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CYANOTECH CORPORATION
and NUTREX HAWAII, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH CENTER, INC., a California non-profit corporation, Plaintiff, v. CYANOTECH CORPORATION, NUTREX HAWAII, INC. and DOES 1-100, Defendants.	CASE NO. RG 15791194 **STIPULATED CONSENT JUDGMENT** Health & Safety Code § 25249.5 *et seq.* Action Filed: October 28, 2015 Trial Date: None Set

1. INTRODUCTION

1.1 On October 28, 2015, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against Cyanotech Corporation and Nutrex Hawaii, Inc. (collectively "Cyanotech") and DOES-100. In this action, ERC alleges that the products manufactured, distributed or sold by Cyanotech, as more fully described below, contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and that such products expose consumers at a level requiring a Proposition 65 warning. The product is Nutrex Hawaii Inc. Green Complete Natural Vanilla Bean Flavor ("Covered Product"). ERC and Cyanotech are referred to individually as a "Party" or collectively as the "Parties."

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

1.3 Cyanotech is a business entity that employs ten or more persons. Cyanotech arranges the manufacture, distribution and sale of the Covered Products.

1.4 The Complaint is based on allegations contained in ERC's Notice of Violation, dated June 15, 2015, that was served on the California Attorney General, other public enforcers, and Cyanotech. A true and correct copy of the Notice of Violation is attached as Exhibit A. More than 60 days have passed since the Notice of Violation was mailed and uploaded to the Attorney General's website, and no designated governmental entity has filed a complaint against Cyanotech with regard to the Covered Products or the alleged violations.

1.5 ERC's Notice of Violation and the Complaint allege that use of the Covered Product exposes persons in California to lead without first providing clear and reasonable warnings in violation of California Health and Safety Code section 25249.6. Cyanotech denies all material allegations contained in the Notice of Violation and Complaint and specifically denies

that the Covered Product required a Proposition 65 warning or otherwise caused harm to any person. Cyanotech asserts that any detectible levels of lead in the Covered Products are the result of naturally occurring lead levels, as provided for in California Code of Regulations, Title 27, Section 25501(a).

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

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

1.8 The Effective Date of this Consent Judgment is the date on which it is entered as a Judgment by this Court.

2. JURISDICTION AND VENUE

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

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

3.1 Clear and Reasonable Warnings

Six months after the Effective Date of this Consent Judgment, Cyanotech shall be permanently enjoined from Distributing into California, manufacturing for sale in California, and/or directly selling to a consumer in the State of California any Covered Product for which the maximum daily dose recommended on the label contains more than 0.5 micrograms (mcg) of lead, as calculated in accordance with the formula set forth in Section 3.4 and pursuant to the testing done in accordance with Section 3.6, unless Cyanotech complies with at least one of the required warning requirements set forth in Section 3.2 and Section 3.3. The term "Distributing into California" or "Distribute into California" means to ship any of the Covered Products into California for sale in California, or to sell or provide any of the Covered Products to any person or entity that Cyanotech knows will sell the Covered Product in California.

The warning shall be provided with such conspicuousness, as compared with other words, statements, designs, or devices on the container or labeling as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. No other statements may accompany the warning on the product label. The warning shall be at least the same size as the largest of any other health or safety warnings on the container or labeling, as applicable, and the word "**WARNING**" shall be in all capital letters and in bold print. The warning shall be contained in the same section of the container or labeling, as applicable, which states other safety warnings concerning the use of the Covered Product.

3.2 The Warning Language

The warning language shall be one of the following:

> **[California Proposition 65] WARNING [(California Proposition 65)]** This product contains [lead,] [a] chemical[s] known [to the State of California] to cause [cancer and] birth defects or other reproductive harm.

> **[California Proposition 65] WARNING [(California Proposition 65)]** This product contains [lead,] [a] substance[s] known [to the State of California] to cause [cancer and] birth defects or other reproductive harm.

