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4 Attorney for Plaintiff  
5 ENVIRONMENTAL RESEARCH CENTER

6 Attorney for Defendant  
7 HEARTLAND PRODUCTS, INC.

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9  
10  
11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
12 CENTRAL DISTRICT, STANLEY MOSK COURTHOUSE

13 ENVIRONMENTAL RESEARCH  
14 CENTER, a California non-profit  
corporation,

15 Plaintiff,

16 v.

17 HEARTLAND PRODUCTS, INC. and  
18 DOES 1-25, Inclusive,

19 Defendants.

CASE NO. BC537505

STIPULATED CONSENT JUDGMENT;  
[PROPOSED] ORDER

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 4, 2014  
Trial Date: None set

20  
21 **1. INTRODUCTION**

22 **1.1** On March 4, 2014, Plaintiff Environmental Research Center (“ERC”), a non-  
23 profit corporation, as a private enforcer, and in the public interest, initiated this action by filing  
24 a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the  
25 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),  
26 against Heartland Products, Inc. (“Heartland”). In this action, ERC alleges that a number of  
27 products manufactured, distributed or sold by Heartland contain lead, a chemical listed under  
28 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical

1 at a level requiring a Proposition 65 warning. These products (referred to hereinafter  
2 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Heartland  
3 Products Inc. Uber Greens; (2) Heartland Products Inc. Omega Greens Delicious Berry Flavor;  
4 and (3) Heartland Products Inc. Uber Flax with Chia.

5 **1.2** ERC and Heartland are hereinafter referred to individually as a “Party” or  
6 collectively as the “Parties.”

7 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,  
8 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
9 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
10 encouraging corporate responsibility.

11 **1.4** ERC alleges and Heartland disputes that Heartland is a business entity that has  
12 employed ten or more persons at all times relevant to this action, and qualifies as a “person in the  
13 course of business” within the meaning of Proposition 65. Heartland manufactures, distributes  
14 and sells the Covered Products.

15 **1.5** On November 18, 2014, Heartland filed a Chapter 7 bankruptcy petition in the  
16 United States Bankruptcy Court for the District of North Dakota. *See* Petition, *In re Heartland*  
17 *Products, Inc.*, No. 14-30603 (Bankr. N.D.), at Dkt. No. 1. As of the Effective date of this  
18 agreement, Heartland’s assets have been liquidated (or are being liquidated), Heartland is under  
19 the control of the bankruptcy trustee, and Heartland no longer continues in business. Moreover,  
20 on November 20, 2015, Heartland served notice of the automatic stay in this case.

21 **1.6** In May 2015, the parties mutually resolved this dispute through the North Dakota  
22 bankruptcy proceeding. That settlement agreement is hereby incorporated and attached as Exhibit  
23 B. To the extent any material terms in this document contradict or alter the material terms in  
24 Exhibit B hereto, those terms in Exhibit B shall govern, control, and bind the parties.

25 **1.7** Heartland, the only named and identified Defendant in this case, is under the  
26 jurisdiction of the North Dakota Bankruptcy Court and, with the approval of that federal court,  
27 Heartland served its Notice of Termination or Modification of Stay on July 1, 2015, the  
28 purpose of which was to facilitate this instant agreement.

1           **1.8**     The Complaint is based on allegations contained in ERC’s Notice of Violation  
2 dated September 13, 2013, that was served on the California Attorney General, other public  
3 enforcers, and Heartland (“Notice”). A true and correct copy of the Notice is attached as  
4 Exhibit A and is hereby incorporated by reference. More than 60 days passed since the Notice  
5 was mailed and uploaded to the Attorney General’s website, and no designated governmental  
6 entity has filed a complaint against Heartland with regard to the Covered Products or the  
7 alleged violations.

8           **1.9**     ERC’s Notice and Complaint allege that use of the Covered Products exposes  
9 persons in California to lead without first providing clear and reasonable warnings in violation  
10 of California Health and Safety Code section 25249.6. Heartland denies all material allegations  
11 contained in the Notice and Complaint.

