

1 Michael Freund SBN 99687  
2 Ryan Hoffman SBN 283297  
3 Michael Freund & Associates  
4 1919 Addison Street, Suite 105  
5 Berkeley, CA 94704  
6 Telephone: (510) 540-1992  
7 Facsimile: (510) 540-5543

8 Attorneys for Plaintiff  
9 ENVIRONMENTAL RESEARCH CENTER, INC.

10 Peg Carew Toledo SBN 181227  
11 Peg Carew Toledo, Law Corporation  
12 3001 Douglas Blvd., Suite 340  
13 Roseville, CA 95661-3853  
14 Telephone: (916) 462-8950  
15 Facsimile: (916) 791-0175  
16 Email: peg@toledolawcorp.com

17 Attorney for Defendants  
18 PLEXUS WORLDWIDE LLC and PLEXUS  
19 HOLDINGS, INC.

20  
21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
22 **COUNTY OF ALAMEDA**

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

26 **Plaintiff,**

27 **v.**

28 **PLEXUS WORLDWIDE, INC., PLEXUS**  
**WORLDWIDE LLC., PLEXUS**  
**HOLDINGS, INC. and DOES 1-100**

**Defendants.**

**CASE NO. RG15780958**

**STIPULATED CONSENT**  
**JUDGMENT**

**Health & Safety Code § 25249.5 et seq.**

**Action Filed: August 6, 2015**

**Trial Date: None set**

**1. INTRODUCTION**

1.1 On August 6, 2015, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the  
2 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),  
3 against Plexus Worldwide, Inc., Plexus Worldwide, LLC, Plexus Holdings, Inc. and Does 1-100.  
4 Plaintiff will dismiss Plexus Holdings, Inc. (formerly known as Plexus Worldwide, Inc.) with  
5 prejudice promptly after judgment is entered in this matter. Plexus Worldwide, LLC is  
6 hereinafter referred to as "Plexus" or "Defendant"). On December 15, 2015, ERC filed a First  
7 Amended Complaint (the operative Complaint referred to hereinafter as the "Complaint"). In  
8 this action, ERC alleges that a number of products manufactured, distributed, or sold by Plexus  
9 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and  
10 expose consumers to this chemical at a level requiring a Proposition 65 warning. These products  
11 (referred to hereinafter individually as a "Covered Product" or collectively as "Covered  
12 Products") are: "Plexus Worldwide Inc. Fast Relief," "Plexus Worldwide Inc. 96 Protein Go-  
13 Pack Chocolate," "Plexus Worldwide Inc. Fast Relief Nerve Health Support," and "Plexus  
14 Worldwide Inc. Block."

15       **1.2**     ERC and Plexus are hereinafter referred to individually as a "Party" or  
16 collectively as the "Parties."

17       **1.3**     ERC is a California non-profit corporation dedicated to, among other causes,  
18 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
19 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
20 encouraging corporate responsibility.

21       **1.4**     For purposes of this Consent Judgment, the Parties agree that Defendant is a  
22 business entity which has employed ten or more persons at all times relevant to this action, and  
23 qualifies as a "person in the course of business" within the meaning of Proposition 65. Plexus  
24 manufactures, distributes, and/or sells the Covered Products.

25       **1.5**     The Complaint is based on allegations contained in ERC's Notices of Violation  
26 dated April 10, 2015 and August 28, 2015 that were served on the California Attorney General,  
27 other public enforcers, and Plexus ("Notices"). True and correct copies of the 60-Day Notices  
28 dated April 10, 2015 and August 28, 2015 are attached hereto as **Exhibits A and B** respectively

1 and each is incorporated herein by reference. More than 60 days have passed since the Notices  
2 were served on the Attorney General, public enforcers, and Plexus and no designated  
3 governmental entity has filed a complaint against Plexus with regard to the Covered Products or  
4 the alleged violations.

