARRIOR and DOES 1-100

27 Defendants.

CASE NO. RG13706282

[PROPOSED] STIPULATED
CONSENT JUDGMENT; [PROPOSED]
ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: December 10, 2013
Trial Date: None set

28 **1. INTRODUCTION**

1.1 On December 10, 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 and Declaratory relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.

1 (“Proposition 65”), against Sun Brothers, LLC dba Sunwarrior and DOES 1-100 (hereinafter
2 “Sunwarrior”). In this action, ERC alleges that the products manufactured, distributed or sold
3 by Sunwarrior, as more fully described below, contain lead, a chemical listed under Proposition
4 65 as a carcinogen and reproductive toxin, and that such products expose consumers at a level
5 requiring a Proposition 65 warning. These products are:

- 6 • SunWarrior Ormus SuperGreens
- 7 • SunWarrior Protein Raw Vegan Natural
- 8 • SunWarrior Protein Raw Vegan Chocolate
- 9 • SunWarrior Warrior Blend Raw Protein Vanilla
- 10 • SunWarrior Warrior Blend Raw Protein Chocolate
- 11 • SunWarrior Warrior Blend Raw Protein Natural
- 12 • SunWarrior Activated Barley
- 13 • SunWarrior Classic Protein Raw Vegan Natural
- 14 • SunWarrior Classic Protein Raw Vegan Vanilla

15 (collectively “Covered Products”). ERC and Sunwarrior are referred to individually as a “Party”
16 or collectively as the “Parties.”

17 **1.2** ERC is a California non-profit corporation dedicated to, among other causes,
18 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
19 and toxic chemicals, facilitating a safe environment for consumers and employees, and
20 encouraging corporate responsibility.

21 **1.3** Sunwarrior is a business entity that employs ten or more persons. Sunwarrior
22 arranges the manufacture, distribution and sale of the Covered Products.

23 **1.4** The Complaint is based on allegations contained in ERC’s Notice of Violation,
24 dated July 19, 2013, that was served on the California Attorney General, other public enforcers,
25 and Sunwarrior. A true and correct copy of the Notice of Violation is attached as Exhibit A.
26 More than 60 days have passed since the Notice of Violation was mailed, and no designated
27 governmental entity has filed a complaint against Sunwarrior with regard to the Covered
28 Products or the alleged violations.

1 **1.5** ERC's Notice of Violation and the Complaint allege that use of the Covered
2 Products exposes persons in California to lead without first providing clear and reasonable
3 warnings in violation of California Health and Safety Code section 25249.6. Sunwarrior denies
4 all material allegations contained in the Notice of Violation and Complaint and specifically
5 denies that the Covered Products required a Proposition 65 warning or otherwise caused harm
6 to any person. Sunwarrior asserts that any detectible levels of lead in the Covered Products are
7 the result of naturally occurring lead levels, as provided for in California Code of Regulations,
8 Title 27, Section 25501(a).

9 **1.6** The Parties have entered into this Consent Judgment in order to settle,
10 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
11 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
12 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
13 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,
14 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
15 this Consent Judgment shall be construed as an admission by Sunwarrior or ERC of any fact,
16 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed
17 as an admission by Sunwarrior or ERC of any fact, issue of law, or violation of law, at any
18 time, for any purpose.

19 **1.7** Except as expressly set forth herein, nothing in this Consent Judgment shall
20 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
21 other or future legal proceeding unrelated to these proceedings.

22 **1.8** The Effective Date of this Consent Judgment is the date on which it is entered as
23 a Judgment by this Court.

24 **2. JURISDICTION AND VENUE**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
27 over Sunwarrior as to the acts alleged in the Complaint, that venue is proper in Alameda County,
28

1 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
2 all claims which were or could have been asserted in this action based on the facts alleged in the
3 Notice of Violation and the Complaint.

