

ENDORSED
FILED
ALAMEDA COUNTY

DEC - 3 2012

CLERK OF THE SUPERIOR COURT

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18 Attorneys for Defendant
19 4Life Research, LLC

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF ALAMEDA

22 ENVIRONMENTAL RESEARCH CENTER,
23 a California non-profit corporation

24 Plaintiff

25 v.

26 4LIFE RESEARCH, LLC and DOES
27 1-100

28 Defendants.

Case No. RG 12633342
Reservation No. 1298341

~~[PROPOSED]~~ CONSENT JUDGMENT

Date: December 3, 2012
Time: 3:00 p.m.
Dept.: 512

1 **1. INTRODUCTION**

2 1.1 On June 6, 2012, Plaintiff Environmental Research Center ("ERC"), a non-profit
3 corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint
4 for Civil Penalties pursuant to the provisions of Cal. Health & Safety Code Section 25249.5 et seq.
5 ("Proposition 65"), against Defendant 4Life Research, LLC ("4Life"). In this action, ERC claims that
6 certain products manufactured and distributed by 4Life contain lead, a chemical listed under Proposition
7 65 as a carcinogen and reproductive toxin, and expose consumers at a level requiring a Proposition 65
8 warning. ERC and 4Life shall sometimes be referred to individually as a "Party" or collectively as the
9 "Parties."

10 1.2 The Complaint is based on allegations contained in four Notices of Violation dated April
11 16, 2010, June 29, 2010, September 24, 2010, and January 14, 2011 served on the California Attorney
12 General, other public enforcers and 4Life. The following products were noticed in these Notices of
13 Violation: 1) 4Life Stress Formula; 2) Targeted Transfer Factor 4Life Transfer Factor Cardio;
14 3) MusculoSkeletal Formula; 4) ShapeRite Energy Go Stix with 4Life Transfer Factor E-XF;
15 5) ShapeRite by 4Life Peak Energy Formula Shape-Fast Ultra; 6) ShapeRite by 4Life Citri-Shape;
16 7) Gurmar; 8) Fibre System Plus; 9) Bountiful Harvest Plus; 10) ShapeRite by 4Life Nutrastart Vanilla;
17 and 11) Targeted Transfer Factor 4Life Transfer Factor GluCoach ("Covered Products"). More than 60-
18 days have passed since the Notices of Violation were served and no public enforcement entity has filed a
19 complaint against 4Life with regard to the Covered Products or the alleged violations.

20 1.3 ERC is a California non-profit corporation dedicated to, among other causes, helping
21 safeguard the public from health hazards by bringing about a reduction in the use and misuse of
22 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and
23 encouraging corporate responsibility. ERC has diligently prosecuted this matter and is settling this case
24 in the public interest.

25 1.4 4Life is a business entity that employs ten or more persons. 4Life arranges the
26 manufacture, distribution or sale of the Covered Products.

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1 1.5 ERC's Notices of Violation and the Complaint allege that the Covered Products exposed
2 persons in California to lead without first providing clear and reasonable warnings, in violation of Cal.
3 Health & Safety Code Section 25249.6. 4Life denies all material allegations contained in the Notices of
4 Violation and Complaint and specifically denies that the Covered Products required a Proposition 65
5 warning or otherwise cause harm to any person.

6 1.6 The Parties have entered into this Consent Judgment in order to settle, compromise and
7 resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent
8 Judgment shall constitute or be construed as an admission by any of the Parties, or by any of their
9 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
10 affiliates, franchises, licensees, customers, distributors, wholesalers, or retailers, of any fact, conclusion
11 of law, issue of law, violation of law, fault, wrongdoing, or liability, including without limitation, any
12 admission concerning any alleged violation of Proposition 65, nor shall this Consent Judgment be
13 offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court,
14 agency, or forum, except with respect to an action seeking to enforce the terms of this Consent
15 Judgment.

16 1.7 Except as expressly set forth herein, nothing in this Consent Judgment shall prejudice,
17 waive or impair any right, remedy, argument, or defense the Parties may have in any other or future
18 legal proceeding unrelated to these proceedings.