12           **1.10**    The Parties have entered into this Consent Judgment in order to settle,  
13 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
14 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
15 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
16 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,  
17 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
18 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
19 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
20 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
21 purpose.

22           **1.11**    Except as expressly set forth herein, nothing in this Consent Judgment shall  
23 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
24 other or future legal proceeding unrelated to these proceedings.

25           **1.12**    The Effective Date of this Consent Judgment is the date on which it is entered as  
26 a Judgment by this Court.

27           **2.    JURISDICTION AND VENUE**

28           For purposes of this Consent Judgment and any further court action that may become

1 necessary to enforce this Consent Judgment, and to the extent Heartland remains a viable  
2 corporate entity, the Parties stipulate that this Court has subject matter jurisdiction over the  
3 allegations of violations contained in the Complaint, personal jurisdiction over Heartland as to the  
4 acts alleged in the Complaint, that venue is proper in Los Angeles County, and that this Court has  
5 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims up through  
6 and including the Effective Date which were or could have been asserted in this action based on  
7 the facts alleged in the Notice and Complaint.

8 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

9 **3.1** Beginning on the Effective Date, to the extent Heartland continues business  
10 operations, it shall be permanently enjoined from manufacturing for sale in the State of  
11 California, "Distributing into the State of California," or directly selling in the State of  
12 California, any of the identified Covered Products which expose a person to a "Daily Lead  
13 Exposure Level" of more than 0.5 micrograms of lead per day when the maximum suggested  
14 dose is taken as directed on the Covered Product's label, unless it meets the warning  
15 requirements under Section 3.2.

16 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
17 of California" shall mean to directly ship a Covered Product into California for sale in  
18 California or to sell a Covered Product to a distributor that Heartland knows will sell the  
19 Covered Product in California.

20 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure  
21 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
22 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
23 product (using the largest serving size appearing on the product label), multiplied by servings  
24 of the product per day (using the largest number of servings in a recommended dosage  
25 appearing on the product label), which equals micrograms of lead exposure per day.

26 **3.2 Clear and Reasonable Warnings**

27 If Heartland is required to provide a warning pursuant to Section 3.1, the following  
28 warning must be utilized:

1           **WARNING: This product contains lead, a chemical known to the State of California**  
2           **to cause [cancer and] birth defects or other reproductive harm.**

3 Heartland shall use the phrase “cancer and” in the warning only if the maximum daily dose  
4 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
5 the quality control methodology set forth in Section 3.4.

6           The warning shall be securely affixed to or printed upon the container or label of each  
7 Covered Product. In addition, for Covered Products sold over Heartland’s website, the warning  
8 shall appear on Heartland’s checkout page on its website for California consumers identifying  
9 any Covered Product, and also appear prior to completing checkout on Heartland’s website when  
10 a California delivery address is indicated for any purchase of any Covered Product.

11           The warning shall be at least the same size as the largest of any other health or safety  
12 warnings also appearing on its website or on the label or container of Heartland’s product  
13 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No other  
14 statements about Proposition 65 or lead may accompany the warning.

15           Heartland must display the above warnings with such conspicuousness, as compared with  
16 other words, statements, or design of the label or container, as applicable, to render the warning  
17 likely to be read and understood by an ordinary individual under customary conditions of purchase  
18 or use of the product.

19           **3.3     Quality Control Methodology**

20           **3.2.1** All testing pursuant to this Consent Judgment shall be performed using a  
21 laboratory method that complies with the performance and quality control factors appropriate  
22 for the method used, including limit of detection, qualification, accuracy, and precision that  
23 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)  
24 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
25 method subsequently agreed to in writing by the Parties.

26           **3.2.2** All testing pursuant to this Consent Judgment shall be performed by an  
27 independent third party laboratory certified by the California Environmental Laboratory  
28

1 Accreditation Program or an independent third-party laboratory that is registered with the  
2 United States Food & Drug Administration.

