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9 ENVIRONMENTAL RESEARCH CENTER, INC.

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16 Attorney for Defendants
17 NORTH AMERICAN HERB AND SPICE CO.
18 LTD. LLC dba NORTH AMERICAN HERB AND
19 SPICE

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 COUNTY OF ALAMEDA

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

25 Plaintiff,

26 v.

27 NORTH AMERICAN HERB AND SPICE
28 CO. LTD. LLC dba NORTH AMERICAN
HERB & SPICE LLC, an Illinois Limited
Liability Company; NORTH AMERICAN
HERB AND SPICE CO. LTD. LLC, an
Illinois Limited Liability Company

Defendants.

CASE NO. RG15764471

STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 30, 2015

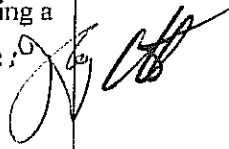
Trial Date: None set

1 IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES HERETO, AS
2 FOLLOWS:

3 ~~1. INTRODUCTION~~

4 1.1 On March 30, 2015, Plaintiff Environmental Research Center, Inc. ("ERC"), a
5 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by
6 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the
7 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),
8 against NORTH AMERICAN HERB AND SPICE CO. LTD. LLC dba NORTH AMERICAN
9 HERB & SPICE CO. LTD, LLC, an Illinois Limited Liability Company and NORTH
10 AMERICAN HERB AND SPICE CO. LTD. LLC. The correct name of the entity is NORTH
11 AMERICAN HERB AND SPICE CO. LTD. LLC dba NORTH AMERICAN HERB AND
12 SPICE LLC (collectively "NAHS" or "Defendant"), an Illinois Limited Liability Company.

13 For purposes of this Consent Judgment, the Parties agree that NAHS is the appropriately named
14 entity and is responsible for the violations described in the Complaint.

15 1.2 In this action, ERC alleges that the following products manufactured,
16 distributed or sold by NAHS contain lead, a chemical listed under Proposition 65 as a
17 carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring a
18 Proposition 65 warning. ~~These products are:~~ *The "Covered Products" are:* 

- 19 a. North American Herb & Spice Extract of Wild Nettles;
- 20 b. North American Herb & Spice Raw ToxiPurge;
- 21 c. North American Herb & Spice EstroNorm;
- 22 d. North American Herb & Spice Hyper-Ten;
- 23 e. North American Herb & Spice Hema-Build;
- 24 f. North American Herb & Spice Total Daily Purge+;
- 25 g. North American Herb & Spice LivaClenz;
- 26 h. North American Herb & Spice Raw Purely-Min;
- 27 i. North American Herb & Spice Purely-B;
- 28 j. North American Herb & Spice ProstaCLENZ

1 1.3 ERC and NAHS are hereinafter referred to individually as a "Party" or
2 collectively as the "Parties."

3 1.4 ERC is a California non-profit corporation dedicated to, among other causes,
4 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
5 and toxic chemicals, facilitating a safe environment for consumers and employees, and
6 encouraging corporate responsibility.

7 1.5 ERC alleges and Defendants dispute that, at all relevant times for purposes of this
8 Consent Judgment only, Defendants employed ten or more persons and are "person in the course of
9 business" within the meaning of Proposition 65. Defendant manufactures, distributes and sells the
10 Covered Products.

11 1.6 The Complaint is based on allegations contained in ERC's two Notices of
12 Violation dated September 26, 2014 and December 22, 2014, that were served on the California
13 Attorney General, other public enforcers, and Defendant ("Notices") on that same date. True
14 and correct copies of the Notices are attached as Exhibit A.

15 1.7 More than 60 days have passed since service of the Notices and no designated
16 governmental entity has filed a complaint against Defendant with regard to the Covered
17 Products or the alleged violations.

