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OXYFRESH.COM/21 TEN, INC.
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA

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

18 Plaintiff,

19 v.

20 OXYFRESH WORLDWIDE, INC., a
21 Wyoming corporation,
OXYFRESH.COM/21 TEN, INC., a
22 Washington corporation and DOES 1-25,
23 inclusive,

24 Defendants.
25
26
27

CASE NO. RG16840102

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 18, 2016

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On November 18, 2016, Plaintiff Environmental Research Center, Inc. (“ERC”),
3 a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by
4 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
6 against Oxyfresh Worldwide, Inc., Oxyfresh.com/21 Ten, Inc. (collectively “Oxyfresh”) and
7 Does 1-25. In this action, ERC alleges that the following products (referred to hereinafter
8 individually as a “Covered Product” or collectively as “Covered Products”), distributed or sold
9 by Oxyfresh contain the chemical(s) identified below that are listed under Proposition 65 as
10 carcinogens and reproductive toxins, and expose consumers to these chemicals at a level
11 requiring a Proposition 65 warning: Life Shotz LS-Vibe Chiseled Chocolate (lead and cadmium)
12 and Life Shotz LS-Vibe Viva Vanilla (lead).

13 **1.2** ERC and Oxyfresh are hereinafter referred to individually as a “Party” or
14 collectively as the “Parties.”

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

19 **1.4** For purposes of this Consent Judgment, the Parties agree that each Oxyfresh
20 defendant is a business entity, each of which has employed ten or more persons at all times
21 relevant to this action, and qualifies as a “person in the course of business” within the meaning of
22 Proposition 65. Oxyfresh distributes and sells the Covered Products.

23 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
24 dated August 28, 2015, that was served on the California Attorney General, other public
25 enforcers, and Oxyfresh (“Notice”). A true and correct copy of the Notice is attached as
26 **Exhibit A** and is hereby incorporated by reference. More than sixty (60) days have passed
27 since the Notice was mailed and uploaded to the Attorney General’s website, and no designated

1 governmental entity has filed a complaint against Oxyfresh with regard to the Covered Products
2 or the alleged violations.

3 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
4 persons in California to lead and cadmium without first providing clear and reasonable
5 warnings in violation of California Health and Safety Code section 25249.6. Oxyfresh denies
6 all material allegations contained in the Notice and Complaint.

7 **1.7** The Parties have entered into this Consent Judgment in order to settle,
8 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
9 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
10 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
11 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
12 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
13 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
14 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
15 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
16 purpose.

17 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
18 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
19 other or future legal proceeding unrelated to these proceedings.

20 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
21 a Judgment by this Court.

22 **2. JURISDICTION AND VENUE**

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

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

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

4 **3.1** Beginning four months after the Effective Date (“Compliance Date”), Oxyfresh
5 shall be permanently enjoined from manufacturing for sale in the State of California,
6 “Distributing into the State of California”, or directly selling in the State of California, any
7 Covered Product which exposes a person to a “Daily Lead Exposure Level” of more than 0.5
8 micrograms per day of lead or “Daily Cadmium Exposure Level” of 4.10 micrograms per day
9 of cadmium when the maximum suggested dose is taken as directed on the Covered Product’s
10 label excluding any naturally occurring lead (as defined in section 3.1.2 below), unless it meets
11 the warning requirements under Section 3.2.

12 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
13 of California” shall mean to directly ship a Covered Product into California for sale in
14 California or to sell a Covered Product to a distributor that Oxyfresh knows will sell the
15 Covered Product in California.

16 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
17 Level” shall be measured in micrograms, and shall be calculated using the following formula:
18 micrograms of lead per gram of product, minus the amounts of lead listed in Table 3.1.2 below
19 (which for purposes of this Consent Judgment shall be treated as naturally occurring),
20 multiplied by the number of grams of product per serving of the product (using the largest
21 serving size appearing on the product label), multiplied by servings of the product per day
22 (using the largest number of servings in a recommended dosage appearing on the product
23 label), which equals micrograms of lead exposure per day. If Oxyfresh seeks to subtract out any
24 amounts of naturally occurring lead listed in Table 3.1.2, Oxyfresh shall provide ERC with the
25 name of the Covered Product that Oxyfresh contends contains naturally occurring lead, and a
26 complete list showing all the ingredients in that Covered Product including the ingredients from
27 Table 3.1.2 that are contained in the Covered Product, as well as the percentage and the amount

1 in grams per serving of each ingredient in the Covered Product. Oxyfresh may update this
2 information from time to time and will be entitled to submit this information to ERC
3 confidentially.

