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7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

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

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

18 Plaintiff,

19 v.

20 HALLELUJAH ACRES, INCORPORATED
21 individually and doing business as
22 HALLELUJAH DIET and DOES 1-25,
23 Inclusive,

24 Defendants.

CASE NO. RG16813816

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: April 29, 2016

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On April 29, 2016, Plaintiff Environmental Research Center, Inc. (“ERC”), a
27 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by
28 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the
provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),

1 against HALLELUJAH ACRES, INCORPORATED, individually and doing business as
2 HALLELUJAH DIET (“HALLELUJAH ACRES”) and DOES 1-25. In this action, ERC
3 alleges that a number of products manufactured, distributed or sold by HALLELUJAH ACRES
4 in California contain lead, a chemical listed under Proposition 65, and expose consumers to this
5 chemical at a level requiring a Proposition 65 warning. These products (referred to hereinafter
6 individually as a “Covered Product” or collectively as “Covered Products”) are:

- 7 • **Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Original**
- 8 • **Hallelujah Acres Inc. Fiber Cleanse**
- 9 • **Hallelujah Acres Inc. HD Hallelujah Diet Fiber Cleanse Green Apple**
- 10 • **Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Alfalfa Free**
- 11 • **Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Berry**
- 12 • **Hallelujah Acres Inc. Fiber Cleanse Lemon**
- 13 • **Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Mint**
- 14 • **Hallelujah Acres Inc. HD Hallelujah Diet Fiber Cleanse Original**
- 15 • **Hallelujah Acres Inc. HD Hallelujah Diet Beetmax**
- 16 • **Hallelujah Acres Inc. HD Hallelujah Diet Advanced SuperFood Plain**
- 17 • **Hallelujah Acres Inc. HD Hallelujah Diet Advanced SuperFood Berry**
- 18 **Flavored**
- 19 • **Hallelujah Acres Inc. HD Hallelujah Diet Triomax**
- 20 • **Hallelujah Acres Inc. HD Hallelujah Diet Organic Essential Protein**

21 **1.2** ERC and HALLELUJAH ACRES are hereinafter referred to individually as a
22 “Party” or collectively as the “Parties.”

23 **1.3** ERC asserts that it is a California non-profit corporation dedicated to, among
24 other causes, helping safeguard the public from health hazards by reducing the use and misuse
25 of hazardous and toxic chemicals, facilitating a safe environment for consumers and
26 employees, and encouraging corporate responsibility.

1 **1.4** For purposes of this Consent Judgment only, the Parties agree that HALLELUJAH
2 ACRES is a “person in the course of business” within the meaning of Proposition 65.
3 HALLELUJAH ACRES distributes and/or sells the Covered Products.

4 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
5 dated August 28, 2015 that was served on the California Attorney General, other public
6 enforcers, and HALLELUJAH ACRES (“Notice”). A true and correct copy of the Notice is
7 attached as Exhibit A and is hereby incorporated by reference. More than 60 days have passed
8 since the Notice was served and uploaded to the Attorney General’s website, and, to the best of
9 the Parties knowledge, no designated governmental entity has filed a complaint or is otherwise
10 diligently prosecuting the noticed claims against HALLELUJAH ACRES with regard to the
11 Covered Products.

12 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
13 persons in California to lead without first providing clear and reasonable warnings in alleged
14 violation of California Health and Safety Code section 25249.6. HALLELUJAH ACRES
15 denies all material allegations contained in the Notice and Complaint.

16 **1.7** The Parties have entered into this Consent Judgment in order to settle,
17 compromise and resolve disputed claims and thus avoid prolonged and costly litigation
18 concerning the claims alleged in the Notice and Complaint. Nothing in this Consent Judgment
19 shall be construed as an admission by the Parties of any fact, issue of law, or violation of law,
20 nor shall compliance with this Agreement constitute or be construed as an admission by the
21 Parties of any fact, issue of law or violation of law. Nothing in this Consent Judgment or any
22 document referred to shall be construed as giving rise to any presumption or inference of
23 admission or concession by the Parties as to any fault, wrongdoing or liability whatsoever.
24 HALLELUJAH ACRES expressly maintains that all of its products comply with all laws
25 including Proposition 65, and are completely safe for their intended use. This Section shall not
26 diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this
27 Agreement.

