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Attorneys for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH  
CENTER, a California non-profit  
corporation,

Plaintiff,

v.

TRACE MINERALS RESEARCH, L.C.

Defendants.

CASE NO. RG14735532

STIPULATED CONSENT JUDGMENT;  
[PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

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

**1. INTRODUCTION**

**1.1** On August 4, 2014, Plaintiff Environmental Research Center (“ERC”), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against Trace Minerals Research, L.C. (“Trace Minerals”) and DOES 1-25. In the Complaint, ERC alleges that the following products, referred to hereinafter individually as a “Covered Product” or collectively as “Covered Products,” which were manufactured, distributed, or sold by Trace Minerals contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose California consumers at a level requiring a Proposition 65 warning:

1. Trace Minerals Research Complete Calcium & Magnesium 1:1
2. Trace Minerals Research Complete Foods Multi
3. Trace Minerals Research ActivJoint Plus
4. Trace Minerals Research ConcenTrace Trace Mineral Tablets
5. Trace Minerals Research Greens Pak Chocolate
6. Trace Minerals Research ActivJoint Platinum
7. Trace Minerals Research ActivJoint
8. Trace Minerals Research Greens Pak Berry

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

**1.3** Trace Minerals is a business entity that, at all relevant times for the purpose of this Consent Judgment, employed ten or more persons and qualified as a “person in the course of business” within the meaning of Proposition 65. Trace Minerals manufactures, distributes and sells the Covered Products.

**1.4** ERC and Trace Minerals are referred to individually as a “Party” or collectively as the “Parties.”

**1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation, dated May 23, 2014, that was served on the California Attorney General, other public enforcers, and Trace Minerals (“the Notice”). A true and correct copy of the Notice is attached hereto as **Exhibit A** and is hereby incorporated by reference. More than sixty (60) days have passed since the Notice was mailed and uploaded onto the Attorney General’s website, and no designated governmental entity has filed a complaint against Trace Minerals with regard to the Covered Products or the alleged violations in the Notice.

**1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes persons in California to lead without first providing clear and reasonable warnings in violation

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1 of California Health and Safety Code section 25249.6. Trace Minerals denies all material  
2 allegations contained in the Notice and Complaint.

3       **1.7** The Parties have entered into this Consent Judgment in order to settle,  
4 compromise and resolve disputed claims, and thus avoid prolonged and costly litigation.  
5 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
6 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
7 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,  
8 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
9 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
10 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
11 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
12 purpose.

13       **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall  
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
15 other or future legal proceeding unrelated to these proceedings.

16       **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as  
17 a Judgment by this Court.

## 18       **2. JURISDICTION AND VENUE**

19       For purposes of this Consent Judgment and for any further court action that may become  
20 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
21 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
22 over Trace Minerals as to the acts alleged in the Complaint, that venue is proper in Alameda  
23 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
24 resolution of all claims up through and including the Effective Date which were or could have  
25 been asserted in this action based on the facts alleged in the Notice and Complaint.

## 26       **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

27       **3.1** Beginning on the Effective Date, Trace Minerals shall be permanently enjoined  
28 from manufacturing for sale in the State of California, "Distributing into the State of

California,” or directly selling in the State of California, any Covered Product which exposes a person to a “Daily Exposure Level” of more than 0.5 micrograms per day when the maximum suggested dose is taken as directed on the Covered Product’s label, unless it meets the warning requirements under Section 3.2.

**3.1.1** As used in Consent Judgment, the term “Distributing into the State of California” shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Trace Minerals knows will sell the Covered Product in California.

