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Attorneys for Defendant
MXI CORP., individually and doing business as THE HEALTHY
CHOCOLATE COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

v.

MXI CORP., individually and doing business
as THE HEALTHY CHOCOLATE
COMPANY and DOES 1-25, Inclusive,

Defendants.

CASE NO. RG17846998

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 25, 2017

Trial Date: None set

1. INTRODUCTION

1.1 On January 25, 2017, 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 Relief and Civil Penalties (the “Complaint”) pursuant to the

provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against MXI CORP., individually and doing business as THE HEALTHY CHOCOLATE COMPANY (“MXI”) and DOES 1-25. In this action, ERC alleges that certain products manufactured, distributed, or sold by MXI contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter individually as a “Covered Product” or collectively as “Covered Products”) are:

- 1) The Healthy Chocolate Company XOCAI Healthy Chocolate Co. XOLOVE Chocolate Love Bites – Lead, Cadmium
- 2) The Healthy Chocolate Company XOCAI Healthy Chocolate Co. Dark Chocolate XoBiotic Squares – Lead, Cadmium
- 3) The Healthy Chocolate Company XOCAI Healthy Chocolate Co. Dark Chocolate Omega Squares – Lead
- 4) XO Lifestyle Worldwide XOCAI Healthy Chocolate Dark Chocolate Nuggets with Acai and Blueberry – Lead, Cadmium
- 5) MXI Corp XOCAI High-Antioxidant Meal-Replacement Extreme Dark Chocolate – Lead, Cadmium
- 6) XO Lifestyle Worldwide XOCAI Healthy Chocolate Healthy Chocolate Beverage Activ with Acai and Blueberry – Lead, Cadmium
- 7) The Healthy Chocolate Company XOCAI Healthy Chocolate Co. Extreme Dark Chocolate X-Power Squares with Acai and Blueberry - Cadmium

1.2 ERC and MXI are hereinafter referred to individually as a “Party” or collectively as the “Parties.”

1.3 ERC is a 501 (c)(3) California non-profit corporation and alleges that it is 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 **1.4** For purposes of this Consent Judgment, the Parties agree that MXI is a business
2 entity and manufactures, distributes, and/or sells the Covered Products. The Parties further agree
3 MXI employed ten or more persons at times relevant to this action and MXI qualified as a “person
4 in the course of business” within the meaning of Proposition 65.

5 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
6 dated March 30, 2016 and November 14, 2016 that were served on the California Attorney
7 General, other public enforcers, and MXI (“Notices”). True and correct copies of the 60-Day
8 Notices dated March 30, 2016 and November 14, 2016 are attached hereto as **Exhibits A and B**
9 respectively and each is incorporated herein by reference. More than 60 days have passed since
10 the Notices were served on the Attorney General, public enforcers, and MXI, and no designated
11 governmental entity has filed a complaint against MXI with regard to the Covered Products or
12 the alleged violations.

13 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes
14 persons in California to lead and/or cadmium without first providing clear and reasonable
15 warnings in violation of California Health and Safety Code section 25249.6. MXI denies all
16 material allegations contained in the Notices and Complaint.

17 **1.7** The Parties have entered into this Consent Judgment in order to settle,
18 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
19 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
20 be construed as an admission by any of the Parties or by any of their respective officers,
21 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
22 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
23 violation of law.

24 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
25 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
26 current or future legal proceeding unrelated to these proceedings.

27 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
28 a Judgment by this Court.

1 **2. JURISDICTION AND VENUE**

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

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

10 **3.1** Beginning on the Effective Date, unless MXI no longer qualifies as a “Person in
11 the course of doing business,” as the term is defined in Cal. Health & Safety Code §
12 25249.11(b), including by employing fewer than 10 employees in its business, MXI shall be
13 permanently enjoined from manufacturing for sale in the State of California, “Distributing into
14 the State of California”, or directly selling in the State of California, any Covered Products
15 which exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead
16 per day and/or “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per
17 day, calculated as set forth in Section 3.1.2, or unless it meets the warning requirements under
18 Section 3.2.