18 1.8 ERC's Notices and Complaint allege that Defendant manufactured, distributed
19 and/or sold in California the Covered Products, which contain lead, a chemical known to the
20 State of California to cause cancer and/or reproductive toxicity, and expose consumers at a
21 level requiring a Proposition 65 warning. ERC further alleges that use of the Covered Products
22 exposes persons in California to lead without first providing required clear and reasonable
23 warnings in violation of California Health and Safety Code section 25249.6.

24 1.9 Defendant denies the material factual and legal allegations contained in the
25 Notices and in the Complaint and maintains that all of the Covered Products sold and
26 distributed in California have been, and are, in compliance with all laws. Nothing in the
27 Consent Judgment shall be construed as an admission by Defendant of any fact, finding,
28 conclusion, issue of law, or violation of law, nor shall compliance with this a Consent

1 Judgment constitute or be construed as an admission by Defendant of any fact, finding,
2 conclusion, issue of law, or violation of law, the same being specifically denied by Defendant.

3 **1.10** The Parties have entered into this Consent Judgment in order to settle,
4 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
5 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
6 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
7 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
8 distributors, wholesalers, or retailers.

9 **1.11** Except as expressly set forth herein, nothing in this Consent Judgment shall
10 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
11 other or future legal proceeding unrelated to these proceedings.

12 **1.12** The Effective Date of this Consent Judgment is the date on which it is entered as
13 a Judgment by this Court.

14 **2. JURISDICTION AND VENUE**

15 For purposes of this Consent Judgment only, and any further court action that may become
16 necessary to enforce this Consent Judgment, and for no other purpose, the Parties stipulate that this
17 Court has subject matter jurisdiction over the allegations of violations contained in the Complaint,
18 personal jurisdiction over NAHS as to the acts alleged in the Complaint, that venue is proper in
19 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
20 final resolution of all claims up through and including the Effective Date which were or could
21 have been asserted in this action based on the Notices and Complaint.

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

23 **3.1** Beginning on the Effective Date, NAHS shall be permanently enjoined from,
24 "Distributing into the State of California", or directly selling in the State of California, any
25 Covered Product manufactured after the Effective Date which exposes a person to a "Daily
26 Exposure Level" of more than 0.5 micrograms per day when the maximum suggested dose is
27 taken as directed on the Covered Product's label, excluding lead deemed "naturally occurring"
28 for the purpose of this Consent Judgment only as defined in Table 3.3 below, unless it meets

1 the warning requirements under Section 3.2. Prior to the Effective Date, NAHS shall supply
2 ERC with the last lot number and expiration date for the Covered Products manufactured prior
3 to the Effective Date.

4 3.1.1 As used in this Consent Judgment, the term "Distributing into the State
5 of California" shall mean to directly ship a Covered Product into California for sale in
6 California or to sell a Covered Product to a distributor that NAHS knows will sell the Covered
7 Product in California.

8 3.1.2 For purpose of this Consent Judgment only, "Daily Lead Exposure Level"
9 shall be measured in micrograms, and shall be calculated using the following formula:
10 Micrograms of lead per gram of product, multiplied by grams per serving of the product (using
11 the largest serving size appearing on the product label), multiplied by servings of the product per
12 day (using the largest number of servings in the recommended dosage appearing on the product
13 label), which equals micrograms of lead exposure per day, excluding the amounts that for
14 purposes of this Consent Judgment only are deemed to have naturally occurring lead in the
15 ingredients listed in the table below in the amounts contained in the table. NAHS may only
16 utilize the naturally occurring allowances listed in Table 3.3 if, subject to Confidentiality, it
17 supplies ERC with a list of all ingredients in the product and the percentage of each ingredient
18 contained in the Covered Product.

19 Table 3.3

INGREDIENT	NATURALLY OCCURING AMOUNT OF LEAD
Elemental Calcium	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram

1 Cocoa-powder

1.0 micrograms/gram

2
3 **3.2 Clear and Reasonable Warnings**

4 If NAHS is required to provide a warning pursuant to Section 3.1, the following warning
5 language must be utilized:

6 **WARNING: This product contains chemicals known to the State of California to**
7 **cause [cancer and] birth defects or other reproductive harm.**

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

11 ~~The warning shall be securely affixed to or printed upon the container or label of each~~
12 Covered Product. In addition, for Covered Products sold over NAHS' website, the warning shall
13 appear prior to completing checkout on NAHS' website when a California delivery address is
14 indicated for any purchase of any non-Reformulated Covered Product as defined in Section 3.3
15 below.