1 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
2 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
3 other or future legal proceeding unrelated to these proceedings.

4 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
5 a Judgment by this Court.

6 **2. JURISDICTION AND VENUE**

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

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

15 **3.1** Beginning on the Effective Date, HALLELUJAH ACRES shall be permanently
16 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
17 California,” or directly selling in the State of California, any Covered Product which exposes a
18 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms per day of lead when
19 the maximum suggested dose is taken as directed on the Covered Product’s label, unless it
20 meets the warning requirements under Section 3.2.

21 **3.1.1** As used in this Consent Judgment, the term “Distributed or Distributing
22 into the State of California” shall mean to directly ship a Covered Product into California for
23 sale in California or to sell a Covered Product to a distributor that HALLELUJAH ACRES
24 knows will sell the Covered Product in California.

25 **3.1.2** For purposes of this Consent Judgment only, the “Daily Lead Exposure
26 Level” shall be measured in micrograms, and shall be calculated using the following formula:
27 micrograms of lead per gram of product, multiplied by grams of product per serving of the
28 product (using the largest serving size appearing on the product label), multiplied by servings

1 of the product per day (using the largest number of servings in a recommended dosage
2 appearing on the product label), which equals micrograms of lead exposure per day.

3 **3.2 Clear and Reasonable Warnings**

4 If HALLELUJAH ACRES is required to provide a warning for any Covered Product sold
5 or distributed in California pursuant to Section 3.1, the following warning must be utilized:

6 **[California Proposition 65] WARNING: This product contains [a] chemical[s] known**
7 **to the State of California to cause [cancer and] birth defects or other reproductive**
8 **harm.**

9 The language in brackets is optional except that HALLELUJAH ACRES shall use the phrase
10 “cancer and” in the warning if the maximum daily dose recommended on the label contains more
11 than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in
12 Section 3.4.

13 The warning shall be securely affixed to or printed upon the container, packaging or label
14 of each Covered Product distributed or sold in California except to the extent a warning has
15 already been provided to California purchasers on an internet site as set forth below. For
16 Covered Products sold into California over HALLELUJAH ACRES’ website, the warning shall
17 appear on the HALLELUJAH ACRES’ product display page for the Covered Product, the
18 checkout page on its website for California consumers identifying the Covered Product, or prior
19 to completing checkout on HALLELUJAH ACRES’ website when a California delivery address
20 is indicated for any purchase of any Covered Product requiring a warning hereunder. For any
21 such Covered Product purchased on HALLELUJAH ACRES’ website for which an internet
22 warning is provided, such product shall not be required to also have a product package or label
23 warning.

24 The warning shall be at least the same size as the largest of any other health or safety
25 warnings also appearing on HALLELUJAH ACRES’ website, or on the label or container of
26 HALLELUJAH ACRES’ product packaging and the word “**WARNING**” shall be in all capital
27 letters and in bold print. No statements contradicting or conflicting with the Warning shall
28 accompany the Warning.

1 HALLELUJAH ACRES must display the above warnings with such conspicuousness, as
2 compared with other words, statements, design of the label, container, or on its website, as
3 applicable, to render the warning likely to be read and understood by an ordinary individual under
4 customary conditions of purchase or use of the product.

5 **3.3 Reformulated Covered Products**

6 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when
7 the maximum suggested dose is taken as directed on the Reformulated Covered Product's label,
8 contains no more than 0.5 micrograms of lead per day as determined by the quality control
9 methodology described in Section 3.4.