19 1.8 The Effective Date of this Consent Judgment shall be the date on which it is entered as a
20 Judgment by this Court.

21 1.9 Subsequent to ERC's Notices of Violation, 4Life has made reasonable efforts to
22 investigate possible reformulations of all the Covered Products. In the interim, beginning on or about
23 July 1, 2010, 4Life has placed Proposition 65 warnings on all of the Covered Products.

24 2. **JURISDICTION AND VENUE**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction
26 over the allegations of violations contained in the Complaint and personal jurisdiction over 4Life as to
27 the acts alleged in the Complaint, that venue is proper in Alameda County, and that this Court has
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1 jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or
2 could have been asserted in this action based on the facts alleged in the Notices of Violation and the
3 Complaint.

4 **3. INJUNCTIVE RELIEF, WARNINGS, AND DETERMINING EXPOSURE LEVEL**

5 **3.1** On or after the Effective Date, 4Life will not knowingly ship Covered Products, to
6 California or to a third party for distribution or sale in California, unless (1) these Covered Products do
7 not expose any person to a daily dose of more than 0.5 micrograms of lead when the maximum daily
8 dose is taken as directed on the product label; or (2) these Covered Products contain a Proposition 65 -
9 compliant warning (as set forth in Section 3.2 below); or (3) this Court or the California Office of
10 Environmental Health Hazard Assessment ("OEHHA") determines that no such warning for these
11 Covered Products is required.

12 **3.2** The warning required by Section 3.1 above shall comply with the "safe harbor" warning
13 methods set out in 27 Cal. Code Regs. § 25601 et seq.

14 **3.3 Warnings**

15 The warning required by Section 3.1 above shall read as follows:

16 **WARNING:** This product contains lead, a chemical known to the State of California to cause
17 [cancer,] or birth defects, or other reproductive harm.

18 **OR**

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

21 The term "cancer" need not be included in the warning if the maximum daily dose recommended
22 on the label contains less than 15 micrograms of lead as determined pursuant to Section 3.4.

23 The warning shall be securely affixed to or printed upon the container or label of each Covered
24 Product. The warning shall be displayed with such conspicuousness, as compared with other words,
25 statements, or design of the label or container, as applicable, to render the warning likely to be read and
26 understood by an ordinary individual under customary conditions of purchase or use. The warning
27 appearing on the label or container shall be at least the same size as the largest of any other health or
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1 safety warnings correspondingly appearing on the label or container, as applicable, or such product, and
2 the word "warning" shall be in all capital letters.

3 **3.4 Calculation for Determining Microgram Per Day Level**

4 For purposes of this Consent Judgment, daily lead exposure levels shall be measured in
5 micrograms, and shall be calculated using the following formula: micrograms of lead per gram of
6 product, multiplied by grams of product per serving of the product (using the largest serving size
7 appearing on the product label), multiplied by servings of the product per day (using the largest) number
8 of servings in a recommended dosage appearing on the product label), which equals micrograms of lead
9 exposure per day. All testing to determine concentrations of lead shall be performed using the following
10 criteria: Closed-vessel, microwave-assisted acid digestion employing high-purity reagents, followed by
11 Inductively Coupled Plasma-Mass Spectrometry (ICP_MS).

12 **4. SETTLEMENT PAYMENT**

13 In full and final satisfaction of all potential civil penalties, payment in lieu of civil penalties,
14 attorneys' fees, and costs, 4Life shall make a total payment of \$75,000.00, payable within ten (10)
15 business days of receiving the Notice of Entry of this Consent Judgment. The payment shall be
16 distributed as follows:

17 4.1 \$6,448.00 as civil penalties pursuant to California Health & Safety Code section
18 25249.7(b)(1). Of this amount, \$4,836.00 shall be payable to OEHHA, and \$1,612.00 shall be payable
19 to ERC. Cal. Health & Safety Code §§ 25249.12(c)(1) & (d). ERC's counsel shall forward the civil
20 penalty payment to OEHHA, and send a copy of the transmittal letter to counsel for 4Life.