16 The warning shall be at least the same size as the largest of any other health or safety
17 warnings also appearing on its website or on the label or container of NAHS' product packaging
18 and the word "WARNING" shall be in all capital letters and in bold print. No other statements
19 about Proposition 65 or lead may accompany the warning, except that NAHS may include a link to
20 its website which explains Proposition 65.

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

25 If the requirements of California Health and Safety Code section 25249.5 *et seq* are
26 amended or OEHHA promulgates regulations that establish a Maximum Allowable Dose Level
27 that is more or less stringent than 0.5 micrograms of lead per day, compliance with either the
28 warning provisions in this Section 3.2 or compliance with the amended rules or regulations shall

1 be deemed as compliant with Proposition 65.

2 **3.3 Reformulated Covered Products**

3 A Reformulated Covered Product is one for which the Daily Exposure Level when the
4 maximum suggested dose is taken as directed on the Reformulated Covered Product's label,
5 contains no more than 0.5 micrograms of lead per day as determined by the quality control
6 methodology described in Section 3.4, excluding the Warner Lambert and cocoa allowances set
7 forth in table 3.3 below.

8 **3.4 Testing and Quality Control Methodology**

9 **3.4.1** Beginning within one year of the Effective Date, NAHS shall arrange
10 for lead testing of the Covered Products at least once a year for a minimum of three consecutive
11 years by arranging for testing of five randomly selected samples of each of the Covered

12 Products which it continues to manufacture, in the form intended for sale to the end-user, which
13 NAHS intends to sell or is manufacturing for sale in California, directly selling to a consumer
14 in California or "Distributing into California." The testing requirement does not apply to any
15 of the Covered Products for which NAHS provides a warning as specified in Section 3.2. If
16 tests conducted pursuant to this Section demonstrate that no warning is required for a Covered
17 Product during each of three consecutive years, then the testing requirements of this Section
18 will no longer be required as to that Covered Product. However, if during the three-year testing
19 period, NAHS changes ingredient suppliers for any of the Covered Products and/or
20 reformulates any of the Covered Products, NAHS shall test that Covered Product annually for
21 one (1) more year after such change is made.

22 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level", the average
23 lead detection result of the five (5) randomly selected samples of the Covered Products will be
24 used.

25 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
26 laboratory method that complies with the performance and quality control factors appropriate for
27 the method used, including limit of detection, qualification, accuracy, and precision that meets the
28 following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit

1 of quantification of less than or equal to 0.010 mg/kg or any other testing method subsequently
2 agreed to in writing by the Parties.

3 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
4 independent third party laboratory certified by the California Environmental Laboratory
5 Accreditation Program or an independent third-party laboratory that is registered with the United
6 States Food & Drug Administration.

7 **3.4.5** As to Covered Products which do not bear a Proposition 65 warning
8 and are sold in California by defendant, beginning on the Effective Date and continuing for a
9 period of three years, NAHS shall arrange for copies of all final laboratory reports with results
10 of testing for lead content under Section 3.4.1 to be sent to ERC within ten days after
11 completion and issuance of the final test report. NAHS shall retain all test results and
12 documentation for a period of three years from the date of each test.

13 **4. SETTLEMENT PAYMENT**

14 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
15 penalties, attorney's fees, and costs, NAHS shall make a total payment of \$72,500.00 ("Total
16 Settlement Amount") to ERC within 5 days of the Effective Date. NAHS shall make this
17 payment by wire transfer to ERC's escrow account, for which ERC will give NAHS the
18 necessary account information. The Total Settlement Amount shall be apportioned as follows:

19 **4.2** \$22,688.00 shall be considered a civil penalty pursuant to California Health and
20 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$17,016.00) of the civil penalty to the
21 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
22 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
23 Code §25249.12(c). ERC will retain the remaining 25% (\$5,672.00) of the civil penalty.

