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ENVIRONMENTAL RESEARCH CENTER, INC.

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

15 **ENVIRONMENTAL RESEARCH**
16 **CENTER, INC. a California non-profit**
17 **corporation,**

18 **Plaintiff,**

19 **v.**

20 **GLOBAL JUICES and FRUITS, LLC dba**
21 **RUTH'S FOODS and DOES 1-100**

22 **Defendants.**

CASE NO. RG15767734

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 et seq.

Action Filed: April 21, 2015

Trial Date: None set

23
24 **1. INTRODUCTION**

25 **1.1** On April 21, 2015, Plaintiff Environmental Research Center, Inc. ("ERC"), a
26 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
27 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the
28 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),

1 against Global Juices and Fruits, LLC dba Ruth's Foods ("Global Juices and Fruits") and Does
2 1-100. On September 4, 2015, ERC filed a First Amended Complaint (the operative Complaint
3 referred to hereinafter as the "Complaint"). In this action, ERC alleges that a number of
4 products manufactured, distributed, or sold by Global Juices and Fruits contain lead, a
5 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
6 consumers to this chemical at a level requiring a Proposition 65 warning. These products
7 (referred to hereinafter individually as a "Covered Product" or collectively as "Covered
8 Products") are: Ruth's Foods Ruth's Goodness Raw Hemp Protein Powder E3Live & Maca and
9 Ruth's Foods Certified Organic Hemp Protein Powder. Neither ERC nor Global Juices and
10 Fruits are currently aware of any other products manufactured, sold or distributed by Global
11 Juices in violation of Proposition 65.

12 1.2 ERC and Global Juices and Fruits are hereinafter referred to individually as a
13 "Party" or collectively as the "Parties."

14 1.3 ERC is a 501(c)(3) California non-profit corporation dedicated to, among other
15 causes, helping safeguard the public from health hazards by reducing the use and misuse of
16 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
17 and encouraging corporate responsibility.

18 1.4 For purposes of this Consent Judgment, the Parties agree that Global Juices and
19 Fruits is a business entity that has employed ten or more persons at all times relevant to this action,
20 and qualifies as a "person in the course of business" within the meaning of Proposition 65. Global
21 Juices and Fruits manufactures, distributes, and/or sells the Covered Products.

22 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
23 dated December 22, 2014 that was served on the California Attorney General, other public
24 enforcers, and Global Juices and Fruits ("Notice"). A true and correct copy of the 60-Day
25 Notice dated December 22, 2014 is attached hereto as **Exhibit A** and is incorporated herein by
26 reference. More than 60 days have passed since the Notice was served on the Attorney
27 General, public enforcers, and Global Juices and Fruits and no designated governmental entity
28 has filed a complaint against Global Juices and Fruits with regard to the Covered Products or the

1 alleged violations.

2 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
3 persons in California to lead without first providing clear and reasonable warnings in violation
4 of California Health and Safety Code section 25249.6. Global Juices and Fruits denies all
5 material allegations contained in the Notice and Complaint. However, Global Juices and Fruits
6 discontinued distribution and sale of the Covered Products on August 5, 2014 and has neither
7 manufactured, distributed nor sold any Covered Products since that date.

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

18 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
20 current or future legal proceeding unrelated to these proceedings.

21 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
22 a Judgment by this Court.

23 **2. JURISDICTION AND VENUE**

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

1 final resolution of all claims up through and including the Effective Date which were or could
2 have been asserted in this action based on the facts alleged in the Notice and Complaint.

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

4 **3.1** Beginning on the Effective Date, if Global Juices and Fruits reinstates its
5 manufacture of any Covered Products for sale in the State of California, “Distributes into the
6 State of California”, or directly sells in the State of California, any Covered Products which
7 exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per
8 day, it must meet the warning requirements under Section 3.2.

9 **3.1.1** As used in this Consent Judgment, the term “Distributes into the State of
10 California” shall mean to directly ship a Covered Product into California for sale in California
11 or to sell a Covered Product to a distributor that Global Juices and Fruits knows or has reason
12 to know will sell the Covered Product in California.

13 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
14 Level” shall be measured in micrograms, and shall be calculated using the following formula:
15 micrograms of lead per gram of product, multiplied by grams of product per serving of the
16 product (using the largest serving size appearing on the product label), multiplied by servings
17 of the product per day (using the largest number of servings in a recommended dosage
18 appearing on the product label), which equals micrograms of lead exposure per day.

19 **3.1.3** Any testing pursuant to this Consent Judgment shall be performed using
20 a laboratory method that complies with the performance and quality control factors appropriate
21 for the method used, including limit of detection, qualification, accuracy, and precision that
22 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
23 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
24 method subsequently agreed to in writing by the Parties and approved by the Court through
25 entry of a modified consent judgment.