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

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

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

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

## 24       **2.     JURISDICTION AND VENUE**

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

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

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

5 **3.1** Beginning on the Effective Date, Plexus shall be permanently enjoined from  
6 manufacturing for sale in the State of California, "Distributing into the State of California", or  
7 directly selling in the State of California, any Covered Products which exposes a person to a  
8 "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the  
9 warning requirements under Section 3.2.

10 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
11 of California" shall mean to directly ship a Covered Product into California for sale in  
12 California or to sell a Covered Product to a distributor that Plexus knows or has reason to know  
13 will sell the Covered Product in California.

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

### 20 **3.2 Clear and Reasonable Warnings**

21 If Plexus is required to provide a warning pursuant to Section 3.1, the following warning  
22 must be utilized ("Warning"):

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

25 Plexus shall use the phrase "cancer and" in the Warning only if the "Daily Lead Exposure Level"  
26 is greater than 15 micrograms of lead as determined pursuant to the quality control methodology  
27 set forth in Section 3.4.  
28

1 For any Covered Product sold over the internet, the Warning shall appear on the checkout  
2 page when a California delivery address is indicated for any purchase of any Covered Product.  
3 An asterisk or other identifying method must be utilized to identify which products on the  
4 checkout page are subject to the Warning.

5 The Warning shall be at least the same size as the largest of any other health or safety  
6 warnings also appearing on its website and the word “**WARNING**” shall be in all capital letters  
7 and in bold print. No statements contradicting or conflicting with the Warning shall accompany  
8 the Warning.

9 Plexus must display the above Warning with such conspicuousness, as compared with  
10 other words, statements, on its website, as applicable, to render the Warning likely to be read and  
11 understood by an ordinary individual under customary conditions of purchase or use of the  
12 product.

### 13 **3.3 Reformulated Covered Products**

14 A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” is no  
15 greater than 0.5 micrograms of lead per day as determined by the quality control methodology  
16 described in Section 3.4.

### 17 **3.4 Testing and Quality Control Methodology**

18 **3.4.1** Beginning within one year of the Effective Date, Plexus shall arrange for  
19 lead testing of the Covered Products at least once a year for a minimum of five consecutive  
20 years by arranging for testing of five randomly selected samples of each of the Covered  
21 Products, in the form intended for sale to the end-user, which Plexus intends to sell or is  
22 manufacturing for sale in California, directly selling to a consumer in California or  
23 “Distributing into the State of California.” If tests conducted pursuant to this Section  
24 demonstrate that no Warning is required for a Covered Product during each of five consecutive  
25 years, then the testing requirements of this Section will no longer be required as to that Covered  
26 Product. However, if during or after the five-year testing period, Plexus changes ingredient  
27 suppliers for any of the Covered Products and/or reformulates any of the Covered Products,  
28 Plexus shall test that Covered Product annually for at least four (4) consecutive years after such

change is made. The testing obligations do not apply to any Covered Product for which Plexus has provided a Warning in the preceding year.

**3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the arithmetic mean of the lead detection results of the five (5) randomly selected samples of the Covered Products will be controlling.

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

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

**3.4.5** Nothing in this Consent Judgment shall limit Plexus’ ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

#### **4. SETTLEMENT PAYMENT**

**4.1** In full satisfaction of all potential civil penalties, additional settlement payments, attorney’s fees, and costs, Plexus shall make a total payment of \$150,000.00 (“Total Settlement Amount”) to ERC within ten (10) business days of the Effective Date (“Due Date”). Plexus shall make this payment by wire transfer to ERC’s escrow account, for which ERC will give Plexus the necessary account information. The Total Settlement Amount shall be apportioned as follows:

**4.2** \$20,818.68 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$15,614.01) of the civil penalty to

1 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
2 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
3 Code section 25249.12(c). ERC will retain the remaining 25% (\$5,204.67) of the civil penalty.

4 **4.3** \$10,260.78 shall be distributed to ERC as reimbursement to ERC for reasonable  
5 costs incurred in bringing this action.