24 **4.3** \$1,601.33 shall be distributed to ERC as reimbursement to ERC for reasonable
25 costs incurred in bringing this action.

26 **4.4** \$17,121.95 shall be distributed to ERC in lieu of further civil penalties, for the
27 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
28 includes work, analyzing, researching and testing consumer products that may contain

1 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
2 the subject matter of the current action; (2) the continued monitoring of past consent judgments
3 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
4 donation of \$856.00 to the Natural Resources Defense Council to address reducing toxic
5 chemical exposures in California.

6 4.5 \$18,784.58 shall be distributed to Law Office of Christina M. Caro as
7 reimbursement of ERC's attorney's fees, while \$12,304.14 shall be distributed to ERC for its
8 in-house legal fees.

9 **5. MODIFICATION OF CONSENT JUDGMENT**

10 5.1 This Consent Judgment 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 consent
12 judgment.

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

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

1 **5.4** Where the meet-and-confer process does not lead to a joint motion or
2 application in support of a modification of the Consent Judgment, then either Party may seek
3 judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs
4 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
5 means a party who is successful in obtaining relief more favorable to it than the relief that the
6 other party was amenable to providing during the Parties' good faith attempt to resolve the
7 dispute that is the subject of the modification.

8 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
9 **JUDGMENT**

10 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
11 this Consent Judgment.

12 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
13 Covered Product and also that Covered Product does not have a warning, then, within 14 days,
14 ERC shall inform NAHS and provide unredacted copies of its test results, including
15 information sufficient to permit NAHS to identify the Covered Products at issue. NAHS shall,
16 within thirty days following such notice, provide ERC with testing information, from an
17 independent third-party laboratory meeting the requirements of Sections 3.4.1 and 3.4.2,
18 demonstrating NAHS' compliance with the Consent Judgment, if warranted. The Parties shall
19 first attempt to resolve the matter prior to ERC taking any further legal action.

20 **7. APPLICATION OF CONSENT JUDGMENT**

21 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
22 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
23 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
24 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
25 application to Covered Products which are distributed or sold outside the State of California.

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

27 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
28 behalf of itself and in the public interest, and NAHS, of any alleged violation of Proposition 65

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

14 8.2 ERC on its own behalf only, on one hand, and NAHS on its own behalf only, on
15 the other, further waive and release any and all claims they may have against each other for all
16 actions or statements made or undertaken in the course of seeking or opposing enforcement of
17 Proposition 65 in connection with the Notices or Complaint up through and including the
18 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
19 right to seek to enforce the terms of this Consent Judgment.

20 8.3 It is possible that other claims not known to the Parties arising out of the facts
21 alleged in the Notices or the Complaint and relating to the Covered Products exist or will
22 develop or be discovered. ERC on behalf of itself only, on one hand, and NAHS, on the other
23 hand, acknowledge that this Consent Judgment is expressly intended to cover and include all
24 such claims up through the Effective Date, including all rights of action therefore. ERC and
25 NAHS acknowledge that the claims released in Sections 8.1 and 8.2 above may include
26 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
27 unknown claims. California Civil Code section 1542 reads as follows:
28

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

6 ERC on behalf of itself only, on the one hand, and NAHS, on the other hand, acknowledge and
7 understand the significance and consequences of this specific waiver of California Civil Code
8 section 1542.

9 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
10 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
11 in the Covered Products as set forth in the Notices and the Complaint.

12 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
13 environmental exposures arising under Proposition 65 or to any of NAHS' products other than
14 the Covered Products.

