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11 TRANSFORMATION ENZYME CORPORATION

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

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

17 Plaintiff,

18 v.

19 TRANSFORMATION ENZYME
20 CORPORATION and DOES 1-100,

21 Defendants.

CASE NO. RG14738322

STIPULATED CONSENT JUDGMENT;
[PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: August 26, 2014
Trial Date: None set

22
23 **1. INTRODUCTION**

24 1.1 On August 26, 2014, Plaintiff Environmental Research Center (“ERC”), a non-
25 profit corporation, as a private enforcer, and in the public interest, initiated this action by filing
26 a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
27 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.
28 (“Proposition 65”), against Transformation Enzyme Corporation (“TEC”) and Does 1-100. In

1 this action, ERC alleges that a number of products manufactured, distributed or sold by TEC
2 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and
3 expose consumers to this chemical at a level requiring a Proposition 65 warning. These
4 products (referred to hereinafter individually as a "Covered Product" or collectively as
5 "Covered Products") are: (1) Transformation Enzyme Corp. ExcellZyme, (2) Transformation
6 Enzyme Corp. Gastro, (3) Transformation Enzyme Corp. MasterZyme, (4) Transformation
7 Enzyme Corp. ReleaseZyme, (5) Transformation Enzyme Corp. BalanceZyme Plus, (6)
8 Transformation Enzyme Corp. GastroZyme, and (7) Transformation Enzyme Corp. Super
9 CellZyme.

10 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
11 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
12 and toxic chemicals, facilitating a safe environment for consumers and employees, and
13 encouraging corporate responsibility.

14 1.3 For purposes of this Consent Judgment, the parties agree that TEC is a business
15 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a
16 "person in the course of business" within the meaning of Proposition 65. TEC distributes and sells
17 the Covered Products.

18 1.4 ERC and TEC are referred to individually as a "Party" or collectively as the
19 "Parties."

20 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
21 dated April 4, 2014, that was served on the California Attorney General, other public enforcers,
22 and TEC ("Notice"). A true and correct copy of the Notice is attached as Exhibit A and is
23 hereby incorporated by reference. More than 60 days have passed since the Notice was mailed
24 and uploaded to the Attorney General's website, and no designated governmental entity has
25 filed a complaint against TEC with regard to the Covered Products or the alleged violations.

26 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes
27 persons in California to lead without first providing clear and reasonable warnings in violation of
28 California Health and Safety Code section 25249.6. TEC denies all material allegations

1 contained in the Notice and Complaint and specifically denies that the Covered Products
2 required a warning or otherwise cause harm to any person. TEC asserts that any detectable levels
3 of lead in the Covered Products are the result of naturally occurring lead levels, as provided for
4 in California Code of Regulations, Title 27, Section 25501(a).

5 1.7 The Parties have entered into this Consent Judgment in order to settle,
6 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
7 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
8 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
9 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
10 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
11 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
12 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
13 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
14 purpose.

15 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
16 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
17 other or future legal proceeding unrelated to these proceedings.

18 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
19 a Judgment by this Court.

20 2. JURISDICTION AND VENUE

21 For purposes of this Consent Judgment and any further court action that may become
22 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
23 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
24 over TEC as to the acts alleged in the Complaint, that venue is proper in Alameda County, and
25 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
26 claims up through and including the Effective Date which were or could have been asserted in this
27 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, TEC shall be permanently enjoined from
3 manufacturing for sale in California, "Distributing into California", or directly selling to an
4 individual in California, any Covered Product which exposes a person to a "Daily Exposure
5 Level" of more than 0.5 micrograms of lead per day when the maximum suggested dose is
6 taken as directed on the Covered Product's label, unless it meets the warning requirements
7 under Section 3.2.

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

12 **3.1.2** For purposes of this Consent Judgment only, the "Daily 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 per day.

18 **3.2 Clear and Reasonable Warnings**

19 If TEC 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[s] known to the State of California**
22 **to cause [cancer and] birth defects or other reproductive harm.**

23 TEC 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 TEC shall provide the warning on TEC's checkout page on its website when a California
27 shipping address is provided by the customer. All Covered Products for which the warning
28 applies shall be identified on the webpage in the same vicinity as the warning.

1 The warning shall be at least the same size as the largest of any other health or safety
2 warnings also appearing on its website and the word "WARNING" shall be in all capital letters
3 and in bold print. No other statements about Proposition 65 or lead may accompany the warning.

4 TEC must display the above warnings with such conspicuousness, as compared with other
5 words, statements, or design of the label or container, as applicable, to render the warning likely to
6 be read and understood by an ordinary individual under customary conditions of purchase or use
7 of the product.