6 **4.4** \$39,930.75 shall be distributed to Michael Freund as reimbursement of ERC's  
7 attorney's fees, \$30,325.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's  
8 attorney's fees, while \$48,664.79 shall be distributed to ERC for its in-house legal fees. Except  
9 as explicitly provided herein, each Party shall bear its own fees and costs.

10 **4.6** In the event that Plexus fails to remit the Total Settlement Payment owed under  
11 Section 4 of this Consent Judgment on or before the Due Date, Plexus shall be deemed to be in  
12 material breach of its obligations under this Consent Judgment. ERC shall provide written  
13 notice of the delinquency to Plexus via electronic mail. If Plexus fails to deliver the Total  
14 Settlement Payment within five (5) days from the written notice, the Total Settlement Payment  
15 shall accrue interest at the statutory judgment interest rate provided in the California Civil  
16 Procedure Code section 685.010. Additionally, Plexus agrees to pay ERC's reasonable  
17 attorney's fees and costs for any efforts to collect the payment due under this Consent  
18 Judgment.

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

20 **5.1** This Consent Judgment may be modified (i) by written stipulation of the Parties  
21 or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent judgment.

22 **5.2** If Plexus seeks to modify this Consent Judgment under Section 5.1, then Plexus  
23 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and  
24 confer regarding the proposed modification in the Notice of Intent, then ERC must provide  
25 written notice to Plexus within thirty (30) days of receiving the Notice of Intent. If ERC  
26 notifies Plexus in a timely manner of ERC's intent to meet and confer, then the Parties shall  
27 meet and confer in good faith as required in this Section. The Parties shall meet in person or  
28 via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.

1 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall  
2 provide to Plexus a written basis for its position. The Parties shall continue to meet and confer  
3 for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it  
4 become necessary, the Parties may agree in writing to different deadlines for the meet-and-  
5 confer period.

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

10 **5.4** Where the meet-and-confer process does not lead to a joint motion or  
11 application in support of a modification of the Consent Judgment, then either Party may seek  
12 judicial relief on its own.

13 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
14 **JUDGMENT**

15 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
16 this Consent Judgment.

17 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
18 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
19 inform Plexus in a reasonably prompt manner of its test results, including information sufficient  
20 to permit Plexus to identify the Covered Products at issue. Plexus shall, within thirty (30) days  
21 following such notice, provide ERC with testing information, from an independent third-party  
22 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating Plexus'  
23 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve  
24 the matter prior to ERC taking any further legal action.

25 **7. APPLICATION OF CONSENT JUDGMENT**

26 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
27 respective officers, directors, shareholders, members, employees, agents, parent companies,  
28 subsidiaries, divisions, franchisees, licensees, customers (excluding private labelers), distributors,

1 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
2 application to Covered Products which are distributed or sold exclusively outside the State of  
3 California and which are not used by California consumers.

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

5 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
6 on behalf of itself and in the public interest, and Plexus and its respective officers, directors,  
7 shareholders, members, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
8 franchisees, licensees, customers (not including private label customers of Plexus), distributors,  
9 ambassadors, wholesalers, retailers, and all other upstream and downstream entities in the  
10 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
11 of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the  
12 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,  
13 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from  
14 the handling, use, or consumption of the Covered Products, as to any alleged violation of  
15 Proposition 65 or its implementing regulations arising from the failure to provide Proposition  
16 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

17 **8.2** ERC on its own behalf only, and Plexus on its own behalf only, further  
18 waive and release any and all claims they may have against each other for all actions or  
19 statements made or undertaken in the course of seeking or opposing enforcement of Proposition  
20 65 in connection with the Notices and Complaint up through and including the Effective Date,  
21 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to  
22 enforce the terms of this Consent Judgment.

23 **8.3** It is possible that other claims not known to the Parties, arising out of the facts  
24 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
25 discovered. ERC on behalf of itself only, and Plexus on behalf of itself only, acknowledge that  
26 this Consent Judgment is expressly intended to cover and include all such claims up through  
27 and including the Effective Date, including all rights of action therefore. ERC and Plexus  
28 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown

1 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
2 claims. California Civil Code section 1542 reads as follows:

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

8 ERC on behalf of itself only, and Plexus on behalf of itself only, acknowledge and understand  
9 the significance and consequences of this specific waiver of California Civil Code section  
10 1542.