10 **3.4 Testing and Quality Control Methodology**

11 **3.4.1** Should any Covered Product be sold or "Distributed into California"
12 without a warning under Section 3.2, HALLELUJAH ACRES shall first arrange for lead
13 testing of the Covered Product at least once a year for a minimum of three consecutive years
14 by arranging for testing of five randomly selected samples of each such Covered Product, in
15 the form intended for sale to the end-user, which HALLELUJAH ACRES intends to sell or is
16 manufacturing for sale in California, directly selling to a consumer in California, or
17 "Distributing into California." The testing requirement does not apply to any of the Covered
18 Products for which HALLELUJAH ACRES is providing the warning specified in Section 3.2.
19 If tests conducted pursuant to this Section demonstrate that no warning is required for a
20 Covered Product during each of three consecutive years, then the testing requirements of this
21 Section will no longer be required as to that Covered Product. However, if during or after the
22 three-year testing period, HALLELUJAH ACRES changes ingredient suppliers for any of the
23 Covered Products and/or reformulates any of the Covered Products, HALLELUJAH ACRES
24 shall test that Covered Product annually for at least three (3) consecutive years after such
25 change is made.

26 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the
27 arithmetic mean of the lead detection results of the five (5) randomly selected samples of the
28 Covered Products will be controlling.

1 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
2 laboratory method that complies with the performance and quality control factors appropriate
3 for the method used, including limit of detection, qualification, accuracy, and precision that
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
5 achieving a limit of quantification of less than or equal to 10 parts per billion or any other
6 testing method subsequently agreed to in writing by the Parties.

7 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
8 independent third-party laboratory certified by the California Environmental Laboratory
9 Accreditation Program or an independent third-party laboratory that is registered with the
10 United States Food & Drug Administration or other competent state or federal agency.

11 **3.4.5** Nothing in this Consent Judgment shall limit HALLELUJAH ACRES’
12 ability to conduct, or require that others conduct, additional testing of the Covered Products,
13 including the raw materials used in their manufacture. Nothing in this Consent Judgment shall
14 require Hallelujah Acres to disclose any such testing to ERC unless it uses such testing to
15 support sales of Covered Products without a warning in California in accordance with the terms
16 hereof.

17 **3.4.6** Beginning on the Effective Date and continuing for a period of three
18 years, HALLELUJAH ACRES shall arrange for copies of all laboratory reports with results of
19 testing for lead content under Section 3.4.1 to be sent to ERC within ten days of its reasonable
20 written request. HALLELUJAH ACRES shall retain all test results and documentation for a
21 period of three years from the date of each test. The requirement to provide all test data to ERC
22 if Hallelujah Acres decides to sell the Covered Products without a Proposition 65 Warning in
23 California shall cease after three (3) years from the Effective Date.

24 **4. SETTLEMENT PAYMENT**

25 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
26 penalties, attorney’s fees, and costs, HALLELUJAH ACRES shall make a total payment of
27 \$55,000.00 (“Total Settlement Amount”) by wire transfer to ERC’s escrow account for which
28 ERC will give HALLELUJAH ACRES the necessary account information. The 1st installment

1 of \$6,875.00 will be made within 5 days of the Effective Date and the remaining seven (7)
2 consecutive equal monthly installments of \$6,875.00 will follow in 30 day increments (“Due
3 Dates”). The Total Settlement Payment covers any all penalties, payments in lieu of penalties,
4 investigative, expert and other costs, as well as all of ERC’s attorney’s fees incurred in
5 connection with the Notice and this Complaint through the Court’s entry of this Consent
6 Judgment. The Total Settlement Amount shall be apportioned as follows:

7 **4.2** \$9,264.00 shall be considered a civil penalty pursuant to California Health and
8 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$6,948.00) of the civil penalty to the
9 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
10 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
11 Code §25249.12(c). ERC will retain the remaining 25% (\$2,316.00) of the civil penalty.

12 **4.3** \$4,567.95 shall be distributed to ERC as reimbursement to ERC for all of its
13 investigative, expert or any other costs incurred in serving the Notice, filing the Complaint or
14 otherwise prosecuting this action.