4
5 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

6 **3.1 Clear and Reasonable Warnings**

7 Six months after the Effective Date of this Consent Judgment, Sunwarrior shall be
8 permanently enjoined from Distributing into California, manufacturing for sale in California,
9 and/or directly selling to a consumer in the State of California any Covered Product for which
10 the maximum daily dose recommended on the label contains more than 0.5 micrograms (mcg)
11 of lead, as calculated in accordance with the formula set forth in Section 3.7 and pursuant to the
12 testing done in accordance with Section 3.9, unless Sunwarrior complies with at least one of the
13 required warning methods set forth in Section 3.1 through Section 3.6. The term "Distributing
14 into California" means to ship any of the Covered Products into California for sale in
15 California, or to sell or provide any of the Covered Products to any person or entity that
16 Sunwarrior knows will sell or intends to sell any of the Covered Products in California.

17 In all warning methods contained in Section 3.2 through Section 3.6 below, the
18 Warning shall be provided with such conspicuousness, as compared with other words,
19 statements, designs, or devices on the container, labeling, webpage, catalog page, invoice,
20 insert, or in the store as to render it likely to be read and understood by an ordinary individual
21 under customary conditions of purchase or use. In all warning methods, no other statements
22 may accompany the Warning, except that Sunwarrior may refer consumers to a single website
23 for further information. The Warning shall be at least the same size as the largest of any other
24 health or safety warnings on the container, labeling, webpage, catalog page, invoice, or insert,
25 as applicable, and the word "WARNING" shall be in all capital letters and in bold print. The
26 Warning shall be contained in the same section of the container, labeling, webpage, catalog
27 page, invoice, or insert, as applicable, which states other safety warnings concerning the use of
28 the Covered Product.

1 **3.2 The Warning Language.**

2 The warning language shall be one of the following:

3 **[California Proposition 65] WARNING [(California Proposition 65)]** This
4 product contains [lead,] [a] chemical[s] known [to the State of California] to
5 cause [cancer and] birth defects or other reproductive harm.

6 **[California Proposition 65] WARNING [(California Proposition 65)]** This
7 product contains [lead,] [a] substance[s] known [to the State of California] to
8 cause [cancer and] birth defects or other reproductive harm.

9 The text in brackets in the warnings above is optional. The words “cancer and” shall be
10 included in the warning only if the maximum recommended daily dose stated on the Covered
11 Product’s label contains more than 15 micrograms (mcg) of lead as calculated in accordance
12 with the formula set forth in Section 3.7 below.

13 **3.3 Warning Method (On-Product Warning)**

14 For those Covered Products that are subject to the warning requirement of Section 3.1,
15 Sunwarrior shall provide the Warning Language in Section 3.2 on the Covered Product. Unless
16 the warning is provided pursuant to Sections 3.4 through 3.6, the warning above shall be
17 permanently affixed to or printed on the labeling of each Covered Product with such
18 conspicuousness as compared with other words, statements, designs, or devices on the labeling
19 as to render it likely to be read and understood by an ordinary individual under customer
20 conditions of purchase or use.

21 **3.4 Warning Method (Store Warning)**

22 For sales in retail stores, the Warning shall be provided by either of the following
23 methods, (1) Identifying Signs and Designated Symbol in Retail Stores, or (2) Other Clear and
24 Reasonable Warnings in Retail Stores, below:

25 (1) *Identifying Signs and Designated Symbol in Retail Stores.* In retail stores, the
26 Warning may be provided through the use of a system that combines both a designated symbol
27 and an identifying sign that explains the meaning of the designated symbol or a sign. The
28 designated symbol (“Symbol”) shall be the Symbol shown on Exhibit B and shall appear as
 shown on Exhibit B, with black “Prop 65” and “!” text, black border, and yellow background,

1 wherever it is displayed.

2 (A) *Covered Products Displayed in Retail Stores: Signs.*

3 (i) Form of Sign. A Sign shall be rectangular and at least 5 inches x
4 7 inches in size, with the word "WARNING" centered one-half of an inch from the top of the
5 sign all in one-half inch capital letters. The Sign shall be substantially identical to the sign
6 attached hereto as Exhibit E. For the body of the warning message, left and right margins of at
7 least one-half of an inch, and a bottom margin of at least one-half inch shall be observed. The
8 Symbol must be at least one inch high. Larger Signs shall bear substantially the same
9 proportions of type size and spacing to sign dimension as a sign that is 5 inches x 7 inches in
10 size. Unless modified by agreement of the Parties, the Sign shall contain one of the following
11 text (text in brackets is optional, except as described in Section 3.2):

12 WARNING:
13 CALIFORNIA PROPOSITION 65
14 Products with the symbol
15 *[Shown on Exhibit B]*
16 contain [lead,] [a] chemical[s] known to the State of California to
17 cause [cancer and] birth defects
18 or other reproductive harm.