19 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
20 of California” shall mean to directly ship a Covered Product into California for sale in
21 California or to sell a Covered Product to a distributor that MXI knows or has reason to know
22 will sell the Covered Product in California.

23 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
24 Level” and “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be
25 calculated using the following formula: micrograms of lead or cadmium per gram of product,
26 but excluding any amounts of lead deemed “naturally occurring” as set forth in Section 3.1.4
27 below, multiplied by grams of product per serving of the product (using the largest serving size
28 appearing on the product label), multiplied by servings of the product per day (using the largest

number of recommended daily servings appearing on the product label), which equals micrograms of lead or cadmium exposure per day..

3.1.4 For purposes of this Consent Judgment, the amount of lead deemed “naturally occurring” in each of the Covered Products is the sum of the amounts of “naturally occurring” lead from each ingredient listed in Table 3.1.4 below

TABLE 3.1.4

Ingredient	Amount of Lead Per Gram of Ingredient Deemed “Naturally Occurring” For Purposes of This Consent Judgment Only.
Cocoa Powder	1.0 µg
Cocoa Liquor	1.0 µg
Cocoa butter	0.1 µg

Within thirty (30) days of ERC’s written request, MXI must supply ERC with the amount of each ingredient in each Covered Product for which the “naturally occurring” allowance is being applied. MXI is entitled to submit this information to ERC confidentially.

3.2 Clear and Reasonable Warnings

If MXI is required to provide a warning pursuant to Section 3.1, the following warning must be utilized (“Warning”):

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

MXI shall use the phrase “cancer and” in the Warning only if the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4. The warning shall appropriately reflect whether there is either lead or cadmium present in each of the Covered Products in accordance with 22 Cal. Code Reg. tit. 27 § 25601(b) (as amended, operative August 30, 2018). If the phrase “cancer and” is used, the Warning must reflect that lead is present in the Covered Product.

1 The Warning shall be securely affixed to or printed upon the container or label of each
2 Covered Product. To the extent such a warning is affixed to or printed upon the container or label
3 of a covered product, a website warning need not be provided.

4 The Warning shall be at least the same size as the largest of any other health or safety
5 warnings also appearing on its website or on the label or container of MXI's product packaging
6 and the word "**WARNING**" shall be in all capital letters and in bold print. No statements intended
7 to or likely to have the effect of diminishing the impact of the Warning on the average lay person
8 shall accompany the Warning. Further no statements may accompany the Warning that state or
9 imply that the source of the listed chemical has an impact on or results in a less harmful effect of
10 the listed chemical.

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

15 **3.3 Reformulated Covered Products**

16 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no
17 greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" is no more
18 than 4.1 micrograms of cadmium per day as determined by the quality control methodology
19 described in Section 3.4.

20 **3.4 Testing and Quality Control Methodology**

21 **3.4.1** Within one year of the Effective Date, unless MXI no longer qualifies as
22 a "Person in the course of doing business," as the term is defined in Cal. Health & Safety Code
23 § 25249.11(b), including by employing fewer than 10 employees in its business, MXI shall
24 arrange for lead and/or cadmium testing of the Covered Products at least once a year for a
25 minimum of three consecutive years by arranging for testing of five randomly selected samples
26 from two or more lots of each of the Covered Products, in the form intended for sale to the end-
27 user, which MXI intends to sell or is manufacturing for sale in California, directly selling to a
28 consumer in California or "Distributing into the State of California." The tem "lot" as used

herein shall mean a manufacturing cycle or series of manufacturing cycles producing Covered Products that are designated with the same date code.

3.4.2 For purposes of measuring the “Daily Lead Exposure Level” and/or “Daily Cadmium Exposure Level,” the arithmetic mean lead and/or cadmium detection result of the five (5) randomly selected samples from two or more lots of each Covered Product will be controlling.

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

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

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

3.4.6 Within thirty (30) days of ERC’s written request, MXI shall deliver lab reports obtained pursuant to Section 3.4 to ERC. MXI shall retain all test results and documentation for a period of five years from the date of each test.

