

Ropers Majeski Kohn & Bentley  
A Professional Corporation  
Redwood City

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FOOD FOR HEALTH INTERNATIONAL, LLC;  
ACTIVZ, LLC; AND HONEST NUTRITION LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH  
CENTER, INC., a non-profit California  
corporation,,

Plaintiff,

v.

FOOD FOR HEALTH  
INTERNATIONAL, LLC, ACTIVZ, LLC,  
and HONEST NUTRITION, LLC, Utah  
Limited liability companies,,

Defendants.

CASE NO. RG 14748008

**STIPULATED SETTLEMENT PURSUANT  
TO SECTION 664.6 C.C.P.**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 13, 2014  
**Trial Date: None set**

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1           **1. INTRODUCTION**

2           1.1 The Parties

3           This Settlement Agreement (“Settlement”) is hereby entered into by and between  
4 the parties to the lawsuit, Plaintiff ENVIRONMENTAL RESEARCH CENTER, INC. (“ERC”), a  
5 non-profit corporation, as a private enforcer, and FOOD FOR HEALTH INTERNATIONAL,  
6 LLC and ACTIVZ, LLC. HONEST NUTRITION LLC was previously a party to this action but  
7 was dismissed, and thus is not part of this Settlement.<sup>1</sup> Hereinafter, FOOD FOR HEALTH  
8 INTERNATIONAL, LLC, and ACTIVZ, LLC, shall be referred to as “FFH”.

9           ERC and FFH shall be collectively referred to as the “Parties” and each of them as  
10 a “Party.” For purposes of this settlement only, FFH is deemed to employ ten or more persons,  
11 and FFH is a person in the course of doing business for purposes of Proposition 65 (§§ 25249.5 et  
12 seq. H.&S.C.).

13           1.2 Allegations and Representations

14           ERC alleges that FFH have offered for sale in the State of California and have sold  
15 in California, the following products:

- 16           • **Activz Organic Rice Protein Shake Chocolate**
- 17           • **Activz 100% Organic Wheatgrass Juice Powder**
- 18           • **Activz Organic Mango Whole Powder**
- 19           • **Activz Organic Spinach Whole + Juice Powder**
- 20           • **Activz Whole-Food Multivitamin Shake Complete Berries &**  
21           **Cream Flavor**

22           Collectively these five products are referred to hereinafter as “the Products”, and each  
23 individually as “the Product”.

24           ERC alleges that each of the Products contains lead and that such sales have not  
25 been accompanied by a requisite Proposition 65 warnings, as set forth in 27 C.C.R. §§ 25601 et  
26 seq. Lead is listed under Proposition 65 as a chemical known to the State of California to cause  
27

28           <sup>1</sup> Honest Nutrition has less than 10 employees.

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1 cancer and birth defects or other reproductive harm.

2 FFH denies that a consumer is exposed to lead from the Products or any of its  
3 other products in an amount that mandates a warning of any type pursuant to Proposition 65.  
4 FFH further denies that this Court has jurisdiction over any consumer product which has not been  
5 both a) explicitly set forth in the 60-Day Notice, and b) has been tested by Plaintiff and supported  
6 by a Certificate of Merit.

7 FFH further denies the material, factual, and legal allegations contained in the 60-  
8 Day Notice and the Complaint, and maintain that all of its products that FFH has sold, imported,  
9 and/or distributed in California, and all products manufactured, imported, sold, or distributed by  
10 others, including the Products, have been and are in compliance with all laws, including but not  
11 limited to Proposition 65. Nothing herein shall be construed as an admission by FFH of any fact,  
12 finding, issue of law, or violation of law, nor shall compliance with this Settlement constitute or  
13 be construed as an admission by FFH of any fact, finding, conclusion, issue of law, or violation  
14 of law.

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

18 1.3 Notices of Violation

19 On or about August 29, 2014, ERC mailed to FFH and various public enforcement  
20 agencies, pursuant to Health & Safety Code §25249.7(d) (the "Notice"), a document entitled  
21 "Notice of Violations of California Health & Safety Code Section 25249.5 et seq.", alleging that  
22 FFH was in violation of Proposition 65 for failing to warn consumers that the Products exposed  
23 users in California to lead. A true and correct copy of the Notice is attached as Exhibit A. No  
24 public enforcer has prosecuted the claims set forth in the Notice within sixty days plus service  
25 time relative to the provision of the Notice to them by ERC.