4 **TABLE 3.1.2**

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Elemental Calcium	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram
Cocoa-powder	1.0 micrograms/gram

16
17 **3.1.3** The “Daily Cadmium Exposure Level” shall be measured in micrograms,
18 and shall be calculated using the following formula: micrograms of cadmium per gram of
19 product, multiplied by grams of product per serving of the product (using the largest serving
20 size appearing on the product label), multiplied by servings of the product per day (using the
21 largest number of servings in a recommended dosage appearing on the product label), which
22 equals micrograms of cadmium exposure per day.

23 **3.2 Clear and Reasonable Warnings**

24 If Oxyfresh is required to provide a warning pursuant to Section 3.1, the following warning
25 must be utilized:

26 Prior to August 30, 2018, either of the below warnings may be utilized:

27 **WARNING:** This product contains lead [and cadmium], [a] chemical[s] known to the

1 State of California to cause [cancer and] birth defects or other reproductive harm.

2 After August 30, 2018, the following warning must be utilized:

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

6 Oxyfresh shall use the phrase "cancer and" in the warning if the maximum daily dose
7 recommended on the label contains more than fifteen (15) micrograms of lead as determined
8 pursuant to the quality control methodology set forth in Section 3.4. As specified by the terms in
9 the brackets above, the warning shall properly identify whether lead, cadmium or both chemicals
10 are present in the Covered Products.

11 Oxyfresh shall provide the Warning on at least one of the following locations: (1) on the
12 checkout page of its website for California consumers; (2) in an email sent to the California
13 consumer that confirms his or her purchase of the Covered Products following the placement of
14 an order (the "Confirmation"); (3) on the container, cap, or label of each Covered Product; 4) on
15 inserts in boxes of Covered Products shipped into California; or 5) on the packing list in boxes of
16 Covered Products shipped to California.

17 For a Warning appearing on the checkout page, insert, packing list, or in the
18 Confirmation, Oxyfresh shall identify with an asterisk (or some other identifying method) each
19 Covered Product to which the Warning applies and Oxyfresh shall not include a Warning
20 without identifying the Covered Products to which the Warning applies.

21 Apart from the Warning, no additional statement regarding Proposition 65 or lead may be
22 stated within the same physical location as the Warning that appears on the checkout page or in
23 the Confirmation. The preceding prohibition in this paragraph does not apply to a url reference
24 to a webpage or to other correspondence with the consumer.

25 For a Warning appearing on the container, cap, or label of the Covered Products, the
26 Warning shall be securely affixed to or printed upon the container, cap, or label of the Covered
27 Products.

1 If Oxyfresh provides the Warning in an insert, Oxyfresh shall provide one insert Warning
2 for each Covered Product in a box or one insert warning that lists all of the Covered Products in
3 the box. The insert Warning will be a minimum of 5 inches x 7 inches. If the insert is provided
4 in an insert or packing list, the Covered Products may be returned by the consumer for a refund
5 within 30 days of the invoice date if the consumer references the Warnings as a reason for the
6 return. If Oxyfresh provides the Warning on an insert or packing slip, the Warning must be
7 present on the front of the insert.

8 Oxyfresh must display the above with such conspicuousness, as compared with other
9 words, statements, or designs of the label, container, cap, Confirmation or website, as applicable,
10 to render the Warning likely to be read and understood by an ordinary individual under
11 customary conditions of purchase or use of the product. The Warning appearing on the website,
12 Confirmation, label, container, or cap shall be at least the same size as the largest of any other
13 health or safety warnings correspondingly appearing on the website, Confirmation, label,
14 container, or cap, as applicable, of such product, and the word "WARNING" shall be in all
15 capital letters and in bold print.