17 WARNING:
18 CALIFORNIA PROPOSITION 65
19 Products with the symbol
20 *[Shown on Exhibit B]*
21 contain [lead,] [a] substance [s] known to the State of California to
22 cause [cancer and] birth defects
23 or other reproductive harm.

22 (ii) Placement of Sign. Signs shall be placed in each California
23 establishment in which any of Sunwarrior's Covered Products that requires a warning are sold.
24 Signs shall not be covered or obscured, and shall be placed and displayed in a manner
25 rendering them likely to be read and understood by an ordinary individual prior to purchase. At
26 least one Sign shall be posted in each aisle or on each shelf or display where the Covered
27 Products for which the warning is being provided are offered or displayed for sale, unless the
28 retail establishment has less than 7,500 square feet of retail space, in which case the Sign may

1 be posted at each cash register. Additional signs shall be posted as are necessary to assure that
2 any potential purchaser of Covered Products would be reasonably likely to see a Sign prior to
3 purchase.

4 (iii) Sunwarrior shall provide an exemplar Sign to the central
5 purchasing office for all distributors and retail establishments with whom Sunwarrior transacts
6 business for sale of the Covered Products in California that require a warning. Sunwarrior shall
7 provide Signs and instructions by letter (“Warning Instruction Letter,” Exhibit C) to the central
8 purchasing office of each distributor or retailer with whom Sunwarrior transacts business and
9 that offers any of the Covered Products for sale in California retail stores, requiring such
10 retailers to post the Signs as described in Section 3.4(1)(A)(ii) above. The Warning Instruction
11 Letter shall request such retailers to respond with a written acknowledgement that the Signs
12 will be posted within thirty (30) days of receipt of the Warning Instruction Letter. Sunwarrior
13 shall send a follow-up communication (“Follow-Up Warning Instruction Letter,” Exhibit D) to
14 entities who were sent the original instructions and who did not return a timely
15 acknowledgment. The Signs, Warning Instruction Letters, and Follow-Up Warning Instruction
16 Letters shall be delivered in person or via a shipping method that is traceable to ensure retailers
17 received the information. Sunwarrior shall maintain files demonstrating compliance with this
18 provision, including the communications sent and receipts of any acknowledgments from
19 retailers and distributors, which Sunwarrior shall provide to ERC upon written request. If
20 Sunwarrior learns that any retailer offering any of the Covered Products for sale in any
21 California retail store does not return an acknowledgement to the Warning Instruction Letter
22 and Follow-Up Warning Instruction Letter within thirty (30) days of receiving the Follow-Up
23 Warning Instruction Letter, or a retailer or distributor is failing to post or maintain the Sign in
24 accordance with subsection (ii) above, then within five (5) business days Sunwarrior shall stop
25 providing Covered Products to such retailer, distributor, or other person until it verifies that
26 compliance with the terms of subsection (ii) above is achieved.

27 (iv) If Sunwarrior complies with the terms of subsection (iii) above, it
28 shall not be found to have violated this Consent Judgment where a retail store, distributor, or

1 other person fails to post or maintain the Sign in accordance with this Consent Judgment.

2 (B) *Covered Products Sold in Retail Stores: Symbol.* The Symbol shall be
3 prominently displayed with such conspicuousness, as compared with other words, statements,
4 designs, or devices used at the point the Covered Product is offered for sale, as to render the
5 Symbol likely to be seen by an ordinary individual prior to purchase. The Symbol shall be
6 permanently affixed to or printed on (at the point of manufacture, prior to shipment to
7 California, or prior to distribution within California) the outside packaging or container of each
8 unit of the Covered Product, in which case the Symbol must be at least as tall as the largest
9 letter in any other health or safety warning on that product label. In no case shall the text "Prop
10 65" and "!" be less than one-quarter inch (0.25 inch) high.

