

1 RICHARD T. DRURY (CBN 163559)  
2 REBECCA L. DAVIS (CBN 271662)  
3 LOZEAU | DRURY LLP  
4 410 12th Street, Suite 250  
5 Oakland, CA 94607  
6 Ph: 510-836-4200  
7 Fax: 510-836-4205  
8 Email: richard@lozeaudrury.com

9 Attorneys for Plaintiff  
10 ENVIRONMENTAL RESEARCH CENTER

11 MELISSA JONES  
12 STOEL RIVES, LLP  
13 500 Capitol Mall, Suite 1600  
14 Sacramento, CA 95814

15 Attorney for Defendant  
16 KROEGER HERB PRODUCTS CO., INC.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
18 COUNTY OF ALAMEDA

19 ENVIRONMENTAL RESEARCH  
20 CENTER, a California non-profit  
21 corporation,

22 Plaintiff,

23 v.

24 KROEGER HERB PRODUCTS CO., INC.,  
25 a Colorado Corporation

26 Defendant.

27 CASE NO. RG15758601

28 STIPULATED CONSENT JUDGMENT:  
[PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: February 13, 2015

Trial Date: None set

1 INTRODUCTION

1.1 On February 13, 2015, 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 KROEGER HERB PRODUCTS CO., INC. ("KROEGER HERB"). In this action, ERC alleges that a number of products manufactured, distributed or sold by

1 KROEGER HERB contain lead, a chemical listed under Proposition 65 as a carcinogen and  
2 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65  
3 warning. These products (referred to hereinafter individually as a "Covered Product" or  
4 collectively as "Covered Products") are:

- 5 1) Kroeger Herb Products Co. Inc. Men's Special
- 6 2) Kroeger Herb Products Co. Inc. Complete Concentrates Bilberry
- 7 3) Kroeger Herb Products Co. Inc. Complete Concentrates Chastetree Berry
- 8 4) Kroeger Herb Products Co. Inc. Candida Formula #1
- 9 5) Kroeger Herb Products Co. Inc. Gallbladder Care
- 10 6) Kroeger Herb Products Co. Inc. Candida Liver Care
- 11 7) Kroeger Herb Products Co. Inc. Complete Concentrates Rhodiola Rosea
- 12 8) Kroeger Herb Products Co. Inc. BloodToner
- 13 9) Kroeger Herb Products Co. Inc. Digestive Enzyme
- 14 10) Kroeger Herb Products Co. Inc. Complete Concentrates Red Clover
- 15 11) Kroeger Herb Products Co. Inc. Brain Care Blend
- 16 12) Kroeger Herb Products Co. Inc. SPK Formula
- 17 13) Kroeger Herb Products Co. Inc. Thyroid Care
- 18 14) Kroeger Herb Products Co. Inc. VYR-33 Defense
- 19 15) Kroeger Herb Products Co. Inc. Women's Gold
- 20 16) Kroeger Herb Products Co. Inc. X 40
- 21 17) Kroeger Herb Products Co. Inc. Candida Formula #2
- 22 18) Kroeger Herb Products Co. Inc. Enzymes
- 23 19) Kroeger Herb Products Co. Inc. Chem X
- 24 20) Kroeger Herb Products Co. Inc. Healthy Gut
- 25 21) Kroeger Herb Products Co. Inc. Female Balance
- 26 22) Kroeger Herb Products Co. Inc. Eye Formula
- 27 23) Kroeger Herb Products Co. Inc. HPX Formula
- 28 24) Kroeger Herb Products Co. Inc. Sinus Blend
- 25 25) Kroeger Herb Products Co. Inc. FNG Care
- 26 26) Kroeger Herb Products Co. Inc. Olive Leaf
- 27 27) Kroeger Herb Products Co. Inc. Serenity
- 28 28) Kroeger Herb Products Co. Inc. Turmeric
- 29 29) Kroeger Herb Products Co. Inc. Kolester
- 30 30) Kroeger Herb Products Co. Inc. Metal X
- 31 31) Kroeger Herb Products Co. Inc. Liver Formula
- 32 32) Kroeger Herb Products Co. Inc. INF Blend
- 33 33) Kroeger Herb Products Co. Inc. Ruma Care
- 34 34) Kroeger Herb Products Co. Inc. PA Formula
- 35 35) Kroeger Herb Products Co. Inc. Rascal
- 36 36) Kroeger Herb Products Co. Inc. Pollution X

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 consumers and employees, and  
encouraging corporate responsibility.

