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ENVIRONMENTAL RESEARCH CENTER
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DESIGNS FOR HEALTH, INC.
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

15 ENVIRONMENTAL RESEARCH
16 CENTER, a California non-profit
corporation,

17 Plaintiff,

18 vs.

19 DESIGNS FOR HEALTH, INC. and DOES
20 1-100,

21 Defendants.
22

CASE NO. RG14729513

STIPULATED CONSENT JUDGMENT;
[PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: June 17, 2014
Trial Date: None set

23
24 **1. INTRODUCTION**

25 **I.1** On June 17, 2014, Plaintiff Environmental Research Center ("ERC"), a non-
26 profit corporation, as a private enforcer, initiated this action by filing a Complaint for
27 Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant to the
28 provisions of California Health and Safety Code section 25249.5 et seq. ("Proposition 65").

1 against Designs for Health, Inc. ("DFH") and DOES 1-100. In this action, ERC alleges that
2 the following products referred to hereinafter individually as "Covered Product" or collectively
3 as "Covered Products", manufactured, distributed or sold by DFH contain lead, a chemical
4 listed under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers at a
5 level requiring a Proposition 65 warning: (1) "Designs for Health Inc. PaleoGreens Lemon-
6 Lime Flavor;" (2) "Designs for Health Inc. EssentiaGreens Orange/Cranberry Flavor;"
7 (3) "Designs for Health Inc. PaleoGreens Mint Flavor;" (4) "Designs for Health Inc. GI-
8 Revive;" (5) "Designs for Health Inc. PurePea Natural Vanilla Flavor;" (6) "Designs for Health
9 Inc. EssentiaMeal-DF Natural Vanilla Flavor;" (7) "Designs for Health Inc. Hepatatonc Plus;"
10 (8) "Designs for Health Inc. EndoTrim;" (9) "Designs for Health Inc. HistaEze;" (10) "Designs
11 for Health Inc. Metal-X-Synergy;" (11) "Designs for Health Inc. GlucoSupreme Herbal;" and
12 (12) "Designs for Health Inc. Kidney Korrekt."

13 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
14 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
15 and toxic chemicals, facilitating a safe environment for consumers and employees, and
16 encouraging corporate responsibility.

17 1.3 DFH is a Florida Corporation that, at all relevant times for the purpose of this
18 Consent Judgment, employed ten or more persons and qualified as a "person in the course of
19 business" within the meaning of Proposition 65. DFH manufactures, distributes and sells the
20 Covered Products.

21 1.4 ERC and DFH are referred to individually as "Party" or collectively as the
22 "Parties."

23 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation,
24 dated September 13, 2013, that was served on the California Attorney General, other public
25 enforcers, and DFH ("Notice"). A true and correct copy of the Notice is attached as Exhibit A
26 and is hereby incorporated by reference. More than 60 days have passed since the Notice was
27 mailed and uploaded onto the Attorney General's website, and no designated governmental
28 entity has filed a complaint against DFH with regard to the Covered Products or the alleged

1 violations.

2 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes
3 persons in California to lead without first providing clear and reasonable warnings in violation
4 of California Health and Safety Code section 25249.6. DFH denies all material allegations
5 contained in the Notice and Complaint and specifically denies that the Covered Products
6 required a Proposition 65 warning or otherwise caused harm to any person.

7 1.7 The Parties have entered into this Consent Judgment in order to settle,
8 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
9 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
10 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
11 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
12 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
13 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
14 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
15 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
16 purpose.

17 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
18 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
19 other or future legal proceeding unrelated to these proceedings.

20 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
21 a Judgment by this Court.

22 2. **JURISDICTION AND VENUE**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 subject matter jurisdiction over the allegations of violations contained in the Complaint, personal
25 jurisdiction over DFH as to the acts alleged in the Complaint, that venue is proper in Alameda
26 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
27 resolution of all claims up through and including the Effective Date which were or could have
28 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

2 **3.1** Beginning on the Effective Date, DFH shall be permanently enjoined from
3 "Distributing into California", or directly selling to a consumer in California, any Covered
4 Product which exposes a person to a "Daily Lead Exposure Level" of more than 0.5
5 micrograms per day when the maximum suggested dose is taken as directed on the Covered
6 Product's label, unless it meets the warning requirements under Section 3.2.

7 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
8 of California" shall mean to directly ship a Covered Product into California for sale in
9 California or to sell a Covered Product to a distributor that DFH knows will sell the Covered
10 Product in California.