15 **4.4** \$9,265.71 shall be distributed to ERC in lieu of further civil penalties, for the
16 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
17 includes work, analyzing, researching and testing consumer products that may contain
18 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
19 the subject matter of the current action; (2) the continued monitoring of past consent judgments
20 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
21 donation of \$463.00 to the Center For Environmental Health to address reducing toxic chemical
22 exposures in California.

23 **4.5** In complete reimbursement of ERC’s attorney’s fees up through and including
24 the entry of this Consent Judgment, \$11,375.00 shall be distributed to William F. Wraith,
25 \$315.00 shall be distributed to Michael Freund, while \$20,212.34 shall be distributed to ERC for
26 its in-house legal fees.

27 **4.6** In the event that HALLELUJAH ACRES fails to remit the Total Settlement
28 Payment owed under Section 4 of this Consent Judgment on or before the Due Date,

1 HALLELUJAH ACRES shall be deemed to be in material breach of its obligations under this
2 Consent Judgment. ERC shall provide written notice of the delinquency to HALLELUJAH
3 ACRES pursuant to Section 11. If HALLELUJAH ACRES fails to deliver the Total
4 Settlement Payment within ten (10) days from the written notice, the Total Settlement Payment
5 shall become immediately due and payable and shall accrue interest at the statutory judgment
6 interest rate provided in the Code of Civil Procedure section 685.010. Additionally,
7 HALLELUJAH ACRES agrees to pay ERC's reasonable attorney's fees and costs for efforts
8 to collect any delinquent payment due under this Consent Judgment.

9 **5. MODIFICATION OF CONSENT JUDGMENT**

10 **5.1** This Consent Judgment may be modified only by: (i) written stipulation of the
11 Parties or pursuant to Section 5.4; and (ii) upon entry by the Court of a modified consent
12 judgment.

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

25 **5.3** In the event that HALLELUJAH ACRES initiates or otherwise requests a
26 modification under Section 5.1, and the meet and confer process leads to a joint motion or
27 application of the Consent Judgment, HALLELUJAH ACRES shall reimburse ERC its
28

1 reasonable costs and attorney's fees for the time spent in the meet-and-confer process and filing
2 and arguing the motion or application.

3 **5.4** Where the meet-and-confer process does not lead to a joint motion or
4 application in support of a modification of the Consent Judgment, then either Party may seek
5 judicial relief on its own.

6 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
7 **JUDGMENT**

8 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
9 this Consent Judgment.

10 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
11 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
12 inform HALLELUJAH ACRES in a reasonably prompt manner of its test results, including
13 information sufficient to permit HALLELUJAH ACRES to identify the Covered Products at
14 issue. HALLELUJAH ACRES shall, within thirty days following such notice, provide ERC
15 with testing information, from an independent third-party laboratory meeting the requirements
16 of Sections 3.4.3 and 3.4.4, demonstrating HALLELUJAH ACRES' compliance with the
17 Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter informally
18 prior to ERC taking any further legal action.

19 **7. APPLICATION OF CONSENT JUDGMENT**

20 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their
21 respective owners, officers, directors, and employees solely in their capacity as owners, officers,
22 directors, and employees of the Parties. This Consent Judgment shall have no application to
23 Covered Products which are distributed or sold exclusively outside the State of California and
24 which are not used by California consumers.

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

26 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
27 on behalf of itself and in the public interest, on one hand, and only HALLELUJAH ACRES
28 and its respective officers, directors, and employees solely in their capacity as officers,

1 directors, or employees of HALLELUJAH ACRES, and no other individual or entity in any
2 capacity on the other hand. HALLELUJAH ACRES and its respective officers, directors, and
3 employees solely in their capacity as officers, directors, or employees of HALLELUJAH
4 ACRES, and no other individual or entity in any capacity, are collectively referred to as
5 "Released Parties." ERC hereby fully releases and discharges the Released Parties from any
6 and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees,
7 costs and expenses asserted against the Released Parties, or that could have been asserted
8 against the Released Parties from the handling, use, or consumption of the Covered Products,
9 as to any alleged violation of Proposition 65 or its implementing regulations arising from the
10 failure by the Released Parties to provide Proposition 65 warnings on the Covered Products
11 regarding lead up to and including the Effective Date.