The text in brackets in the warnings above is optional except that the words "cancer and" shall be included in the warning only if the maximum recommended daily dose stated on the Covered Product's label contains more than 15 micrograms (mcg) of lead as calculated in accordance with the formula set forth in Section 3.4 below.

3.3 Warning Method

For those Covered Products that are subject to the warning requirement of Section 3.1, Cyanotech shall provide the warning language in Section 3.2 on the Covered Product. The warning above shall be permanently affixed to or printed on the labeling of each Covered Product with such conspicuousness as compared with other words, statements, designs, or devices on the container or labeling as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

3.4 Calculation of Lead Levels

For purposes of this Consent Judgment and determining Cyanotech's compliance with Proposition 65, daily lead exposure levels shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label) which equals micrograms of lead exposure per day.

3.5 Reformulated Covered Products

A Reformulated Covered Product is one for which the maximum recommended daily serving on the label contains no more than 0.5 micrograms of lead per day as calculated pursuant to Section 3.4.

3.6 Testing and Quality Control Methodology

(a) Beginning within one year of the Effective Date, Cyanotech shall conduct testing of the Covered Products for lead content for a minimum of four (4) consecutive years, except that the testing requirement of this Consent Judgment does not apply to any of the Covered Products for which Cyanotech has provided the warning specified in Section 3.2. For purposes of determining which warning, if any, is required pursuant to Section 3.2, the second-highest lead detection results of the five (5) randomly selected samples of the Covered Products will be controlling.

(b) All testing for lead required by this Consent Judgment shall be performed using Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") or any other testing method subsequently agreed to in writing by the Parties.

(c) 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 a laboratory that is registered with the United States Food & Drug Administration.

(d) If no warning has been provided pursuant to Section 3.2, Cyanotech shall test each of the Covered Products at least once a year for a minimum of four (4) consecutive years by testing five (5) randomly selected samples of each Covered Product (in the form intended for sale to the end-user) which Cyanotech intends to sell or is manufacturing for sale in California, directly selling to a consumer in California, or Distributing into California. If tests conducted pursuant to this Section demonstrate that no warning is required for a Covered Product during each of four (4) consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the four (4) year period, Cyanotech changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, Cyanotech shall test that Covered Product annually for at least four (4) consecutive years after such change is made.

(e) Cyanotech shall retain all test results and documentation for a period of four (4) years from the date of each test. Nothing in this Consent Judgment shall limit Cyanotech's 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, payment in lieu of civil penalties, attorney's fees, and costs, Cyanotech shall make a total payment of $85,000.00 to ERC within ten (10) days of the Effective Date. Cyanotech shall make this payment by wire transfer to ERC's escrow account, for which ERC will give Cyanotech the necessary account information. Said payment shall be for the following:

4.2 $21,320.00 shall be payable as civil penalties pursuant to California Health and Safety Code section 25249.7(b)(1). Of this amount, ERC shall remit 75% $15,990.00 to the Office of Environmental Health Hazard Assessment ("OEHHA") and $5,330.00 shall be retained by ERC. California Health and Safety Code section 25249.12(c)(1) & (d). ERC will be

responsible for forwarding the civil penalty.

4.3 $650.21 shall be payable to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 $21,323.19 shall be payable to ERC in lieu of further civil penalties, for the day-to-day business activities such as (1) continued enforcement of Proposition 65, which includes work, analyzing, researching and testing consumer products that may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are the subject matter of the current action; (2) the continued monitoring of past consent judgments and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a donation of $1,066.00 to the Center for Environmental Health to address reducing toxic chemical exposures in California.

4.5 $23,785.50 shall be payable to Adams Broadwell Joseph and Cardozo as reimbursement of ERC's attorney's fees while $17,921.10 shall be distributed to ERC for its in-house legal fees.

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

5. MODIFICATION OF CONSENT JUDGMENT

5.1 This Consent Judgment may be modified (i) by written stipulation of the Parties or pursuant to Section 5.3 and (ii) upon entry by the Court of a modified consent judgment.