3 **4. SETTLEMENT PAYMENT**

4 **4.1** Heartland and the Trustee in Bankruptcy Case No. 14-30603 stipulated that the  
5 stay imposed by Heartland's bankruptcy has been lifted only so that ERC and the Debtor can  
6 enter into this negotiated consent judgment for the sum of \$100,000.00 ("Total Settlement  
7 Amount") in full satisfaction of all potential civil penalties, payment in lieu of civil penalties,  
8 attorney's fees, and costs. ERC will receive its pro-rata portion of the estate which ERC shall  
9 apportion as follows:

10 **4.2** \$12,298.08 shall be considered a civil penalty pursuant to California Health and  
11 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$9,223.56) of the civil penalty to the  
12 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
13 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
14 Code §25249.12(c). ERC will retain the remaining 25% (\$3,074.52) of the civil penalty.

15 **4.3** \$1,394.60 shall be distributed to ERC as reimbursement to ERC for reasonable  
16 costs incurred in bringing this action.

17 **4.4** \$33,170.75 shall be distributed to William F. Wraith as reimbursement of  
18 ERC's attorney's fees, \$2,938.48 shall be distributed to ERC for reimbursement of Michael L.  
19 Gust's attorney's fees, and \$20,198.09 shall be distributed to ERC for its in-house legal fees.

20 **4.5** The remainder, if any, of ERC's pro rata share of \$100,000.00 after the penalty in  
21 Section 4.2 and the fees and costs in Sections 4.3 and 4.4 are deducted shall be distributed to  
22 ERC in lieu of further civil penalties, for the day-to-day business activities such as (1) continued  
23 enforcement of Proposition 65, which includes work, analyzing, researching and testing  
24 consumer products that may contain Proposition 65 chemicals, focusing on the same or similar  
25 type of ingestible products that are the subject matter of the current action; (2) the continued  
26 monitoring of past consent judgments and settlements to ensure companies are in compliance  
27 with Proposition 65.

1     **5.    MODIFICATION OF CONSENT JUDGMENT**

2           **5.1**    This Consent Judgment may be modified only (i) by written stipulation of the  
3 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
4 judgment.

5     **6.    RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
6           **JUDGMENT**

7           **6.1**    This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
8 this Consent Judgment.

9     **7.    APPLICATION OF CONSENT JUDGMENT**

10           This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
11 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
12 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,  
13 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
14 application to the Covered Products which are distributed or sold exclusively outside the State of  
15 California, which are not used by California consumers.

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

17           **8.1**    This Consent Judgment is a full, final, and binding resolution between ERC, on  
18 behalf of itself and in the public interest, and Heartland, of any alleged violation of Proposition  
19 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to  
20 lead from the handling, use, or consumption of the Covered Products and fully resolves all  
21 claims that have been or could have been asserted in this action up to and including the  
22 Effective Date for failure to provide Proposition 65 warnings for the Covered Products. ERC,  
23 on behalf of itself and in the public interest, hereby discharges Heartland and its respective  
24 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
25 affiliates, suppliers, franchisees, licensees, customers (not including private label customers of  
26 Heartland), distributors, wholesalers, retailers, and all other upstream and downstream entities  
27 in the distribution chain of any Covered Product, and the predecessors, successors and assigns  
28 of any of them (collectively, "Released Parties"), from any and all claims, actions, causes of

1 action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that  
2 could have been asserted, as to any alleged violation of Proposition 65 arising from the failure  
3 to provide Proposition 65 warnings on the Covered Products regarding lead.

4 **8.2** ERC on its own behalf only, on one hand, and Heartland on its own behalf only,  
5 on the other, further waive and release any and all claims they may have against each other for  
6 all actions or statements made or undertaken in the course of seeking or opposing enforcement  
7 of Proposition 65 in connection with the Notice or Complaint up through and including the  
8 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
9 right to seek to enforce the terms of this Consent Judgment.