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

14 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
15 environmental exposures arising under Proposition 65, nor shall it apply to any of Plexus'  
16 products other than the Covered Products.

## 17 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

## 20 **10. GOVERNING LAW**

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

## 23 **11. PROVISION OF NOTICE**

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

### 27 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

28 Chris Heptinstall, Executive Director, Environmental Research Center  
3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
Tel: (619) 500-3090

1 Email: chris\_erc501c3@yahoo.com

2 With a copy to:

3 Michael Freund

4 Ryan Hoffman

5 Michael Freund & Associates

6 1919 Addison Street, Suite 105

7 Berkeley, CA 94704

8 Telephone: (510) 540-1992

9 Facsimile: (510) 540-5543

10 **PLEXUS WORLDWIDE LLC**

11 Christopher Reid, General Counsel

12 Plexus Worldwide LLC

13 9145 E. Pima Center Parkway

14 Scottsdale, AZ 85258

15 With a copy to:

16 Peg Carew Toledo

17 Peg Carew Toledo, Law Corporation

18 3001 Douglas Blvd., Suite 340

19 Roseville, CA 95661-3853

20 Telephone: (916) 462-8950

21 Facsimile: (916) 791-0175

22 Email: peg@toledolawcorp.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. The Parties shall use their best efforts to support entry of this  
26 Consent Judgment.

27 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
28 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
prior to the hearing on the motion.

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

**13. EXECUTION AND COUNTERPARTS**

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

1 as the original signature.

## 2 **14. DRAFTING**

3 The terms of this Consent Judgment have been reviewed by the respective counsel for each  
4 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
5 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
6 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
7 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
8 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
9 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
10 equally in the preparation and drafting of this Consent Judgment.

## 11 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

## 16 **16. ENFORCEMENT**

17 ERC may, by motion or order to show cause before the Superior Court of Alameda  
18 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
19 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
20 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
21 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
22 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,  
23 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by  
24 law for failure to comply with Proposition 65 or other laws.

## 25 **17. ENTIRE AGREEMENT, AUTHORIZATION**

26 **17.1** This Consent Judgment contains the sole and entire agreement and  
27 understanding of the Parties with respect to the entire subject matter herein, and any and all  
28 prior discussions, negotiations, commitments, and understandings related hereto. No

1 representations, oral or otherwise, express or implied, other than those contained herein have  
2 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
3 herein, shall be deemed to exist or to bind any Party.

4       **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
5 authorized by the Party he or she represents to stipulate to this Consent Judgment.

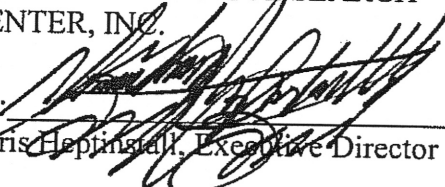
6       **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
7       **CONSENT JUDGMENT**

8       This Consent Judgment has come before the Court upon the request of the Parties. The  
9 Parties request the Court to fully review this Consent Judgment and, being fully informed  
10 regarding the matters which are the subject of this action, to make the findings pursuant to  
11 California Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this  
12 Consent Judgment.

13 **IT IS SO STIPULATED:**

14 Dated: 11/3/, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Heppling, Executive Director

18 Dated: \_\_\_\_\_, 2016

PLEXUS WORLDWIDE, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

1 representations, oral or otherwise, express or implied, other than those contained herein have  
2 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
3 herein, shall be deemed to exist or to bind any Party.

4 17.2 Each signatory to this Consent Judgment certifies that he or she is fully  
5 authorized by the Party he or she represents to stipulate to this Consent Judgment.