8 **3.3 Reformulated Covered Products**

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

13 **3.4 Testing and Quality Control Methodology**

14 **3.4.1** All testing pursuant to this Consent Judgment shall be performed using a
15 laboratory method that complies with the performance and quality control factors appropriate
16 for the method used, including limit of detection, qualification, accuracy, and precision that
17 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)
18 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
19 method subsequently agreed upon in writing by the Parties.

20 **3.4.2** All testing pursuant to this Consent Judgment shall be performed by an
21 independent third-party laboratory certified by the California Environmental Laboratory
22 Accreditation Program or an independent third-party laboratory that is registered with the
23 United States Food & Drug Administration. Nothing in this Consent Judgment shall limit
24 TEC's ability to conduct, or require that others conduct, additional testing of the Covered
25 Products, including the raw materials used in their manufacture.

26 **3.4.3** TEC shall arrange for at least once per year, for the lead testing of three
27 randomly selected samples of each Covered Product in the form intended for sale to the end-
28 user to be distributed or sold to California. TEC shall continue testing so long as the Covered

1 Products are sold in California or sold to a third party for retail sale in California. If tests
2 conducted pursuant to this Section demonstrate that no warning is required for a Covered
3 Product during each of five consecutive years, then the testing requirements of this Section will
4 no longer be required as to that Covered Product. However, if after the five-year period, TEC
5 changes ingredient suppliers for a Covered Product and/or reformulates a Covered Product,
6 TEC shall test that Covered Product at least once after such change is made. The testing
7 requirements discussed in Section 3.4 are not applicable to any Covered Product for which TEC
8 has provided the warning as specified in Section 3.2.

9 **3.4.4** TEC shall retain all test results and documentation for a period of five
10 years from the date of each test.

11 **4. SETTLEMENT PAYMENT**

12 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties,
13 attorney's fees, and costs, TEC shall make a total payment of \$40,000.00 ("Total Settlement
14 Amount") to ERC. The first payment in the amount of \$10,000.00 shall be due and owing
15 within ten (10) business days of the Effective Date or on September 1, 2015 – whichever is
16 later – and followed by six (6) consecutive monthly payments of \$5,000.00 due and owing on
17 the same day of the month as the first payment was due (e.g., if the first payment is due on the
18 15th of the month, the second payment would be due on the 15th of the following month, and so
19 on.) TEC shall make this payment by wire transfer to ERC's escrow account, for which ERC
20 will give TEC the necessary account information. The Total Settlement Amount shall be
21 apportioned as follows:

22 **4.1** \$8,124.22 shall be considered a civil penalty pursuant to California Health and
23 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$6,093.17) of the civil penalty to the
24 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
25 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
26 Code §25249.12(c). ERC will retain the remaining 25% (\$2,031.05) of the civil penalty.

27 **4.2** \$2,522.22 shall be distributed to Environmental Research Center as
28 reimbursement to ERC for reasonable costs incurred in bringing this action.

1 4.3 \$15,415.00 shall be distributed to Michael Freund as reimbursement of ERC's
2 attorney's fees, \$3,060.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
3 attorney's fees, while \$10,878.56 shall be distributed to ERC for its in-house legal fees.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

5 5.1 This Consent Judgment may be modified only (i) by written stipulation of the
6 Parties or pursuant to Section 5.3 and (ii) upon entry by the Court of a modified consent
7 judgment.

8 5.2 If TEC seeks to modify this Consent Judgment under Section 5.1, then TEC
9 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and
10 confer regarding the proposed modification in the Notice of Intent, then ERC must provide
11 written notice to TEC within thirty days of receiving the Notice of Intent. If ERC notifies TEC
12 in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and confer in
13 good faith as required in this Section. The Parties shall meet in person or via telephone within
14 thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty days of
15 such meeting, if ERC disputes the proposed modification, ERC shall provide to TEC a written
16 basis for its position. The Parties shall continue to meet and confer for an additional thirty (30)
17 days in an effort to resolve any remaining disputes. Should it become necessary, the Parties
18 may agree in writing to different deadlines for the meet-and-confer period.

19 5.3 In the event that TEC initiates or otherwise requests a modification under
20 Section 5.1, and the meet and confer process leads to a joint motion or application of the
21 Consent Judgment, TEC shall reimburse ERC its costs and reasonable attorney's fees for the
22 time spent in the meet-and-confer process and filing and arguing the motion or application.