26 1.4 Stipulation as to Jurisdiction/No Admission

27 For purposes of this Settlement only, the Parties stipulate that in the event that  
28 enforcement of this Settlement is deemed necessary by one or both of the Parties, or a dispute

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1 between the Parties arises regarding this Settlement, the Superior Court of California, County of  
2 Alameda, has proper jurisdiction and venue over the Parties as to the terms and conditions of this  
3 Settlement Pursuant to Section 664.6 C.C.P., that venue is proper in the County of Alameda, and  
4 that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Settlement.

5 Nothing in this Settlement shall be construed as an admission by FFH of any fact,  
6 finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement  
7 constitute or be construed as an admission by FFH of any fact, finding, conclusion, issue of law,  
8 or violation of law, such being specifically denied by Defendants.

9 1.5 Effective Date

10 For purposes of this Settlement, the term "Effective Date" shall mean the date this  
11 Settlement is approved by the Superior Court.

12 For purposes of this Settlement, the term "Execution Date" shall mean the date this  
13 Settlement is signed by the Parties as set forth in Para. 14 hereinafter.

14 **2. WARNINGS AND REFORMULATION**

15 Commencing on the Effective Date, FFH shall not ship to, sell in, or offer to sell in  
16 California any of the Products that is/are manufactured, distributed, or sold by FFH that exposes a  
17 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms per day of lead when said  
18 person consumes the maximum recommended or suggested quantity of the Product as indicated  
19 on the Product's label, unless it meets the warning requirements noted herein.

20 2.1 As used herein, the term "ship to, sell in, or offer to sell in" shall mean (a)  
21 to directly ship one or more of the Products into California for sale or use in California, or (b) to  
22 sell one or more of the Products to a distributor or retailer that FFH knows intends to sell or cause  
23 to be sold said Product(s) at retail in California or to cause the Product(s) to be used in California.

24 2.2 For purposes of this Settlement, the "Daily Lead Exposure Level" shall be  
25 measured in micrograms and shall be calculated using the following formula: micrograms of  
26 lead per gram of product, multiplied by grams of product per serving of the product (using the  
27 largest suggested or recommended serving size appearing on the product label), multiplied by  
28 servings of the product per day (using the largest number of recommended or suggested servings

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1 appearing on the product label), which equals micrograms of lead exposure per day.

2 2.3 Clear & Reasonable Warnings

3 If FFH is required to provide a warning, the following warning must be utilized:

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

6 FFH shall use the phrase “cancer and” in the warning only if the maximum daily  
7 dose recommended on the label results in a daily exposure of more than 15 micrograms of lead  
8 as determined pursuant to the quality control methodology set forth herein.

9 The warning shall be securely affixed to or printed upon the container or label of  
10 each of the Products. In addition, for the Products sold over the FFH website, the warning shall  
11 appear on FFH’s checkout page on their website for California consumers identifying any of the  
12 Products for purchase, and shall also appear prior to completing checkout on the FFH website  
13 when a California delivery address is indicated for any purchase of any of the Products.

14 The font size of the warning shall be at least the same size as the largest of any  
15 other health or safety warnings also appearing on its website or on the label or container of  
16 FFH’s Product packaging and the word “WARNING” shall be in all capital letters and in bold  
17 print. No other statements about Proposition 65 or lead may accompany the warning as required  
18 herein.

19 FFH must display the above warnings with such conspicuousness, as compared  
20 with other words, statements, or design of the label or container, as applicable, to render the  
21 warning likely to be read and understood by an ordinary individual under customary conditions  
22 of purchase or use of the Product(s).

