

Charles W. Poss (SBN 325366)
Environmental Research Center, Inc.
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Email: charles.poss@erc501c3.org

Attorney for Plaintiff Environmental Research Center, Inc.

Christopher G. Foster (SBN 119142)
Hamrick & Evans, LLP
2600 W Olive Avenue, Ste 1020
Burbank, CA 91505
Ph: (818) 763-5292
Email: cfoster@hamricklaw.com

Attorney for Defendant West Thomas Partners, LLC, individually and
dba The GFB: Gluten Free Bar

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

**WEST THOMAS PARTNERS, LLC,
individually and dba THE GFB: GLUTEN
FREE BAR; and DOES 1-100**

Defendants.

CASE NO. RG20061663

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 19, 2020
Trial Date: None set

1. INTRODUCTION

1.1 On May 19, 2020, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against West Thomas Partners, LLC, individually and dba The GFB:

1 Gluten Free Bar (“West Thomas Partners”) and Does 1-100. In this action, ERC alleges that a
2 number of products manufactured, distributed, or sold by West Thomas Partners contain lead
3 and/or cadmium, chemicals listed under Proposition 65 as carcinogens and reproductive toxins,
4 and expose consumers to these chemicals at a level requiring a Proposition 65 warning. These
5 products (referred to hereinafter individually as a “Covered Product” or collectively as
6 “Covered Products”) are: (1) The GFB Gluten Free Oatmeal Coconut + Cashew (lead), (2) The
7 GFB Gluten Free Oatmeal Maple + Raisin (lead), (3) The GFB Gluten Free Bites Chocolate +
8 Cherry + Almond (lead), (4) The GFB Gluten Free Bites Dark Chocolate + Almond (lead), (5)
9 The GFB Gluten Free Bar Cranberry + Toasted Almond (lead), (6) The GFB Gluten Free Bar
10 Dark Chocolate + Almond (lead), (7) The GFB Gluten Free Bar Coconut + Cashew (lead), (8)
11 The GFB Gluten Free Bar Oatmeal + Raisin (lead, cadmium), (9) The GFB Gluten Free Bar
12 Dark Chocolate + Coconut (lead, cadmium), (10) The GFB Gluten Free Bar Chocolate +
13 Peanut Butter (lead, cadmium), (11) The GFB Gluten Free Bar Peanut Butter (lead), and (12)
14 The GFB Gluten Free Oatmeal Apple + Cinnamon (cadmium).

15 **1.2** ERC and West Thomas Partners are hereinafter referred to individually as a
16 “Party” or collectively as the “Parties.”

17 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
18 causes, helping safeguard the public from health hazards by reducing the use and misuse of
19 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
20 and encouraging corporate responsibility.

21 **1.4** For purposes of this Consent Judgment, the Parties agree that West Thomas
22 Partners is a business entity that has employed ten or more persons at all times relevant to this
23 action, and qualifies as a “person in the course of doing business” within the meaning of
24 Proposition 65. West Thomas Partners manufactures, distributes, and/or sells the Covered
25 Products.

26 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
27 dated January 16, 2020 that was served on the California Attorney General, other public
28 enforcers, and West Thomas Partners (“Notice”). A true and correct copy of the 60-Day Notice

1 dated January 16, 2020 is attached hereto as **Exhibit A** and incorporated herein by reference.
2 More than 60 days have passed since the Notice was served on the Attorney General, public
3 enforcers, and West Thomas Partners and no designated governmental entity has filed a
4 Complaint against West Thomas Partners with regard to the Covered Products or the alleged
5 violations.

6 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
7 persons in California to lead and/or cadmium without first providing clear and reasonable
8 warnings in violation of California Health and Safety Code section 25249.6. West Thomas
9 Partners denies all material allegations contained in the Notice and Complaint.

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

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

20 **1.9** The Effective Date of this Consent Judgment is the date on which ERC serves
21 notice on West Thomas Partners that it has been entered as a Judgment by this Court.