1           1.3    ERC alleges that Defendant KROEGER HERB qualifies as a “person in the  
2 course of doing business” as that term is defined in Health and Safety Code section  
3 25249.11(b).

4           1.4    KROEGER HERB is a Colorado corporation. KROEGER HERB denies that it  
5 qualifies as a “person in the course of doing business” as that term is defined in Health and  
6 Safety Code section 25249.11(b).

7           1.5    ERC and KROEGER HERB are referred to individually as a “Party” or  
8 collectively as the “Parties.”

9           1.6    The Complaint is based on allegations contained in ERC’s Notice of Violation  
10 dated August 29, 2014, that was served on the California Attorney General, other public  
11 enforcers, and KROEGER HERB (“Notice”). A true and correct copy of the Notice is attached  
12 as Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the  
13 Notice was mailed and uploaded to the Attorney General’s website, and no designated  
14 governmental entity has filed a complaint against KROEGER HERB with regard to the  
15 Covered Products or the alleged violations.

16           1.7    ERC’s Notice and Complaint allege that use of the Covered Products exposes  
17 persons in California to lead without first providing clear and reasonable warnings in violation  
18 of California Health and Safety Code section 25249.6. KROEGER HERB denies all material  
19 allegations contained in the Notice and Complaint.

20           1.8    The Parties have entered into this Consent Judgment in order to settle,  
21 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
22 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
23 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
24 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,  
25 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
26 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
27 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
28 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any

1 purpose.

2           **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall  
3 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
4 other or future legal proceeding unrelated to these proceedings.

5           **1.10** The Effective Date of this Consent Judgment is the date on which it is entered as  
6 a Judgment by this Court.

7           **2. JURISDICTION AND VENUE**

8           For purposes of this Consent Judgment and any further court action that may become  
9 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
10 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
11 over KROEGER HERB as to the acts alleged in the Complaint, that venue is proper in  
12 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
13 final resolution of all claims up through and including the Effective Date which were or could  
14 have been asserted in this action based on the facts alleged in the Notice and Complaint.

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

16           **3.1** Beginning on the Effective Date, but only at times KROEGER HERB qualifies  
17 as a “person in the course of doing business” as that term is defined in Health and Safety Code  
18 section 25249.11(b), KROEGER HERB shall be permanently enjoined from manufacturing for  
19 sale in the State of California, “Distributing into the State of California”, or directly selling in  
20 the State of California, any Covered Product which exposes a person to a “Daily Exposure  
21 Level” of more than 0.5 micrograms per day when the maximum suggested dose is taken as  
22 directed on the Covered Product’s label, unless it meets the warning requirements under  
23 Section 3.2.

24           **3.1.1** As used in this Consent Judgment, the term “Distributing into the State of  
25 California” shall mean to directly ship a Covered Product into California for sale in California or  
26 to sell a Covered Product to a distributor the KROEGER HERB knows will sell the Covered  
27 Product in California.

1           3.1.2 For the sole purpose of this Consent Judgment, the “Daily Lead  
2 Exposure Level” shall be measured in micrograms, and shall be calculated using the following  
3 formula: micrograms of lead per gram of product, multiplied by grams of product per serving  
4 of the product (using the largest serving size appearing on the product label), multiplied by  
5 servings of the product per day (using the largest number of servings in a recommended dosage  
6 appearing on the product label), which equals micrograms of lead exposure per day.

7           **3.2 Clear and Reasonable Warnings**

8           If KROEGER HERB is required to provide a warning pursuant to Section 3.1:

9           The following warning must be utilized:

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

12 KROEGER HERB shall use the phrase “cancer and” in the warning only if the “Daily Lead  
13 Exposure Level” exceeds 15 micrograms of lead exposure per day. KROEGER HERB shall  
14 provide the warning on the following: 1) on the checkout page of Hannah’s Herb Shop and  
15 KROEGER HERB’s retail website for California consumers identifying each Covered Product to  
16 which the warning applies. A second warning shall appear prior to completing checkout on the  
17 website when a California delivery address is indicated. The purchaser shall be required to accept  
18 the warning prior to completing checkout for any of the Covered Products being sold; and 2) on  
19 the label or container of KROEGER HERB’s product packaging for each Covered Product  
20 distributed into the State of California as defined in Section 3.1.1.