11 (2) *Other Clear and Reasonable Warnings in Retail Stores.* In stores not using the
12 Identifying Signs and Designated Symbol in Retail Stores system described above in Section
13 3.4(1), the Warning set forth in Section 3.2 may be provided by signs placed and displayed in a
14 manner rendering them likely to be read and understood by an ordinary individual prior to
15 purchase. Signs containing the warning set forth in Section 3.2 shall be posted in each aisle or
16 on each shelf or display where the Covered Products for which the warning is being provided
17 are offered or displayed for sale, unless the retail establishment has less than 7,500 square feet
18 of retail space, in which case the Sign may be posted at each cash register and shall not be
19 obscured. Any sign pursuant to this subsection shall be substantially identical to the sign
20 attached as Exhibit F (but names of Covered Products may change so as to list only those
21 Covered Products which require a warning). The sign must be rectangular and at least 5 inches
22 x 7 inches in size, with the word "WARNING" in bold and entered one-half of an inch from
23 the top of the sign all in one-half inch capital letters. For the body of the warning message, left
24 and right margins of at least one-half of an inch, and a bottom margin of at least one-half inch
25 shall be observed. Larger signs shall bear substantially the same proportions of type size and
26 spacing to sign dimension as a sign that is 5 inches x 7 inches in size. Each sign shall name
27 each Covered Product that requires the Warning pursuant to Section 3.1. If Sunwarrior warns
28 under this Section 3.4(1)(B)(2), for any retail store not operated by Sunwarrior, then

1 Sunwarrior shall provide the sign to the retail store, send the Warning Instruction Letter, and
2 comply with all other requirements under Section 3.4(1)(A)(iii) above.

3 **3.5 Warning Method No. 3 (Website Warning)**

4 The Warning stated in Section 3.2 shall be given in conjunction with all sales of the
5 Covered Products via the Internet, and such Warning shall appear in at least one of the
6 following ways: (a) on the same web page on which the Covered Product is displayed; (b) on
7 the same web page as the order form for the Covered Product; (c) on the same page as the price
8 for any Covered Product; (d) on one or more web pages displayed to a purchaser during the
9 checkout process; (e) an "Insert Warning" as defined below; or (f) an "Invoice Warning" as
10 defined below. The Warning stated in Section 3.2 shall be used and shall appear in any of the
11 above instances adjacent to or immediately following the display, description, or price of the
12 Covered Product for which it is given, in the same type size or larger than the text of the
13 Covered Product's description.

14 Insert Warning: Where the Covered Product is being shipped to a consumer in
15 California and may be returned by the consumer for a full refund with no extra charge or
16 shipping or handling fee, the warning stated in Section 3.2 may be displayed on the invoice or
17 other package insert that accompanies each box of Covered Products going to a consumer in
18 California. The insert warning shall be a minimum of 5 inches x 7 inches, shall name each
19 Covered Product in the shipment that requires a Warning, and shall be substantially identical to
20 the insert warning attached as Exhibit F (but the names of Covered Products may change so as
21 to list only those Covered Products which require a Warning). The Insert Warning shall state
22 the name(s) of the products subject to the Warning, or a list of all of the Covered Products. No
23 other statements about Proposition 65 or lead may accompany the Warning on the invoice or
24 other package insert, except that Sunwarrior may refer consumers to a single website for further
25 information. Any Warning printed on an invoice must be in a type size at least as tall as the
26 largest letter in the name of the Covered Product printed on the invoice.

27 Invoice Warning: Where the Covered Product may be returned by the consumer for a
28 full refund with no extra charge or shipping or handling fee, the Warning may alternatively be

1 displayed on an invoice that accompanies the shipment of the Covered Product. The Warning
2 shall be displayed with such conspicuousness, as compared with other words, statements,
3 designs, or devices on the invoice, as to render it likely to be read and understood by an
4 ordinary individual prior to use. A Warning printed on an invoice must be on the front of the
5 invoice and in a type size that is 1) at least as tall as the largest letter or numeral in the name of
6 the Covered Product printed on the invoice, or 2) at least as tall as the largest of any other
7 health or safety warnings on the invoice, whichever is larger. The Invoice Warning shall be
8 substantially identical to the invoice warning attached as Exhibit G.