22 **2. JURISDICTION AND VENUE**

23 For purposes of this Consent Judgment and any further court action that may become
24 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
25 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
26 over West Thomas Partners as to the acts alleged in the Complaint, that venue is proper in
27 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
28 final resolution of all claims up through and including the Effective Date which were or could

1 have been asserted in this action based on the facts alleged in the Notice and Complaint.

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

3 **3.1** Beginning thirty (30) days after the Effective Date, or October 1, 2020,
4 whichever date is later (hereafter referred to as the “Compliance Date”), West Thomas Partners
5 shall be permanently enjoined from manufacturing for sale in the State of California,
6 “Distributing into the State of California,” or directly selling in the State of California, any
7 Covered Products which expose a person to a “Daily Lead Exposure Level” of more than 0.5
8 micrograms of lead per day and/or “Daily Cadmium Exposure Level” of more than 4.1
9 micrograms of cadmium per day unless it meets the warning requirements under Section 3.2.

10 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
11 of California” shall mean to directly ship a Covered Product into California for sale in
12 California or to sell a Covered Product to a distributor that West Thomas Partners knows or has
13 reason to know will sell the Covered Product in California.

14 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
15 Level” shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of lead per gram of product, multiplied by grams of product per serving of the
17 product (using the largest serving size appearing on the product label), multiplied by servings
18 of the product per day (using the largest number of recommended daily servings appearing on
19 the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section
20 3.1.3, amounts of allowances of lead in the ingredients listed in **Table 1** below. If the label
21 contains no recommended daily servings, then the number of recommended daily servings
22 shall be one.

23 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
24 West Thomas Partners shall be allowed to deduct the amount of lead that is deemed “naturally
25 occurring” in any ingredient listed in **Table 1** that is contained in that Covered Product under
26 the following conditions: For each year that West Thomas Partners claims entitlement to a
27 “naturally occurring” allowance, West Thomas Partners shall provide ERC with the following
28 information: (a) West Thomas Partners must produce to ERC a list of each ingredient in the

Covered Product for which a “naturally occurring” allowance is claimed; (b) West Thomas Partners must provide ERC with documentation of laboratory testing that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in any ingredient listed in **Table 1** that is contained in the Covered Product and for which West Thomas Partners intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in any ingredient listed in **Table 1** that is contained in the Covered Product, West Thomas Partners shall be entitled to deduct up to the full amount of the allowance for that ingredient, as listed in **Table 1**, but not to exceed the total amount of lead actually contained in that ingredient in the Covered Product; and (d) If the Covered Product does not contain an ingredient listed in **Table 1**, West Thomas Partners shall not be entitled to a deduction for “naturally occurring” lead in the Covered Product for that ingredient. The information required by Sections 3.1.3 (a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date or anniversary thereof for any year that West Thomas Partners shall claim entitlement to the “naturally occurring” allowance.

TABLE 1

<u>INGREDIENT</u>	<u>NATURALLY OCCURRING AMOUNTS OF LEAD</u>
Calcium (Elemental)	Up to 0.8 micrograms/gram (up to maximum amount of 1.2 micrograms of lead if there are 1.5 grams or more of elemental calcium in the Covered Product)
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa Powder	Up to 1.0 micrograms/gram
Chocolate Liquor	Up to 1.0 micrograms/gram

Cocoa Butter

Up to 0.1 micrograms/gram

3.1.4 For purposes of this Consent Judgment, the “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of cadmium per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

3.2 Clear and Reasonable Warnings

If West Thomas Partners 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.

West Thomas Partners shall use the phrase “cancer and” in the Warning if West Thomas Partners has reason to believe that the 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 or if West Thomas Partners has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. As identified in the brackets, the warning shall appropriately reflect whether there is lead, cadmium, or both chemicals present in each of the Covered Products.