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

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

1           **3.3 Reformulated Covered Products**

2           A Reformulated Covered Product is one for which the "Daily Exposure Level" exceeds no  
3 more than 0.5 micrograms of lead exposure per day.

4           **3.4 Testing and Quality Control Methodology**

5           3.4.1 Beginning on the Effective Date, but only at times KROEGER HERB  
6 qualifies as a "person in the course of doing business" as that term is defined in Health and  
7 Safety Code section 25249.11(b), KROEGER HERB shall comply with this Section 3.4.

8           3.4.2 All testing pursuant to this Consent Judgment shall be performed using a  
9 laboratory method that complies with the performance and quality control factors appropriate  
10 for the method used, including limit of detection, qualification, accuracy, and precision that  
11 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)  
12 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
13 method subsequently agreed upon in writing by the Parties.

14           3.4.3 All testing pursuant to this Consent Judgment shall be performed by an  
15 independent third-party laboratory certified by the California Environmental Laboratory  
16 Accreditation Program or an independent third-party laboratory that is registered with the  
17 United States Food & Drug Administration. Nothing in this Consent Judgment shall limit  
18 KROEGER HERB's ability to conduct, or require that others conduct, additional testing of the  
19 Covered Products, including the raw materials used in their manufacture.

20           3.4.4 KROEGER HERB shall arrange, for at least five consecutive years and at  
21 least once per year, for the lead testing of five randomly selected samples of each Covered  
22 Product in the form intended for sale to the end-user to be distributed or sold to California.  
23 KROEGER HERB shall continue testing so long as the Covered Products are sold in California  
24 or sold to a third party for retail sale in California. If tests conducted pursuant to this Section  
25 demonstrate that no warning is required for a Covered Product during each of five consecutive  
26 years, then the testing requirements of this Section will no longer be required as to that Covered  
27 Product. However, if after the five-year period, KROEGER HERB changes ingredient suppliers  
28 for any of the Covered Products and/or reformulates any of the Covered Products, KROEGER

1 HERB shall test that Covered Product at least once after such change is made, and send those  
2 test results to ERC within 10 working days of receiving the test results. The testing  
3 requirements discussed in Section 3.4 are not applicable to any Covered Product for which  
4 KROEGER HERB has provided the warning as specified in Section 3.2.

5           3.4.5 Beginning on the Effective Date and continuing for a period of five years  
6 thereafter, KROEGER HERB shall arrange for copies of all laboratory reports with results of  
7 testing for lead content under Section 3.4 to be automatically sent by the testing laboratory  
8 directly to ERC within ten working days after completion of that testing. These reports shall be  
9 deemed and treated by ERC as confidential information under the terms of the confidentiality  
10 agreement entered into by the Parties. KROEGER HERB shall retain all test results and  
11 documentation for a period of five years from the date of each test.

#### 12 4. SETTLEMENT PAYMENT

13           4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil  
14 penalties, attorney's fees, and costs, KROEGER HERB shall make a total payment of  
15 \$75,000.00 ("Total Settlement Amount") to ERC divided into six equal consecutive monthly  
16 payments of \$12,500.00 with the first payment due and owing within 5 days of the Effective  
17 Date followed by five (5) consecutive monthly payment due on the same day of the month as  
18 the day of the month the first payment was due (e.g. if the first payment is due on the 15<sup>th</sup> of the  
19 month, the second payment would be due on the 15<sup>th</sup> of the following month). KROEGER  
20 HERB shall make this payment by wire transfer to ERC's escrow account, for which ERC will  
21 give KROEGER HERB the necessary account information. The Total Settlement Amount  
22 shall be apportioned as follows:

23           4.2 \$25,772.00 shall be considered a civil penalty pursuant to California Health  
24 and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$19,329.00) of the civil penalty to the  
25 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
26 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
27 Code §25249.12(c). ERC will retain the remaining 25% (\$6,443.00) of the civil penalty.