10 **8.3** It is possible that other claims not known to the Parties arising out of the facts  
11 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be  
12 discovered. ERC on behalf of itself only, on one hand, and Heartland, on the other hand,  
13 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
14 claims up through the Effective Date, including all rights of action therefore. ERC and  
15 Heartland acknowledge that the claims released in Sections 8.1 and 8.2 above may include  
16 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
17 unknown claims. California Civil Code section 1542 reads as follows:

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

21 ERC on behalf of itself only, on the one hand, and Heartland, on the other hand, acknowledge  
22 and understand the significance and consequences of this specific waiver of California Civil  
23 Code section 1542.

24 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
25 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
26 in the Covered Products as set forth in the Notice and the Complaint.



1           **8.5**    Nothing in this Consent Judgment is intended to apply to any occupational or  
2 environmental exposures arising under Proposition 65, nor shall it apply to any of Heartland's  
3 products other than the Covered Products.

4           **9.    SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7           **10.   GOVERNING LAW**

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

10          **11.   PROVISION OF NOTICE**

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

14 **FOR ENVIRONMENTAL RESEARCH CENTER:**

15 Chris Heptinstall, Executive Director, Environmental Research Center  
16 3111 Camino Del Rio North, Suite 400  
17 San Diego, CA 92108  
18 Tel: (619) 500-3090  
19 Email: chris\_erc501c3@yahoo.com

20 With a copy to:

21 WILLIAM F. WRAITH  
22 WRAITH LAW  
23 24422 Avenida de la Carlota, Suite 400  
24 Laguna Hills, CA 92653  
25 Tel: (949) 452-1234  
26 Fax: (949) 452-1102

27 **HEARTLAND PRODUCTS, INC.**

28 849 14th St. S.W.  
Valley City, ND 58072

With a copy to:

PETER A. ARHANGELSKY  
EMORD & ASSOCIATES  
3210 S. Gilbert Road, Suite 4  
Chandler, AZ 85286  
Ph: (602) 388-8899  
Fx: (602) 393-4361



1 used in the preceding sentence, the term “prevailing party” means a party who is successful in  
2 obtaining relief more favorable to it than the relief that the other party was amenable to providing  
3 during the Parties’ good faith attempt to resolve the dispute that is the subject of such enforcement  
4 action.

5 **16. ENTIRE AGREEMENT, AUTHORIZATION**

6 **16.1** This Consent Judgment and Exhibit “B” attached hereto contain the sole and  
7 entire agreement and understanding of the Parties with respect to the entire subject matter  
8 herein, and any and all prior discussions, negotiations, commitments and understandings related  
9 hereto. No representations, oral or otherwise, express or implied, other than those contained in  
10 this Consent Judgment and Exhibit “B” hereto have been made by any Party. No other  
11 agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or  
12 to bind any Party.

13 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
14 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
15 explicitly provided herein, each Party shall bear its own fees and costs.

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

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

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

24 (2) Make the findings pursuant to California Health and Safety Code section  
25 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

26  
27 **IT IS SO STIPULATED:**  
28

1 Dated: 7/14/, 2015

ENVIRONMENTAL RESEARCH  
CENTER

By: [Signature]  
Chris Heptinstall, Executive Director

2  
3  
4 Dated: 7-14-15, 2015

HEARTLAND PRODUCTS, INC.

5  
6 By: [Signature]  
Richard Dietrich

7  
8  
9 APPROVED AS TO FORM

10 Dated: 7/14, 2015

WRAITH LAW

11 By: [Signature]  
12 William F. Wraith  
13 Attorneys for Plaintiff, Environmental  
Research Center

14 Dated: 7/14, 2015

EMORD & ASSOCIATES

15  
16 [Signature]  
17 Peter A. Arhangelsky,  
Attorneys for Defendant Heartland Products  
Inc.