23 2.4 Reformulated Products

24 A Reformulated Product is one for which the “Daily Lead Exposure Level” is  
25 less than 0.5 micrograms per day of lead when said person consumes the maximum  
26 recommended or suggested quantity of the Product as indicated on the Product’s label. If any  
27 testing, in the manner set forth herein, demonstrates that the Daily Lead Exposure Level is less  
28 than 0.5 micrograms per day, then for that one-year period until the next test FFH may sell said

1 Product without the Clear & Reasonable Warnings set forth herein until the next required testing  
2 of the Product. FFH shall give written notice, as provided herein, to ERC that it intends, based  
3 on the test results, to sell the Product(s) for the next year without said warnings. If ERC  
4 disagrees with said conclusion by FFH, the Parties shall, in good faith, meet-and-confer to  
5 discuss the matter and seek a resolution before either FFH or ERC undertake any action to  
6 enforce the terms of the Settlement.

7 2.5 Testing and Quality Control Methodology

8 2.5.1 Beginning within one year of the Effective Date, FFH shall arrange  
9 for lead testing of the Products at least once a year for a minimum of five consecutive years by  
10 arranging for testing of five randomly selected samples of each of the Products, in the form  
11 intended for sale to the end-user, Products which FFH intends (a) to sell or is manufacturing for  
12 sale in California, (b) to sell directly to a consumer in California, or (c) to sell to a distributor or  
13 retailer that FFH knows intends to sell or cause to be sold said Product(s) at retail in California  
14 or to cause the Product(s) to be used in California. The testing requirement does not apply to  
15 any of the Products for which FFH has provided the warnings specified in Section 2.3. If the  
16 tests conducted, as set forth herein, demonstrate that no warning is required for a Product during  
17 each of five consecutive years, then the testing requirements of this Section will no longer be  
18 required as to that Product. However, if during or after the five-year testing period, FFH  
19 changes ingredient suppliers for any of the Products and/or reformulates any of the Products,  
20 FFH shall test the Product annually for at least four (4) consecutive years after such change is  
21 made.

22 2.5.2 For purposes of measuring the "Daily Lead Exposure Level" for  
23 this section, the highest lead detection result of the five (5) randomly selected samples of the  
24 Products shall be deemed controlling.

25 2.5.3 All testing pursuant to this Settlement shall be performed  
26 according to proper and accepted scientific and statistical analysis for the Covered Products  
27 using a laboratory method that complies with the performance and quality control factors  
28 appropriate for the method used, including limit of detection, limit of qualification, accuracy,

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1 and precision and meets at least the following criteria: Inductively Coupled Plasma-Mass  
2 Spectrometry, with a limit of detection, that achieves a limit of quantification of less than or  
3 equal to 0.010 mg/kg, or any other testing method subsequently agreed to in writing by the  
4 Parties.

5 2.5.4 All testing pursuant to this Settlement shall be performed by an  
6 independent third party laboratory certified by the California Environmental Laboratory  
7 Accreditation Program or certified by the U.S. EPA, or by an independent third-party laboratory  
8 that is registered with the U.S. FDA.

9 2.5.5 Nothing in this Settlement shall limit FFH's ability to conduct, or  
10 require that others conduct, additional testing of the Products, including the raw materials used  
11 in the manufacture or composition of the Products. Nothing in this Settlement shall limit FFH's  
12 ability to scientifically demonstrate to ERC that the lead present in one or more of the Products  
13 is naturally occurring, as described in 27 C.C.R. § 25501

14 2.5.6 Beginning on the Effective Date and continuing for a period of  
15 five years, FFH shall arrange for copies of all laboratory reports with results of testing for lead  
16 content as set forth herein to be sent by the testing laboratory directly to ERC within ten days  
17 after completion of the testing. FFH shall also retain copies of all test results and  
18 documentation related thereto for a period of five years from the date of each test.

19 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

20 3.1 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties,  
21 attorney's fees, and costs, FFH shall make a total payment of \$140,000.00 ("Total Settlement  
22 Amount") which shall be paid in eleven (11) consecutive equal monthly installments of  
23 \$11,666.67 and the final consecutive monthly installment of \$11,666.63 for a total of twelve  
24 consecutive monthly installments (the "Settlement Payments"), the first of which shall be due  
25 and payable within ten (10) business days after the Effective Date. FFH shall make this  
26 payment by wire transfer to ERC's escrow account, for which ERC will give FFH the necessary  
27 account information. The Total Settlement Amount shall be apportioned as follows:  
28

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1           3.2 \$27,860.00 shall be considered a civil penalty pursuant to California Health and  
2 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$20,895.00) of the civil penalty to the  
3 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
4 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
5 Code §25249.12(c). ERC will retain the remaining 25% (\$6,965.00) of the civil penalty.