15 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

18 **10. GOVERNING LAW**

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

21 **11. PROVISION OF NOTICE**

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

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

26 Chris Heptinstall, Executive Director, Environmental Research Center
27 3111 Camino Del Rio North, Suite 400
28 San Diego, CA 92108
Tel: (619) 500-3090
Email: chris_erc501c3@yahoo.com

With a copy to:

1 Christina M. Caro
2 LAW OFFICE OF CHRISTINA M. CARO
3 2506 Haste Street
4 Berkeley, CA 94704
5 Tel: (510) 545-9346
6 Fax: (510) 295-2649
7 Email: christina@ccarolaw.com

8 **NORTH AMERICAN HERB AND SPICE CO. LTD. LLC**
9 **dba NORTH AMERICAN HERB AND SPICE LLC.**

10 David P. Schippers, Esq.
11 On behalf of North American Herb And Spice Co. Ltd. LLC
12 dba North American Herb And Spice LLC
13 20 North Clark Street, Suite 720
14 Chicago, IL 60602

15 With a copy to:

16 Malcolm Weiss
17 HUNTON & WILLIAMS LLP
18 550 South Hope Street, Suite 2000
19 Los Angeles, CA 90071
20 Telephone: (213) 532-2130
21 Facsimile: (213) 312-4757
22 Email: mweiss@hunton.com

23 **12. COURT APPROVAL**

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

27 **12.2** If this Stipulated Consent Judgment is not approved by the Court within one (1)
28 year after it is last executed by either Party, it shall be void and have no force or effect.

29 **13. EXECUTION AND COUNTERPARTS**

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

33 **14. DRAFTING**

34 The terms of this Consent Judgment have been reviewed by the respective counsel for each
35 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and

1 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
2 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
3 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
4 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
5 portion of the Consent Judgment. It is presumed that all of the Parties participated equally in the
6 preparation and drafting of this Consent Judgment.

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

8 If a dispute arises with respect to either Party's compliance with the terms of this Consent
9 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
10 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
11 ~~such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is~~

12 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
13 used in the preceding sentence, the term "prevailing party" means a party who is successful in
14 obtaining relief more favorable to it than the relief that the other party was amenable to providing
15 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement
16 action.

17 **16. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

1 17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY
2 OF 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: 5/13/, 2015

ENVIRONMENTAL RESEARCH
CENTER, INC.

13 By: 
14 Chris Heptinstall, Executive Director

15 Dated: 5/14/, 2015

NORTH AMERICAN HERB AND SPICE
CO. LTD. LLC dba NORTH AMERICAN
HERB AND SPICE LLC

16 By: 
17 Its: President

18 APPROVED AS TO FORM:

19 Dated: May 14, 2015

LAW OFFICE OF CHRISTINA M. CARO

20 By: 
21 Christina M. Caro
22 Attorney for Plaintiff Environmental
Research Center, Inc.

23 Dated: _____, 2015

HUNTON & WILLIAMS LLP

24 By: _____
25 Malcolm Weiss
26 Attorney for Defendants North
27 American Herb and Spice Co. LTD. LLC
28 dba North American Herb and Spice
LLC

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

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

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

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

IT IS SO STIPULATED:

Dated: 5/13/, 2015

ENVIRONMENTAL RESEARCH CENTER, INC.

By: [Signature]
Chris Heptinstall, Executive Director

Dated: 5/14/, 2015

NORTH AMERICAN HERB AND SPICE CO. LTD. LLC dba NORTH AMERICAN HERB AND SPICE LLC

By: [Signature]
Its: President

APPROVED AS TO FORM:

Dated: May 14, 2015

LAW OFFICE OF CHRISTINA M. CARO

By: [Signature]
Christina M. Caro
Attorney for Plaintiff Environmental Research Center, Inc.

