

1 Michael Freund SBN 99687
2 Ryan Hoffman SBN 283297
3 Michael Freund & Associates
4 1919 Addison Street, Suite 105
5 Berkeley, CA 94704
6 Telephone: (510) 540-1992
7 Facsimile: (510) 540-5543

8 Attorneys for Plaintiff
9 ENVIRONMENTAL RESEARCH CENTER, INC.

10 Gregory D. Trimarche SBN 143686
11 Ring Bender LLP
12 2 Park Plaza, Suite 550
13 Irvine, CA 92614
14 Tel: (949) 232-1210
15 Fax: (949) 679-7939
16 Email: gtrimarche@ringbenderlaw.com

17 Attorney for Defendant
18 ALMASED USA, INC.

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF ALAMEDA**

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

24 **Plaintiff,**

25 **v.**

26 **ALMASED USA, INC. and DOES 1-100**

27 **Defendants.**

CASE NO. RG16823889

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 19, 2016

Trial Date: None set

28 **1. INTRODUCTION**

29 **1.1** On July 19, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a
30 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
31 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")
32 pursuant to the provisions of California Health and Safety Code Section 25249.5 *et seq.*

1 (“Proposition 65”), against Almasked USA, Inc. (“Almasked”) and DOES 1-100. In this action,
2 ERC alleges that a product manufactured, distributed, or sold by Almasked contains lead, a
3 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and exposes
4 consumers to this chemical at a level requiring a Proposition 65 warning. This product (referred
5 to hereinafter as the “Covered Product”) is: Almasked USA Inc. Almasked.

6 **1.2** ERC and Almasked are hereinafter referred to individually as a “Party” or
7 collectively as the “Parties.”

8 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,
9 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
10 and toxic chemicals, facilitating a safe environment for consumers and employees, and
11 encouraging corporate responsibility.

12 **1.4** For purposes of this Consent Judgment, the Parties agree that Almasked is a
13 business entity that has employed ten or more persons at all times relevant to this action, and
14 qualifies as a “person in the course of business” within the meaning of Proposition 65. Almasked
15 manufactures, distributes and sells the Covered Product.

16 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
17 dated March 30, 2016, that was served on the California Attorney General, other public
18 enforcers, and Almasked (“Notice”). A true and correct copy of the Notice is attached as Exhibit
19 A and is hereby incorporated by reference. More than 60 days have passed since the Notice
20 was served on the Attorney General, public enforcers, and Almasked and no designated
21 governmental entity has filed a complaint against Almasked with regard to the Covered Products
22 or the alleged violations.

23 **1.6** ERC’s Notice and Complaint allege that use of the Covered Product exposes
24 persons in California to lead without first providing clear and reasonable warnings in violation
25 of California Health and Safety Code Section 25249.6. Almasked denies all material allegations
26 contained in the Notice and Complaint.

27 **1.7** The Parties have entered into this Consent Judgment in order to settle,
28 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.

1 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
2 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
3 parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,
4 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
5 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
6 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
7 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
8 purpose.

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

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

14 **2. JURISDICTION AND VENUE**

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

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

23 **3.1** Beginning on the Effective Date, Almased shall be permanently enjoined from
24 "Distributing into the State of California", or directly selling in the State of California, any
25 Covered Product which exposes a person to a "Daily Lead Exposure Level" of more than 0.5
26 micrograms per day unless it meets the 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 Almased knows will sell the
2 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 Almased is required to provide a warning pursuant to Section 3.1, the following warning
11 must be utilized (“Warning”):

12 **WARNING: This product contains a chemical known to the State of California to**
13 **cause [cancer and] birth defects or other reproductive harm.**

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

17 The Warning shall be securely affixed to or printed upon the container or label of each
18 Covered Product. In addition, for any Covered Product sold over Almased’s website, the
19 Warning shall appear on Almased’s checkout page on its website for California consumers
20 identifying any Covered Product, and also appear prior to completing checkout on Almased’s
21 website when a California delivery address is indicated for any purchase of any Covered
22 Product.