6 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
7 **CONSENT JUDGMENT**

8 This Consent Judgment has come before the Court upon the request of the Parties. The  
9 Parties request the Court to fully review this Consent Judgment and, being fully informed  
10 regarding the matters which are the subject of this action, to make the findings pursuant to  
11 California Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this  
12 Consent Judgment.

13 **IT IS SO STIPULATED:**

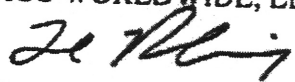
14 Dated: \_\_\_\_\_, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

15  
16 By: \_\_\_\_\_  
Chris Heptinstall, Executive Director

17  
18 Dated: \_\_\_\_\_, 2016

19 PLEXUS WORLDWIDE, LLC

20   
21 By: TARA Robinson  
Its: CEO

1 **APPROVED AS TO FORM:**

2 Dated: 11/3/, 2016

MICHAEL FREUND & ASSOCIATES

3  
4 By: M/F  
5 Michael Freund  
6 Ryan Hoffman  
7 Attorney for Plaintiff Environmental  
8 Research Center, Inc.

9 Dated: November 3, 2016

10 PEG CAREW TOLEDO, LAW  
11 CORPORATION

12 By: Peg Carew Toledo  
13 Peg Carew Toledo  
14 Attorneys for Defendants  
15 Plexus Worldwide, LLC  
16 and Plexus Holdings, Inc.

17 **ORDER AND JUDGMENT**

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

20 IT IS SO ORDERED, ADJUDGED AND DECREED.

21 Dated: \_\_\_\_\_, 2016

22 \_\_\_\_\_  
23 Judge of the Superior Court

EXHIBIT A

**Michael Freund & Associates**

1919 Addison Street, Suite 105

Berkley, CA 94704

Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.

Ryan Hoffman, Esq.

OF COUNSEL:

Denise Ferkich Hoffman, Esq.

April 10, 2015

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. 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 Violators 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 Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), 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 enclosed with this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Plexus Worldwide, Inc.

Plexus Worldwide, LLC

Plexus Holdings, Inc.

**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:

Plexus Worldwide Inc. Fast Relief – Lead

Plexus Worldwide Inc. 96 Protein Go-Pack Chocolate – 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.

**Exhibit A**

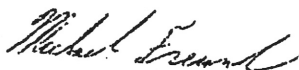
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred 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 April 10, 2012, 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 this known toxic chemical is 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 chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

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 Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, 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 chemical, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.

Sincerely,



Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Plexus Worldwide, Inc.; Plexus Worldwide, LLC; Plexus Holdings, Inc. and their 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 Plexus Worldwide, Inc.; Plexus Worldwide, LLC; and Plexus Holdings, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

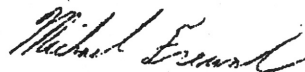
2. I am an attorney for the noticing party.

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 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 Violators 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: April 10, 2015



---

Michael Freund

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

April 10, 2015

Page 4

**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 April 10, 2015, I served the following documents: NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Mr. Tarl Robinson, CEO  
Plexus Worldwide, Inc.  
15649 North Greenway Hayden Loop  
Scottsdale, AZ 85260

Osborn Maledon, PA  
(Plexus Worldwide, LLC's Registered Agent  
for Service of Process)  
2929 North Central Avenue, Suite 2100  
Phoenix, AZ 85012

Current President or CEO  
Plexus Worldwide, LLC  
15649 North Greenway Hayden Loop  
Scottsdale, AZ 85260

Osborn Maledon, PA  
(Plexus Holdings, Inc.'s Registered Agent  
for Service of Process)  
2929 North Central Avenue, Suite 2100  
Phoenix, AZ 85012

Current President or CEO  
Plexus Holdings, Inc.  
15649 North Greenway Hayden Loop  
Scottsdale, AZ 85260

Mr. Tarl Robinson, CEO  
Plexus Worldwide, Inc.  
7025 East Greenway Parkway, Suite 250  
Scottsdale, AZ 85254

On April 10, 2015, I verified 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) were served on the following party when a true and correct copy thereof was uploaded 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 April 10, 2015, I served the following documents: NOTICE OF VIOLATION, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on April 10, 2015, in Fort Oglethorpe, Georgia.