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

**3.1.3** Naturally Occurring Exemption for Lead in the Covered Products

**TABLE 3.1.3**

<b><u>INGREDIENT</u></b>	<b><u>NATURALLY OCCURRING AMOUNT OF LEAD</u></b>
Calcium (elemental)	0.8 mcg Pb per gram of elemental Calcium
Ferrous Fumarate	0.4 mcg Pb per gram of Ferrous Fumarate
Zinc Oxide	8.0 mcg Pb per gram of Zinc Oxide
Magnesium Oxide	0.4 mcg Pb per gram of Magnesium Oxide
Magnesium Carbonate	0.332 mcg Pb per gram of Magnesium Carbonate
Magnesium Hydroxide	0.4 mcg Pb per gram of Magnesium Hydroxide
Zinc Gluconate	0.8 mcg Pb per gram of Zinc Gluconate
Potassium Chloride	1.0 mcg Pb per gram of Potassium Chloride

For determining whether the 0.5 micrograms level of lead per day under Section 3.1.3. is exceeded, Trace Minerals may exclude any naturally occurring lead in the additional ingredients listed above in Table 3.1.3 (in the amount of micrograms of lead for each such ingredient as listed in Table 3.1.3. per gram of that ingredient in the maximum daily dose recommended on the product label) in accordance with the Attorney General’s Stipulation Modifying Agreement in *People v. Warner Lambert, et al.* (San Francisco County Superior Court Case No. 984503).

Should Trace Minerals seek to exclude naturally occurring lead in its calculation of overall lead content for any of the Covered Products, Trace Minerals shall provide to ERC within fifteen (15) working days of ERC's written request a complete list of all ingredients in the Covered Products and the corresponding percentage and quantity in grams (rounded to the nearest one tenth of a gram) of each of the ingredients being used in each of the Covered Products and any other lab data that independently confirms Trace Mineral's contention concerning the amount of any naturally occurring ingredient in the Covered Products. Any documentation that Trace Minerals submit to ERC pursuant to the terms of this Section shall be kept confidential.

### **3.2 Clear and Reasonable Warnings**

If Trace Minerals is required to provide a warning pursuant to Section 3.1, the following warning must be utilized:

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

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

The warning shall be at least the same size as the largest of any other health or safety warnings correspondingly appearing on the label, container, receipt, invoice, website, or insert, and the word "WARNING" shall be in all capital letters. No other statements about Proposition 65 or lead may accompany the warning.

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

### **3.3 Reformulated Covered Products**

A Reformulated Covered Product is one for which the Daily Exposure Level when the maximum suggested dose is taken as directed on the Reformulated Covered Product's label, contains no more than 0.5 micrograms of lead per day as determined by the quality control

methodology described in Section 3.4.

### **3.4 Testing and Quality Control Methodology**

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

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

**3.4.3** Trace Minerals shall arrange, for at least five consecutive years and at least once per year, for the lead testing of four randomly selected samples of each Covered Product in the form intended for sale to the end-user to be distributed or sold to California. Trace Minerals shall continue testing so long as the Covered Products are sold in California or sold to a third party for retail sale in California. If tests conducted pursuant to this Section demonstrate that no warning is required for a Covered Product during each of five consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if after the five-year period, Trace Minerals changes contract manufacturers for any of the Covered Products and/or reformulates any of the Covered Products, Trace Minerals shall test that Covered Product at least once after such change is made, and send those test results to ERC within 10 working days of receiving the test results. The testing requirements discussed in Section 3.4 are not applicable to any Covered Product for which Trace Minerals has provided the warning as specified in Section 3.2.

1 For purposes of this Consent Judgment, "Sample" is defined as: 1) for Covered Products  
2 in tablet form, as one randomly selected bottle of the Covered Product from a production run  
3 consisting of not less than 20 tablets; or 2) for Covered Products in powder form, at least 5 grams  
4 of the Covered Product measured from different randomly selected boxes of the Covered  
5 Product.

6 **3.4.4** Beginning on the Effective Date and continuing for a period of five years  
7 thereafter, Trace Minerals shall arrange for copies of all laboratory reports with results of  
8 testing for lead content under Section 3.4 to be automatically sent by the testing laboratory  
9 directly to ERC within ten (10) working days after completion of that testing. These reports  
10 shall be deemed and treated by ERC as confidential information under the terms of the  
11 Confidentiality Agreement entered into by the Parties, a copy of which is attached hereto as  
12 **Exhibit B**. Trace Minerals shall retain all test results and documentation for a period of five  
13 years from the date of each test.