23 5.4 Where the meet-and-confer process does not lead to a joint motion or
24 application in support of a modification of the Consent Judgment, then either Party may seek
25 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and
26 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
27 means a party who is successful in obtaining relief more favorable to it than the relief that the
28

1 other party was amenable to providing during the Parties' good faith attempt to resolve the
2 dispute that is the subject of the modification.

3 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
4 **JUDGMENT**

5 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate
6 this Consent Judgment.

7 6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated
8 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
9 inform TEC in a reasonably prompt manner of its test results, including information sufficient
10 to permit TEC to identify the Covered Products at issue. TEC shall, within thirty (30) days
11 following such notice, provide ERC with testing information, from an independent third-party
12 laboratory meeting the requirements of Sections 3.4.1 and 3.4.2, demonstrating TEC's
13 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve
14 the matter prior to ERC taking any further legal action.

15 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

23 8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on
24 behalf of itself and in the public interest, and TEC, of any alleged violation of Proposition 65 or
25 its implementing regulations for failure to provide Proposition 65 warnings of exposure to lead
26 from the handling, use, or consumption of the Covered Products and fully resolves all claims
27 that have been or could have been asserted in this action up to and including the Effective Date
28 for failure to provide Proposition 65 warnings for the Covered Products. ERC, on behalf of

1 itself and in the public interest, hereby releases and discharges TEC and its respective officers,
2 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
3 suppliers, franchisees, licensees, customers (not including private label customers of TEC),
4 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
5 distribution chain of any Covered Product, and the predecessors, successors and assigns of any
6 of them (collectively, "Released Parties"), from any and all claims, actions, causes of action,
7 suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could
8 have been asserted, as to any alleged violation of Proposition 65 arising from the failure to
9 provide Proposition 65 warnings on the Covered Products regarding lead.

10 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released
11 Parties from all known and unknown claims, causes of action, suits, damages, penalties,
12 liabilities, injunctive relief, declaratory relief, attorney's fees, costs, and expenses arising from
13 or related to the claims asserted or that could have been asserted, under state or federal law,
14 regarding the presence of lead in the Covered Products or the facts alleged in the Notice or the
15 Complaint, including without limitation any and all claims concerning exposure to any person
16 to lead in the Covered Products up to, and including, the Effective Date.

17 **8.3** ERC on its own behalf only, on one hand, and TEC on its own behalf only, on
18 the other, further waive and release any and all claims they may have against each other for all
19 actions or statements made or undertaken in the course of seeking or opposing enforcement of
20 Proposition 65 in connection with the Notice or Complaint up through and including the
21 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
22 right to seek to enforce the terms of this Consent Judgment.

23 **8.4** It is possible that other claims not known to the Parties arising out of the facts
24 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
25 discovered. ERC on behalf of itself only, acknowledges that this Consent Judgment is
26 expressly intended to cover and include all such claims up through the Effective Date,
27 including all rights of action therefore. ERC acknowledges that the claims released in Sections
28 8.1 through 8.3 above may include unknown claims, and nevertheless waive California Civil

1 Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as
2 follows:

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

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

10 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
11 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures
12 to lead in the Covered Products.

13 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
14 environmental exposures arising under Proposition 65, nor shall it apply to any of TEC's
15 products other than the Covered Products.

16 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

19 **10. GOVERNING LAW**

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

24 **11. PROVISION OF NOTICE**

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

28 **FOR ENVIRONMENTAL RESEARCH CENTER:**

Chris Heptinstall, Executive Director, Environmental Research Center

1 3111 Camino Del Rio North, Suite 400
2 San Diego, CA 92108
3 Tel: (619) 500-3090
4 Email: chris_erc501c3@yahoo.com

5 With a copy to:

6 Michael Freund
7 Ryan Hoffman
8 Michael Freund & Associates
9 1919 Addison Street, Suite 105
10 Berkeley, CA 94704
11 Telephone: (510) 540-1992
12 Facsimile: (510) 540-5543

13 **TRANSFORMATION ENZYME CORPORATION**

14 Suzanne Alft, President
15 Transformation Enzyme Corporation
16 2900 Wilcrest Drive, Suite 220
17 Houston, TX 77042

18 With a copy to:

19 Margaret Carew Toledo
20 Stacy E. Don
21 Toledo Don LLP
22 3001 Douglas Blvd., Suite 340
23 Roseville, CA 95661

24 **12. COURT APPROVAL**

25 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
26 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
27 Consent Judgment.

28 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
prior to the hearing on the motion.

