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8 ENVIRONMENTAL RESEARCH CENTER, INC.  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA

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

14 Plaintiff,

15 v.

16 ESSANTE ORGANICS, LLC and DOES 1-25,  
17 Inclusive,

18 Defendants.  
19

CASE NO. RG16842657

STIPULATED CONSENT  
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: December 16, 2016  
Trial Date: None set

20 1. INTRODUCTION

21 1.1 On December 16, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a  
22 non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
23 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the  
24 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),  
25 against ESSANTE ORGANICS, LLC ("ESSANTE") and DOES 1-25. In this action, ERC  
26 alleges that a number of products manufactured, distributed, or sold by ESSANTE contain lead,  
27 a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
28 consumers to this chemical 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) Essanté Organics 7.365 PH Shake Chocolate Kiss
- 2) Essanté Organics 7.365 PH Shake Ice Cream Rave
- 3) Essante Worldwide EG Earth Greens
- 4) Essanté Organics Bee Natural
- 5) Essante Worldwide EG Earth Greens

1.2 ERC and ESSANTE 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 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.

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

1.5 The Complaint is based on allegations contained in ERC's Notice of Violation dated October 4, 2016 that was served on the California Attorney General, other public enforcers, and ESSANTE ("Notice"). A true and correct copy of the 60-Day Notice dated October 4, 2016 is attached hereto as Exhibit A and is incorporated herein by reference. More than 60 days have passed since the Notice was served on the Attorney General, public enforcers, and ESSANTE and no designated governmental entity has filed a complaint against ESSANTE with regard to the Covered Products or the alleged violations.

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

1           1.7     The Parties have entered into this Consent Judgment in order to settle,  
2     compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
3     Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or  
4     be construed as an admission by any of the Parties or by any of their respective officers,  
5     directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,  
6     licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or  
7     violation of law.

8           1.8     Except as expressly set forth herein, nothing in this Consent Judgment shall  
9     prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
10    current or future legal proceeding unrelated to these proceedings.

11          1.9     The Effective Date of this Consent Judgment is the date on which it is entered as  
12    a Judgment by this Court.

## 13       2.     **JURISDICTION AND VENUE**

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

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

22          3.1     Beginning on the Effective Date, ESSANTE shall be permanently enjoined from  
23    manufacturing for sale in the State of California, "Distributing into the State of California", or  
24    directly selling in the State of California, any Covered Products which exposes a person to a  
25    "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the  
26    warning requirements under Section 3.2.

27           3.1.1   As used in this Consent Judgment, the term "Distributing into the State  
28    of California" shall mean to directly ship a Covered Product into California for sale in

1 California or to sell a Covered Product to a distributor that ESSANTE knows or has reason to  
2 know will sell the Covered Product in California.

3           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
4 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
5 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
6 product (using the largest serving size appearing on the product label), multiplied by servings  
7 of the product per day (using the largest number of servings in a recommended dosage  
8 appearing on the product label), which equals micrograms of lead exposure per day.

9           **3.2 Clear and Reasonable Warnings**

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

12       ▲ **WARNING:** This product can expose you to chemicals including [lead] which is known to  
13       the State of California to cause [cancer and] birth defects or other reproductive harm. For  
14       more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

15       ESSANTE shall use the phrase “cancer and” in the Warning only if the “Daily Lead Exposure  
16 Level” is greater than 15 micrograms of lead as determined pursuant to the quality control  
17 methodology set forth in Section 3.4.

18       The Warning shall be provided on the invoice in boxes of Covered Products shipped to  
19 California. ESSANTE shall provide one invoice Warning for each Covered Product in a box or  
20 one invoice Warning that lists all of the Covered Products in the box. The Covered Products  
21 may be returned by the consumer for a refund within 30 days of the invoice date at no cost to the  
22 consumer if the consumer references the Warning as a reason for the return. The Warning must  
23 be present on the front of the invoice.

24       The Warning shall be at least the same size as the largest of any other health or safety  
25 warnings also appearing on the invoice and the word “WARNING” shall be in all capital letters  
26 and in bold print. No statements intended to or likely to have the effect of diminishing the impact  
27 of, or reducing the clarity of, the Warning on the average lay person shall accompany the Warning.  
28 Further no statements may accompany the Warning that state or imply that the source of the listed  
chemical has an impact on or results in a less harmful effect of the listed chemical.