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, additional settlement payments, attorney’s fees, and costs, MXI shall make a total payment of one hundred eighty seven thousand five hundred dollars (\$187,500.00) (“Total Settlement Amount”) to ERC within 5 business days of the service of a copy of the order approving the settlement and entry of this

1 Consent Judgment (“Due Date”). MXI shall make this payment by wire transfer to ERC’s
2 escrow account, for which ERC will give MXI the necessary account information. The Total
3 Settlement amount shall initially be deposited in the Client Trust Account of Seyfarth Shaw
4 LLP within 30 days of the execution of this Stipulated Consent Judgment. The Total Settlement
5 Amount shall be apportioned as follows:

6 **4.2** \$66,598.40 shall be considered a civil penalty pursuant to California Health and
7 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$49,948.80) of the civil penalty to
8 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
9 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
10 Code section 25249.12(c). ERC will retain the remaining 25% (\$16,649.60) of the civil
11 penalty.

12 **4.3** \$16,677.75 shall be distributed to ERC as reimbursement to ERC for reasonable
13 costs incurred in bringing this action.

14 **4.4** \$49,948.71 shall be distributed to ERC as an Additional Settlement Payment
15 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
16 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
17 caused by MXI in this matter. These activities are detailed below and support ERC’s stated
18 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
19 supplement products in California. ERC represents that its activities have had, and will continue
20 to have, a direct and primary effect within the State of California because California consumers
21 will be benefitted by the reduction and/or elimination of exposure to lead and/or cadmium in
22 dietary supplements and/or by providing clear and reasonable warnings to California consumers
23 prior to ingestion of the products.

24 Based on a review of past years’ actual budgets, ERC is providing the following list of
25 activities ERC engages in to protect California consumers through Proposition 65 citizen
26 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
27 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
28 supplement products that may contain lead and/or cadmium and are sold to California

1 consumers. This work includes continued monitoring and enforcement of past consent judgments
2 and settlements to ensure companies are in compliance with their obligations thereunder, with a
3 specific focus on those judgments and settlements concerning lead and/or cadmium. This work
4 also includes investigation of new companies that ERC does not obtain any recovery through
5 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining
6 ERC's Voluntary Compliance Program by acquiring products from companies, developing and
7 maintaining a case file, testing products from these companies, providing the test results and
8 supporting documentation to the companies, and offering guidance in warning or implementing a
9 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT
10 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the
11 numbers of contaminated products that reach California consumers by providing access to free
12 testing for lead in dietary supplement products (Products submitted to the program are screened
13 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,
14 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
15 that submitted the product).

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

21 **4.5** \$23,905.00 shall be distributed to William F. Wraith as reimbursement of ERC's
22 attorney's fees, while \$30,370.14 shall be distributed to ERC for its in-house legal fees. Except
23 as explicitly provided herein, each Party shall bear its own fees and costs.

24 **4.6** In the event that MXI fails to remit the Total Settlement Amount owed under
25 Section 4 of this Consent Judgment on or before the Due Date, MXI shall be deemed to be in
26 material breach of its obligations under this Consent Judgment. ERC shall provide written
27 notice of the delinquency to MXI via electronic mail. If MXI fails to deliver the Total
28 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount

1 shall accrue interest at the statutory judgment interest rate provided in the California Code of
2 Civil Procedure section 685.010. Additionally, MXI agrees to pay ERC's reasonable attorney's
3 fees and costs for any efforts to collect the payment due under this Consent Judgment.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

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

24 **5.4** Where the meet-and-confer process does not lead to a joint motion or application
25 in support of a modification of the Consent Judgment, then either Party may seek judicial relief
26 on its own. In any such contested court proceeding, ERC may seek any attorney's fees and costs
27 incurred in opposing the motion pursuant to 1021.5.
28

1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
2 **JUDGMENT**

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

5 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
7 inform MXI in a reasonably prompt manner of its test results, including information sufficient
8 to permit MXI to identify the Covered Products at issue. MXI shall, within thirty (30) days
9 following such notice, provide ERC with testing information, from an independent third-party
10 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating MXI's
11 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve
12 the matter prior to ERC taking any further legal action.