11 **3.1.2** For purposes of this Consent Judgment only, "Daily Lead Exposure
12 Level" means the maximum daily dose recommended on the label. Daily Lead Exposure Level
13 shall be measured in micrograms, and shall be calculated using the following formula:
14 micrograms of lead per gram of product, multiplied by grams of product per serving of the
15 product (using the largest serving size appearing on the product label), multiplied by servings
16 of the product per day (using the largest number of servings in a recommended dosage
17 appearing on the product label), which equals micrograms of lead exposure per day.

18 **3.2 Clear and Reasonable Warnings**

19 If DFH is required to provide a warning pursuant to Section 3.1, the following warning
20 must be utilized:

21 **WARNING:** This product contains a substance known to the State of California to
22 cause [cancer and] birth defects or other reproductive harm.

23 DFH shall use the phrase "cancer and" in the warning only if the maximum daily dose
24 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
25 the quality control methodology set forth in Section 3.4.

26 The warning shall be securely affixed to or printed upon the container or label of each
27 Covered Product. In addition, for Covered Products sold over DFH's website and requiring a
28 warning pursuant to Section 3.1, the warning shall appear in at least one of the following ways:

1 (a) on DFH's checkout page on its website identifying any Covered Product to which the warning
2 applies when a California delivery address is indicated for any Covered Product; (b) on the same
3 web page on which the Covered Product is displayed; (c) on the same page as the price for any
4 Covered Product; or (d) on one or more web pages displayed to the purchaser during the checkout
5 process when a California delivery address is indicated for any Covered Product.

6 The warning shall be at least the same size as the largest of any other health or safety
7 warnings correspondingly appearing on website, label, or container of DFH's product packaging
8 and the word "WARNING" shall be in all capital letters and in bold print. No other statements
9 about Proposition 65 or lead may accompany the warning.

10 DFH must display the above warnings with such conspicuousness, as compared with other
11 words, statements, or design of the label or container, as applicable, to render the warning likely to
12 be read and understood by an ordinary individual under customary conditions of purchase or use
13 of the product.

14 3.3 Reformulated Covered Products

15 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when
16 the maximum suggested dose is taken as directed on the Reformulated Covered Product's label,
17 contains no more than 0.5 micrograms of lead per day as determined by the quality control
18 methodology described in Section 3.4.

19 3.4 Testing

20 3.4.1 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 upon in writing by the Parties.

26 3.4.2 All testing pursuant to this Consent Judgment shall be performed by an
27 independent third-party laboratory certified by the California Environmental Laboratory
28 Accreditation Program or an independent third-party laboratory that is registered with the

1 United States Food & Drug Administration. Nothing in this Consent Judgment shall limit
2 DFH's ability to conduct, or require that others conduct, additional testing of the Covered
3 Products, including the raw materials used in their manufacture.

4 3.4.3 DFH shall arrange at least once per year, for the lead testing of five
5 randomly selected samples of each Covered Product in the form intended for sale to the end-
6 user to be distributed or sold to California. For purposes of determining if a warning, if any, is
7 required pursuant to Section 3.2, the arithmetic mean of the test results of the samples tested
8 pursuant to this Section 3.4 will be controlling.

9 3.4.4 DFH shall continue testing so long as the Covered Products are sold in
10 California or sold to a third party for retail sale in California. If tests conducted pursuant to this
11 Section demonstrate that no warning is required for a Covered Product during each of five
12 consecutive years, then the testing requirements of this Section will no longer be required as to
13 that Covered Product. However, if after the five-year period, DFH changes ingredient suppliers
14 for a Covered Product and/or reformulates a Covered Product, DFH shall test that Covered
15 Product at least once after such change is made. The testing requirements discussed in Section
16 3.4 are not applicable to any Covered Product for which DFH has provided the warning as
17 specified in Section 3.2.

18 3.4.5 DFH shall retain all test results and documentation for a period of five
19 years from the date of each test.

20 4. SETTLEMENT PAYMENT

21 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil
22 penalties, attorney's fees, and costs, DFH shall make a total payment of \$84,250.00 ("Total
23 Settlement Amount") to ERC within ten (10) business days of the Effective Date. DFH shall
24 make this payment by wire transfer to ERC's escrow account, for which ERC will give DFH
25 the necessary account information. The Total Settlement Amount shall be apportioned as
26 follows:

27 4.2 \$15,100.00 shall be considered a civil penalty pursuant to California Health
28 and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$11,325.00) of the civil penalty to the

1 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
2 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
3 Code §25249.12(c). ERC will retain the remaining 25% (\$3,775.00) of the civil penalty.