23 The Warning shall be at least the same size as the largest of any other health or safety
24 warnings also appearing on its website or on the label or container of Almased’s product
25 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No
26 statements contradicting or conflicting with the Warning shall accompany the Warning.

27 Almased must display the above Warning with such conspicuousness, as compared with
28 other words, statements, design of the label, container, or on its website, as applicable, to render

1 the Warning likely to be read and understood by an ordinary individual under customary
2 conditions of purchase or use of the product.

3 **3.3 Reformulated Covered Products**

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

7 **3.4 Testing and Quality Control Methodology**

8 **3.4.1** Beginning within one year of the Effective Date, Almased shall arrange
9 for lead testing of the Covered Product at least once a year for a minimum of five consecutive
10 years by arranging for testing of five randomly selected samples of the Covered Product, in the
11 form intended for sale to the end-user, which Almased intends to sell or is manufacturing for
12 sale in California, directly selling to a consumer in California or "Distributing into the State of
13 California." If tests conducted pursuant to this Section demonstrate that no Warning is required
14 for a Covered Product during each of five consecutive years, then the testing requirements of
15 this Section will no longer be required as to that Covered Product. However, if during or after
16 the five-year testing period, Almased changes ingredient suppliers for the Covered Product
17 and/or reformulates the Covered Product, Almased shall test that Covered Product annually for
18 at least four (4) consecutive years after such change is made. The testing requirement does not
19 apply to any Covered Product for which Almased has provided the Warning specified in
20 Section 3.2.

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 Product 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 Almased's ability to
8 conduct, or require that others conduct, additional testing of the Covered Product, including the
9 raw materials used in their manufacture.

10 **3.4.6** Within thirty (30) days of ERC's written request, Almased shall deliver
11 lab reports obtained pursuant to Section 3.4 to ERC. Almased shall retain all test results and
12 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, payment in lieu of civil
15 penalties, attorney's fees, and costs, Almased shall make a total payment of \$175,000.00
16 ("Total Settlement Amount") to ERC within 5 days of the Effective Date. Almased shall make
17 this payment by wire transfer to ERC's escrow account, for which ERC will give Almased the
18 necessary account information. The Total Settlement Amount shall be apportioned as follows:

19 **4.2** \$69,791.00 shall be considered a civil penalty pursuant to California Health and
20 Safety Code Section 25249.7(b)(1). ERC shall remit 75% (\$52,343.25) of the civil penalty to
21 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
22 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
23 Code Section 25249.12(c). ERC will retain the remaining 25% (\$17,447.75) of the civil
24 penalty.

25 **4.3** \$2,111.58 shall be distributed to ERC as reimbursement to ERC for reasonable
26 costs incurred in bringing this action.

27 **4.4** \$69,792.25 shall be distributed to ERC in lieu of further civil penalties, for the
28 day-to-day business activities such as (1) continued enforcement of Proposition 65, which

1 includes work, analyzing, researching and testing consumer products that may contain
2 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
3 the subject matter of the current action; (2) the continued monitoring of past consent judgments
4 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
5 donation of \$3,489.00 to the As You Sow to address reducing toxic chemical exposures in
6 California.

7 **4.5** \$18,815.00 shall be distributed to Michael Freund as reimbursement of ERC's
8 attorney's fees, \$495.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
9 attorney's fees, while \$13,995.17 shall be distributed to ERC for its in-house legal fees. Except
10 as explicitly provided herein, each Party shall bear its own fees and costs.

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

20 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

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

8 **5.3** In the event that Almased initiates or otherwise requests a modification under
9 Section 5.1, and the meet and confer process leads to a joint motion or application of the
10 Consent Judgment, Almased shall reimburse ERC its costs and reasonable attorney's fees for
11 the time spent in the meet-and-confer process and filing and arguing the motion or application.