9 **3.6 Warning Method No. 4 (Printed Catalog)**

10 For Covered Products sold to California consumers through a printed catalog, the
11 Warning shall be prominently displayed on each catalog page that contains a description of the
12 ingredients or attributes of the Covered Product. Where the Covered Product may be returned
13 by the consumer for a full refund with no extra charge or shipping or handling fee, the Warning
14 may alternatively be displayed on the invoice or other package insert as pursuant to Section 3.5.

15 **3.7 Calculation of Lead Levels**

16 As used in this Consent Judgment, “no more than 0.5 micrograms of lead per day”
17 means that the samples of the testing performed by Sunwarrior under Section 3.9 yield a daily
18 exposure of no more than that level of lead calculated pursuant to this Section of this Consent
19 Judgment. For products that cause exposures in excess of the foregoing level, Sunwarrior shall
20 provide the warning set forth in Section 3.2.

21 For purposes of this Consent Judgment and determining Defendant’s compliance with
22 Proposition 65, daily lead exposure levels shall be calculated using the following formula:
23 micrograms of lead per gram of product, multiplied by 2.5 grams for covered powder products
24 and by 1.0 grams for covered greens powder product (Ormus Supergreens), multiplied by one
25 serving per day (provided there are no directions or suggested uses on the product label to
26 consume more than once per day), which equals micrograms of lead exposure per day.

27 For the purposes of this Consent Judgment and determining Defendant’s compliance
28 with Proposition 65, Defendant shall be afforded a naturally occurring allowance of up to one

1 (1) part per million (1000 ppb) of lead for any cocoa powder in the Covered Products, pursuant
2 to the letter dated September 28, 2001 from the Attorney General to Roger Lane Carrick and
3 Michele Corash.

4 **3.8 Reformulated Covered Products**

5 A Reformulated Covered Product is one for which the maximum recommended daily
6 serving on the label contains no more than 0.5 micrograms of lead per day as calculated
7 pursuant to section 3.7.

8 **3.9 Testing and Quality Control Methodology**

9 (a) Beginning within one year of the Effective Date, Sunwarrior shall conduct
10 testing of the Covered Products for lead content for a minimum of four (4) consecutive years,
11 except that the testing requirement of this Consent Judgment does not apply to any of the
12 Covered Products for which Sunwarrior has provided the warning specified in Section 3.2. For
13 purposes of determining which warning, if any, is required pursuant to Section 3.2, the second-
14 highest lead detection result of the three (3) randomly selected samples of the Covered Products
15 will be controlling.

16 (b) All testing for lead required by this Consent Judgment shall be performed using
17 Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") or any other testing method
18 subsequently agreed to in writing by the Parties.

19 (c) All testing pursuant to this Consent Judgment shall be performed by an
20 independent third-party laboratory certified by the California Environmental Laboratory
21 Accreditation Program or a laboratory that is registered with the United States Food & Drug
22 Administration.

23 (d) Sunwarrior shall test each of the Covered Products at least once a year for a
24 minimum of four (4) consecutive years by testing three (3) randomly selected samples of each
25 Covered Product (in the form intended for sale to the end-user) which Sunwarrior intends to
26 sell or is manufacturing for sale in California, directly selling to a consumer in California, or
27 Distributing into California. If tests conducted pursuant to this Section demonstrate that no
28 warning is required for a Covered Product during each of four (4) consecutive years, then the

1 testing requirements of this Section will no longer be required as to that Covered Product.
2 However, if during or after the four (4) year period, Sunwarrior changes ingredient suppliers
3 for any of the Covered Products and/or reformulates any of the Covered Products, Sunwarrior
4 shall test that Covered Product annually for at least four (4) consecutive years after such change
5 is made.