The Warning shall be securely affixed to or printed upon the container or label of each Covered Product. If the Warning is provided on the label, it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet, the Warning shall appear on the checkout page when a California delivery address is indicated for any purchase of any Covered Product. An asterisk or other identifying method

1 must be utilized to identify which products on the checkout page are subject to the Warning.
2 In no event shall any internet or website Warning be contained in or made through a link.

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

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

14 **3.3 Conforming Covered Products**

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

19 **3.4 Testing and Quality Control Methodology**

20 **3.4.1** Beginning within one year of the Effective Date, West Thomas Partners
21 shall arrange for lead and cadmium testing of the Covered Products at least once a year for a
22 minimum of three consecutive years by arranging for testing of one randomly selected sample
23 of each of the Covered Products, in the form intended for sale to the end-user, which West
24 Thomas Partners intends to sell or is manufacturing for sale in California, directly selling to a
25 consumer in California or "Distributing into the State of California." If tests conducted
26 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
27 each of three consecutive years, then the testing requirements of this Section will no longer be
28 required as to that Covered Product. However, if during or after the three-year testing period,

West Thomas Partners changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, West Thomas Partners shall test that Covered Product annually for at least two (2) consecutive years after such change is made. The total period for testing required by this Section shall not exceed five (5) years.

3.4.2 For purposes of measuring the “Daily Lead Exposure Level” and/or “Daily Cadmium Exposure Level,” the lead and/or cadmium detection result of the one (1) randomly selected sample of the Covered Products 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.

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 West Thomas Partners’ 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, West Thomas Partners shall deliver lab reports obtained pursuant to Section 3.4 to ERC. West Thomas Partners shall retain all test results and documentation for a period of three 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, West Thomas Partners shall make a total payment of \$75,000.000 (“Total Settlement Amount”) to ERC in six periodic payments (the “Periodic Payments”) according to the following payment schedule (“Due Dates”):

- Payment 1 -- \$11,000.00 within 5 days of the Effective Date

- Payment 2 -- \$11,000.00 within 35 days of the Effective Date
- Payment 3 -- \$11,000.00 within 65 days of the Effective Date
- Payment 4 -- \$11,000.00 within 95 days of the Effective Date
- Payment 5 -- \$11,000.00 within 125 days of the Effective Date
- Payment 6 -- \$20,000.00 within 155 days of the Effective Date.

West Thomas Partners shall make these Periodic Payments by wire transfer to ERC's account, for which ERC will give West Thomas Partners the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.2 \$38,750.00 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$29,062.50) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$9,687.50) of the civil penalty.

4.3 \$3,991.47 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 \$28,995.53 shall be distributed to ERC as an Additional Settlement Payment ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly caused by Defendant in this matter. These activities are detailed below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC's activities have had, and will continue to have, a direct and primary effect within the State of California because California consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements and/or by providing clear and reasonable warnings to California consumers prior to ingestion of the products.

Based on a review of past years' actual budgets, ERC is providing the following list of activities ERC engages in to protect California consumers through Proposition 65 citizen enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those

activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary supplement products that may contain lead and/or cadmium and are sold to California consumers. This work includes continued monitoring and enforcement of past consent judgments and settlements to ensure companies are in compliance with their obligations thereunder, with a specific focus on those judgments and settlements concerning lead and/or cadmium. This work also includes investigation of new companies that ERC does not obtain any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products from companies, developing and maintaining a case file, testing products from these companies, providing the test results and supporting documentation to the companies, and offering guidance in warning or implementing a self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated products that reach California consumers by providing access to free testing for lead in dietary supplement products (Products submitted to the program are screened for ingredients which are suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer that submitted the product).