1           4.3           \$3,790.09 shall be distributed to Environmental Research Center as  
2 reimbursement to ERC for reasonable costs incurred in bringing this action; and \$19,446.07  
3 shall be distributed to Environmental Research Center in lieu of further civil penalties, for the  
4 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
5 includes work, analyzing, researching and testing consumer products that may contain  
6 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
7 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
8 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
9 donation of \$972.00 to the As You Sow to address reducing toxic chemical exposures in  
10 California.

11           4.4           \$13,015.39 shall be distributed to LOZEAU DRURY LLP as reimbursement  
12 of ERC's attorney's fees, while \$12,976.45 shall be distributed to ERC for its in-house legal  
13 fees.

14       **5.       MODIFICATION OF CONSENT JUDGMENT**

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

18           5.2           If KROEGER HERB seeks to modify this Consent Judgment under Section  
19 5.1, then KROEGER HERB must provide written notice to ERC of its intent ("Notice of  
20 Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of  
21 Intent, then ERC must provide written notice to KROEGER HERB within thirty days of  
22 receiving the Notice of Intent. If ERC notifies KROEGER HERB in a timely manner of ERC's  
23 intent to meet and confer, then the Parties shall meet and confer in good faith as required in this  
24 Section. The Parties shall meet in person or via telephone within thirty (30) days of ERC's  
25 notification of its intent to meet and confer. Within thirty days of such meeting, if ERC  
26 disputes the proposed modification, ERC shall provide to KROEGER HERB a written basis for  
27 its position. The Parties shall continue to meet and confer for an additional thirty (30) days in  
28

1 an effort to resolve any remaining disputes. Should it become necessary, the Parties may agree  
2 in writing to different deadlines for the meet-and-confer period.

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

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

15       **6.    RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
16       **JUDGMENT**

17       **6.1**       This Court shall retain jurisdiction of this matter to enforce, modify or  
18 terminate this Consent Judgment.

19       **6.2**       If ERC alleges that any Covered Product fails to qualify as a Reformulated  
20 Covered Product (for which ERC alleges that no warning has been provided but required under  
21 the terms of this Consent Judgment), then ERC shall inform KROEGER HERB in a reasonably  
22 prompt manner of its test results, including information sufficient to permit KROEGER HERB  
23 to identify the Covered Products at issue. KROEGER HERB shall, within thirty days following  
24 such notice, provide ERC with testing information, from an independent third-party laboratory  
25 meeting the requirements of Sections 3.4, demonstrating KROEGER HERB's compliance with  
26 the Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior  
27 to ERC taking any further legal action.

1       **7. APPLICATION OF CONSENT JUDGMENT**

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

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

9           **8.1**       This Consent Judgment is a full, final, and binding resolution between ERC,  
10 on behalf of itself and in the public interest, and KROEGER HERB, of any alleged violation of  
11 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of  
12 exposure to lead from the handling, use, or consumption of the Covered Products and fully  
13 resolves all claims that have been or could have been asserted in this action up to and including  
14 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.  
15 ERC, on behalf of itself and in the public interest, hereby discharges KROEGER HERB and its  
16 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
17 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label  
18 customers of KROEGER HERB), distributors, wholesalers, retailers, and all other upstream and  
19 downstream entities in the distribution chain of any Covered Product, and the predecessors,  
20 successors and assigns of any of them (collectively, "Released Parties"), from any and all  
21 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and  
22 expenses asserted, or that could have been asserted, as to any alleged violation of Proposition  
23 65 arising from the failure to provide Proposition 65 warnings on the Covered Products  
24 regarding lead.

25           **8.2**       ERC on its own behalf only, on one hand, and KROEGER HERB on its own  
26 behalf only, on the other, further waive and release any and all claims they may have against  
27 each other for all actions or statements made or undertaken in the course of seeking or opposing  
28 enforcement of Proposition 65 in connection with the Notice or Complaint up through and

1 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit  
2 any Party's right to seek to enforce the terms of this Consent Judgment.