6           3.3 \$2,949.74 shall be distributed to ERC as reimbursement to ERC for reasonable  
7 costs incurred in bringing this action.

8           3.4 \$21,026.13 shall be distributed to ERC in lieu of further civil penalties, for the  
9 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
10 includes work, analyzing, researching and testing consumer products that may contain  
11 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
12 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
13 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
14 donation of \$1,050.00 to the Global Community Monitor to address reducing toxic chemical  
15 exposures in California.

16           3.5 \$74,949.00 shall be distributed to Lozeau | Drury LLP as reimbursement of  
17 ERC’s attorney’s fees, while \$13,215.13 shall be distributed to ERC for its in-house legal fees.

18           **4. RELEASE OF ALL CLAIMS**

19           4.1. ERC, suing in the public interest, hereby releases FFH; all entities that  
20 supplied or distributed the Products or ingredients therefor to FFH; all entities that manufactured  
21 the Products that were directly or indirectly supplied to FFH; all distributors and retailers of the  
22 Products; and, the affiliates and subsidiaries of each of these aforementioned entities; and, the  
23 divisions, successors, subsidiaries, parent corporations, related entities, affiliates, agents,  
24 contractors, experts, consultants, counsel, service providers, officers, directors, and employees of  
25 FFH; and, the aforementioned entities described or named in this Para. 4.1, of any liability  
26 whatsoever under Proposition 65 related to the Products and the alleged failure to warn California  
27 consumers of an alleged exposure to lead from any of the Products sold in California on or before  
28 the date the Court approves this Settlement.

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1           4.2. It is possible that other claims not known to the Parties arising out of the facts  
2 alleged in the Notice or the Complaint and relating to the Products will develop or be discovered.  
3 ERC in his individual capacity and not in his representative capacity and FFH, acknowledges that  
4 this Settlement is intended to cover and include all such claims up through the Effective Date,  
5 including all rights of action thereof. ERC and FFH acknowledge that the claims released in  
6 Section 4.1 above may include unknown claims, and nevertheless hereby waive California Civil  
7 Code section 1542 which provides as follows:

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

14           ERC and FFH understand and acknowledge the significance and consequence of this  
15 waiver pursuant to California Civil Code Section 1542, and understand and acknowledge that the  
16 waiver applies to any and all legal or equitable actions that arise from or are related directly or  
17 indirectly, in whole or in part, to the Products sold prior to the Effective Date the litigation,  
18 statements made regarding ERC or the litigation, and the underlying facts of the lawsuit or claims  
19 made in the litigation. Furthermore, ERC and FFH acknowledge that it intends these  
20 consequences for any such claims related to the Products which may exist as of the date of this  
21 release but which ERC and FFH do not know exist, and which, if known, would materially affect  
22 his decision to enter into this Agreement, regardless of whether the lack of knowledge is the result  
23 of ignorance, oversight, error, negligence or any other cause. ERC and FFH further waive all  
24 rights to institute any form of legal or equitable action or defense (including without limit  
25 contribution, indemnity, set-off, and by right of subrogation) against any entity released herein for  
26 any and all acts or omissions or statements made or activities directed to be undertaken or  
27 activities that were undertaken by any party released herein excluding any actions that become  
28 necessary to enforce this Settlement.

4.3. FFH, on behalf of themselves, their past and current officers, directors,  
managers, agents, representatives, attorneys, successors, and/or assignees, hereby waive any and

1 all claims against ERC, its attorneys and other representatives, for any and all actions taken or  
2 statements made (or those that could have been taken or made) by ERC and its attorneys and other  
3 representatives, whether in the course of investigating claims or otherwise seeking to enforce  
4 Proposition 65 against them in this matter with respect to the Products.