13 **7. APPLICATION OF CONSENT JUDGMENT**

14 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
15 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
16 divisions, predecessors, successors, and assigns. This Consent Judgment shall have no
17 application to any Covered Product which is distributed or sold exclusively outside the State of
18 California and which MXI has no reason to know will be distributed or sold to a consumer in
19 California.

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

21 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
22 on behalf of itself and in the public interest, and MXI and its respective officers, directors,
23 shareholders, employees, agents, attorneys, parent companies, subsidiaries, divisions, suppliers,
24 franchisees, licensees, customers (not including private label customers of MXI), distributors,
25 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain
26 of any Covered Product, and the predecessors, successors, and assigns of any of them
27 (collectively, "Released Parties"). ERC acting on its own behalf and in the public interest
28 hereby fully releases and discharges the Released Parties from any and all claims, actions,

1 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
2 asserted, or that could have been asserted from the handling, use, or consumption of the
3 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
4 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
5 lead and/or cadmium up to and including the Effective Date.

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

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

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

25 ERC on behalf of itself only, and MXI on behalf of itself only, acknowledge and understand the
26 significance and consequences of this specific waiver of California Civil Code section 1542.

27 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
28 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
29 exposures to lead and/or cadmium in the Covered Products as set forth in the Notices and
30 Complaint.

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

4 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7 **10. GOVERNING LAW**

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

10 **11. PROVISION OF NOTICE**

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

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

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

20 With a copy to:

21 WILLIAM F. WRAITH
22 WRAITH LAW
23 24422 Avenida de la Carlota, Suite 400
24 Laguna Hills, CA 92653
25 Tel: (949) 452-1234
26 Fax: (949) 452-1102

27 **MXI CORP., individually and doing business as**
28 **THE HEALTHY CHOCOLATE COMPANY**

Andrew Brooks, CFO
#220, 9855 Double R Blvd.
Reno, Nevada 89521
Tel: (775) 971-9903
Email: anb@healthychocolateco.com

1 With a copy to:
2 JAY W. CONNOLLY
3 AARON BELZER
4 SEYFARTH SHAW LLP
5 560 Mission Street, 31st Floor
6 San Francisco, CA 94105
7 Tel: (415) 397-2823
8 Fax: (415) 397-8549
9 Email: jconnolly@seyfarth.com

10 **12. COURT APPROVAL**

11 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
12 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
13 Consent Judgment.

14 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
15 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
16 prior to the hearing on the motion.

17 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
18 void and have no force or effect.

19 **13. EXECUTION AND COUNTERPARTS**

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

23 **14. DRAFTING**

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

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

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

6 **16. ENFORCEMENT**

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

11 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

18 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
19 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

28 (2) Make the findings pursuant to California Health and Safety Code section

1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

2

3 **IT IS SO STIPULATED:**

4 Dated: 4/28/, 2017

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9 Dated: _____, 2017

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15 **APPROVED AS TO FORM:**

16 Dated: _____, 2017

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21 Dated: April 28, 2017

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ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 

Chris Henderson, Executive Director

MXI CORP., individually and doing
business as THE HEALTHY CHOCOLATE
COMPANY

By: _____

Its: _____

WRAITH LAW

By: _____

William F. Wraith

Attorney for Plaintiff Environmental
Research Center, Inc.

SEYFARTH SHAW LLP

By: 

Jay W. Connolly

Aaron Belzer

Attorneys for Defendant MXI Corp.,
individually and doing business as
The Healthy Chocolate Company

25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

IT IS SO STIPULATED:

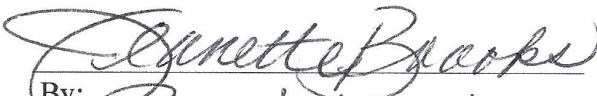
Dated: _____, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

Dated: _____, 2017

MXI CORP., individually and doing
business as THE HEALTHY CHOCOLATE
COMPANY

By: 
Its: President

APPROVED AS TO FORM:

Dated: _____, 2017

WRAITH LAW

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

Dated: _____, 2017

SEYFARTH SHAW LLP

By: _____
Jay W. Connolly
Aaron Belzer
Attorneys for Defendant MXI Corp.,
individually and doing business as
The Healthy Chocolate Company