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

4.5 \$3,263.00 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

4.6 In the event that West Thomas Partners fails to remit, in full, any of the Periodic Payments owed under Section 4.1 of this Consent Judgment on or before the applicable Due Date, West Thomas Partners shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC shall provide written notice of the delinquency to West Thomas

1 Partners via electronic mail. If West Thomas Partners fails to deliver the delinquent payment
2 within ten (10) days from the written notice, the Total Settlement Amount, less any amounts
3 previously paid to ERC pursuant to Section 4.1, shall be immediately due and owing and shall
4 accrue interest at the statutory judgment interest rate provided in the California Code of Civil
5 Procedure section 685.010. Additionally, West Thomas Partners agrees to pay ERC's
6 reasonable attorney's fees and costs for any efforts to collect the payment due under this
7 Consent Judgment.

8 **5. MODIFICATION OF CONSENT JUDGMENT**

9 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
10 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
11 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
12 modified consent judgment.

13 **5.2** If any Party seeks to modify this Consent Judgment under Section 5.1, then that
14 Party must provide written notice to the other Party of its intent ("Notice of Intent"). The
15 Parties shall meet and confer in good faith regarding the proposed modification within sixty
16 (60) days of the receiving Party's receipt of the Notice of Intent. Within thirty (30) days of the
17 meet and confer conference, if the Parties are not able to fully resolve the issues regarding the
18 proposed modification, the Party disputing the modification shall provide the other Party with a
19 written basis for its position. The Parties shall continue to meet and confer for an additional
20 thirty (30) days in an effort to resolve any remaining disputes. Should it become necessary, the
21 Parties may agree in writing to different deadlines for the meet-and-confer period.

22 **5.3** In the event that West Thomas Partners initiates or otherwise requests a
23 modification under Section 5.1, and the meet and confer process leads to a joint motion or
24 application for a modification of the Consent Judgment, West Thomas Partners shall reimburse
25 ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process
26 and filing and arguing the motion or application. ERC shall not be reimbursed for costs or
27 attorney's fees for an uncontested motion, or for a ministerial motion (such as a change in
28 name or contact information) or if ERC does not expend more than two (2) hours of attorney

1 time in the joint motion.

2 **5.4** In the event that Proposition 65 is repealed, and as a result of such repeal the
3 Covered Products are no longer subject to Proposition 65, then West Thomas Partners shall
4 have no further obligations as to injunctive terms pursuant to this Consent Judgment with
5 respect to the Covered Products.

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

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

10 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
11 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
12 inform West Thomas Partners in a reasonably prompt manner pursuant to Paragraph 11 herein
13 of its test results received from a laboratory described in Paragraph 3.4.4 herein, including
14 information sufficient to permit West Thomas Partners to identify the Covered Products at issue
15 and of ERC's calculation of the Daily Lead Exposure Level and/or Daily Cadmium Exposure
16 Level. West Thomas Partners shall, within thirty (30) days following such notice, provide ERC
17 with testing information, from an independent third-party laboratory meeting the requirements
18 of Sections 3.4.3 and 3.4.4, demonstrating West Thomas Partners' compliance with the
19 Consent Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any
20 further legal action.

21 **7. APPLICATION OF CONSENT JUDGMENT**

22 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
23 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
24 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
25 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application
26 to any Covered Product that is distributed or sold exclusively outside the State of California and
27 that is not used by California consumers.