16 **3.3 Reformulated Covered Products**

17 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" or
18 "Daily Cadmium Exposure Level" when the maximum suggested dose is taken as directed on the
19 Reformulated Covered Product's label, contains no more than 0.5 micrograms of lead per day
20 (excluding any lead defined as naturally occurring pursuant to section 3.1.2) or 4.10 micrograms
21 of cadmium per day as determined by the quality control methodology described in Section 3.4.

22 **3.4 Testing and Quality Control Methodology**

23 **3.4.1** Beginning within one year of the Compliance Date, Oxyfresh shall
24 arrange for lead and cadmium testing of the Covered Products at least once a year for a
25 minimum of five (5) consecutive years by arranging for testing of five (5) randomly selected
26 samples of each of the Covered Products, in the form intended for sale to the end-user, which
27 Oxyfresh intends to sell or is manufacturing for sale in California, directly selling to a

1 consumer in California or “Distributing into California.” If tests conducted pursuant to this
2 Section demonstrate that no warning is required for a Covered Product during each of five (5)
3 consecutive years, then the testing requirements of this Section will no longer be required as to
4 that Covered Product. However, if during or after the five-year period, Oxyfresh changes
5 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered
6 Products, Oxyfresh shall test that Covered Product at least once after such change is made. The
7 above testing requirements do not apply to any of the Covered Products for which Oxyfresh has
8 provided the warning specified in Section 3.2.

9 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” or “Daily
10 Cadmium Exposure Level”, the highest lead or cadmium detection result of the five (5)
11 randomly selected samples of the Covered Products will be controlling.

12 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
13 laboratory method that complies with the performance and quality control factors appropriate
14 for the method used, including limit of detection, qualification, accuracy, and precision that
15 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
16 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
17 method subsequently agreed to in writing by the Parties.

18 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
19 independent third party laboratory certified by the California Environmental Laboratory
20 Accreditation Program or an independent third-party laboratory that is registered with the
21 United States Food & Drug Administration.

22 **3.4.5** Nothing in this Consent Judgment shall limit Oxyfresh’s ability to
23 conduct, or require that others conduct, additional testing of the Covered Products, including
24 the raw materials used in their manufacture.

25 **3.4.6** Beginning on the Compliance Date and continuing for a period of five
26 (5) years, Oxyfresh shall arrange for copies of all laboratory reports with results of testing for
27 lead and cadmium content under Section 3.4.1 to be automatically sent by the testing laboratory

1 directly to ERC within ten (10) business days after completion of the testing. Oxyfresh shall
2 retain all test results and documentation for a period of five (5) years from the date of each test.

3 **4. SETTLEMENT PAYMENT**

4 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
5 penalties, attorney's fees, and costs, Oxyfresh shall make a total payment of \$75,000.00 ("Total
6 Settlement Amount") The Total Settlement Amount shall be paid in a total of six consecutive
7 monthly payments. The first payment of \$12,500.00 shall be due and owing five (5) business
8 days after the Effective Date. The next five (5) consecutive equal monthly payments of
9 \$12,500.00 shall follow in thirty day increments from the first payment ("Due Dates").
10 Oxyfresh shall make this payment by wire transfer to ERC's escrow account, for which ERC
11 will give Oxyfresh the necessary account information. The Total Settlement Amount shall be
12 apportioned as follows:

13 **4.2** \$26,876.20 shall be considered a civil penalty pursuant to California Health and
14 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$20,157.15) of the civil penalty to the
15 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
16 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
17 Code §25249.12(c). ERC will retain the remaining 25% (\$6,719.05) of the civil penalty.

18 **4.3** \$2,493.78 shall be distributed to ERC as reimbursement to ERC for reasonable
19 costs incurred in bringing this action.

20 **4.4** \$20,157.12 shall be distributed to ERC as an Additional Settlement Payment
21 ("ASP"), pursuant to California Code of Regulations, title 27, sections 3203, subdivision (d) and
22 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
23 caused by Defendant in this matter. These activities are detailed below and support ERC's
24 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
25 supplement products in California. ERC's activities have had, and will continue to have, a direct
26 and primary effect within the State of California because California consumers will be benefitted
27 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements

1 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
2 the products.