4 4.3 \$1,781.06 shall be distributed to Environmental Research Center as
5 reimbursement to ERC for reasonable costs associated with the enforcement of Proposition 65
6 and other costs incurred as a result of work in bringing this action

7 4.4 \$33,075.00 shall be distributed to Michael Freund as reimbursement of
8 ERC's attorney's fees, and \$10,075.00 shall be distributed to Ryan Hoffman as reimbursement
9 of ERC's attorney's fees, while \$24,218.94 shall be distributed to ERC for its in-house legal
10 fees.

11 5. MODIFICATION OF CONSENT JUDGMENT

12 5.1 This Consent Judgment may be modified only (i) by written stipulation of
13 the Parties and (ii) upon entry by the Court of a modified consent judgment.

14 5.2 If DFH seeks to modify this Consent Judgment under Section 5.1, then DFH
15 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and
16 confer regarding the proposed modification in the Notice of Intent, then ERC must provide
17 written notice to DFH within thirty days of receiving the Notice of Intent. If ERC notifies DFH
18 in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and confer in
19 good faith as required in this Section. The Parties shall meet in person or via telephone within
20 thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty (30) days
21 of such meeting, if ERC disputes the proposed modification, ERC shall provide to DFH a
22 written basis for its position. The Parties shall continue to meet and confer for an additional
23 thirty (30) days in an effort to resolve any remaining disputes. Should it become necessary, the
24 Parties may agree in writing to different deadlines for the meet-and-confer period.

25 5.3 In the event that DFH initiates or otherwise requests a modification under
26 Section 5.1 for its primary benefit, and the meet and confer process leads to a joint motion or
27 application of the Consent Judgment, DFH shall reimburse ERC its costs and reasonable
28

1 attorney's fees for the time spent in the meet and confer process and filing and arguing the
2 motion or application.

3 5.4 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
13 terminate this Consent Judgment.

14 6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated
15 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
16 inform DFH in a reasonably prompt manner of its test results, including information sufficient
17 to permit DFH to identify the Covered Products at issue. DFH shall, within thirty (30) days
18 following such notice, provide ERC with testing information, from an independent third-party
19 laboratory meeting the requirements of Sections 3.4.1 and 3.4.2, demonstrating Defendant's
20 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve
21 the matter prior to ERC taking any further legal action.

22 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
3 on behalf of itself and in the public interest, and DFH, of any alleged violation of
4 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings
5 for exposure to lead from the handling, use, or consumption of the Covered Products and fully
6 resolves all claims that have been or could have been asserted in this action up to and including
7 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.
8 ERC, on behalf of itself and in the public interest, hereby releases and discharges DFH and its
9 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
10 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label
11 customers of DFH), distributors, wholesalers, retailers, and all other upstream and downstream
12 entities in the distribution chain of any Covered Product, and the predecessors, successors and
13 assigns of any of them (collectively, "Released Parties"), from any and all claims, actions,
14 causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses
15 asserted, or that could have been asserted, as to any alleged violation of Proposition 65 arising
16 from the failure to provide Proposition 65 warnings on the Covered Products regarding lead up
17 to and including the Effective Date.

18 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released
19 Parties from all known and unknown claims, causes of action, suits, damages, penalties,
20 liabilities, injunctive relief, declaratory relief, attorney's fees, costs, and expenses arising from
21 or related to the claims asserted or that could have been asserted, under state or federal law,
22 regarding the presence of lead in the Covered Products or the facts alleged in the Notice or the
23 Complaint, including without limitation any and all claims concerning exposure to any person
24 to lead in the Covered Products up to, and including, the Effective Date.

25 **8.3** ERC on its own behalf only, on one hand, and DFH on its own behalf only,
26 on the other, further waive and release any and all claims they may have against each other for
27 all actions or statements made or undertaken in the course of seeking or opposing enforcement
28 of Proposition 65 in connection with the Notice or Complaint up through and including the

1 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
2 right to seek to enforce the terms of this Consent Judgment. It is possible that other claims not
3 known to the Parties arising out of the facts alleged in the Notice or the Complaint and relating
4 to the Covered Products will develop or be discovered. ERC on behalf of itself only, and DFH
5 on behalf of its own self acknowledges that this Consent Judgment is expressly intended to
6 cover and include all such claims up through the Effective Date, including all rights of action
7 therefore. ERC and DFH acknowledge that the claims released in Sections 8.1 through 8.3
8 above may include unknown claims, and nevertheless waives California Civil Code section
9 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