#### 14 **4. SETTLEMENT PAYMENT**

15 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
16 penalties, attorney's fees, and costs, Trace Minerals shall make a total payment of \$115,000.00  
17 ("Total Settlement Amount") to ERC according to the following schedule:

- 18 a. \$38, 333.00 within 5 days of the Effective Date.
- 19 b. \$38,333.00 within 35 days of the Effective Date
- 20 c. \$38,334.00 within 65 days of the Effective Date.

21 Trace Minerals shall make these payments by wire transfer to ERC's escrow account,  
22 for which ERC will give Trace Minerals the necessary account information. The Total  
23 Settlement Amount shall be apportioned as follows:

24 **4.2** \$51,076.00 shall be considered a civil penalty pursuant to California Health  
25 and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$38,307.00) of the civil penalty to the  
26 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
27 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
28 Code §25249.12(c). ERC will retain the remaining 25% (\$12,769.00) of the civil penalty.

1           **4.3**           \$924.98 shall be distributed to Environmental Research Center as  
2 reimbursement to ERC for reasonable costs incurred as a result of work in bringing this action;  
3 and \$40,131.16 shall be distributed to Environmental Research Center in lieu of further civil  
4 penalties, for the day-to-day business activities such as (1) continued enforcement of  
5 Proposition 65, which includes work, analyzing, researching and testing consumer products that  
6 may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible  
7 products that are the subject matter of the current action; (2) the continued monitoring of past  
8 consent judgments and settlements to ensure companies are in compliance with Proposition 65;  
9 and (3) giving a donation of \$1,961.00 to the Center For Environmental Health to address  
10 reducing toxic chemical exposures in California.

11           **4.4**           \$11,741.50 shall be distributed to Lozeau | Drury LLP as reimbursement of  
12 ERC's attorney's fees while \$11,126.36 shall be distributed to ERC for its in-house legal fees.

13       **5.   MODIFICATION OF CONSENT JUDGMENT**

14           **5.1**           This Consent Judgment may be modified only (i) by written stipulation of  
15 the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
16 judgment.

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



1           **5.3**           In the event that Trace Minerals initiates or otherwise requests a modification  
2 under Section 5.1, and the meet and confer process leads to a joint motion or application of the  
3 Consent Judgment, Trace Minerals shall reimburse ERC its costs and reasonable attorney's  
4 fees for the time spent in the meet-and-confer process and filing and arguing the motion or  
5 application.

6           **5.4**           Where the meet-and-confer process does not lead to a joint motion or  
7 application in support of a modification of the Consent Judgment, then either Party may seek  
8 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and  
9 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
10 means a party who is successful in obtaining relief more favorable to it than the relief that the  
11 other party was amenable to providing during the Parties' good faith attempt to resolve the  
12 dispute that is the subject of the modification.

13       **6.   RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
14       **JUDGMENT**

15           **6.1**           This Court shall retain jurisdiction of this matter to enforce, modify or  
16 terminate this Consent Judgment.

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

25       **7.   APPLICATION OF CONSENT JUDGMENT**

26           This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
27 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
28 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,

1 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
2 application to Covered Products which are distributed or sold exclusively outside the State of  
3 California and which are not used by California consumers.

## 4 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

5 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
6 on behalf of itself and in the public interest, and Trace Minerals, of any alleged violation of  
7 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of  
8 exposure to lead from the handling, use, or consumption of the Covered Products and fully  
9 resolves all claims that have been or could have been asserted in this action up to and including  
10 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.  
11 ERC, on behalf of itself and in the public interest, hereby discharges Trace Minerals and its  
12 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
13 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label  
14 customers of Trace Minerals), distributors, wholesalers, retailers, and all other upstream and  
15 downstream entities in the distribution chain of any Covered Product, and the predecessors,  
16 successors and assigns of any of them (collectively, "Released Parties"), from any and all  
17 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and  
18 expenses asserted, or that could have been asserted, as to any alleged violation of Proposition  
19 65 arising from the failure to provide Proposition 65 warnings on the Covered Products  
20 regarding lead.