26 **3.2 Clear and Reasonable Warnings**

27 If Global Juices and Fruits is required to provide a warning pursuant to Section 3.1, the
28 following warning must be utilized (“Warning”):

1 **WARNING:** This product can expose you to chemicals including [lead] which is known to
2 the State of California to cause [cancer and] birth defects or other reproductive harm. For
 more information go to www.P65Warnings.ca.gov.

3 Global Juices and Fruits shall use the phrase “cancer and” in the Warning only if the “Daily Lead
4 Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality
5 control methodology set forth in Section 3.4.

6 The Warning shall be securely affixed to or printed upon the container or label of each
7 Covered Product. In addition, for any Covered Product sold over the internet, the Warning shall
8 appear on the checkout page when a California delivery address is indicated for any purchase of
9 any Covered Product. An asterisk or other identifying method must be utilized to identify which
10 products on the checkout page are subject to the Warning.

11 The Warning shall be at least the same size as the largest of any other health or safety
12 warnings also appearing on its website or on the label or container of Global Juices and Fruits’
13 product packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No
14 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
15 clarity of, the Warning on the average lay person shall accompany the Warning. Further no
16 statements may accompany the Warning that state or imply that the source of the listed chemical
17 has an impact on or results in a less harmful effect of the listed chemical.

18 Global Juices and Fruits must display the above Warning with such conspicuousness, as
19 compared with other words, statements, design of the label, container, or on its website, as
20 applicable, to render the Warning likely to be read and understood by an ordinary individual under
21 customary conditions of purchase or use of the product.

22 **4. SETTLEMENT PAYMENT**

23 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
24 attorney’s fees, and costs, Global Juices and Fruits shall make a total payment of \$72,500.00
25 (“Total Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). Global
26 Juices and Fruits shall make this payment by wire transfer to ERC’s escrow account, for which
27 ERC will give Global Juices and Fruits the necessary account information. ERC shall then
28 apportion The Total Settlement Amount as follows:

1 4.2 \$14,598.00 shall be considered a civil penalty pursuant to California Health and
2 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$10,948.50) of the civil penalty to
3 the 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 section 25249.12(c). ERC will retain the remaining 25% (\$3,649.50) of the civil penalty.

6 4.3 \$1,752.03 shall be retained byERC as reimbursement for reasonable costs
7 incurred in bringing this action.

8 4.4 \$10,948.50 shall be distributed to ERC as an Additional Settlement Payment
9 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
10 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
11 caused by Defendant in this matter. These activities are detailed below and support ERC’s
12 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
13 supplement products in California. ERC’s activities have had, and will continue to have, a direct
14 and primary effect within the State of California because California consumers will be benefitted
15 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
16 providing clear and reasonable warnings to California consumers prior to ingestion of the
17 products.

18 Based on a review of past years’ actual budgets, ERC is providing the following list of
19 activities ERC engages in to protect California consumers through Proposition 65 citizen
20 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
21 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
22 supplement products that may contain lead and are sold to California consumers. This work
23 includes continued monitoring and enforcement of past consent judgments and settlements to
24 ensure companies are in compliance with their obligations thereunder, with a specific focus on
25 those judgments and settlements concerning lead [and/or cadmium][and/or arsenic]. This work
26 also includes investigation of new companies that ERC does not obtain any recovery through
27 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining
28 ERC’s Voluntary Compliance Program by acquiring products from companies, developing and

1 maintaining a case file, testing products from these companies, providing the test results and
2 supporting documentation to the companies, and offering guidance in warning or implementing a
3 self-testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM
4 (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of
5 contaminated products that reach California consumers by providing access to free testing for
6 lead in dietary supplement products (Products submitted to the program are screened for
7 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
8 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
9 that submitted the product).

10 ERC shall be fully accountable in that it will maintain adequate records to document and
11 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
12 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
13 shall provide the Attorney General, within thirty days of any request, copies of documentation
14 demonstrating how such funds have been spent.

15 4.5 ERC shall distribute \$1,980.00 to Michael Freund as reimbursement of ERC's
16 attorney's fees and \$2,200.00 to Ryan Hoffman as reimbursement of ERC's attorney's fees,
17 while \$41,021.47 shall be retained by ERC for its in-house legal fees. Except as explicitly
18 provided herein, each Party shall bear its own fees and costs.

19 4.6 No later than the date ERC files its Motion for Approval with the Court, it shall
20 provide Global Juices and Fruits with its Internal Revenue Department Form W-9..