3 Based on a review of past years' actual budgets, ERC is providing the following list of
4 activities ERC engages in to protect California consumers through Proposition 65 citizen
5 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
6 activities: (1) ENFORCEMENT (55-70%): obtaining, shipping, analyzing, and testing dietary
7 supplement products that may contain lead and/or cadmium and are sold to California
8 consumers; continued monitoring and enforcement of past consent judgments and settlements to
9 ensure companies are in compliance with their obligations thereunder, with a specific focus on
10 those judgments and settlements concerning lead and/or cadmium (which necessarily includes
11 additional work purchasing, processing, analyzing and testing consumer products; litigating
12 matters that result in defaults, bankruptcies, or dismissals; (2) VOLUNTARY COMPLIANCE
13 PROGRAM (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring
14 products from companies, developing and maintaining a case file, testing products from these
15 companies, providing the test results and supporting documentation to the companies, and
16 offering guidance in implementing a self-testing program for lead and/or cadmium in dietary
17 supplement products; (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got
18 Lead?" Program which reduces the numbers of contaminated products that reach California
19 consumers by providing access to free testing for lead in dietary supplement products (Products
20 submitted to the program are screened for ingredients which are suspected to be contaminated,
21 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and the
22 results shared with the consumer that submitted the product); (4) DONATION: from this
23 settlement, a donation of \$1,008.00 to As You Sow will be provided to address reducing toxic
24 chemical exposures in California and following up with the recipient to ensure the funds are
25 utilized in a manner that is consistent with ERC's mission and stated purpose of the Donation;
26 (5) PUBLIC OUTREACH (up to 5%): public outreach programs including maintaining ERC's
27 blog, website, and social media accounts; (6) SPECIAL PROJECTS (10-20%): projects

1 including obtaining expert and legal opinions not specific to any one case that are necessary to
2 the continued private enforcement of Proposition 65 (7) SCHOLARSHIPS (up to 5%):
3 scholarships for college students in California who have been or are currently diagnosed with
4 cancer or who are pursuing an environmental health science major; and (8) PRODUCT
5 DATABASE (up to 5%): maintaining a database with all products sold to California consumers
6 that ERC has tested for lead, cadmium, or arsenic.

7 ERC will maintain adequate records to document that the funds paid as an ASP are spent
8 on the activities described herein. ERC shall provide the Attorney General, within thirty days of
9 any request, copies of documentation demonstrating how such funds have been spent.

10 **4.5** \$25,472.90 shall be distributed to ERC for its in-house legal fees.

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

20 **5. MODIFICATION OF CONSENT JUDGMENT**

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

24 **5.2** If Oxyfresh seeks to modify this Consent Judgment under Section 5.1, then
25 Oxyfresh must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to
26 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
27 provide written notice to Oxyfresh within thirty (30) days of receiving the Notice of Intent. If

1 ERC notifies Oxyfresh in a timely manner of ERC's intent to meet and confer, then the Parties
2 shall meet and confer in good faith as required in this Section. The Parties shall meet in person
3 or via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.
4 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall
5 provide to Oxyfresh a written basis for its position. The Parties shall continue to meet and
6 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
7 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
8 confer period.

9 **5.3** In the event that either Party initiates or otherwise requests a modification under
10 Section 5.1, and the meet and confer process leads to a joint motion or application of the
11 Consent Judgment, the initiating Party shall reimburse the non-initiating Party its costs and
12 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
13 arguing the motion or application, provided, however, that these fees and costs shall not exceed
14 \$10,000.00 total without the prior written consent of the initiating Party.

15 **5.4** Where the meet-and-confer process does not lead to a joint motion or
16 application in support of a modification of the Consent Judgment, then either Party may seek
17 judicial relief on its own.

18 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
19 **JUDGMENT**

20 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
21 this Consent Judgment.

22 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
23 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
24 inform Oxyfresh in a reasonably prompt manner of its test results, including information
25 sufficient to permit Oxyfresh to identify the Covered Products at issue. Oxyfresh shall, within
26 thirty (30) days following such notice, provide ERC with testing information, from an
27 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,

1 demonstrating Oxyfresh's compliance with the Consent Judgment, if warranted. The Parties
2 shall first attempt to resolve the matter prior to ERC taking any further legal action.