21 **8.2** ERC on its own behalf only, on one hand, and Trace Minerals on its own  
22 behalf only, on the other, further waive and release any and all claims they may have against  
23 each other for all actions or statements made or undertaken in the course of seeking or opposing  
24 enforcement of Proposition 65 in connection with the Notice or Complaint up through and  
25 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit  
26 any Party's right to seek to enforce the terms of this Consent Judgment.

27 **8.3** It is possible that other claims not known to the Parties arising out of the  
28 facts alleged in the Notice or the Complaint and relating to the Covered Products will develop

1 or be discovered. ERC on its own behalf only, on one hand, and Trace Minerals on its own  
2 behalf only on the other, acknowledge that this Consent Judgment is expressly intended to  
3 cover and include all such claims up through the Effective Date, including all rights of action  
4 therefore. ERC and Trace Minerals acknowledge that the claims released in Sections 8.1 and  
5 8.2 above may include unknown claims, and nevertheless waive California Civil Code section  
6 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

12 ERC on its own behalf only, on one hand, and Trace Minerals, on its own behalf on the other,  
13 acknowledge and understand the significance and consequences of this specific waiver of  
14 California Civil Code section 1542.

15 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
16 constitute compliance with Proposition 65 by any Releasee regarding alleged exposures to lead  
17 in the Covered Products as set forth in the Notice and the Complaint.

18 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational  
19 or environmental exposures arising under Proposition 65, nor shall it apply to any of Trace  
20 Minerals' products other than the Covered Products.

## 21 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

## 24 **10. GOVERNING LAW**

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

## 27 **11. PROVISION OF NOTICE**

28 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. Courtesy copies via email may also be sent.

1 **FOR ENVIRONMENTAL RESEARCH CENTER:**

2 Chris Heptinstall, Executive Director, Environmental Research Center  
3 3111 Camino Del Rio North, Suite 400  
4 San Diego, CA 92108  
5 Tel: (619) 500-3090  
6 Email: chris\_erc501c3@yahoo.com

7 With a copy to:

8 Richard Drury (CBN 163559)  
9 Douglas J. Chermak (CBN 233382)  
10 LOZEAU | DRURY LLP  
11 410 12<sup>th</sup> Street, Suite 250  
12 Oakland, CA 94607  
13 Ph: 510-836-4200  
14 Fax: 510-836-4205  
15 Email: doug@lozeaudrury.com

16 **FOR TRACE MINERALS CORPORATION:**

17 Stanley W. Landfair, Esq.  
18 Rebecca L. Woodson, Esq.  
19 McKenna Long & Aldridge LLP  
20 One Market Plaza  
21 Spear Tower, 24<sup>th</sup> Floor  
22 San Francisco, CA 94105

23 **12. COURT APPROVAL**

24 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
25 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
26 Consent Judgment.

27 **12.2** If the California Attorney General objects to any term in this Consent  
28 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 Stipulated Consent Judgment is not approved by the Court, it shall be  
void and have no force or effect.

**13. EXECUTION AND COUNTERPARTS**

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

1 the original signature.

2 **14. DRAFTING**

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

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

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

17 **16. ENTIRE AGREEMENT, AUTHORIZATION**

18 **16.1** This Consent Judgment contains the sole and entire agreement and  
19 understanding of the Parties with respect to the entire subject matter herein, and any and all  
20 prior discussions, negotiations, commitments and understandings related hereto. No  
21 representations, oral or otherwise, express or implied, other than those contained herein have  
22 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
23 herein, shall be deemed to exist or to bind any Party.

24 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
25 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
26 explicitly provided herein, each Party shall bear its own fees and costs.