12 **8.2** ERC on its own behalf only, on one hand, and HALLELUJAH ACRES on
13 its own behalf only, on the other, further waive and release any and all claims they may have
14 against each other for all actions or statements made or undertaken in the course of seeking or
15 opposing enforcement of Proposition 65 in connection with the Notice or Complaint up through
16 and including the Effective Date, provided, however, that nothing in Section 8 shall affect or
17 limit any Party's right to seek to enforce the terms of this Consent Judgment.

18 **8.3** It is possible that other claims not known to the Parties arising out of the facts
19 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
20 discovered. ERC on behalf of itself only, on one hand, and HALLELUJAH ACRES on behalf
21 of itself only, on the other hand, acknowledge that this Consent Judgment is expressly intended
22 to cover and include all such claims up through the Effective Date, including all rights of action
23 therefore. ERC on behalf of itself only, on one hand, and HALLELUJAH ACRES on behalf of
24 itself only, on the other hand, acknowledge that the claims released in Sections 8.1 and 8.2
25 above may include unknown claims, and nevertheless waive California Civil Code section
26 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
28 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

1 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
2 OR HER SETTLEMENT WITH THE DEBTOR.

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

6 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
7 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
8 in the Covered Products as set forth in the Notice and the Complaint.

9 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational
10 or environmental exposures arising under Proposition 65, nor shall it apply to any of
11 HALLELUJAH ACRES' products other than the Covered Products

12 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

15 **10. GOVERNING LAW**

16 The terms and conditions of this Consent Judgment shall be governed by and construed in
17 accordance with the laws of the State of California. Should there be an amendment to Proposition
18 65 or should OEHHA promulgate revised regulations as to matters covered by this Consent
19 Judgment, the Parties shall meet and confer to see if they can agree upon an appropriate stipulation
20 to modify this Consent Judgment.

21 **11. PROVISION OF NOTICE**

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

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

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

1 With a copy to:
2 WILLIAM F. WRAITH
3 WRAITH LAW
4 24422 Avenida de la Carlota, Suite 400
5 Laguna Hills, CA 92653
6 Tel: (949) 452-1234
7 Fax: (949) 452-1102

8 **HALLELUJAH ACRES, INCORPORATED, individually**
9 **and doing business as HALLELUJAH DIET**

10 Paul Malkmus
11 President and CEO
12 Hallelujah Diet
13 PO Box 2388
14 Shelby, NC 28151

15 With a copy to:
16 J. ROBERT MAXWELL
17 ROGERS JOSEPH O'DONNELL
18 311 California Street, 10th Floor
19 San Francisco, CA 94104
20 Tel: (415) 956-2828
21 Fax: (415)-956-6457
22 Email: jmaxwell@rjo.com

23 **12. COURT APPROVAL**

24 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall within a
25 reasonable time, prepare and file a Motion for Court Approval. The Parties shall use their best
26 efforts to support entry of this 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 Stipulated 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 as valid as
the original signature.

1 **14. DRAFTING**

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

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

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

15 **16. ENFORCEMENT**

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

20 **17. ENTIRE AGREEMENT, AUTHORIZATION**

21 **17.1** This Consent Judgment contains the sole and entire agreement and
22 understanding of the Parties with respect to the entire subject matter herein, and any and all
23 prior discussions, negotiations, commitments and understandings related hereto. No
24 representations, oral or otherwise, express or implied, other than those contained herein have
25 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
26 herein, shall be deemed to exist or to bind any Party.

1 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
3 explicitly provided herein, each Party shall bear its own fees and costs.