6 (e) Sunwarrior shall retain all test results and documentation for a period of four (4)
7 years from the date of each test. Sunwarrior shall arrange for the laboratory conducting the
8 testing specified in Section 3.9(d) to send the test results to ERC within ten (10) days of
9 conducting each test. For testing conducted pursuant to subsection 3.9(d), Sunwarrior shall
10 send such test results to ERC on or before the yearly anniversary of the Effective Date for a
11 period of four (4) years after the Effective Date. Nothing in this Consent Judgment shall limit
12 Sunwarrior's ability to conduct, or require that others conduct, additional testing of the Covered
13 Products, including the raw materials used in their manufacture.

14 (f) All testing pursuant to Section 3.9 that Sunwarrior releases to ERC shall be
15 maintained confidentially by ERC and shall not be published, disseminated, or publically
16 released by ERC, except as required by law.

17 **4. SETTLEMENT PAYMENT**

18 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
19 penalties, attorney's fees, and costs, Sunwarrior shall make a total payment of \$154,750.00
20 to ERC within ten (10) days of the Effective Date. Sunwarrior shall make this payment by wire
21 transfer to ERC's escrow account, for which ERC will give Sunwarrior the necessary account
22 information. Said payment shall be for the following:

23 **4.2** \$45,740.00 shall be payable as civil penalties pursuant to California Health and
24 Safety Code section 25249.7(b)(1). Of this amount, \$34,305.00 shall be payable to the Office
25 of Environmental Health Hazard Assessment ("OEHHA") and \$11,435.00 shall be payable to
26 Environmental Research Center. California Health and Safety Code section 25249.12(c)(1) &
27 (d). ERC will be responsible for forwarding the civil penalty.
28

1 **4.3** \$29,571.00 shall be payable to Environmental Research Center as
2 reimbursement to ERC for (A) reasonable costs associated with the enforcement of Proposition
3 65 and other costs incurred as a result of work in bringing this action; and (B) \$55,544.00
4 shall be payable to Environmental Research Center in lieu of further civil penalties, for the day-
5 to-day business activities such as (1) continued enforcement of Proposition 65, which includes
6 work, analyzing, researching and testing consumer products that may contain Proposition 65
7 chemicals, focusing on the same or similar type of ingestible products that are the subject
8 matter of the current action; (2) the continued monitoring of past consent judgments and
9 settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
10 donation of \$2,795.00 to the Center For Environmental Health to address reducing toxic
11 chemical exposures in California.

12 **4.4** \$23,895.00 shall be payable to Michael Freund as reimbursement of ERC's
13 attorney's fees

14 **5. MODIFICATION OF CONSENT JUDGMENT**

15 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
16 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
17 judgment.

18 **5.2** If Sunwarrior seeks to modify this Consent Judgment under Section 5.1, then
19 Sunwarrior must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
20 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
21 provide written notice to Sunwarrior within thirty (30) days of receiving the Notice of Intent. If
22 ERC notifies Sunwarrior in a timely manner of ERC's intent to meet and confer, then the
23 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
24 person within thirty (30) days of ERC's notification of its intent to meet and confer. Within
25 thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall provide
26 to Sunwarrior a written basis for its position. The Parties shall continue to meet and confer for
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1 an additional thirty (30) days in an effort to resolve any remaining disputes. The Parties may
2 agree in writing to different deadlines for the meet-and-confer period.

3 **5.3** Where the meet-and-confer process does not lead to a joint motion or
4 application in support of a modification of the Consent Judgment, then either Party may seek
5 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and
6 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
7 means a party who is successful in obtaining relief more favorable to it than the relief that the
8 other party was amenable to providing during the Parties' good faith attempt to resolve the
9 dispute that is the subject of the modification.

10 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
11 **JUDGMENT**

12 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
13 this Consent Judgment.

14 **6.2** Only after it complies with Section 15 below may any Party, by motion or
15 application for an order to show cause filed with this Court, enforce the terms and conditions
16 contained in this Consent Judgment.

17 **6.3** If ERC alleges that any Covered Product fails to qualify as a Reformulated
18 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
19 inform Sunwarrior in a reasonably prompt manner of its test results, including information
20 sufficient to permit Sunwarrior to identify the Covered Products at issue. Sunwarrior shall,
21 within thirty (30) days following such notice, provide ERC with testing information, from an
22 independent third-party laboratory meeting the requirements of Sections 3.9, demonstrating
23 Defendant's compliance with the Consent Judgment, if warranted. The Parties shall first
24 attempt to resolve the matter prior to ERC taking any further legal action.