14 ERC on behalf of itself only, and DFH on behalf of itself acknowledge and understand the
15 significance and consequences of this specific waiver of California Civil Code section 1542.
16 ERC represents, warrants, and covenants that it will not pursue any statutory or common law
17 claims that it may have with respect to the Covered Products. DFH represents that it
18 manufactures private label products that have the identical formulation as the Covered Products
19 ("DFH Private Label Products"). ERC represents, warrants, and covenants that it will not
20 pursue any statutory or common law claims against DFH that it may have with respect to the
21 DFH Private Label Products up to and including the Effective date.

22 8.4 Compliance with the terms of this Consent Judgment shall be deemed to
23 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures
24 to lead in the Covered Products.

25 8.5 Nothing in this Consent Judgment is intended to apply to any occupational
26 or environmental exposures arising under Proposition 65.

27 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

28 In the event that any of the provisions of this Consent Judgment are held by a court to be

unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

10. GOVERNING LAW

The terms and conditions of this Consent Judgment shall be governed by and construed in accordance with the laws of the State of California. In the event that Proposition 65 is repealed or preempted then DFH shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that the Covered Products are so affected.

11. PROVISION OF NOTICE

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

FOR ENVIRONMENTAL RESEARCH CENTER:

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Tel: (619) 500-3090
Email: chris_erc501c3@yahoo.com

With a copy to:

Michael Freund SBN 99687
Ryan Hoffman SBN 283297
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

FOR DESIGNS FOR HEALTH, INC.

Stephen Carruthers
General Counsel
Designs for Health, Inc.
980 South Street
Suffield, CT 06078

With a copy to:

Peg Carew Toledo SBN 181227
Peg Carew Toledo, Law Corporation
3001 Douglas Blvd., Suite 340
Roseville, CA 95661-3853

1
2 **12. COURT APPROVAL**

3 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
4 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
5 Consent Judgment.

6 12.2 If the California Attorney General objects to any term in this Consent
7 Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and
8 if possible prior to the hearing on the motion.

9 12.3 If this Consent Judgment is not approved by the Court, it shall be void and
10 have no force or effect.

11 **13. EXECUTION AND COUNTERPARTS**

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

15 **14. DRAFTING**

16 The terms of this Consent Judgment have been reviewed by the respective counsel for each
17 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms with
18 counsel. The Parties agree that this Consent Judgment was drafted jointly by the Parties and that
19 in any subsequent interpretation and construction of this Consent Judgment, the terms and
20 provisions shall not be construed against any Party.

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

22 If a dispute arises with respect to either Party's compliance with the terms of this Consent
23 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
24 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
25 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is
26 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
27 used in the preceding sentence, the term "prevailing party" means a party who is successful in
28 obtaining relief more favorable to it than the relief that the other party was amenable to providing

1 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement
2 action.

3 **16. ENTIRE AGREEMENT, AUTHORIZATION**

4 16.1 This Consent Judgment contains the sole and entire agreement and
5 understanding of the Parties with respect to the entire subject matter herein, and any and all
6 prior discussions, negotiations, commitments and understandings related hereto. No
7 representations, oral or otherwise, express or implied, other than those contained herein have
8 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
9 herein, shall be deemed to exist or to bind any Party.

10 16.2 Each signatory to this Consent Judgment certifies that he or she is fully
11 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
12 explicitly provided herein, each Party shall bear its own fees and costs.

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

15 This Consent Judgment has come before the Court upon the request of the Parties. The
16 Parties request the Court to fully review this Consent Judgment and, being fully informed
17 regarding the matters which are the subject of this action, make the findings pursuant to California
18 Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent
19 Judgment.

20
21 **IT IS SO STIPULATED:**

22 Dated: 4/15/, 2016

ENVIRONMENTAL RESEARCH
CENTER

23
24 By: 
Chris Hepburn, Executive Director

25
26 Dated: _____, 2016

DESIGNS FOR HEALTH, INC.

27
28 By: _____
Its: _____

1 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement
2 action.

3 **16. ENTIRE AGREEMENT, AUTHORIZATION**

4 16.1 This Consent Judgment contains the sole and entire agreement and
5 understanding of the Parties with respect to the entire subject matter herein, and any and all
6 prior discussions, negotiations, commitments and understandings related hereto. No
7 representations, oral or otherwise, express or implied, other than those contained herein have
8 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
9 herein, shall be deemed to exist or to bind any Party.