21 4.7 In the event that Global Juices and Fruits fails to remit the Total Settlement
22 Amount owed under Section 4 of this Consent Judgment on or before the Due Date, Global
23 Juices and Fruits shall be deemed to be in material breach of its obligations under this Consent
24 Judgment. ERC shall provide written notice of the delinquency to Global Juices and Fruits via
25 electronic mail. If Global Juices and Fruits fails to deliver the Total Settlement Amount within
26 five (5) days from the written notice, the Total Settlement Amount shall accrue interest at the
27 statutory judgment interest rate provided in the California Code of Civil Procedure section
28 685.010. Additionally, Global Juices and Fruits agrees to pay ERC's reasonable attorney's fees

1 and costs for any efforts to collect the payment due under this Consent Judgment.

2 **5. MODIFICATION OF CONSENT JUDGMENT**

3 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
4 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a
5 modified consent judgment.

6 **5.2** If Global Juices and Fruits seeks to modify this Consent Judgment under Section
7 5.1, then Global Juices and Fruits must provide written notice to ERC of its intent (“Notice of
8 Intent”). If ERC seeks to meet and confer regarding the proposed modification in the Notice of
9 Intent, then ERC must provide written notice to Global Juices and Fruits within thirty (30) days
10 of receiving the Notice of Intent. If ERC notifies Global Juices and Fruits in a timely manner of
11 ERC’s intent to meet and confer, then the Parties shall meet and confer in good faith as
12 required in this Section. The Parties shall meet in person or via telephone within thirty (30)
13 days of ERC’s notification of its intent to meet and confer. Within thirty (30) days of such
14 meeting, if ERC disputes the proposed modification, ERC shall provide to Global Juices and
15 Fruits a written basis for its position. The Parties shall continue to meet and confer for an
16 additional thirty (30) days in an effort to resolve any remaining disputes. Should it become
17 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer
18 period.

19 **5.3** In the event that Global Juices and Fruits initiates or otherwise requests a
20 modification under Section 5.1, and the meet and confer process leads to a joint motion or
21 application of the Consent Judgment, Global Juices and Fruits shall reimburse ERC its costs
22 and reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and
23 arguing the motion or application.

24 **5.4** Where the meet-and-confer process does not lead to a joint motion or
25 application in support of a modification of the Consent Judgment, then either Party may seek
26 judicial relief on its own.
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1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
2 **JUDGMENT**

3 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
4 this Consent Judgment.

5 **6.2** If ERC alleges that Global Juices and Fruits is in violation of the injunctive
6 aspects of this Consent Judgment, it shall promptly provide Global Juices and Fruits with
7 evidence of such violation, including any test reports. Global Juices and Fruits shall, within
8 thirty (30) days following such notice, provide ERC with evidence of its compliance, including
9 any test reports. The Parties shall first attempt to resolve the matter prior to ERC taking any
10 further legal action.

11 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

19 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
20 on behalf of itself and in the public interest, and Global Juices and Fruits and its respective
21 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
22 suppliers, franchisees, licensees, customers (not including private label customers of Global
23 Juices and Fruits), distributors, wholesalers, retailers, and all other upstream and downstream
24 entities in the distribution chain of any Covered Product, and the predecessors, successors, and
25 assigns of any of them (collectively, "Released Parties"). ERC hereby fully releases and
26 discharges the Released Parties from any and all claims, actions, causes of action, suits,
27 demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have
28 been asserted from the handling, use, or consumption of the Covered Products, as to any

1 alleged violation of Proposition 65 or its implementing regulations arising from the failure to
2 provide Proposition 65 warnings on the Covered Products regarding lead up to and including
3 the Effective Date.

4 **8.2** ERC on its own behalf only, and Global Juices and Fruits on its own behalf
5 only, further waive and release any and all claims they may have against each other for all
6 actions or statements made or undertaken in the course of seeking or opposing enforcement of
7 Proposition 65 in connection with the Notice and Complaint up through and including the
8 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
9 right to seek to enforce the terms of this Consent Judgment.

10 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
11 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
12 discovered. ERC on behalf of itself only, and Global Juices and Fruits on behalf of itself only,
13 acknowledge that this Consent Judgment is expressly intended to cover and include all such
14 claims up through and including the Effective Date, including all rights of action therefore.
15 ERC and Global Juices and Fruits acknowledge that the claims released in Sections 8.1 and 8.2
16 above may include unknown claims, and nevertheless waive California Civil Code section
17 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

21 ERC on behalf of itself only, and Global Juices and Fruits on behalf of itself only, acknowledge
22 and understand the significance and consequences of this specific waiver of California Civil
23 Code section 1542.

24 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
25 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
26 in the Covered Products as set forth in the Notice and Complaint.

1 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
2 environmental exposures arising under Proposition 65, nor shall it apply to any of Global Juices
3 and Fruits' products other than the Covered Products.