25 **7. APPLICATION OF CONSENT JUDGMENT**

26 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
27 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
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1 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
2 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
3 application to Covered Products which are distributed or sold exclusively outside the State of
4 California and which are not used by California consumers. This Consent Judgment shall
5 terminate without further action by any Party when Sunwarrior no longer manufactures,
6 distributes or sells all of the Covered Products and all of such Covered Products previously
7 “distributed for sale in California” have reached their expiration dates and are no longer sold.
8

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

11 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
12 behalf of itself and in the public interest, and Sunwarrior, of any alleged violation of
13 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
14 exposure to lead from the handling, use, or consumption of the Covered Products and fully
15 resolves all claims that have been or could have been asserted in this action up to and including
16 six months after the Effective Date for failure to provide Proposition 65 warnings for the
17 Covered Products. ERC, on behalf of itself and in the public interest, hereby discharges
18 Sunwarrior and its respective officers, directors, shareholders, employees, agents, parent
19 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not
20 including private label customers of Sunwarrior), distributors, wholesalers, retailers, and all
21 other upstream and downstream entities in the distribution chain of any Covered Product, and
22 the predecessors, successors and assigns of any of them (collectively, “Released Parties”), from
23 any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,
24 fees, costs and expenses asserted, or that could have been asserted, as to any alleged violation
25 of Proposition 65 arising from the failure to provide Proposition 65 warnings on the Covered
26 Products regarding lead.
27
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1 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released
2 Parties from all known and unknown claims for alleged violations of Proposition 65 arising
3 from or relating to sales or distribution of the Covered Products or to alleged exposures to lead
4 in the Covered Products as set forth in the Notice of Violation up to and including six months
5 after the Effective Date. It is possible that other claims not known to the Parties arising out of
6 the facts alleged in the Notice of Violation or the Complaint and relating to the Covered
7 Products will develop or be discovered. ERC, on behalf of itself only, acknowledges that this
8 Consent Judgment is expressly intended to cover and include all such claims, including all
9 rights of-action therefore. ERC has full knowledge of the contents of California Civil Code
10 section 1542. ERC, on behalf of itself only, acknowledges that the claims released in Sections
11 8.1 and 8.2 above may include unknown claims, and nevertheless waives California Civil Code
12 section 1542 as to any such unknown claims. California Civil Code section 1542 reads as
13 follows:
14

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

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

22 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
23 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures
24 to lead in the Covered Products as set forth in the Notice of Violation and the Complaint.

25 **8.4** Nothing in this Consent Judgment is intended to apply to any occupational or
26 environmental exposures arising under Proposition 65, nor shall it apply to any of Sunwarrior's
27 products other than the Covered Products.
28

1 **8.5** ERC and Sunwarrior each release and waive all claims they may have against
2 each other for any statements or actions made or undertaken by them in connection with the
3 Notice of Violation or the Complaint; provided, however, that nothing in Section 8 shall affect
4 or limit any Party's right to seek to enforce the terms of this Consent Judgment.

5 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

6 In the event that any of the provisions of this Consent Judgment is held by a court to be
7 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.
8

9 **10. GOVERNING LAW**

10 The terms and conditions of this Consent Judgment shall be governed by and construed in
11 accordance with the laws of the State of California.
12

13 **11. PROVISION OF NOTICE**

14 All notices required to be given to either Party to this Consent Judgment by the other shall
15 be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified
16 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.
17

18 **FOR ENVIRONMENTAL RESEARCH CENTER:**

19 Chris Heptinstall, Executive Director
20 Environmental Research Center
21 3111 Camino Del Rio North, Suite 400
22 San Diego, CA 92108

23 With a copy to:

24 Michael Freund (SBN 99687)
25 Ryan Hoffman (SBN 283297)
26 Michael Freund & Associates
27 1919 Addison Street, Suite 105
28 Berkeley, California 94704-1101

29 **FOR SUN BROTHERS, LLC dba SUNWARRIOR**

30 Thad Seegmiller
31 General Counsel

1 Sun Brothers, LLC dba Sunwarrior
2 754 West Pioneer Blvd. Suite 101
3 Mesquite, NV 89027

4 With a copy to:

5 Monty Agarwal (SBN 191568)
6 Arnold & Porter LLP
7 Three Embarcadero Center, 7th Floor
8 San Francisco, CA 94111

9 **12. COURT APPROVAL**

10 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be
11 void and have no force or effect.

