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6 Attorneys for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER

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11 Attorney for Defendant  
12 TRIVITA, INC.

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

16 ENVIRONMENTAL RESEARCH  
17 CENTER, a California non-profit  
corporation,  
18  
19 Plaintiff,  
20  
21 v.  
22 TRIVITA, INC., an Arizona Corporation  
23  
24 Defendant.

CASE NO. RG14746573  
STIPULATED CONSENT JUDGMENT;  
[PROPOSED] ORDER  
Health & Safety Code § 25249.5 et seq.  
Action Filed: October 31, 2014  
Trial Date: None set

25 1. INTRODUCTION

26 1.1 On October 31, 2014, Plaintiff Environmental Research Center (“ERC”), a  
27 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by  
28 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)

1 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.  
2 (“Proposition 65”), against Trivita, Inc. (“Trivita”). In this action, ERC alleges that the  
3 following products referred to hereinafter individually as “Covered Product” or collectively as  
4 “Covered Products”, manufactured, distributed or sold by Trivita contain lead, a chemical  
5 listed under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers at a  
6 level requiring a Proposition 65 warning:

- 7 a. **TriVita Inc. Garcinia Cambogia**
- 8 b. **TriVita Inc. Bone Growth Factor**
- 9 c. **TriVita Inc. Amazon Herb Perform Shake**
- 10 d. **TriVita Inc. Leanology Nutritional Shake Creamy Vanilla**
- 11 e. **TriVita Inc. GlucoManage Formula**
- 12 f. **TriVita Inc. Leanology**
- 13 g. **TriVita Inc. Leanology Appetite Control Soft Chews Chocolate Mocha 60**  
14 **Soft Chews**
- 15 h. **TriVita Inc. Nopalea Daily Cleanse**

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

20 1.3 Trivita is an Arizona Corporation that, at all relevant times for the purpose of this  
21 Consent Judgment, employed ten or more persons and qualified as a “person in the course of  
22 business” within the meaning of Proposition 65. Trivita manufactures, distributes and sells the  
23 Covered Products.

24 1.4 ERC and Trivita are referred to individually as “Party” or collectively as the  
25 “Parties.”

26 1.5 The Complaint is based on allegations contained in ERC’s Notice of Violation,  
27 dated May 23, 2014, that was served on the California Attorney General, other public  
28 enforcers, and Trivita (“Notice”). A true and correct copy of the Notice is attached as Exhibit

1 A and is hereby incorporated by reference. More than 60 days have passed since the Notice  
2 was mailed and uploaded onto the Attorney General's website, and no designated governmental  
3 entity has filed a complaint against Trivita with regard to the Covered Products or the alleged  
4 violations.

5 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes  
6 persons in California to lead without first providing clear and reasonable warnings in violation  
7 of California Health and Safety Code section 25249.6. Trivita denies all material allegations  
8 contained in the Notice and Complaint.

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

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

22 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as  
23 a Judgment by this Court.

## 24 2. JURISDICTION AND VENUE

25 For purposes of this Consent Judgment and for any further court action that may become  
26 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
27 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
28 over Trivita as to the acts alleged in the Complaint, that venue is proper in Alameda County, and

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

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

5 **3.1** Beginning on the Effective Date, Trivita shall be permanently enjoined from  
6 manufacturing for sale in the State of California, "Distributing into the State of California", or  
7 directly selling in the State of California, any Covered Product which exposes a person to a  
8 "Daily Exposure Level" of more than 0.5 micrograms per day when the maximum suggested  
9 dose is taken as directed on the Covered Product's label, unless it contains the warning set forth  
10 in Section 3.2 below.

11 **3.1.1** As used in Consent Judgment, the term "Distributing into the State of  
12 California" shall mean to directly ship a Covered Product into California for sale in California  
13 or to sell a Covered Product to a distributor that Trivita knows will sell the Covered Product in  
14 California.

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

21 **3.2 Clear and Reasonable Warnings**

22 If Trivita is required to provide a warning pursuant to Section 3.1, the following warning  
23 must be utilized:

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

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

1 Trivita shall provide the warning on one of the following: 1) for website purchases only,  
2 on Trivita's checkout page for California consumers identifying each Covered Product. A second  
3 warning shall appear prior to completing checkout on the website when a California delivery  
4 address is indicated. The purchaser shall be required to accept the warning prior to completing  
5 checkout for any of the Covered Products being sold or 2) on Trivita's product packaging. The  
6 warning appearing on the label or container shall be at least the same size as the largest of any  
7 other health or safety warnings correspondingly appearing on the label or container, as applicable,  
8 or such product, and the word "WARNING" shall be in all capital letters. No other statements  
9 about Proposition 65 or lead may accompany the warning.