5.2 If Cyanotech seeks to modify this Consent Judgment under Section 5.1, then Cyanotech must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must

provide written notice to Cyanotech within thirty (30) days of receiving the Notice of Intent. If ERC notifies Cyanotech in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall provide to Cyanotech a written basis for its position. The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes. The Parties may agree in writing to different deadlines for the meet-and-confer period.

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

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

6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT

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

6.2 Only after it complies with Section 15 below may any Party, by motion or application for an order to show cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.

6.3 If ERC alleges that any Covered Product fails to qualify as a Reformulated Covered Product (for which ERC alleges that no warning has been provided), then ERC shall inform Cyanotech in a reasonably prompt manner of its test results, including information sufficient to permit Cyanotech to identify the Covered Products at issue. Cyanotech shall, within thirty (30) days following such notice, provide ERC with testing information, from an independent third-party laboratory meeting the requirements of Section 3.6, demonstrating Defendant's compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior

to ERC taking any further legal action.

7. APPLICATION OF CONSENT JUDGMENT

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

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself and in the public interest, and Cyanotech and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates under common ownership of Cyanotech, suppliers, franchisees, licensees, customers (not including private label customers of Cyanotech), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Product, and the predecessors, successors and assigns of any of them (collectively, "Released Parties), from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been asserted, as to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding lead up through and including six months from the Effective Date ("the Compliance Date").

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

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

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

8.3 Compliance with the terms of this Consent Judgment shall be deemed to constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to lead in the Covered Products as set forth in the Notice of Violation and the Complaint.

8.4 Nothing in this Consent Judgment is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of Cyanotech's products other than the Covered Products.

8.5 ERC and Cyanotech each release and waive all claims they may have against each other for any statements or actions made or undertaken by them in connection with the Notice of Violation or the Complaint up through and including the Effective Date; provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

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

FOR ENVIRONMENTAL RESEARCH CENTER:

Anne Barker, In-House Counsel
Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

With a copy to:

Christina M. Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080-7037

FOR CYANOTECH CORPORATION AND NUTREX, HAWAII, INC.:

Jennifer Johansen
Cyanotech Corporation
73-4460 Queen Kaahumanu Highway, Suite 102
Kailua-Kona, HI 96740

With a copy to:

Peg Carew Toledo
Peg Carew Toledo, Law Corporation
3001 Douglas Blvd., Suite 340
Roseville, CA 95661-3853

12. COURT APPROVAL

12.1 If this Consent Judgment is not approved by the Court, it shall be void and have no force or effect. The Parties shall use their best efforts to support entry of this Consent Judgment.

12.2 If the California Attorney General objects to any term in this Consent Judgment, 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 ERC shall comply with California Health and Safety Code section 25249.7(f) and with Title II of the California Code Regulations, Section 3003.

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 as valid as the original signature.

14. DRAFTING

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

15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

16. ENFORCEMENT

ERC may, by motion or order to show cause, before the Superior Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.

17. ENTIRE AGREEMENT, AUTHORIZATION

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

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

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

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

Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

IT IS SO STIPULATED:

Dated: 8/4/, 2016

ENVIRONMENTAL RESEARCH CENTER

By: _____
Chris Heptinstall, Executive Director

Dated: Aug 8, 2016

CYANOTECH CORPORATION

By: _____
Interim President + CEO

Dated: Aug 8, 2016

NUTREX HAWAII, INC.

By: _____
Interim President + CEO

APPROVED AS TO FORM:

Dated: August 8, 2016

ADAMS BROADWELL JOSEPH & CARDOZO

By: _____
Christina Caro
Attorneys for Plaintiff
Environmental Research Center, Inc.

Dated: August 5 2016

PEG CAREW TOLEDO, LAW CORPORATION

By: _____
Peg Carew Toledo
Attorneys for Defendants
Cyanotech Corporation and Nutrex Hawaii, Inc.

JUDGMENT

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

Dated: _____ _____
Judge of the Superior Court