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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 TOTAL RESOURCES INTERNATIONAL  
15 INC., WALMART INC.,

16 Defendants.

Case No.: CGC-25-624521

**CONSENT JUDGMENT**

Judge: Christine Van Aken  
Dept.: 301

Hearing Date: September 5, 2025

Hearing Time: 9:00 AM

Complaint Filed: April 18, 2025

1       **1. INTRODUCTION**

2           **1.1 The Parties.** This Consent Judgment is entered into by and between Gabriel  
3 Espinoza acting on behalf of the public interest (hereinafter “Espinoza”) and Total Resources  
4 International Inc. (“Total Resources” or “Defendant”) with Espinoza and Defendant collectively  
5 referred to as the “Parties” and each of them as a “Party.” Espinoza is an individual residing in  
6 California that seeks to promote awareness of exposures to toxic chemicals and improve human  
7 health by reducing or eliminating hazardous substances contained in consumer products. Total  
8 Resources is alleged to be a person in the course of doing business for purposes of Proposition 65,  
9 Cal. Health & Safety Code §§ 25249.6 et seq.

10           **1.2 Allegations and Representations.** Espinoza alleges that Defendant has exposed  
11 individuals to diethanolamine (DEA) from its sales of *Silvex*® wound gels, UPC # 020424321949  
12 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEA is  
13 listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

14           **1.3 Notice of Violation/Action.** On June 19, 2024, Espinoza served Walmart Inc., Total  
15 Resources, and various public enforcement agencies with documents entitled “60-Day Notice of  
16 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant  
17 violated Proposition 65 for failing to warn consumers and customers that use of *Silvex*® wound  
18 gels, UPC # 020424321949 expose users in California to DEA. No public enforcer has brought and  
19 is diligently prosecuting the claims alleged in the Notice. On April 18, 2025, Espinoza filed a  
20 complaint (the “Complaint”).

21           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
23 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,  
24 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution  
25 of all claims which were or could have been raised in the Complaint based on the facts alleged  
26 therein and in the Notice.

1           1.5 Defendant denies the material allegations contained in Espinoza's Notice and  
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment  
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of  
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission  
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the  
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8           **2. DEFINITIONS**

9           2.1 **Covered Products.** The term "Covered Products" means *Silvex*® wound gels, UPC  
10 # 020424321949 that are manufactured, distributed, shipped into California and offered for sale in  
11 California by Total Resources that expose users to DEA.

12           2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is  
13 entered as a Judgment of the Court.

14           **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

15           3.1 **Reformulation of Products.** Commencing within ninety (90) days after the  
16 Effective Date, and continuing thereafter, Covered Products that Total Resources directly  
17 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)  
18 reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure  
19 warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Settlement Agreement, a "DEA  
20 Free Reformulated Product" is a Covered Product that is in compliance with the standard set forth  
21 in § 3.2, below. The warning requirements set forth in §§ 3.3 and 3.4 shall not apply to any DEA  
22 Free Reformulated Product or to any Covered Product manufactured within 90 days after the  
23 Effective Date.


24           3.2 **DEA Free Reformulation Standard.** To qualify as a "DEA Free Reformulated  
25 Product" the Covered Product must meet the following standard: DEA content that is not detectable  
26 (i.e., zero) or below the Reporting Limit (defined herein) when analyzed pursuant to liquid  
27 chromatography/tandem mass spectrometry (LC/MS/MS), inductively coupled mass-spectroscopy  
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(ICP-MS) or other method of analysis utilized by the International Organization for Standardization (ISO) for qualitative and quantitative screening of cosmetics and cosmetic raw materials.


3.2.1 **Reporting Limit.** The “Reporting Limit<sup>1</sup>” is 10 mg/kg.

3.3 **Clear and Reasonable Warning.** Commencing within 90 days after the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Defendant to provide a warning for Covered Products that enter the stream of commerce within 90 days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including diethanolamine (DEA), which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Total Resources may, but is not required to, use the alternative short-form warning<sup>2</sup> as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Covered Product does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or

<sup>1</sup> The “Reporting Limit” the lowest concentration at which DEA can be detected in a sample of a Covered Product by an accredited testing laboratory employing LC/MS/MS analysis or other method of analysis utilized by the ISO for qualitative and quantitative screening of cosmetics and cosmetic raw materials.