4 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7 **10. GOVERNING LAW**

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

10 **11. PROVISION OF NOTICE**

11 All notices required to be given to either Party to this Consent Judgment by the other shall
12 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
13 email may also be sent.

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

15 Chris Heptinstall, Executive Director, Environmental Research Center
16 3111 Camino Del Rio North, Suite 400
17 San Diego, CA 92108
18 Tel: (619) 500-3090
19 Email: chris_erc501c3@yahoo.com

20 With a copy to:

21 Michael Freund
22 Ryan Hoffman
23 Michael Freund & Associates
24 1919 Addison Street, Suite 105
25 Berkeley, CA 94704
26 Telephone: (510) 540-1992
27 Facsimile: (510) 540-5543
28 Email: rrhoffma@gmail.com

29 **GLOBAL JUICES and FRUITS, LLC dba RUTH'S FOODS**

30 Charles E. Watson - President
31 372 S. Eagle Road, Suite 353
32 Eagle, ID 83616
33 Telephone: (208) 898-4004

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 Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 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 to be as valid
13 as 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 and
17 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
18 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
19 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
20 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
21 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
22 equally in the preparation and drafting of this Consent Judgment.

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

24 If a dispute arises with respect to either Party's compliance with the terms of this Consent
25 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
26 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
27 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

1 **16. ENFORCEMENT**

2 ERC may, by motion or order to show cause before the Superior Court of Alameda
3 County, enforce the terms and conditions contained in this Consent Judgment. In any action
4 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
5 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

6 **17. ENTIRE AGREEMENT, AUTHORIZATION**

7 **17.1** This Consent Judgment contains the sole and entire agreement and
8 understanding of the Parties with respect to the entire subject matter herein, and any and all
9 prior discussions, negotiations, commitments, and understandings related hereto. No
10 representations, oral or otherwise, express or implied, other than those contained herein have
11 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
12 herein, shall be deemed to exist or to bind any Party.

13 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
14 authorized by the Party he or she represents to stipulate to this Consent Judgment.

15 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
16 **CONSENT JUDGMENT**

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

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

23 (2) Make the findings pursuant to California Health and Safety Code section
24 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

25 **IT IS SO STIPULATED:**
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1 Dated: 1/26/, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Heppert, Executive Director

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5 Dated: 1/27/, 2017

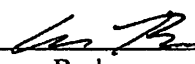
GLOBAL JUICES AND FRUITS, LLC dba
RUTH'S FOODS

By: 
Charles G. Watson
President

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9 **APPROVED AS TO FORM:**

10 Dated: 1/26/, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Anne Barker
In-House Counsel

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18 **ORDER AND JUDGMENT**

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

21 IT IS SO ORDERED, ADJUDGED AND DECREED.

22
23 Dated: _____, 2017

Judge of the Superior Court

EXHIBIT A



Environmental Research Center

3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
619-500-3090

December 22, 2014

NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.* (PROPOSITION 65)

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I am the Executive Director of Environmental Research Center, Inc. (“ERC”). 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.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

Global Juices and Fruits, LLC dba Ruth’s Foods

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Ruth’s Foods Ruth’s Goodness Raw Hemp Protein Powder E3Live & Maca - Lead
Ruth’s Foods Certified Organic Hemp Protein Powder – 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.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least December 22, 2011, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (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. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC at the above listed address and telephone number.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Global Juices and Fruits, LLC dba Ruth's Foods and its Registered Agents 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 Global Juices and Fruits, LLC dba Ruth's Foods

I, Chris Heptinstall, declare:

1. This Certificate of Merit accompanies the attached 60-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 the Executive Director 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 chemicals that are 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

Chris Heptinstall

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:

Current President or CEO
Global Juices and Fruits, LLC dba Ruth’s Foods
372 South Eagle Road, Suite 353
Eagle, Idaho 83616

Current President or CEO
Global Juices and Fruits, LLC dba Ruth’s Foods
Post Office Box 73, Station P
Toronto, ON M5S 2S6
Canada

Current President or CEO
Global Juices and Fruits, LLC dba Ruth’s Foods
69 Burnside Drive
Toronto, ON M6G 2M9
Canada

Charles E. Watson
(Global Juices and Fruits, LLC dba Ruth’s Foods’
Registered Agent for Service of Process)
372 South Eagle Road, Suite 353
Eagle, ID 83616

The Company Corporation
(Global Juices and Fruits, LLC dba Ruth’s Foods’
Registered Agent for Service of Process)
2711 Centerville Road, Suite 400
Wilmington, DE 19808

On December 22, 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
Post Office Box 70550
Oakland, CA 94612-0550

On December 22, 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 December 22, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

December 22, 2014

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 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
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 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	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 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	

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies; for example, when exposures are sufficiently low (see below). The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer (“carcinogens”), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA’s website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by a 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA’s website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4)

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.