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

1 **13. EXECUTION AND COUNTERPARTS**

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

5 **14. DRAFTING**

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

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

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

20 **16. ENTIRE AGREEMENT, AUTHORIZATION**

21 16.1 This Consent Judgment contains the sole and entire agreement and
22 understanding of the Parties with respect to the entire subject matter herein, and any and all
23 prior discussions, negotiations, commitments and understandings related hereto. No
24 representations, oral or otherwise, express or implied, other than those contained herein have
25 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
26 herein, shall be deemed to exist or to bind any Party.

1 16.2 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
3 explicitly provided herein, each Party shall bear its own fees and costs.

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

6 This Consent Judgment has come before the Court upon the request of the Parties. The
7 Parties request the Court to fully review this Consent Judgment and, being fully informed
8 regarding the matters which are the subject of this action, make the findings pursuant to California
9 Health and Safety Code section 25249.7(f)(4), approve the settlement, and approve this Consent
10 Judgment.

11 **IT IS SO STIPULATED:**

12 Dated: 5/28/, 2015

ENVIRONMENTAL RESEARCH
CENTER

13
14 By: 
Chris Hapustall, Executive Director

15 Dated: _____, 2015

TRANSFORMATION ENZYME
CORPORATION

16
17
18 By: Suzanne Alft
Its: President

19 **APPROVED AS TO FORM:**

20 Dated: _____, 2015

MICHAEL FREUND & ASSOCIATES

21
22 By: _____
Michael Freund
23 Ryan Hoffman
24 Attorneys for Plaintiff Environmental
25 Research Center
26
27
28

1 16.2 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
3 explicitly provided herein, each Party shall bear its own fees and costs.

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7 Parties request the Court to fully review this Consent Judgment and, being fully informed
8 regarding the matters which are the subject of this action, make the findings pursuant to California
9 Health and Safety Code section 25249.7(f)(4), approve the settlement, and approve this Consent
10 Judgment.

11 **IT IS SO STIPULATED:**

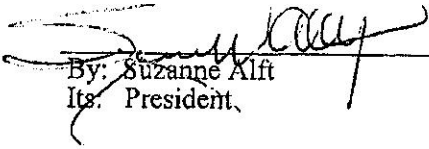
12 Dated: _____, 2015

ENVIRONMENTAL RESEARCH
CENTER

13
14 By: _____
Chris Heptinstall, Executive Director

15 Dated: 6/11, 2015

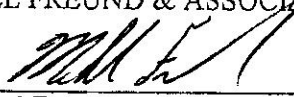
TRANSFORMATION ENZYME
CORPORATION

16
17 
18 By: Suzanne Alft
Its: President

19 **APPROVED AS TO FORM:**

20 Dated: 6/2, 2015

MICHAEL FREUND & ASSOCIATES

21
22 By: 
23 Michael Freund
24 Ryan Hoffman
25 Attorneys for Plaintiff Environmental
26 Research Center
27
28

1 Dated: May 31, 2015

TOLEDO DON LLP

2
3 By: Margaret Carew Toledo
4 Margaret Carew Toledo
5 Stacy E. Don
6 Attorneys for Defendant Transformation
7 Enzyme Corporation

8 ORDER AND JUDGMENT

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

11 IT IS SO ORDERED, ADJUDGED AND DECREED.

12 Dated: _____, 2015

13 _____
14 Judge of the Superior Court

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

April 4, 2014

**NOTICE OF VIOLATION 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:

Transformation Enzyme Corporation

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:

- Transformation Enzyme Corp. ExcellZyme – Lead
- Transformation Enzyme Corp. Gastro – Lead
- Transformation Enzyme Corp. MasterZyme – Lead
- Transformation Enzyme Corp. ReleaseZyme – Lead
- Transformation Enzyme Corp. BalanceZyme Plus - Lead
- Transformation Enzyme Corp. GastroZyme – Lead
- Transformation Enzyme Corp. Super CellZyme – 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.

Exhibit A

April 4, 2014

Page 2

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 April 4, 2011, 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 Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Transformation Enzyme Corporation 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 Transformation Enzyme Corporation

I, Michael Freund, 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(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: April 4, 2014



Michael Freund

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 April 4, 2014, I served the following documents: **NOTICE OF VIOLATION 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
Transformation Enzyme Corporation
2900 Wilcrest Drive, Suite 220
Houston, TX 77042

James Stephenson Jr.
(Transformation Enzyme Corporation's Registered
Agent for Service of Process)
4544 Post Oak Place Drive, Suite 378
Houston, TX 77027

On April 4, 2014, 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 April 4, 2014, 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 April 4, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

April 4, 2014

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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 nd 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 rd 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 th 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 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th 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 th 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 nd 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	

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 P65Public.Comments@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.