<sup>2</sup> An **Alternative Warning** on a Covered Product manufactured and labeled after January 1, 2028 shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

1 electronic device or automatic process only if such electronic device or automatic process provides  
2 the **Warning** or **Alternative Warning** without the purchaser having to seek it out, providing that  
3 the **Warning** or **Alternative Warning** is displayed with such conspicuousness, as compared with  
4 other words, statements, or designs as to render it likely to be read and understood by an ordinary  
5 individual under customary conditions of purchase or use. The **Warning** or **Alternative Warning**  
6 may be contained in the same section of the packaging, labeling, or instruction booklet that states  
7 other safety warnings, if any, concerning the use of the Covered Product and shall be at least the  
8 same size as those other safety warnings. If “consumer information,” as that term is defined in Title  
9 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is  
10 provided in a foreign language, Total Resources shall provide the **Warning** or **Alternative**  
11 **Warning** in the foreign language in accordance with applicable warning regulations adopted by  
12 the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

13 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s  
14 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where  
15 Total Resources offers Products for sale to consumers in California. The requirements of this  
16 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink  
17 using the word “**WARNING**,” appears on the product display page, or by otherwise prominently  
18 displaying the warning to the purchaser prior to completing the purchase. To comply with this  
19 Section, Total Resources shall (a) post the **Warning** or **Alternative Warning** on its own website  
20 and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does  
21 not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party  
22 internet sellers, provide such sellers with written notice in accordance with Title 27, California  
23 Code of Regulations, § 25600.2. Third-party internet sellers of the Covered Product that have been  
24 provided with written notice in accordance with Title 27, California Code of Regulations, § 25600.2  
25 are not released in Section 5 of this Agreement if they fail to meet the warning requirements herein.

1           3.5     **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
2 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
3 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered  
4 Product and exposures at issue.

5     **4.       MONETARY TERMS**

6           4.1     **Civil Penalty.** Total Resources shall pay \$3,000.00 as a Civil Penalty pursuant to  
7 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health  
8 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of  
9 the Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code  
10 § 25249.12(d).

11                 4.1.1   Within ten (10) days of the Effective Date, Total Resources shall issue two  
12 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$2,250.00; and  
13 to (b) “Gabriel Espinoza” in the amount of \$750.00. Payment owed to Espinoza pursuant to this  
14 Section shall be delivered to the following payment address:

15                 Evan J. Smith, Esquire  
16                 Brodsky Smith  
17                 Two Bala Plaza, Suite 805  
18                 Bala Cynwyd, PA 19004

19                 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
20 to OEHHA (Memo Line “Prop 65 Penalties”) at one of the following address(es):

21                 For United States Postal Service Delivery:

22                 Mike Gyurics  
23                 Fiscal Operations Branch Chief  
24                 Office of Environmental Health Hazard Assessment  
25                 P.O. Box 4010  
26                 Sacramento, CA 95812-4010

27                 For Non-United States Postal Service Delivery:

28                 Mike Gyurics  
                  Fiscal Operations Branch Chief  
                  Office of Environmental Health Hazard Assessment  
                  1001 I Street  
                  Sacramento, CA 95814

1 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth  
2 above as proof of payment to OEHHA.

3 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Total Resources shall  
4 pay \$30,000.00 to Brodsky Smith as complete reimbursement for Espinoza's attorneys' fees and  
5 costs incurred as a result of investigating, bringing this matter to the attention of Total Resources,  
6 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,  
7 pursuant to Code of Civil Procedure § 1021.5.