1 ESSANTE must display the above Warning with such conspicuousness, as compared with  
2 other words and statements on the invoice, to render the Warning likely to be read and understood  
3 by an ordinary individual under customary conditions of purchase or use of the product.

### 4 3.3 Reformulated Covered Products

5 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no  
6 greater than 0.5 micrograms of lead per day as determined by the quality control methodology  
7 described in Section 3.4.

### 8 3.4 Testing and Quality Control Methodology

9 3.4.1 Beginning within one year of the Effective Date, ESSANTE shall  
10 arrange for lead testing of the Covered Products at least once a year for a minimum of five  
11 consecutive years by arranging for testing of five randomly selected samples of each of the  
12 Covered Products, in the form intended for sale to the end-user, which ESSANTE intends to  
13 sell or is manufacturing for sale in California, directly selling to a consumer in California or  
14 "Distributing into the State of California." If tests conducted pursuant to this Section  
15 demonstrate that no Warning is required for a Covered Product during each of five consecutive  
16 years, then the testing requirements of this Section will no longer be required as to that Covered  
17 Product. However, if during or after the five-year testing period, ESSANTE changes ingredient  
18 suppliers for any of the Covered Products and/or reformulates any of the Covered Products,  
19 ESSANTE shall test that Covered Product annually for at least four (4) consecutive years after  
20 such change is made.

21 3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the highest  
22 lead detection result of the five (5) randomly selected samples of the Covered Products will be  
23 controlling.

24 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a  
25 laboratory method that complies with the performance and quality control factors appropriate  
26 for the method used, including limit of detection, qualification, accuracy, and precision that  
27 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
28 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing

1 method subsequently agreed to in writing by the Parties and approved by the Court through  
2 entry of a modified consent judgment.

3           3.4.4 All testing pursuant to this Consent Judgment shall be performed by an  
4 independent third party laboratory certified by the California Environmental Laboratory  
5 Accreditation Program or an independent third-party laboratory that is registered with the  
6 United States Food & Drug Administration.

7           3.4.5 Nothing in this Consent Judgment shall limit ESSANTE's ability to  
8 conduct, or require that others conduct, additional testing of the Covered Products, including  
9 the raw materials used in their manufacture.

10           3.4.6 Within thirty (30) days of ERC's written request, ESSANTE shall  
11 deliver lab reports obtained pursuant to Section 3.4 to ERC. ESSANTE shall retain all test  
12 results and documentation for a period of five years from the date of each test.

#### 13   4. SETTLEMENT PAYMENT

14           4.1 In full satisfaction of all potential civil penalties, additional settlement payments,  
15 attorney's fees, and costs, ESSANTE shall make a total payment to ERC of \$40,000.00 ("Total  
16 Settlement Amount") in six monthly installments plus 8% per annum simple interest on the  
17 balance remaining after the first payment. The Total Settlement Amount including interest  
18 shall be paid on the following schedule ("Due Dates"):

19           \$6,666.67 due within 5 days of the Effective Date

20           \$6,888.89 due within 35 days of the Effective Date

21           \$6,844.45 due within 65 days of the Effective Date

22           \$6,800.00 due within 95 days of the Effective Date

23           \$6,755.56 due within 125 days of the Effective Date

24           \$6,711.09 due within 155 days of the Effective Date

25           4.2 ESSANTE shall make these payments by wire transfer to ERC's escrow  
26 account, for which ERC will give ESSANTE the necessary account information. The Total  
27 Settlement Amount shall be apportioned as follows:  
28

1           4.3     \$7,611.95 shall be considered a civil penalty pursuant to California Health and  
2 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$5,708.96) of the civil penalty to the  
3 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
4 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
5 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,902.99) of the civil penalty.

6           4.4     \$2,994.75 shall be distributed to ERC as reimbursement to ERC for reasonable  
7 costs incurred in bringing this action.

8           4.5     \$5,708.95 shall be distributed to ERC as an Additional Settlement Payment  
9 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and  
10 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
11 caused by Defendant in this matter. These activities are detailed below and support ERC's  
12 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
13 supplement products in California. ERC's activities have had, and will continue to have, a direct  
14 and primary effect within the State of California because California consumers will be benefitted  
15 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by  
16 providing clear and reasonable warnings to California consumers prior to ingestion of the  
17 products.