12 **5.4** Where the meet-and-confer process does not lead to a joint motion or
13 application in support of a modification of the Consent Judgment, then either Party may seek
14 judicial relief on its own.

15 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
16 **JUDGMENT**

17 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
18 this Consent Judgment.

19 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
20 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
21 inform Almased in a reasonably prompt manner of its test results, including information
22 sufficient to permit Almased to identify the Covered Product at issue. Almased shall, within
23 thirty (30) days following such notice, provide ERC with testing information, from an
24 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
25 demonstrating Almased's compliance with the Consent Judgment, if warranted. The Parties
26 shall first attempt to resolve the matter prior to ERC taking any further legal action.

27 **7. APPLICATION OF CONSENT JUDGMENT**

28 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their

1 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
2 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
3 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
4 application to any Covered Product which is distributed or sold exclusively outside the State of
5 California and which is not used by California consumers.

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

7 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
8 on behalf of itself and in the public interest, and Almased and its respective officers, directors,
9 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
10 franchisees, licensees, customers (not including private label customers of Almased),
11 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
12 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
13 of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the
14 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
15 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from
16 the handling, use, or consumption of the Covered Product, as to any alleged violation of
17 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
18 65 warnings on the Covered Product regarding lead up to and including the Effective Date.

19 **8.2** ERC on its own behalf only, and Almased on its own behalf only, further
20 waive and release any and all claims they may have against each other for all actions or
21 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
22 65 in connection with the Notice or Complaint up through and including the Effective Date,
23 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
24 enforce the terms of this Consent Judgment.

25 **8.3** It is possible that other claims not known to the Parties arising out of the facts
26 alleged in the Notice or the Complaint and relating to the Covered Product will develop or be
27 discovered. ERC on behalf of itself only, and Almased, on behalf of itself only acknowledge
28 that this Consent Judgment is expressly intended to cover and include all such claims up

1 through and including the Effective Date, including all rights of action therefore. ERC and
2 Almased acknowledge that the claims released in Sections 8.1 and 8.2 above may include
3 unknown claims, and nevertheless waive California Civil Code Section 1542 as to any such
4 unknown claims. California Civil Code Section 1542 reads as follows:

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

8 ERC on behalf of itself only, and Almased, acknowledge and understand the significance and
9 consequences of this specific waiver of California Civil Code Section 1542.

10 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
11 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
12 in the Covered Product as set forth in the Notice and the Complaint.

13 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
14 environmental exposures arising under Proposition 65, nor shall it apply to any of Almased's
15 products other than the Covered Product.

16 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

19 **10. GOVERNING LAW**

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

22 **11. PROVISION OF NOTICE**

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

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

27 Chris Heptinstall, Executive Director, Environmental Research Center
28 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

1 Tel: (619) 500-3090
2 Email: chris_erc501c3@yahoo.com

3 With a copy to:
4 Michael Freund
5 Ryan Hoffman
6 Michael Freund & Associates
7 1919 Addison Street, Suite 105
8 Berkeley, CA 94704
9 Telephone: (510) 540-1992
10 Facsimile: (510) 540-5543

11 **ALMASED USA, INC.**

12 Mike Mader
13 Vice President
14 Almased USA
15 2861 34th Street S
16 St. Petersburg, FL 33711
17 727-867-4444 ext 23

18 With a copy to:
19 Gregory D. Trimarche
20 Ring Bender LLP
21 2 Park Plaza, Suite 550
22 Irvine, CA 92614
23 Tel: (949) 232-1210
24 Fax: (949) 679-7939
25 Email: gtrimarche@ringbenderlaw.com

26 **12. COURT APPROVAL**

27 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
28 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.

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

13. EXECUTION AND COUNTERPARTS

This Consent Judgment may be executed in counterparts, which taken together shall be

1 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
2 as the original signature.