1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

2
3 **IT IS SO STIPULATED:**

4 Dated: _____, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

5 By: _____
6 Chris Heptinstall, Executive Directo

7
8
9 Dated: _____, 2017

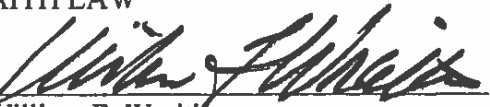
MXI CORP., individually and doing
business as THE HEALTHY CHOCOLATE
COMPANY

10
11
12 By: _____
13 Its:

14
15 **APPROVED AS TO FORM:**

16 Dated: April 28, 2017

WRAITH LAW

17 By: 
18 William F. Wraith
19 Attorney for Plaintiff Environmental
20 Research Center, Inc.

21 Dated: _____, 2017

SEYFARTH SHAW LLP

22 By: _____
23 Jay W. Connolly
24 Aaron Belzer
25 Attorneys for Defendant MXI Corp.,
26 individually and doing business as
27 The Healthy Chococolate Company
28

1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

2
3 **IT IS SO STIPULATED:**

4 Dated: _____, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

5 By: _____
6 Chris Heptinstall, Executive Directo

7
8
9 Dated: _____, 2017

MXI CORP., individually and doing
business as THE HEALTHY CHOCOLATE
COMPANY

10
11
12 By: _____
13 Its:

14
15 **APPROVED AS TO FORM:**

16 Dated: _____, 2017

WRAITH LAW

17 By: _____
18 William F. Wraith
19 Attorney for Plaintiff Environmental
20 Research Center, Inc.

21 Dated: April 28, 2017

SEYFARTH SHAW LLP

22 By: Jay W. Connolly
23 Jay W. Connolly
24 Aaron Belzer
25 Attorneys for Defendant MXI Corp.,
26 individually and doing business as
27 The Healthy Chococolate Company
28

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

Dated: _____, 2017

38750124v.2

EXHIBIT “A”

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

March 30, 2016

**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:

MXI Corp., individually and doing business as Xocai

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

- 1. The Healthy Chocolate Company XOCAI Healthy Chocolate Co. XOLOVE Chocolate Love Bites – Lead, Cadmium**

2. **The Healthy Chocolate Company XOCAI Healthy Chocolate Co. Dark Chocolate XoBiotic Squares – Lead, Cadmium**
3. **The Healthy Chocolate Company XOCAI Healthy Chocolate Co. Dark Chocolate Omega Squares – Lead**
4. **XO Lifestyle Worldwide XOCAI Healthy Chocolate Dark Chocolate Nuggets with Acai and Blueberry – Lead, Cadmium**
5. **MXI Corp XOCAI High-Antioxidant Meal-Replacement Extreme Dark Chocolate – Lead, Cadmium**
6. **XO Lifestyle Worldwide XOCAI Healthy Chocolate Healthy Chocolate Beverage Activ with Acai and Blueberry – Lead, Cadmium**
7. **The Healthy Chocolate Company XOCAI Healthy Chocolate Co. Extreme Dark Chocolate X-Power Squares with Acai and Blueberry - Cadmium**

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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while Cadmium and Cadmium Compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987. It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 30, 2013, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with

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

March 30, 2016

Page 3

Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

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,

A handwritten signature in black ink that reads "William F. Wraith". The signature is written in a cursive, flowing style.

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to MXI Corp., individually and doing business as Xocai 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 MXI Corp., individually and doing business as Xocai

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 chemicals that are the subject of the notice.