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

### 14 3.3 Reformulated Covered Products

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

### 19 3.4 Testing and Quality Control Methodology

20 3.4.1 All testing pursuant to this Consent Judgment shall be performed using a  
21 laboratory method that complies with the performance and quality control factors appropriate  
22 for the method used, including limit of detection, qualification, accuracy, and precision that  
23 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)  
24 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
25 method subsequently agreed upon in writing by the Parties.

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

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

4           **3.4.3** Trivita shall arrange, for at least three consecutive years and at least once  
5 per year, for the lead testing of three randomly selected samples of each Covered Product in the  
6 form intended for sale to the end-user to be distributed or sold to California. If tests conducted  
7 pursuant to this Section demonstrate that no warning is required for a Covered Product during  
8 each of three consecutive years, then the testing requirements of this Section will no longer be  
9 required as to that Covered Product. However, if after the three-year period, Trivita changes  
10 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered  
11 Products, Trivita shall test that Covered Product at least once after such change is made, and  
12 send those test results to ERC within ten (10) working days of receiving the test results. The  
13 testing requirements discussed in Section 3.4 are not applicable to any Covered Product for  
14 which Trivita has provided the warning as specified in Section 3.2.

15           **3.4.4** Beginning on the Effective Date and continuing for a period of three  
16 years thereafter, upon ERC's written request, Trivita shall provide ERC with copies of all  
17 laboratory reports with results of testing for lead content within ten (10) working days of  
18 Trivita's receipt of said request. These reports shall be deemed and treated by ERC as  
19 confidential information under the terms of the confidentiality agreement entered into by the  
20 Parties. Trivita shall retain all test results and documentation for a period of three years from  
21 the date of each test.

22       **4. SETTLEMENT PAYMENT**

23           **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
24 penalties, attorney's fees, and costs, Trivita shall make a total payment of \$98,000.00  
25 ("Total Settlement Amount") in settlement payments to ERC on the following schedule: An  
26 initial payment of \$19,600.00 shall be made to ERC on the later of the following: five (5) days  
27 after the Effective Date, or February 15, 2015, followed by four (4) consecutive monthly  
28 payments in the amount of \$19,600.00 due and owing no later than the 15<sup>th</sup> of each month after

1 the month the first payment is made. Trivita shall make these payments by wire transfer to  
2 ERC's escrow account, for which ERC will give Trivita the necessary account information.

3 The Total Settlement Amount shall be apportioned as follows:

4       **4.2**       \$34,152.00 shall be considered a civil penalty pursuant to California Health  
5 and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$25,614.00) of the civil penalty to the  
6 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
7 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
8 Code §25249.12(c). ERC will retain the remaining 25% (\$8,538.00) of the civil penalty.

9       **4.3**       \$2,341.38 shall be distributed to Environmental Research Center as  
10 reimbursement to ERC for reasonable costs incurred in bringing this action; and \$25,765.44  
11 shall be distributed to Environmental Research Center in lieu of further civil penalties, for the  
12 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
13 includes work, analyzing, researching and testing consumer products that may contain  
14 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
15 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
16 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
17 donation of \$1,285.00 to the Environmental Working Group to address reducing toxic chemical  
18 exposures in California.

19       **4.4**       \$18,000.00 shall be distributed to Lozeau Drury LLP as reimbursement of  
20 ERC's attorney's fees while \$17,741.18 shall be distributed to ERC for its in-house legal fees.

## 21       **5.    MODIFICATION OF CONSENT JUDGMENT**

22       **5.1**       This Consent Judgment may be modified only (i) by written stipulation of  
23 the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
24 judgment.

25       **5.2**       If Trivita seeks to modify this Consent Judgment under Section 5.1, then  
26 Trivita must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to  
27 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must  
28 provide written notice to Trivita within thirty days of receiving the Notice of Intent. If ERC

1 notifies Trivita in a timely manner of ERC's intent to meet and confer, then the Parties shall  
2 meet and confer in good faith as required in this Section. The Parties shall meet in person or  
3 via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.  
4 Within thirty days of such meeting, if ERC disputes the proposed modification, ERC shall  
5 provide to Trivita a written basis for its position. The Parties shall continue to meet and confer  
6 for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it  
7 become necessary, the Parties may agree in writing to different deadlines for the meet-and-  
8 confer period.