18           Based on a review of past years' actual budgets, ERC is providing the following list of  
19 activities ERC engages in to protect California consumers through Proposition 65 citizen  
20 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
21 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary  
22 supplement products that may contain lead and are sold to California consumers. This work  
23 includes continued monitoring and enforcement of past consent judgments and settlements to  
24 ensure companies are in compliance with their obligations thereunder, with a specific focus on  
25 those judgments and settlements concerning lead. This work also includes investigation of new  
26 companies that ERC does not obtain any recovery through settlement or judgment; (2)  
27 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary  
28 Compliance Program by acquiring products from companies, developing and maintaining a case

1 file, testing products from these companies, providing the test results and supporting  
2 documentation to the companies, and offering guidance in warning or implementing a self-  
3 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up  
4 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated  
5 products that reach California consumers by providing access to free testing for lead in dietary  
6 supplement products (Products submitted to the program are screened for ingredients which are  
7 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a  
8 qualified laboratory for testing, and the results shared with the consumer that submitted the  
9 product).

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

15 4.6 \$7,875.00 shall be distributed to William F. Wraith as reimbursement of ERC's  
16 attorney's fees, while \$15,809.35 shall be distributed to ERC for its in-house legal fees. Except  
17 as explicitly provided herein, each Party shall bear its own fees and costs.

18 4.6 In the event that ESSANTE fails to remit any settlement payment owed under  
19 Section 4 of this Consent Judgment on or before its respective Due Date, ESSANTE shall be  
20 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
21 provide written notice of the delinquency to ESSANTE via electronic mail. If ESSANTE fails  
22 to deliver the past due settlement payment within five (5) days from the written notice, the  
23 Total Settlement Amount shall become immediately due and owing and shall accrue interest at  
24 the statutory judgment interest rate provided in the California Code of Civil Procedure section  
25 685.010. Additionally, ESSANTE agrees to pay ERC's reasonable attorney's fees and costs for  
26 any efforts to collect the payment due under this Consent Judgment.



1     **5.     MODIFICATION OF CONSENT JUDGMENT**

2             **5.1**     This Consent Judgment may be modified only as to injunctive terms (i) by  
3 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a  
4 modified consent judgment.

5             **5.2**     If ESSANTE seeks to modify this Consent Judgment under Section 5.1, then  
6 ESSANTE must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks  
7 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must  
8 provide written notice to ESSANTE within thirty (30) days of receiving the Notice of Intent. If  
9 ERC notifies ESSANTE in a timely manner of ERC's intent to meet and confer, then the  
10 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in  
11 person or via telephone within thirty (30) days of ERC's notification of its intent to meet and  
12 confer. Within thirty (30) days of such meeting, if ERC disputes the proposed modification,  
13 ERC shall provide to ESSANTE a written basis for its position. The Parties shall continue to  
14 meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.  
15 Should it become necessary, the Parties may agree in writing to different deadlines for the  
16 meet-and-confer period.

17             **5.3**     In the event that ESSANTE initiates or otherwise requests a modification under  
18 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
19 Consent Judgment, ESSANTE shall reimburse ERC its costs and reasonable attorney's fees for  
20 the time spent in the meet-and-confer process and filing and arguing the motion or application.

21             **5.4**     Where the meet-and-confer process does not lead to a joint motion or  
22 application in support of a modification of the Consent Judgment, then either Party may seek  
23 judicial relief on its own.

24     **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
25             **JUDGMENT**

26             **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
27 this Consent Judgment.

28             **6.2**     If ERC alleges that any Covered Product fails to qualify as a Reformulated

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

## 8 **7. APPLICATION OF CONSENT JUDGMENT**

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

## 15 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

16 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
17 on behalf of itself and in the public interest, and ESSANTE and its respective officers,  
18 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
19 franchisees, licensees, customers (not including private label customers of ESSANTE),  
20 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
21 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
22 of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the  
23 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,  
24 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from  
25 the handling, use, or consumption of the Covered Products, as to any alleged violation of  
26 Proposition 65 or its implementing regulations arising from the failure to provide Proposition  
27 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

28 **8.2** ERC on its own behalf only, and ESSANTE on its own behalf only, further

1 waive and release any and all claims they may have against each other for all actions or  
2 statements made or undertaken in the course of seeking or opposing enforcement of Proposition  
3 65 in connection with the Notice and Complaint up through and including the Effective Date,  
4 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to  
5 enforce the terms of this Consent Judgment.

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

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

17 ERC on behalf of itself only, and ESSANTE on behalf of itself only, acknowledge and  
18 understand the significance and consequences of this specific waiver of California Civil Code  
19 section 1542.