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

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

Dated: March 30, 2016



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 March 30, 2016, 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
MXI Corp., individually and
doing business as Xocai
795 Trademark Drive
Reno, NV 89521

Nathan M. Jenkins
(MXI Corp., individually and doing
business as Xocai’s Registered Agent for
Service of Process)
501 Hammill Lane
Reno, NV 89511

On March 30, 2016, 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 March 30, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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

March 30, 2016

Page 6

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr.
Sonoma, CA 95403
jbarnes@sonoma-county.org

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

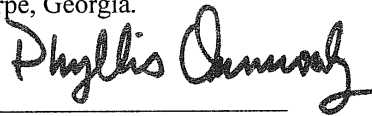
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On March 30, 2016, 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 March 30, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

March 30, 2016

Page 7

Service List

District Attorney, Alameda
County
1225 Fallon Street, Suite 900
Oakland, CA 94612

District Attorney, Alpine
County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador
County
708 Court Street
Jackson, CA 95642

District Attorney, Butte
County
25 County Center Drive,
Suite 245
Oroville, CA 95965

District Attorney, Calaveras
County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa
County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Del Norte
County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado
County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno
County
2220 Tulare Street, Suite
1000
Fresno, CA 93721

District Attorney, Glenn
County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt
County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial
County
940 West Main Street, Ste
102
El Centro, CA 92243

District Attorney, Inyo
County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern
County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings
County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake
County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los
Angeles County
210 West Temple Street,
Suite 18000
Los Angeles, CA 90012

District Attorney, Madera
County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin
County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, Mariposa
County
Post Office Box 730
Mariposa, CA 95338

District Attorney,
Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced
County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc
County
204 S Court Street, Room
202
Alturas, CA 96101-4020

District Attorney, Mono
County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Nevada
County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange
County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer
County
10810 Justice Center Drive,
Ste 240
Roseville, CA 95678

District Attorney, Plumas
County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, San Benito
County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San
Bernardino County
316 N. Mountain View
Avenue
San Bernardino, CA 92415-
0004

District Attorney, San Diego
County
330 West Broadway, Suite
1300
San Diego, CA 92101

District Attorney, San
Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Mateo
County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa
Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Cruz
County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta
County
1355 West Street
Redding, CA 96001

District Attorney, Sierra
County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou
County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano
County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus
County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter
County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama
County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity
County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne
County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba
County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's
Office
City Hall East
200 N. Main Street, Suite
800
Los Angeles, CA 90012

San Diego City Attorney's
Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's
Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

EXHIBIT “B”

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

November 14, 2016

**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:

MXI Corp., individually and doing business as The Healthy Chocolate Co.

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

- 1. The Healthy Chocolate Company XOCAI Healthy Chocolate Co. XOLOVE Chocolate Love Bites – Lead, Cadmium**

2. **The Healthy Chocolate Company XOCAI Healthy Chocolate Co. Dark Chocolate XoBiotic Squares – Lead, Cadmium**
3. **The Healthy Chocolate Company XOCAI Healthy Chocolate Co. Dark Chocolate Omega Squares – Lead**
4. **XO Lifestyle Worldwide XOCAI Healthy Chocolate Dark Chocolate Nuggets with Acai and Blueberry – Lead, Cadmium**
5. **MXI Corp XOCAI High-Antioxidant Meal-Replacement Extreme Dark Chocolate – Lead, Cadmium**
6. **XO Lifestyle Worldwide XOCAI Healthy Chocolate Healthy Chocolate Beverage Activ with Acai and Blueberry – Lead, Cadmium**
7. **The Healthy Chocolate Company XOCAI Healthy Chocolate Co. Extreme Dark Chocolate X-Power Squares with Acai and Blueberry - Cadmium**

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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987. It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 30, 2013, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the

November 14, 2016

Page 3

identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

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,

A handwritten signature in black ink that reads "William F. Wraith". The signature is fluid and cursive, with the first and last names being more prominent.

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to MXI Corp., individually and doing business as The Healthy Chocolate Co. 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 MXI Corp., individually and doing business as The Healthy Chocolate Co.

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 chemicals that are the subject of the notice.

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

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

Dated: November 14, 2016



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 November 14, 2016, 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
MXI Corp., individually and
doing business as The Healthy
Chocolate Co.
795 Trademark Drive
Reno, NV 89521

Nathan M. Jenkins
(MXI Corp., individually and doing
business as The Healthy Chocolate Co.’s
Registered Agent for Service of Process)
1895 Plumas Street, Suite 2
Reno, NV 89509

On November 14, 2016 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 November 14, 2016 I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

November 14, 2016

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On November 14, 2016, 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 November 14, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

November 14, 2016

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