28 ///

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

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
3 on behalf of itself and in the public interest, and West Thomas Partners and its respective past,
4 present and future officers, directors, shareholders, employees, agents, representatives,
5 attorneys, accountants, insurers, receivers, advisors, consultants, partners, third-party vendors,
6 partnerships, members, divisions, assigns, agents, independent contractors, successors, heirs,
7 predecessors in interest, joint venturers, commonly-controlled corporations, holding
8 companies, controlling entities, sister companies, parent companies, subsidiaries, divisions,
9 suppliers, franchisees, licensees, customers (not including private label customers of West
10 Thomas Partners unless (a) within thirty (30) days after the private label customer receives a
11 Notice of Violation ("Private Label Notice") from ERC pertaining to a Covered Product that is
12 private labeled ("Private Label Covered Product"), West Thomas Partners notifies ERC that it
13 is the manufacturer of the Private Label Covered Product and identifies the corresponding
14 Covered Product covered by this Consent Judgment, and (b) West Thomas Partners agrees to
15 reimburse ERC for the fees and costs incurred for the Private Label Notice through the date the
16 private label customer receives the Private Label Notice, with such fees and costs being limited
17 to those relating to the Private Label Covered Product and not to exceed \$5,000.00),
18 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
19 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
20 of them (collectively, "Released Parties") with regard to the Covered Products. ERC, on behalf
21 of itself and in the public interest, hereby fully releases and discharges the Released Parties
22 from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
23 penalties, fees, costs, and expenses asserted, or that could have been asserted from the
24 handling, use, or consumption of the Covered Products, as to any alleged violation of
25 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
26 65 warnings on the Covered Products regarding lead and/or cadmium up to and including the
27 Compliance Date.

28 **8.2** ERC on its own behalf only, and West Thomas Partners on its own behalf

1 only, further waive and release any and all claims they may have against each other for all
2 actions or statements made or undertaken in the course of seeking or opposing enforcement of
3 Proposition 65 in connection with the Notice and Complaint up through and including the
4 Compliance Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
5 right to seek to 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 West Thomas Partners on behalf of itself only,
9 acknowledge that this Consent Judgment is expressly intended to cover and include all such
10 claims up through and including the Compliance Date, including all rights of action therefor.
11 ERC and West Thomas Partners acknowledge that the claims released in Sections 8.1 and 8.2
12 above may include unknown claims, and nevertheless waive California Civil Code section
13 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

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

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

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

27 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

28 In the event that any of the provisions of this Consent Judgment are held by a court to be

unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

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

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

With a copy to:

Charles W. Poss
Environmental Research Center, Inc.
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Email: charles.poss@erc501c3.org

FOR WEST THOMAS PARTNERS, LLC, individually and dba THE GFB: GLUTEN FREE BAR

Marshall Rader
The Gluten Free Bar
4053 Brockton Drive SE
Grand Rapids, MI 49512
Ph: (616) 755-8432
Email: marshall@theglutenfreebar.com

With a copy to:

Christopher G. Foster
Hamrick & Evans, LLP
2600 W Olive Avenue, Ste 1020
Burbank, CA 91505
Ph: (818) 763-5292
Email: cfoster@hamricklaw.com

1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible,
7 prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

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

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

28 ///

1 **16. ENFORCEMENT**

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

6 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

13 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
14 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

23 (2) Make the findings pursuant to California Health and Safety Code section
24 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

25 ///

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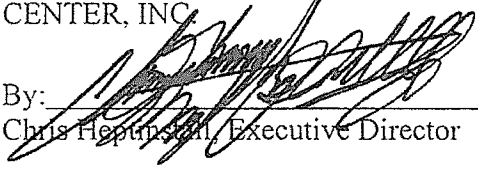
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1 **IT IS SO STIPULATED:**

2
3 Dated: 5/29/, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.

4
5 By: 
Chris Heptinstall, Executive Director

6
7 Dated: 6/5/20, 2020


WEST THOMAS PARTNERS, LLC,
individually and dba THE GFB: GLUTEN
FREE BAR

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11 By: MANUEL RABER
Its: CEO

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15 **APPROVED AS TO FORM:**

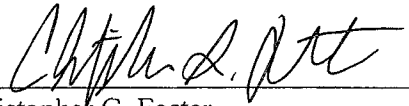
16 Dated: May 29, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.

17
18 By: 
Charles W. Poss
In-House Counsel

19
20
21 Dated: 6/8, 2020

HAMRICK & EVANS, LLP

22
23 By: 
Christopher G. Foster
Attorney for Defendant West Thomas
Partners, LLC, individually and dba The
GFB: Gluten Free Bar

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IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court