20       **8.4**     Compliance with the terms of this Consent Judgment shall be deemed to  
21 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
22 in the Covered Products as set forth in the Notice and Complaint.

23       **8.5**     Nothing in this Consent Judgment is intended to apply to any occupational or  
24 environmental exposures arising under Proposition 65, nor shall it apply to any of ESSANTE's  
25 products other than the Covered Products.

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

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

1     **10. GOVERNING LAW**

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

4     **11. PROVISION OF NOTICE**

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

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

9 Chris Heptinstall, Executive Director, Environmental Research Center  
10 3111 Camino Del Rio North, Suite 400  
11 San Diego, CA 92108  
12 Tel: (619) 500-3090  
13 Email: chris\_erc501c3@yahoo.com

14 With a copy to:

15 WILLIAM F. WRAITH,  
16 WRAITH LAW  
17 24422 Avenida de la Carlota, Suite 400  
18 Laguna Hills, CA 92653  
19 Tel: (949) 452-1234  
20 Fax: (949) 452-1102

21 Attorney for Plaintiff  
22 ENVIRONMENTAL RESEARCH CENTER, INC.

23     **ESSANTE ORGANICS, LLC**

24 11001 North 24<sup>th</sup> Avenue  
25 Suite 612  
26 Phoenix, AZ, 85029

27     **12. COURT APPROVAL**

28             **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
Consent Judgment.

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

1           12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be  
2 void and have no force or effect.

3           **13. EXECUTION AND COUNTERPARTS**

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

7           **14. DRAFTING**

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

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

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

21           **16. ENFORCEMENT**

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

1 law for failure to comply with Proposition 65 or other laws.

2 **17. ENTIRE AGREEMENT, AUTHORIZATION**

3 **17.1** This Consent Judgment contains the sole and entire agreement and  
4 understanding of the Parties with respect to the entire subject matter herein, and any and all  
5 prior discussions, negotiations, commitments, and understandings related hereto. No  
6 representations, oral or otherwise, express or implied, other than those contained herein have  
7 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
8 herein, shall be deemed to exist or to bind any Party.

9 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
10 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

19 (2) Make the findings pursuant to California Health and Safety Code section  
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

21 **IT IS SO STIPULATED:**

22 Dated: 1/24/, 2017

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: 

Chris Heppinstall, Executive Director

1  
2 Dated: 11-21-2017, 2017

ESSANTE ORGANICS, LLC

3  
4  
5 Michael Wenniger  
CEO

6  
7 APPROVED AS TO FORM:

8 Dated: January 27, 2017

WRAITH LAW

9 By: William F. Wraith

10 William F. Wraith  
11 Attorney for Plaintiff Environmental  
12 Research Center, Inc.

13  
14  
15 **ORDER AND JUDGMENT**

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

18 IT IS SO ORDERED, ADJUDGED AND DECREED.

19  
20 Dated: \_\_\_\_\_, 2017

\_\_\_\_\_  
21 Judge of the Superior Court

## **EXHIBIT “A”**



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

October 4, 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:

**Essante Organics, LLC**

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

**Essanté Organics 7.365 PH Shake Chocolate Kiss - Lead**  
**Essanté Organics 7.365 PH Shake Ice Cream Rave - Lead**  
**Essante Worldwide EG Earth Greens - Lead**  
**Essanté Organics Bee Natural - Lead**  
**Essante Worldwide EG Earth Greens – Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

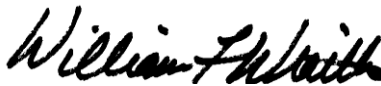
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred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

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least October 4, 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 this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

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

Sincerely,



---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Essante Organics, LLC 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  
Essante Organics, LLC**

I, William F. Wraith, declare:

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

2. I am an attorney for the noticing party.

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

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

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

Dated: October 4, 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 October 4, 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  
Essante Organics, LLC  
11001 North 24<sup>th</sup> Avenue  
Suite 612  
Phoenix, AZ 85029

Michael Wenniger  
(Registered Agent for Essante  
Organics, LLC)  
1145 West Southern #4  
Tempe, AZ 85282

On October 4, 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 October 4, 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](mailto:sgrassini@contracostada.org)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

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

October 4, 2016

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

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

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

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

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


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

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

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

On October 4, 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 First Class Mail.

Executed on October 4, 2016, in Fort Oglethorpe, Georgia



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Phyllis Dunwoody

October 4, 2016

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**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, Suite 202  
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 4<sup>th</sup> 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 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