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

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

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

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

IT IS SO STIPULATED:

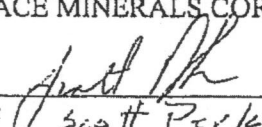
Dated: 12/15, 2014

ENVIRONMENTAL RESEARCH  
CENTER

By:   
Chris Heptinstall, Executive Director

Dated: 12-15, 2014

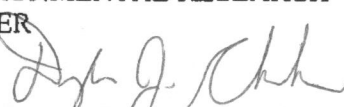
TRACE MINERALS CORPORATION

By:   
Its: Scott Perkins  
Managing Director

APPROVED AS TO FORM:

Dated: 12/15, 2014

ENVIRONMENTAL RESEARCH  
CENTER

By:   
RICHARD DRURY  
DOUGLAS J. CHERMAK  
LOZEAU | DRURY LLP

Dated: 12/15, 2014

TRACE MINERALS CORPORATION

By:   
REBECCA WOODSON  
MCKENNA LONG & ALDRIDGE LLP

1  
2 **ORDER AND JUDGMENT**

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

5 IT IS SO ORDERED, ADJUDGED AND DECREED.

6  
7 Dated: \_\_\_\_\_, 2014

8 \_\_\_\_\_  
9 Judge of the Superior Court  
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# EXHIBIT A





T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
christina@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
Trace Minerals Research, L.C.  
1996 West 3300 South  
West Haven, UT 84401

Current CEO or President  
Trace Minerals Research, L.C.  
PO Box 429  
Roy, UT 84067

Current CEO or President  
Trace Minerals Research, L.C.  
1996 West 3300 South  
Ogden, UT 84401

Scott Perkes  
(Trace Minerals Research, L.C.'s  
Registered Agent for Service of Process)  
1996 West 3300 South  
Ogden, UT 84401

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA PRIORITY MAIL**

District Attorneys of All California Counties  
and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

The name of the Company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

**Trace Minerals Research, L.C.**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

**Trace Minerals Research Complete Calcium & Magnesium 1:1 - Lead**  
**Trace Minerals Research Complete Foods Multi - Lead**  
**Trace Minerals Research ActivJoint Plus - Lead**  
**Trace Minerals Research ConcenTrace Trace Mineral Tablets - Lead**  
**Trace Minerals Research Greens Pak Chocolate - Lead**  
**Trace Minerals Research ActivJoint Platinum - Lead**  
**Trace Minerals Research ActivJoint – Lead**  
**Trace Minerals Research Greens Pak Berry - 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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.


The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since May 23, 2011, as well as every day since the products were introduced in the California marketplace, and will

continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons who purchased the above products in the last four years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Christina Caro

Attachments

Certificate of Merit  
Certificate of Service  
OEHHA Summary (to Trace Minerals Research, L.C. 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  
Trace Minerals Research, L.C.**

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is 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: May 23, 2014

  
\_\_\_\_\_  
Christina Caro

**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 May 23, 2014, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Trace Minerals Research, L.C.  
1996 West 3300 South  
West Haven, UT 84401

Current CEO or President  
Trace Minerals Research, L.C.  
1996 West 3300 South  
Ogden, UT 84401

Current CEO or President  
Trace Minerals Research, L.C.  
PO Box 429  
Roy, UT 84067

Scott Perkes  
(Trace Minerals Research, L.C.’s  
Registered Agent for Service of Process)  
1996 West 3300 South  
Ogden, UT 84401

On May 23, 2014, I electronically served the following documents: **NOTICE OF VIOLATIONS, 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 May 23, 2014, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on May 23, 2014, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Tiffany Capehart

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

May 23, 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 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 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 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

# EXHIBIT B



## CONFIDENTIALITY AGREEMENT

This agreement is made as of August 28, 2014 by and among the Environmental Research Center, its representatives, agents, attorneys, assigns, employees and consultants (collectively "ERC") and Trace Minerals Research, L.C., its representatives, agents, attorneys, assigns, employees, members and consultants (collectively "Trace Minerals"). ERC and Trace Minerals collectively are hereafter sometimes referred to as "Parties" or individually as a "Party."