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

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

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

12 (2) Make the findings pursuant to California Health and Safety Code section
13 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

14 **IT IS SO STIPULATED:**

15 Dated: 9/21, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hepburn, Executive Director

18 Dated: 9/31, 2016

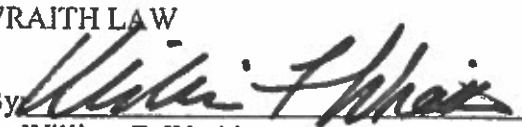
HALLELUJAH ACRES,
INCORPORATED, individually and doing
business as HALLELUJAH DIET

By: 
President
Its:

23 **APPROVED AS TO FORM:**

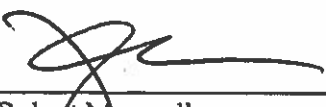
24 Dated: 9/6, 2016

WRAITH LAW

By: 
William F. Wraith
Attorney for Plaintiff Environmental
Research Center, Inc.

1 Dated: 9/7, 2016

ROGERS JOSEPH O'DONNELL

2
3 By: 
4 J. Robert Maxwell
5 Attorney for Defendant Hallelujah Acres,
6 Incorporated, individually and doing
7 business as Hallelujah Diet

8 **ORDER AND JUDGMENT**

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

11 IT IS SO ORDERED, ADJUDGED AND DECREED.

12 Dated: _____, 2016

13 Judge of the Superior Court

EXHIBIT “A”

WRAITH LAW
24422 AVENIDA DE LA CARLOTA
SUITE 400
LAGUNA HILLS, CA 92653
Tel (949) 452-1234
Fax (949) 452-1102

August 28, 2015

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I 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 Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

Hallelujah Acres, Incorporated, individually and doing business as Hallelujah Diet

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:

1. **Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Original – Lead**
2. **Hallelujah Acres Inc. Fiber Cleanse – Lead**
3. **Hallelujah Acres Inc. HD Hallelujah Diet Fiber Cleanse Green Apple- Lead**
4. **Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Alfalfa Free – Lead**
5. **Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Berry - Lead**
6. **Hallelujah Acres Inc. Fiber Cleanse Lemon – Lead**
7. **Hallelujah Acres Inc. HD Hallelujah Diet Barley Max Mint - Lead**
8. **Hallelujah Acres Inc. HD Hallelujah Diet Fiber Cleanse Original - Lead**
9. **Hallelujah Acres Inc. HD Hallelujah Diet Beetmax - Lead**
10. **Hallelujah Acres Inc. HD Hallelujah Diet Advanced SuperFood Plain – Lead**
11. **Hallelujah Acres Inc. HD Hallelujah Diet Advanced SuperFood Berry Flavored - Lead**

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12. Hallelujah Acres Inc. HD Hallelujah Diet Triomax – Lead

13. Hallelujah Acres Inc. HD Hallelujah Diet Organic Essential Protein – 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 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 Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to 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 Violator 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 Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (Hallelujah Acres, Incorporated, individually and doing business as Hallelujah Diet and its Registered Agent for Service of Process only)

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

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Hallelujah Acres, Incorporated, individually and doing business as Hallelujah Diet

I, William F. Wraith, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: August 28, 2015



William F. Wraith

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 VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Hallelujah Acres, Incorporated,
individually and doing business as
Hallelujah Diet
916 Cox Road, Suite 210
Gastonia, NC 28054

Paul H. Malkmus
(Hallelujah Acres, Incorporated,
individually and doing business as
Hallelujah Diet’s Registered Agent
for Service of Process)
208 Vauxhall Drive
Shelby, NC 28150

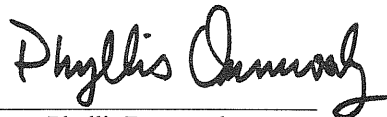
Current President or CEO
Hallelujah Acres, Incorporated,
individually and doing business as
Hallelujah Diet
834 South Post Road
Shelby, NC 28152

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 VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it 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 Violations of California Health & Safety Code §25249.5 *et seq.*

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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, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	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, Nevada County 201 Commercial Street Nevada City, CA 95959	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, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	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, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	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, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	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 Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	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	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103		