3 **14. DRAFTING**

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

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

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

17 **16. ENFORCEMENT**

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

26 **17. ENTIRE AGREEMENT, AUTHORIZATION**

27 **17.1** This Consent Judgment contains the sole and entire agreement and
28 understanding of the Parties with respect to the entire subject matter herein, and any and all

1 prior discussions, negotiations, commitments, and understandings related hereto. No
2 representations, oral or otherwise, express or implied, other than those contained herein have
3 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
4 herein, shall be deemed to exist or to bind any Party.

5 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

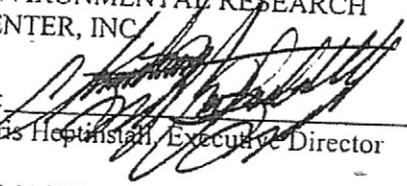
12 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
13 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
14 been diligently prosecuted, and that the public interest is served by such settlement; and

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

17 **IT IS SO STIPULATED:**

18 Dated: 9/22/, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

19 By: 
20 Chris Heptinstall, Executive Director

21 Dated: 9/26/, 2016

ALMASED USA, INC.

22 
23 By: Mike Mader Vice President
24 Its:

1 **APPROVED AS TO FORM:**

2 Dated: 9/26, 2016

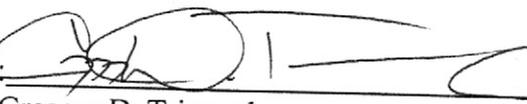
MICHAEL FREUND & ASSOCIATES

3 By: 

4 Michael Freund
5 Ryan Hoffman
6 Attorneys for Plaintiff Environmental
7 Research Center, Inc.

8 Dated: September 26 2016

RING BENDER LLLP

9 By: 

10 Gregory D. Trimarche
11 Attorney for Defendant Almased USA,
12 Inc.

13 **ORDER AND JUDGMENT**

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

16 IT IS SO ORDERED, ADJUDGED AND DECREED.

17 Dated: _____, 2016

18 _____
19 Judge of the Superior Court

EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferkich Hoffman, Esq.

March 30, 2016

**NOTICE OF VIOLATION 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 product 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 this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), 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 enclosed with 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:

Almased USA, Inc.

Consumer Product and Listed Chemical. The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels are:

Almased USA Inc. Almased - 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 this product. 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.

March 30, 2016

Page 2

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 30, 2013, as well as every day since the product was 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 product. 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 this product 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 product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (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 product 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 Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Almased USA, Inc. and its Registered Agents 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 Almased USA, Inc.

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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: March 30, 2016



Michael Freund

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On March 30, 2016, I served the following documents: **NOTICE OF VIOLATION 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
Almased USA, Inc.
2861 34th Street South
Saint Petersburg, FL 33711

Bush Ross Registered Agent Services, LLC
(Almased USA, Inc.'s Registered
Agent for Service of Process)
1801 North Highland Avenue
Tampa, FL 33602

Silke M. Ullmann
(Almased USA, Inc.'s Registered
Agent for Service of Process)
350 Rhode Island Street, Suite 240
San Francisco, CA 94103

On March 30, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

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

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

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

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

March 30, 2016

Page 5

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

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

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

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

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

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

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

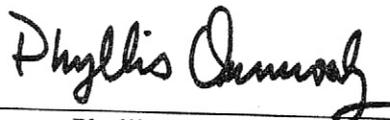
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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 March 30, 2016, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on March 30, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

March 30, 2016

Page 6

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Shasta County 1355 West Street Redding, CA 96001	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301			

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and

reasonable.” This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$5B500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

The notice is reproduced here:

Page 1

Date: March 30, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

- 1. You have actually taken the corrective steps that you have certified in this form**
- 2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice**
- 3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
- 4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

- 1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.**
- 2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.**

Date: March 30, 2016

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108
Phone number: 619-500-3090

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2014

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

² See Section 25501(a)(4).

Note: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

HISTORY

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A