3 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

24 **8.2** ERC on its own behalf only, on one hand, and Oxyfresh on its own behalf
25 only, on the other, further waive and release any and all claims they may have against each
26 other for all actions or statements made or undertaken in the course of seeking or opposing
27 enforcement of Proposition 65 in connection with the Notice or Complaint up through and

1 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit
2 any Party's right to seek to enforce the terms of this Consent Judgment.

3 **8.3** It is possible that other claims not known to the Parties arising out of the facts
4 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
5 discovered. ERC on behalf of itself only, on one hand, and Oxyfresh, on the other hand,
6 acknowledge that this Consent Judgment is expressly intended to cover and include all such
7 claims up through the Effective Date, including all rights of action therefore. ERC and
8 Oxyfresh acknowledge that the claims released in Sections 8.1 and 8.2 above may include
9 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
10 unknown claims. California Civil Code section 1542 reads as follows:

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

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

17 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
18 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
19 and cadmium in the Covered Products as set forth in the Notice and the Complaint.

20 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
21 environmental exposures arising under Proposition 65, nor shall it apply to any of Oxyfresh's
22 products other than the Covered Products.

23 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

26 **10. GOVERNING LAW**

27 The terms and conditions of this Consent Judgment shall be governed by and construed in

1 accordance with the laws of the State of California.

2 **11. PROVISION OF NOTICE**

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

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

7 Chris Heptinstall, Executive Director, Environmental Research Center
8 3111 Camino Del Rio North, Suite 400
9 San Diego, CA 92108
10 Tel: (619) 500-3090
11 Email: chris_erc501c3@yahoo.com

11 **OXYFRESH WORLDWIDE, INC.,**
12 **and**
13 **OXYFRESH.COM/21 TEN, INC.**

14 Richard Brooke
15 Chief Executive Officer
16 Oxyfresh.com/21 Ten, Inc.
17 1875 Lakewood Drive
18 3rd Floor
19 Coeur d'Alene, ID 83814

20 With a copy to:
21 Stephen L. Marsh
22 Stefanie Warren
23 Dentons US LLP
24 4655 Executive Drive, Suite 700
25 San Diego, CA 92121
26 Telephone: (619) 236-1414
27 Facsimile: (619) 645-5363
28 stephen.marsh@dentons.com
stefanie.warren@dentons.com

24 **12. COURT APPROVAL**

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

1 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
2 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
3 prior to the hearing on the motion.

4 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
5 void and have no force or effect.

6 **13. EXECUTION AND COUNTERPARTS**

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

10 **14. DRAFTING**

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

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

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

24 **16. ENTIRE AGREEMENT, AUTHORIZATION**

25 **16.1** This Consent Judgment contains the sole and entire agreement and
26 understanding of the Parties with respect to the entire subject matter herein, and any and all
27 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 16.2 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. Except as
6 explicitly provided herein, each Party shall bear its own fees and costs.

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

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

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

15 (2) Make the findings pursuant to California Health and Safety Code section
16 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

17
18 **IT IS SO STIPULATED:**

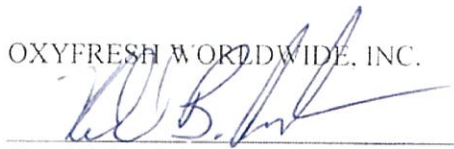
19
20 Dated: 11/28/, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

21
22 By: 
Chris Heppstall, Executive Director

23
24 Dated: 11/29/20, 2016

OXYFRESH WORLDWIDE, INC.

25
26 By: 
Richard Brooke
27 Its: Chief Executive Officer

1 Dated: 11/29, 2016

OXYFRESH.COM/21 TEN, INC.



By: Richard Brooke
Its: Chief Executive Officer

6 **APPROVED AS TO FORM:**

7 Dated: 11-28, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

9 By: 

10 Anne Barker
11 In-House Counsel

12 Dated: 29 Nov., 2016

DENTONS US LLP

14 By: 

15 Stephen L. Marsh
16 Stefanie Warren
17 Attorneys for Defendants Oxyfresh
Worldwide, Inc., and Oxyfresh.com/21
Ten, Inc.

18 **ORDER AND JUDGMENT**

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

21 IT IS SO ORDERED, ADJUDGED AND DECREED.

22 Dated: _____, 2016

23 _____
24 Judge of the Superior Court