8 **5. RELEASE OF ALL CLAIMS**

9 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza  
10 acting on his own behalf, and on behalf of the public interest, and Total Resources, and its parents,  
11 shareholders, members, directors, officers, managers, employees, representatives, agents,  
12 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
13 predecessors, successors and assigns ("Defendant Releasees"), and all entities to whom they  
14 directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers,  
15 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, including but not  
16 limited to Total Resources, and its parents, subsidiaries, and affiliates, franchisees, and cooperative  
17 members ("Downstream Releasees"), of all claims for violations of Proposition 65 based on  
18 exposure to DEA from use of the Covered Products manufactured, distributed, or sold by Total  
19 Resources within 90 days after the Effective Date as set forth in the Notice. It is the Parties'  
20 intention that this Consent Judgment shall have preclusive effect such that no other actions by  
21 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be  
22 permitted to pursue and take any action with respect to any violation of Proposition 65 based on  
23 exposure to DEA from use of the Covered Products that was alleged in the Complaint, or that could  
24 have been brought pursuant to the Notice against Total Resources and the Downstream Releasees  
25 ("Proposition 65 Claims"). Total Resources' compliance with the terms of this Consent Judgment  
26 constitutes compliance with Proposition 65 by Total Resources with regard to exposure to DEA  
27 from use of the Covered Products.  
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1           5.2     In addition to the foregoing, Espinoza, on behalf of himself, his past and current  
2 agents, representatives, attorneys, and successors and assignees, and not in his representative  
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
4 legal action and releases Total Resources, Defendant Releasees, and Downstream Releasees from  
5 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,  
6 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
7 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,  
8 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising  
9 from Covered Products manufactured, distributed, or sold by Total Resources, Defendant Releasees  
10 or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,  
11 Espinoza hereby specifically waives any and all rights and benefits which he now has, or in the  
12 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which  
13 provides 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  
17 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.

18           5.3     Total Resources waives any and all claims against Espinoza, his attorneys and other  
19 representatives, for any and all actions taken, or statements made (or those that could have been  
20 taken or made) by Espinoza and his attorneys and other representatives, whether in the course of  
21 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
22 and with respect to Covered Products.

## 23     6.     INTEGRATION

24           6.1     This Consent Judgment contains the sole and entire agreement of the Parties and  
25 any and all prior negotiations and understandings related hereto shall be deemed to have been  
26 merged within it. No representations or terms of agreement other than those contained herein exist  
27 or have been made by any Party with respect to the other Party or the subject matter hereof.  
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1     **7.     NOTICES**

2             7.1     Unless specified herein, all correspondence and notices required to be provided  
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
5 by the other party at the following addresses:

6     For Defendant:

7             Moses Hall  
8             Total Resources International Inc.  
9             420 S. Lemon Ave.,  
              Walnut, CA 91789

              John Levine, Esq.  
              Law Offices of John Levine  
              9025 Wilshire Blvd., Ste. 304  
              Beverly Hills, CA 90211

10     And

11     For Espinoza:

12             Evan Smith  
13             Brodsky Smith  
              9465 Wilshire Blvd., Ste. 300  
              Beverly Hills, CA 90212

14     Any party, from time to time, may specify in writing to the other party a change of address to  
15 which all notices and other communications shall be sent.

16     **8.     COUNTERPARTS; FACSIMILE SIGNATURES**

17             8.1     This Consent Judgment may be executed in counterparts and by facsimile, each of  
18 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
19 the same document.

20     **9.     COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
21 **APPROVAL**

22             9.1     Espinoza agrees to comply with the requirements set forth in California Health &  
23 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
24 Defendant agrees it shall support approval of such Motion.

1           9.2     This Consent Judgment shall not be effective until it is approved and entered by the  
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
3 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
4 days, the case shall proceed on its normal course.

5           9.3     If the Court approves this Consent Judgment and is reversed or vacated by an  
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
7 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
8 its normal course on the trial court's calendar.

9     **10.   MODIFICATION**

10          10.1    This Consent Judgment may be modified only by further stipulation of the Parties  
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12     **11.   ATTORNEY'S FEES**

13          11.1    A Party who unsuccessfully brings or contests an action arising out of this Consent  
14 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

15          11.2    Nothing in this Section shall preclude a Party from seeking an award of sanctions  
16 pursuant to law.

17     **12.   RETENTION OF JURISDICTION**

18          12.1    This Court shall retain jurisdiction of this matter to implement or modify the  
19 Consent Judgment.

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**13. AUTHORIZATION**

13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 7/10/25

By: \_\_\_\_\_  
GABRIEL ESPINOZA

By:   
TOTAL RESOURCES INTERNATIONAL  
INC.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court

1 **13. AUTHORIZATION**

2 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
4 document and certify that he or she is fully authorized by the Party he or she represents to execute  
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
6 explicitly provided herein each Party is to bear its own fees and costs.

7  
8 **AGREED TO:**

9 Date: \_\_\_\_\_

7 / 18 / 25

10 By: \_\_\_\_\_

11 GABRIEL ESPINOZA

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

TOTAL RESOURCES INTERNATIONAL  
INC.

13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

14  
15 Dated: \_\_\_\_\_

Judge of Superior Court