9           **5.3**           In the event that Trivita initiates or otherwise requests a modification under  
10 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
11 Consent Judgment, Trivita shall reimburse ERC its costs and reasonable attorney's fees for the  
12 time spent in the meet-and-confer process and filing and arguing the motion or application.

13           **5.4**           Where the meet-and-confer process does not lead to a joint motion or  
14 application in support of a modification of the Consent Judgment, then either Party may seek  
15 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and  
16 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
17 means a party who is successful in obtaining relief more favorable to it than the relief that the  
18 other party was amenable to providing during the Parties' good faith attempt to resolve the  
19 dispute that is the subject of the modification.

20       **6.   RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
21       **JUDGMENT**

22           **6.1**           This Court shall retain jurisdiction of this matter to enforce, modify or  
23 terminate this Consent Judgment.

24           **6.2**           If ERC alleges that any Covered Product fails to qualify as a Reformulated  
25 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
26 inform Trivita in a reasonably prompt manner of its test results, including information sufficient  
27 to permit Trivita to identify the Covered Products at issue. Trivita shall, within thirty days  
28 following such notice, provide ERC with testing information, from an independent third-party

1 laboratory meeting the requirements of Sections 3.4.1 and 3.4.2, demonstrating Defendant's  
2 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve  
3 the matter prior to ERC taking any further legal action.

4 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

27 **8.2** ERC on its own behalf only, on one hand, and Trivita on its own behalf only,  
28 on the other, further waive and release any and all claims they may have against each other for

1 all actions or statements made or undertaken in the course of seeking or opposing enforcement  
2 of Proposition 65 in connection with the Notice or Complaint up through and including the  
3 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
4 right to seek to enforce the terms of this Consent Judgment.

5 **8.3** It is possible that other claims not known to the Parties arising out of the  
6 facts alleged in the Notice or the Complaint and relating to the Covered Products will develop  
7 or be discovered. ERC on behalf of itself only, on one hand, and Trivita, on the other hand,  
8 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
9 claims up through the Effective Date, including all rights of action therefore. ERC and Trivita  
10 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown  
11 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
12 claims. California Civil Code section 1542 reads as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
14 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
15 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
OR HER SETTLEMENT WITH THE DEBTOR,

16 ERC on behalf of itself only, on the one hand, and Trivita, on the other hand, acknowledge and  
17 understand the significance and consequences of this specific waiver of California Civil Code  
18 section 1542.

19 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
20 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
21 in the Covered Products as set forth in the Notice and the Complaint.

22 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational  
23 or environmental exposures arising under Proposition 65, nor shall it apply to any of Trivita's  
24 products other than the Covered Products.

25 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

1     **10. GOVERNING LAW**

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

4     **11. PROVISION OF NOTICE**

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

8  
9     **FOR ENVIRONMENTAL RESEARCH CENTER:**

10 Chris Heptinstall, Executive Director, Environmental Research Center  
11 3111 Camino Del Rio North, Suite 400  
12 San Diego, CA 92108  
13 Tel: (619) 500-3090  
14 Email: chris\_erc501c3@yahoo.com

15  
16 With a copy to:

17 MICHAEL R. LOZEAU  
18 RICHARD DRURY  
19 LOZEAU | DRURY LLP  
20 410 12<sup>th</sup> Street, Suite 250  
21 Oakland, CA. 94607  
22 Ph: 510-836-4200  
23 Fax: 510-836-4205  
24 Email: michael@lozeaudrury.com  
25 Email: richard@lozeaudrury.com

26  
27  
28

1 **FOR TRIVITA, INC.**

2 Gene Henderson, Executive Vice President Legal Affairs

3 Trivita, Inc.

4 16100 North Greenway Hayden Loop, Suite 950

5 Scottsdale, AZ 85260

6 Ph: (480) 337-4124

7 Email: Gene.Henderson@Trivita.com

8

9 With a copy to:

10 DANIEL S. SILVERMAN

11 VENABLE LLP

12 2049 Century Park East, Suite 2100

13 Los Angeles, CA 90067

14 Ph: (310) 229-0373

15 Fax: (310) 229-9901

16 Email: DSilverman@Venable.com

17

18 **12. COURT APPROVAL**

19 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
20 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
21 Consent Judgment.