18  
19 ORDER AND JUDGMENT

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

22 IT IS SO ORDERED, ADJUDGED AND DECREED.

23 Dated: \_\_\_\_\_, 2015

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

# EXHIBIT A

# **WRAITH LAW**

16485 LAGUNA CANYON ROAD  
SUITE 250  
IRVINE, CALIFORNIA 92618  
Tel (949) 251-9977  
Fax (949) 251-9978

September 13, 2013

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, 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 Violator 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 Violator 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 attached with the copy of this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter “the Violator”) is:

**Heartland Products, Inc.**

**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:

**Heartland Products Inc. Uber Greens - Lead**

**Heartland Products Inc. Omega Greens Delicious Berry Flavor - Lead**

**Heartland Products Inc. Uber Flax with Chia - 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 September 13, 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 Violator 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 Violator 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,



---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Heartland Products, Inc. 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 Heartland Products, Inc.**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

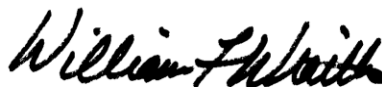
2. I am an attorney for the noticing party.

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 Violator 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: September 13, 2013



---

William F. Wraith



**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 September 13, 2013, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

President or CEO  
Heartland Products, Inc.  
849 14<sup>th</sup> St, SW  
PO Box 777  
Valley City, ND 58072-0777

Registered Agent for Heartland Products, Inc.  
Richard J Dietrich  
S Kathryn Rd  
PO Box 777  
Valley City, ND 58072-0777

On September 13, 2013, I electronically 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 party by uploading a true and correct copy thereof on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On September 13, 2013, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on September 13, 2013, in Fort Oglethorpe, Georgia.



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Tiffany Capehart

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

September 13, 2013

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**Service List**

District Attorney, Alameda County 1225 Fallon Street, Suite 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, Suite 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, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 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, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main 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 City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 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, Suite 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 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive 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 95354	
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 Blvd., Room 224 Visalia, CA 93291	

# EXHIBIT B

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NORTH DAKOTA**

In the Matter of:

Heartland Products, Inc.,

Case No. 14-30603

Chapter 7

Debtor.

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**STIPULATION FOR RELIEF FROM AUTOMATIC STAY AND SETTLEMENT OF  
OBJECTIONS TO PROOF OF CLAIM**

This Stipulation for Relief from Automatic Stay and Settlement Of Objections To Proof Of Claim ("Agreement") is hereby entered into by and between Environmental Resource Center, an unsecured creditor of the above-named Debtor; Richard Dietrich; and Heartland Products, Inc., through its bankruptcy trustee, Kip M. Kaler, the Chapter 7 Trustee assigned to the above-entitled matter.

WHEREAS, Heartland Products, Inc., filed a voluntary Chapter 7 Petition on November 18, 2014.

WHEREAS, Environmental Resource Center ("ERC") and Richard Dietrich ("Dietrich") allege to be unsecured creditors of the Debtor.

WHEREAS, ERC filed a Proof of Claim in the amount of \$20,200,000.00 on or about March 3, 2015. and such claim was objected to by attorney Bruce Madlom, purportedly acting on behalf of the Debtor and as attorney for Dietrich and the Trustee on or about March 31, 2015.

WHEREAS, ERC has sought relief from the automatic stay in order to continue its state court litigation in California against Debtor. The Motion for Relief from Stay was filed on March 17, 2015, as docket entry no. 14.

WHEREAS, Debtor (purportedly acting through attorney Bruce Madlom) and the Trustee, on March 31, 2015, as docket entry nos. 18 and 20 responded to ERC's Motion for Relief from Automatic Stay seeking that the same be denied.

WHEREAS, the Court has set for hearing the objections to ERC's Proof of Claim as well as ERC's Motion for Relief from Automatic Stay for May 12, 2015, at 9:30a.m.

WHEREAS, ERC, Debtor, Dietrich, and the Trustee, seek to settle their differences without the need for additional hearings on the matter.

NOWHEREFORE, ERC, Debtor, Dietrich, and the Trustee, for good and valuable consideration, the sufficiency of which is agreed to and acknowledged, hereby agree as follows:

1. The above-recitals are contractual in nature and therefore are made a part of this Agreement as if separately set forth in this paragraph 1.

2. Dietrich, Debtor and the Trustee hereby agree to and consent to ERC's Motion For Relief From The Automatic Stay being lifted with regards to ERC's claim against Debtor in the State of California. The stay is lifted only so that ERC and the Debtor can enter into a negotiated consent judgment for the sum of \$100,000.00. The negotiated consent judgment will be presented to the state court in California for approval. At the time of entering into this Agreement, all parties expect that the California state court will agree to enter the negotiated consent judgment as a judgment against Debtor.