5 4.4. The Parties agree, understand, and acknowledge that this Settlement  
6 represents a compromise of this action and the release of claims as set forth herein, and that neither  
7 the fact nor the terms of this Settlement shall be construed as an admission of liability or  
8 wrongdoing on the part of the Parties.

9 **5. MODIFICATION OF SETTLEMENT**

10 5.1 This Settlement may be modified only (i) by written stipulation of the  
11 Parties or pursuant to Section 5.4, and (ii) upon entry by the Court of a modified Settlement.

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

23 5.3 In the event that FFH initiates or otherwise requests a modification under  
24 Section 5.1, and the meet-and-confer process leads to a joint motion or application of the  
25 Settlement, FFH shall reimburse ERC its costs and reasonable attorney's fees for the time spent  
26 in the meet-and-confer process and filing and arguing the motion or application.

27 5.4 In the event that ERC initiates or otherwise requests a modification under  
28 Section 5.1, and the meet-and-confer process leads to a joint motion or application of the

1 Settlement, ERC shall reimburse FFH its costs and reasonable attorney's fees for the time spent  
2 in the meet-and-confer process and filing and arguing the motion or application.

3 5.5 Where the meet-and-confer process does not lead to a joint motion or  
4 application in support of a modification of the Consent Judgment, then either Party may seek  
5 judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs and  
6 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
7 means a party who is successful in obtaining relief more favorable to it than the relief that the  
8 other party was amenable to providing during the Parties' good faith attempt to resolve the  
9 dispute that is the subject of the modification.

10 **6. APPLICATION OF SETTLEMENT**

11 This Settlement shall apply to, be binding upon, and benefit the Parties and their  
12 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
13 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,  
14 wholesalers, retailers, predecessors, successors, and assigns.

15 This Settlement shall have no application to the Products which are distributed or sold  
16 outside the State of California and which thereafter are not used by California consumers in  
17 California.

18 **7. BINDING EFFECT**

19 7.1 Compliance with the terms of this Settlement shall be deemed to constitute  
20 compliance with Proposition 65 by FFH and any entity released herein regarding any alleged  
21 exposures to lead in the Products, as set forth in the Notice and the Complaint.

22 7.2 Nothing in this Settlement is intended to apply to any occupational or  
23 environmental exposures arising under Proposition 65, nor shall it apply to any of FFH's  
24 products other than the Products.

25 **8. SEVERABILITY & COMPLETENESS OF AGREEMENT**

26 8.1 If, subsequent to the execution of this Settlement Agreement, any of the  
27 provisions of this Settlement are held by a court to be unenforceable, the validity of the  
28 enforceable provisions remaining shall not be adversely affected.

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1                   8.2 This Settlement Agreement contains the sole and entire agreement of the  
2 Parties and any and all prior negotiations and understandings related hereto shall be deemed to  
3 have been merged within it. No representations or terms of agreement other than those contained  
4 herein exist or have been made by any Party with respect to the other Party or the subject matter  
5 hereof.

6                   **9. GOVERNING LAW**

7                   The terms of this Settlement shall be governed by the laws of the State of California and  
8 apply within the State of California. Compliance with the terms of this Settlement resolves any  
9 issue, now or in the future, as to the requirements of Proposition 65 with respect to alleged  
10 exposures to lead arising from the Products. In the event that Proposition 65 is repealed or  
11 amended, then FFH shall provide written notice to ERC of any asserted change in the law, and  
12 shall have no further obligations pursuant to this Settlement with respect to, and to the extent that,  
13 the Products are so affected.