22 **12.2** If the California Attorney General objects to any term in this Consent  
23 Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and  
24 if possible prior to the hearing on the motion.

25 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
26 void and have no force or effect.

27 **13. EXECUTION AND COUNTERPARTS**

28 This Consent Judgment may be executed in counterparts, which taken together shall be

1 deemed to constitute one document. A facsimile or .pdf signature shall be construed as valid as  
2 the original signature.

3 **14. DRAFTING**

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

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

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

18 **16. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

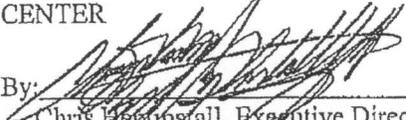
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
7 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has  
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section  
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11 IT IS SO STIPULATED:

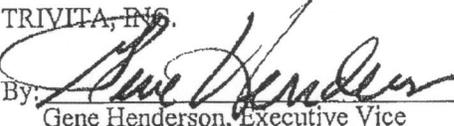
12 Dated: 12/21, 2014

ENVIRONMENTAL RESEARCH  
CENTER

13 By:   
14 Chris Reppinstall, Executive Director

15 Dated: 12/21, 2014

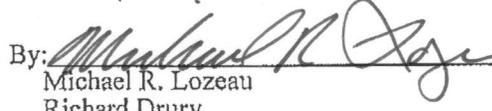
TRIVITA, INC.

16 By:   
17 Gene Henderson, Executive Vice  
18 President Legal Affairs

19 APPROVED AS TO FORM:

20 Dated: 12/2, 2014

LOZEAU | DRURY LLP

21 By:   
22 Michael R. Lozeau  
23 Richard Drury  
24 Attorneys for Plaintiff Environmental  
25 Research Center

26 Dated: 12/2, 2014

VENABLE LLP

27 By:   
28 Daniel S. Silverman  
Attorney for Defendant Trivita, Inc.

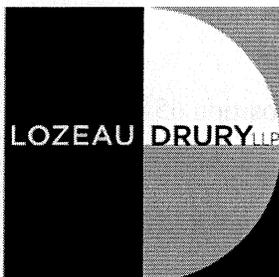
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ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.  
IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2014  
\_\_\_\_\_  
Judge of the Superior Court

# EXHIBIT A



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
michael@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
TriVita, Inc.  
16100 N. Greenway Hayden Loop  
Suite 950  
Scottsdale, AZ 85260

Current CEO or President  
TriVita, Inc.  
PO Box 15700  
Scottsdale, AZ 85267

Mark Allen  
(TriVita, Inc.'s Registered Agent for  
Service of Process)  
393 East Palm Lane  
Phoenix, AZ 85004

**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:

**TriVita, Inc.**

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

- **TriVita Inc. Garcinia Cambogia - Lead**
- **TriVita Inc. Bone Growth Factor - Lead**
- **TriVita Inc. Amazon Herb Perform Shake - Lead**
- **TriVita Inc. Leanology Nutritional Shake Creamy Vanilla - Lead**
- **TriVita Inc. GlucoManage Formula – Lead**
- **TriVita Inc. Leanology – Lead**
- **TriVita Inc. Leanology Appetite Control Soft Chews Chocolate Mocha 60 Soft Chews- Lead**
- **TriVita Inc. Nopalea Daily Cleanse - 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.

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

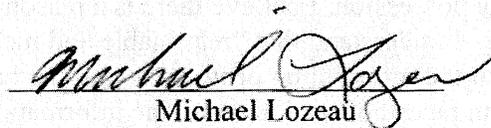
May 23, 2014

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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,



Michael Lozeau

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to TriVita, Inc. and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by  
TriVita, Inc.**

I, Michael Lozeau, 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

  
Michael Lozeau

**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  
TriVita, Inc.  
16100 N. Greenway Hayden Loop  
Suite 950  
Scottsdale, AZ 85260

Mark Allen  
(TriVita, Inc.'s Registered Agent for  
Service of Process)  
393 East Palm Lane  
Phoenix, AZ 85004

Current CEO or President  
TriVita, Inc.  
PO Box 15700  
Scottsdale, AZ 85267

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 3 <sup>rd</sup> 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	

## 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.<sup>1</sup> 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

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<sup>1</sup> 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](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 contaminant<sup>2</sup> 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.

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<sup>2</sup> 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](mailto: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.