3           **8.3**           It is possible that other claims not known to the Parties arising out of the  
4 facts alleged in the Notice or the Complaint and relating to the Covered Products will develop  
5 or be discovered. ERC on behalf of itself only, on one hand, and KROEGER HERB, on the  
6 other hand, acknowledge that this Consent Judgment is expressly intended to cover and include  
7 all such claims up through the Effective Date, including all rights of action therefore. ERC and  
8 KROEGER HERB acknowledge that the claims released in Sections 8.1 and 8.2 above may  
9 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any  
10 such unknown claims. California Civil Code section 1542 reads as follows:

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

14 ERC on behalf of itself only, on the one hand, and KROEGER HERB, on the other hand,  
15 acknowledge and understand the significance and consequences of this specific waiver of  
16 California Civil Code section 1542.

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

20           **8.5**           Nothing in this Consent Judgment is intended to apply to any occupational  
21 or environmental exposures arising under Proposition 65, nor shall it apply to any of  
22 KROEGER HERB's products other than the Covered Products.

23           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

26           **10. GOVERNING LAW**

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

1     **11. PROVISION OF NOTICE**

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

5     **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

6 Chris Heptinstall, Executive Director, Environmental Research Center  
7 3111 Camino Del Rio North, Suite 400  
8 San Diego, CA 92108  
9 Tel: (619) 500-3090  
10 Email: chris\_erc501c3@yahoo.com

11 With a copy to:

12 RICHARD T. DRURY  
13 REBECCA L. DAVIS  
14 LOZEAU | DRURY LLP  
15 410 12th Street, Suite 250  
16 Oakland, CA 94607  
17 Ph: 510-836-4200  
18 Fax: 510-836-4205  
19 Email: richard@lozeaudrury.com

20     **FOR KROEGER HERB PRODUCTS CO., INC.:**

21 Thomas M. Brown, President  
22 Kroeger Herb Products Co., Inc.  
23 805 Walnut Street  
24 Boulder, CO 80302  
25 Email: tom@kroegerherb.com

26 With a copy to:

27 MELISSA JONES  
28 STOEL RIVES, LLP  
500 Capitol Mall, Suite 1600  
Sacramento, Ca 95814  
Ph: 916-319-4649  
Fax: 916-447-4781  
Email: melissa.jones@stoel.com

1     **12. COURT APPROVAL**

2           **12.1**       Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
4 Consent Judgment.

5           **12.2**       If the California Attorney General objects to any term in this Consent  
6 Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and  
7 if possible prior to the hearing on the motion.

8           **12.3**       If this Stipulated Consent Judgment is not approved by the Court, it shall be  
9 void and have no force or effect.

10     **13. EXECUTION AND COUNTERPARTS**

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

14     **14. DRAFTING**

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

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

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

1 **16. ENTIRE AGREEMENT, AUTHORIZATION**

2 16.1 This Consent Judgment contains the sole and entire agreement and  
3 understanding of the Parties with respect to the entire subject matter herein, and any and all  
4 prior discussions, negotiations, commitments and understandings related hereto. No  
5 representations, oral or otherwise, express or implied, other than those contained herein have  
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
7 herein, shall be deemed to exist or to bind any Party.

8 16.2 Each signatory to this Consent Judgment certifies that he or she is fully  
9 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
10 explicitly provided herein, each Party shall bear its own fees and costs.

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

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

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

19 (2) Make the findings pursuant to California Health and Safety Code section  
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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1 IT IS SO STIPULATED:

2 Dated: 4/10/, 2015

ENVIRONMENTAL RESEARCH  
CENTER

By: [Signature]  
Chris Heppinslat, Executive Director

5  
6 Dated: 4-10-, 2015

KROEGER HERB PRODUCTS CO., INC.

By: [Signature]  
Its: President

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10 APPROVED AS TO FORM:

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12 Dated: 4/12/, 2015

LOZEAU | DRURY LLP

By: [Signature]  
Richard T. Drury  
Rebecca L. Davis  
Attorneys for Plaintiff Environmental  
Research Center

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15  
16 Dated: April 10, 2015

STOEL RIVES, LLP

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for By: [Signature]  
Melissa A. Jones  
Attorneys for Defendant Kroeger Herb  
Product Co., Inc.

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: \_\_\_\_\_, 2015

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