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15 This Consent Judgment has come before the Court upon the request of the Parties. The
16 Parties request the Court to fully review this Consent Judgment and, being fully informed
17 regarding the matters which are the subject of this action, make the findings pursuant to California
18 Health and Safety Code section 25249.7(E)(4), approve the Settlement, and approve this Consent
19 Judgment.

20
21 **IT IS SO STIPULATED:**

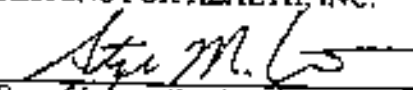
22 Dated: _____, 2016

ENVIRONMENTAL RESEARCH
CENTER

23
24 By: _____
Chris Heptinstall, Executive Director

25
26 Dated: January 18, 2016

DESIGNS FOR HEALTH, INC.

27 
28 By: Stephen M. Carruthers
Its: General Counsel

1
2
3 APPROVED AS TO FORM:

4 Dated: 1/15/, 2016

MICHAEL FREUND & ASSOCIATES

5
6 By: *Michael Freund*

Michael Freund
Ryan Hoffman
Attorneys for Plaintiff
Environmental Research Center

7
8
9 Dated: January 15, 2016

PEG CAREW TOLEDO, LAW
CORPORATION

10
11 By: *Peg Carew Toledo*

Peg Carew Toledo
Attorneys for Defendant
Designs for Health, Inc.

12
13
14 **ORDER AND JUDGMENT**

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

17 IT IS SO ORDERED, ADJUDGED AND DECREED.

18
19 Dated: _____, 2016

Judge of the Superior Court

EXHIBIT A

LAW OFFICE OF
MICHAEL FREUND

RYAN HOFFMAN
ATTORNEY AT LAW
1919 ADDISON STREET, SUITE 105
BERKELEY, CALIFORNIA 94704-1101
TEL (510) 540-1997
FAX (510) 540-3543
EMAIL: RRHOFFMA@GMAIL.COM

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, 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 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 Health and Safety Code Section 25249.7(d), 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 enclosed with 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:

Designs for Health, 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:

Designs for Health Inc. PaleoGreens Lemon-Lime Flavor – Lead
Designs for Health Inc. EssentiaGreens Orange/Cranberry Flavor – Lead
Designs for Health Inc. PaleoGreens Mint Flavor – Lead
Designs for Health Inc. GI-Revive – Lead
Designs for Health Inc. PurePcs Natural Vanilla Flavor - Lead
Designs for Health Inc. EssentiaMeal-DF Natural Vanilla Flavor – Lead
Designs for Health Inc. Hepatatox Plus – Lead
Designs for Health Inc. EndoTrim – Lead
Designs for Health Inc. IllstaEze – Lead
Designs for Health Inc. Metal-X-Synergy – Lead

Designs for Health Inc. GlucoSupreme Herbal – Lead
Designs for Health Inc. Kidney Korrekt - 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,



Ryan Hoffman

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Designs for Health, 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 Designs for Health, Inc.

1. Ryan Hoffman, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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(b)(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



Ryan Hoffman

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 country 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:

Current President or CEO
Designs for Health, Inc.
980 South Street
Suffield, CT 06078

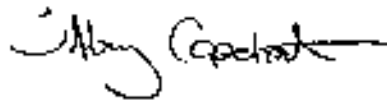
Jonathan Lizotte
Designs for Health, Inc.
Registered Agent for Service of Process
211 Pondway LA
Trumbull, CT 06611

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



Tiffany Capehart

Service List

District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

District Attorney, Alpine County
P.O. Box 248
Markleville, CA 96120

District Attorney, Amador County
708 Court Street
Jackson, CA 95842

District Attorney, Butte County
25 County Center Drive, Suite 245
Orville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
146 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
230 W. 1st Street
Bishop, CA 93314

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
235 N. Forbes Street
Lakeport, CA 95453

District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95422

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 93902

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

District Attorney, San Mateo County
400 County Ct., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Sierra County
PO Box 457
Downsville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Sonoma County
600 Administration Drive,
Room 212J
Santa Rosa, CA 95403

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95334

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93291

District Attorney, Tributumic County
423 N. Washington Street
Sonoma, CA 94370

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

District Attorney, Yuba County
301 2nd Street
Woodland, CA 95693

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies; for example, when exposures are sufficiently low (see below). The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by a 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4)

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65PublicComments@oehha.ca.gov.

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.