12 **12.2** ERC shall comply with California Health and Safety Code section 25249.7(f)
13 and with Title II of the California Code Regulations, Section 3003.

14 **13. EXECUTION AND COUNTERPARTS**

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

18 **14. DRAFTING**

19 The terms of this Consent Judgment have been reviewed by the respective counsel for the
20 each Party to this Settlement prior to its signing, and each Party has had an opportunity to fully
21 discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and
22 construction of this Consent Judgment entered thereon, the terms and provisions shall not be
23 construed against any Party.

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

25 If a dispute arises with respect to either Party's compliance with the terms of this Consent
26 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
27 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
28

1 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is
2 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
3 used in the preceding sentence, the term "prevailing party" means a party who is successful in
4 obtaining relief more favorable to it than the relief that the other party was amenable to providing
5 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement
6 action.
7

8 **16. ENTIRE AGREEMENT, AUTHORIZATION**

9 16.1 This Consent Judgment contains the sole and entire agreement and
10 understanding of the Parties with respect to the entire subject matter herein, and any and all
11 prior discussions, negotiations, commitments and understandings related hereto. No
12 representations, oral or otherwise, express or implied, other than those contained herein have
13 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
14 herein, shall be deemed to exist or to bind any Party.
15

16 16.2 Each signatory to this Consent Judgment certifies that he or she is fully
17 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
18 explicitly provided herein, each Party shall bear its own fees and costs.

19 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
20 **CONSENT JUDGMENT**

21 This Consent Judgment has come before the Court upon the request of the Parties. The
22 Parties request the Court to fully review this Consent Judgment and, being fully informed
23 regarding the matters which are the subject of this action, to:

24 (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable
25 settlement of all matters raised by the allegations of the Complaint, that the matter has been
26 diligently prosecuted, and that the public interest is served by such settlement; and
27

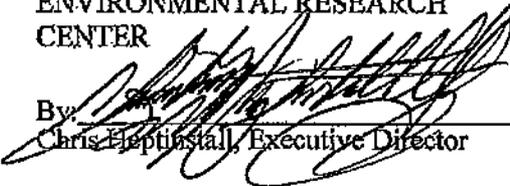
28 (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4),

1 approve the Settlement, and approve this Consent Judgment.
2

3 **IT IS SO STIPULATED:**

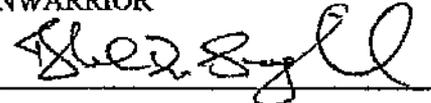
4 Dated: 7/5/, 2014

ENVIRONMENTAL RESEARCH
CENTER

5
6 By: 
7 Chris Heptinstall, Executive Director

8
9 Dated: July 3, 2014

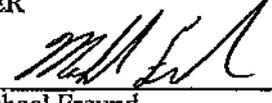
SUN BROTHERS, LLC dba
SUNWARRIOR

10
11 By: 

12
13 **APPROVED AS TO FORM:**

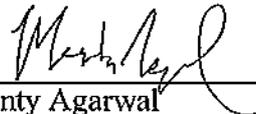
14 Dated: July 6, 2014

ENVIRONMENTAL RESEARCH
CENTER

15
16 By: 
17 Michael Freund
18 Ryan Hoffman
19 Counsel for ENVIRONMENTAL
20 RESEARCH CENTER
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1 Dated: July 3, 2014

SUN BROTHERS, LLC dba
SUNWARRIOR

2
3 By: 
4 Monty Agarwal
5 Counsel for SUN BROTHERS, LLC
6 dba SUNWARRIOR
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JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

Dated: _____, 2014

Judge of the Superior Court