  
Tiffany Capehart

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
April 10, 2015

Page 5

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 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 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 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 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### WHAT DOES PROPOSITION 65 REQUIRE?

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

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

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

[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

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

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

#### ***DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?***

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

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

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

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

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

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

**Exposures to Naturally Occurring Chemicals in a Food.** Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

---

<sup>2</sup> See Section 25501(a)(4)

### **HOW IS PROPOSITION 65 ENFORCED?**

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

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

### **FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...**

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

Revised: July, 2012

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

**EXHIBIT B**

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.  
Ryan Hoffman, Esq.

OF COUNSEL:  
Denise Ferkich Hoffman, Esq.

August 28, 2015

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. 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 Violators 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 Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), 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 enclosed with this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

Plexus Worldwide, Inc.  
Plexus Worldwide, LLC  
Plexus Holdings, Inc.

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

Plexus Worldwide Inc. Fast Relief Nerve Health Support - Lead  
Plexus Worldwide Inc. Block - 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 this

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
August 28, 2015

Page 2

chemical 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 August 28, 2012, 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 this known toxic chemical is 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 chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

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 Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, 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 chemical, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Plexus Worldwide, Inc.; Plexus Worldwide, LLC; Plexus Holdings, Inc. and their Registered Agents for Service of Process only)

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

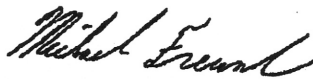
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Plexus Worldwide, Inc.; Plexus Worldwide, LLC; and Plexus Holdings, Inc.**

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties 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 Violators 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: August 28, 2015



Michael Freund

**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 August 28, 2015, I served the following documents: NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Mr. Tarl Robinson, CEO  
Plexus Worldwide, Inc.  
15649 North Greenway Hayden Loop  
Scottsdale, AZ 85260

Current President or CEO  
Plexus Worldwide, LLC  
15649 North Greenway Hayden Loop  
Scottsdale, AZ 85260

Current President or CEO  
Plexus Holdings, Inc.  
15649 North Greenway Hayden Loop  
Scottsdale, AZ 85260

Mr. Tarl Robinson, CEO  
Plexus Worldwide, Inc.  
7025 East Greenway Parkway, Suite 250  
Scottsdale, AZ 85254

Osborn Maledon, PA  
(Plexus Worldwide, LLC's Registered Agent  
for Service of Process)  
2929 North Central Avenue, Suite 2100  
Phoenix, AZ 85012

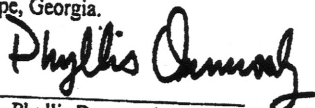
Osborn Maledon, PA  
(Plexus Holdings, Inc.'s Registered Agent  
for Service of Process)  
2929 North Central Avenue, Suite 2100  
Phoenix, AZ 85012

On August 28, 2015, I verified 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) were served on the following party when a true and correct copy thereof was uploaded 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 August 28, 2015, I served the following documents: NOTICE OF VIOLATION, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on August 28, 2015, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Phyllis Dunwoody

Notice of Violation of California Health & Safety Code §25249.5 et seq.  
August 28, 2015  
Page 5

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2nd Street Woodland, CA 95695
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	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, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Mateo County 400 County Ctr., 3rd 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, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	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, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	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, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	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, 16th Floor San Jose, CA 95113
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1335 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	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, Glenn County Post Office Box 430 Willows, CA 95988	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, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	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	
District Attorney, Lake County 255 N. Forbes Street Lakewood, CA 95453	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonoma, CA 95370	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	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, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012			

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### WHAT DOES PROPOSITION 65 REQUIRE?

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

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

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:  
[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

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

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

#### DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

**Exposures to Naturally Occurring Chemicals in a Food.** Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

---

<sup>2</sup> See Section 25501(a)(4)

### *HOW IS PROPOSITION 65 ENFORCED?*

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

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

### *FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

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

Revised: July, 2012

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