Dated: May 15, 2015

HUNTON & WILLIAMS LLP

By: [Signature]
Malcolm Weiss
Attorney for Defendants North American Herb and Spice Co. LTD. LLC dba North American Herb and Spice LLC

EXHIBIT A

LAW OFFICE OF CHRISTINA M. CARO

2506 Haste St.
Berkeley, CA 94704

Tel: (510) 387-8597
Fax: (510) 295-2649

christina@ccarolaw.com
www.ccarolaw.com

VIA CERTIFIED MAIL

Current CEO or President
North American Herb and Spice Co. LTD. LLC
dba North American Herb and Spice LLC
13900 West Polo Trail Drive
Lake Forest, IL 60045

Current CEO or President
North American Herb and Spice Co. LTD. LLC
dba North American Herb and Spice LLC
PO Box 4885
Buffalo Grove, IL 60089

Current CEO or President
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dba North American Herb and Spice LLC
9120 Double Diamond Parkway
Reno, NV 89521

David P. Schippers
(North American Herb and Spice Co. LTD. LLC
dba North American Herb and Spice LLC's
Registered Agent for Service of Process)
20 North Clark Street, Suite 720
Chicago, IL 60602

Laughlin Associates, Inc.
(North American Herb and Spice Co. LTD. LLC
dba North American Herb and Spice LLC's
Registered Agent for Service of Process)
9120 Double Diamond Parkway
Reno, NV 89521

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, Inc. (“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:

North American Herb and Spice Co. LTD. LLC dba North American Herb and Spice LLC

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

North American Herb & Spice Extract of Wild Nettles - Lead
North American Herb & Spice Raw ToxiPurge - Lead
North American Herb & Spice EstroNorm - Lead
North American Herb & Spice Hyper-Ten - Lead
North American Herb & Spice Hema-Build - Lead
North American Herb & Spice Total Daily Purge+ - Lead
North American Herb & Spice LivaClenz - Lead
North American Herb & Spice Raw Purely-Min - Lead
North American Herb & Spice Purely-B – Lead
North American Herb & Spice ProstaCLENZ -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 September 26, 2011, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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

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

Sincerely,



Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to North American Herb and Spice Co. LTD. LLC dba North American Herb and Spice LLC 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, Inc.'s Notice of Proposition 65 Violations
by North American Herb and Spice Co. LTD. LLC dba North American
Herb and Spice LLC**

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 26, 2014



Christina M. Caro

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On September 26, 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
North American Herb and Spice Co. LTD. LLC
dba North American Herb and Spice LLC
13900 West Polo Trail Drive
Lake Forest, IL 60045

David P. Schippers
(North American Herb and Spice Co. LTD. LLC
dba North American Herb and Spice LLC’s
Registered Agent for Service of Process)
20 North Clark Street, Suite 720
Chicago, IL 60602

Current CEO or President
North American Herb and Spice Co. LTD. LLC
dba North American Herb and Spice LLC
PO Box 4885
Buffalo Grove, IL 60089

Laughlin Associates, Inc.
(North American Herb and Spice Co. LTD. LLC
dba North American Herb and Spice LLC’s
Registered Agent for Service of Process)
9120 Double Diamond Parkway
Reno, NV 89521


Current CEO or President
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On September 26, 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 September 26, 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 September 26, 2014, in Fort Oglethorpe, Georgia.


Tiffany Caphart

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

September 26, 2014

Page 6

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
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District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County Post Office Box 720 Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
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District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

LAW OFFICE OF CHRISTINA M. CARO

2506 Haste St.
Berkeley, CA 94704

Tel: (510) 545-9346
Fax: (510) 295-2649

christina@ccarolaw.com
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VIA CERTIFIED MAIL

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(North American Herb and Spice Co. LTD. LLC's
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VIA ONLINE SUBMISSION

Office of the California Attorney General

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

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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 December 22, 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.

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

Sincerely,



Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to North American Herb and Spice Co. LTD. LLC and its Registered Agents for Service of Process only)

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


CERTIFICATE OF MERIT

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by North American Herb and Spice Co. LTD. LLC**

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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: December 22, 2014



Christina M. Caro

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On December 22, 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:

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Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
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Executed on December 22, 2014, in Fort Oglethorpe, Georgia.


Tiffany Capehart

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

December 22, 2014

Page 6

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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
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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: _____, 2015

Judge of the Superior Court