14                   **10. NOTICES**

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

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

19 Chris Heptinstall, Executive Director, Environmental Research Center, Inc.  
20 3111 Camino Del Rio North, Suite 400  
21 San Diego, CA 92108  
22 Tel: (619) 500-3090  
23 Email: chris\_erc501c3@yahoo.com

24                   With a copy to:

25                   MICHAEL R. LOZEAU  
26                   RICHARD T. DRURY  
27                   LOZEAU | DRURY LLP  
28                   410 12th Street, Suite 250  
29                   Oakland, CA 94607  
30                   Ph: 510-836-4200  
31                   Fax: 510-836-4205  
32                   Email: michael@lozeaudrury.com  
33                   richard@lozeaudrury.com

34                   **FOR FOOD FOR HEALTH INTERNATIONAL, LLC, & ACTIVZ, LLC**

1 Frank Davis  
2 Food For Health International, LLC  
3 825 East 800 North  
4 Orem UT 84097-4244

5 With a copy to:

6 THOMAS H. CLARKE, JR.  
7 ROPERS, MAJESKI, KOHN & BENTLEY  
8 1001 Marshall Street, Suite 500  
9 Redwood City, CA 94063-2052  
10 Ph: 650-364-8200  
11 Fax: 650-780-1701  
12 Email: thomas.clarke@rmkb.com

13 For all notices and correspondence required to be provided pursuant to this Settlement in  
14 writing, the Parties shall also send a courtesy notice by electronic mail to counsel with the  
15 correspondence or notice attached thereto. The provision of such courtesy notice shall not lessen,  
16 diminish, or void the requirement noted herein regarding how actual notices and correspondence  
17 are to be sent. Further, any party, from time to time, may specify in writing to the other party a  
18 change of address to which all notices and other communications shall be sent.

19 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

20 This Settlement may be executed in counterparts and by facsimile, each of which shall be  
21 deemed an original, and all of which, when taken together, shall constitute one and the same  
22 document.

23 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

24 ERC agrees to comply with the requirements set forth in California Health & Safety Code  
25 § 25249.7(f).

26 **13. AUTHORIZATION**

27 12.1 Each of the Parties acknowledges that they had the right and ability to  
28 consult with and seek the advice of counsel of their choice and each voluntarily has entered into  
this Settlement.

12.2 The undersigned affirmatively represent that they are authorized to execute  
this Settlement on behalf of their respective Parties and have read, understood, and agree to all of  
the terms and conditions of this document, and further certifies that he or she is fully authorized

1 by the Party he or she represents to execute the Settlement on behalf of the Party represented and  
2 legally bind that Party.

3 12.3. Except to the extent otherwise noted, each of the Parties shall bear its own  
4 costs and fees.

5 **14. COURT APPROVAL**

6 13.1 Upon execution of this Settlement by the Parties, ERC shall notice a Motion  
7 for Court Approval. The Parties shall use their best efforts to support approval of this  
8 Settlement.

9 13.2 If the California Attorney General objects to any term in this Settlement, the  
10 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior  
11 to the hearing on the motion.

12 13.3 If this Settlement is not approved by the Court, it shall be void and have no  
13 force or effect.

14 **15. DRAFTING**

15 The terms of this Settlement 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 and  
17 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
18 construction of this Settlement, no inference, assumption, or presumption shall be drawn, and no  
19 provision of this Settlement shall be construed against any Party, based on the fact that one of  
20 the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of  
21 the Settlement. It is conclusively presumed that all of the Parties participated equally in the  
22 preparation and drafting of this Settlement.

23 **16. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

24 If a dispute arises with respect to either Party's compliance with the terms of this  
25 Settlement, the Parties shall meet in person or by telephone and endeavor to resolve the dispute in  
26 an amicable manner. No action or motion may be filed in the absence of such a good faith  
27 attempt to resolve the dispute beforehand. In the event an action or motion is filed, however, the  
28 prevailing party may seek to recover costs and reasonable attorney's fees. As used in the

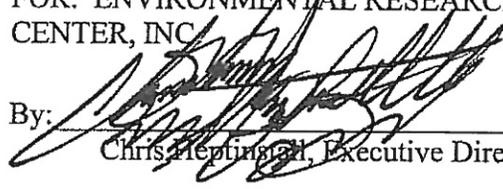
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A Professional Corporation  
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preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

Dated: 9/14/, 2015

FOR: ENVIRONMENTAL RESEARCH CENTER, INC

By:   
Chris Hepting, Executive Director

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

FOR: FOOD FOR HEALTH ("FFH")

By:   
By: Frank Davis  
Its: President