3. In the event this agreement is not approved by the California state court, this agreement shall become void and the parties shall continue with the present motions and objections.

4. Upon entry of the consent judgment in the amount of \$100,000.00 in California state court, ERC will amend its Proof of Claim in the above-entitled matter to the amount of \$100,000.00, which shall be the limit of its claim and allowed as a claim against this bankruptcy estate. Dietrich, Debtor and Trustee agree that none of them will attempt to subordinate the debt due and owing to ERC and all agree that ERC shall share pro rata in any and all distributions to unsecured creditors.

5. Dietrich, a listed unsecured creditor of Debtor, has filed a Proof of Claim in the above-entitled matter. Upon entry of the consent judgment in favor of ERC in the amount of \$100,000.00 in California state court as contemplated in paragraph 4 above, Dietrich will withdraw his Proof of Claim. Dietrich, or any agent or representative on his behalf shall not be allowed a claim against this estate, if all other terms of this agreement occur, except his rights to receive distributions from the Debtor as stockholder.

6. This Agreement is subject to the approval of the United States Bankruptcy Court for the District of North Dakota, which the trustee shall promptly seek to obtain.

Dated this 14 day of May, 2015.


ENVIRONMENTAL RESOURCE CENTER

By:

Its

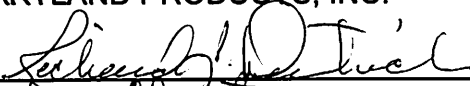
  
EXECUTIVE DIRECTOR

Dated this 7 day of May, 2015.

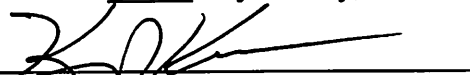
  
Richard Dietrich

Dated this 7 day of May, 2015.

HEARTLAND PRODUCTS, INC.

By:   
Its: President

Dated this 20<sup>th</sup> day of May, 2015.

  
Kip Kaler, Chapter 7 Trustee for the  
Debtor, Heartland Products, Inc.

# EXHIBIT C



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NORTH DAKOTA**

In re:	)	Bky. Case No. 14-30603
	)	Chapter 7
Heartland Products, Inc.,	)	
	)	<b>ORDER</b>
	)	
Debtor.	)	
_____	)	

On May 20, 2015, the Bankruptcy Trustee filed a motion seeking approval of a stipulation for relief from stay and settlement of objections to creditor Environmental Resource Center’s proof of claim. The stipulation was executed by the Trustee, Richard Dietrich and Environmental Resource Center. The Trustee served notice of the motion, which included a summary of the terms of the agreement, on interested parties. The Court received no objections. Based on the information provided by the Trustee and the documents filed in this case, the Court finds that the agreement is fair and equitable, reflects a balance of the risks of litigation with potential recovery and appears to be in the best interest of the bankruptcy estate. Therefore, **IT IS ORDERED** that the Motion For Approval of Settlement Agreement is **GRANTED**. The agreement filed as Document 32 is **APPROVED**.

IT IS ALSO ORDERED that Environmental Resource Center’s Motion for Relief from Stay [Doc. 14] is granted in part and denied in part. The motion is granted to the extent Environmental Resource Center seeks to negotiate entry of judgment in favor of Environmental Resource Center and against Debtor in the sum of \$100,000 and to seek approval of the negotiated agreement and entry of consent judgment in California state

court. The motion for relief from stay is denied to the extent Environmental Resource Center seeks additional relief.

The hearing on the Trustee's Objection to Claim Number 1 [Doc. 21] and Debtor Heartland Products' Objection to Claim Number 1 [Doc. 17] is continued for 45 days to allow Environmental Resource Center time to seek a consent judgment in state court and withdraw or amend its proof of claim.

Dated this 23rd day of June, 2015.

/s/ SHON HASTINGS  
Shon Hastings, Judge  
United States Bankruptcy Court