This Agreement relates to the Parties' information pertaining to alleged violations of California's Proposition 65 (Cal. Health & Safety Code §25249.5) identified in the Notice of Violation sent by ERC to TRACE MINERALS on or about May 23, 2014, with respect to ten (10) products identified in the Notice of Violation (the "Dispute"). The Parties are negotiating, and desire to continue negotiating, a possible settlement of the Dispute. In connection with such negotiations, the Parties intend to meet and share information in an effort to settle their differences.

To that end, confidential attorney-client and work-product information related to the Dispute may be shared by and among the Parties. Accordingly, the Parties agree as follows:

1. "Confidential Information" means documents and other writings (including electronic mail) or recordings, including this Agreement (collectively "Documents"), the content of any of them, as well as oral communications and the content of any of them, and includes without limitation any factual information and the positions expressed by any of the Parties that has been, or may be exchanged in the future, during the course of resolving the Dispute. "Confidential Information" does not



include information which: (i) is known to a Party or is in a Party's lawful possession or control prior to the time of disclosure of the Confidential Information by another Party; (ii) is or becomes, before or after disclosure, public knowledge through no fault or omission of the Party to whom Confidential Information was disclosed; or (iii) is lawfully obtained from a third party without obligation of confidentiality.

2. All Confidential Information shall be privileged and confidential and is for settlement purposes only. No Party shall use Confidential Information disclosed by another Party for any other purpose or in any legal or administrative hearing, except in an action for breach of this Confidentiality Agreement. No Party shall disclose to any third party any Confidential Information received from the other Party.

3. Any and all information generated by experts or consultants for any Party for purposes of settling the Dispute shall not be discoverable in litigation involving the Dispute, even if that expert or consultant is subsequently designated as a testifying expert in such litigation.

4. If any Party determines that settlement discussions have failed, then that Party shall provide written notice to the other Parties informing it that settlement discussions have failed. Within ten (10) days of a written request by the Party making the notification, the other Parties shall return or destroy all copies of written Confidential Information received from the notifying Party.

5. If the Dispute settles or is otherwise resolved, any Party may request in writing that the other Party return or destroy all copies of written Confidential Information received from the notifying Party. The Party receiving that request will comply within ten (10) days.

6. The Parties agree and acknowledge that the mutual interest in privilege and confidentiality established by this Agreement is held jointly by all Parties and that no Party to this Agreement is authorized to waive the privilege with respect to any information or documents obtained during these settlement discussions. In the event that a Party becomes legally compelled to disclose any of the Confidential Information disclosed to it by the other Party, that Party shall: (i) provide the disclosing Party with immediate written notice so that the disclosing Party may seek a protective order or other appropriate remedy; and (ii) furnish only that portion of the Confidential Information which that Party is legally required to disclose.

7. No Confidential Information provided by any Party, in whatever form, constitutes an admission by that Party. Nothing herein shall limit the protections afforded by California Evidence Code sections 1152 or any other protection pertaining to admissions. Nothing herein shall be construed to prohibit or limit a Party's use of its own Confidential Information.

8. Nothing contained in this Agreement, nor the fact that any Party produces Confidential Information to any other Party will operate as a waiver, nor subsequently be deemed or argued to constitute or reflect any waiver (either knowing or inadvertent), of any defenses and/or objection to the production of documents or of other information in the Dispute or in any other litigation or any other context.

9. Nothing herein is intended to prevent any Party from separately and independently discovering any relevant, non-privileged information by any lawful means, and using such information as permitted by the applicable laws.

10. Each of the individuals whose signatures appear below has the authority granted by his or her respective principal entity to sign on behalf of the entity (including its respective representatives, agents, attorneys, assigns, employees, and consultants) and their signatures have the power to bind the respective entities (including their respective representatives, agents, attorneys, assigns, employees, and consultants).

On behalf of Environmental Research Center:

Dated: August 28, 2014

Lozeau Drury LLP

By: 

Richard T. Drury

Douglas J. Chermak

Attorneys for Environmental Research Center

On behalf of Trace Minerals Research, L.C.

Dated: August 28, 2014

McKenna Long & Aldridge LLP

By: 

Rebecca Woodson

Attorneys for Trace Minerals Research, L.C.