21 4.2 \$19,342.00 in lieu of further civil penalties, payable to ERC, for activities such as
22 (1) investigating, researching and testing consumer products that may contain Proposition 65 listed
23 chemicals; (2) awarding a grant to St. Jude Children's Research Hospital as further described in the
24 Addendum; (3) funding the ERC Eco Scholarship Fund for high school students in California interested
25 in pursuing an education in the field of environmental sciences; (4) funding ERC's Voluntary
26 Compliance Program to work with companies not subject to Proposition 65 to reformulate their products
27 to reduce potential consumer exposures; (5) funding ERC's RxY Program to assist various medical
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1 personnel to provide testing assistance to independent distributors of various products; (6) funding
2 ERC's Got Lead? Program to assist consumers in testing products for lead; (7) funding the ERC Cancer
3 Scholarship Fund to provide scholarships to college students in California who have previously been
4 diagnosed with a form of cancer; (8) aiding various cancer research centers and organizations in their
5 ongoing efforts to assist families and children in cancer treatment facilities; (9) maintaining, supporting
6 and increasing ERC's Database of lead-free and Proposition 65 compliant products; (10) increasing
7 ERC's tracking and cataloging of contamination-free sources for specific ingredients used in the types of
8 products ERC test, and sharing this information with companies to try and reduce lead levels in their
9 products; (11) post-settlement monitoring of past consent judgments; and (12) the continuing
10 enforcement of Proposition 65.

11 4.3 \$20,235.00 payable to ERC, as reimbursement to ERC for reasonable investigation costs
12 associated with the enforcement of Proposition 65 and other costs incurred as a result of investigating,
13 bringing this matter to 4Life's attention, litigating and negotiating this settlement in the public interest.

14 4.4 \$21,975.00 payable to Michael Freund and \$7,000.00 payable to Karen Evans as
15 reimbursement of ERC's attorneys' fees.

16 The above payments shall be mailed to the Law Office of Michael Freund.

17 **5. MODIFICATION OF CONSENT JUDGMENT**

18 This Consent Judgment may be modified only by written agreement and stipulation of the
19 Parties, or upon noticed motion filed by any Party, followed by entry of a modified consent judgment by
20 the Court.

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

22 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
23 Consent Judgment.

24 6.2 Only after it complies with Section 10 below, any Party may, by motion or application
25 for an order to show cause filed with this Court, enforce the terms and conditions contained in this
26 Consent Judgment. The prevailing party may request that the Court award its reasonable attorneys' fees
27 and costs associated with such motion or application. As used in the preceding sentence, the term
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1 "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief
2 that the other party was amenable to providing during the parties' good faith attempt to resolve the
3 dispute that is the subject of such enforcement action.

4 **7. APPLICATION OF CONSENT JUDGMENT**

5 This Consent Judgment, as it relates to the Covered Products, shall apply to, be binding upon and
6 benefit the Parties, and their respective officers, directors, shareholders, employees, agents, parent
7 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (except private
8 labelers), distributors, wholesalers, retailers, and all other entities in the distribution chain of the
9 Covered Products, the predecessors, successors and assigns of and ERC on its own behalf and the
10 public interest as set forth in Paragraph 8.

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

12 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of
13 itself, and in the public interest, and 4Life of any alleged violation of Proposition 65 or its implementing
14 regulations, and fully and finally resolves all claims that have been or could have been asserted in this
15 action against 4Life for failure to provide Proposition 65 warnings for the Covered Products regarding
16 lead. ERC, on behalf of itself, and in the public interest, hereby releases and discharges 4Life and its
17 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
18 affiliates, suppliers, franchisees, licensees, distributors, wholesalers, retailers, and all other entities in the
19 distribution chain of any Covered Product, and the predecessors, successors and assigns of the entities in
20 the distribution chain (collectively, "Released Parties"), from any and all claims asserted, or that could
21 have been asserted, in this action arising from or related to the alleged failure to provide Proposition 65
22 warnings for the Covered Products regarding lead.

23 **8.2** Compliance with the terms of this Consent Judgment shall constitute compliance by the
24 Released Parties with Proposition 65 with respect to alleged exposures to lead contained in the Covered
25 Products.

1 8.3 ERC, on the one hand, and 4Life, on the other hand, release and waive all claims they
2 may have against each other for any statements or actions made or undertaken by them in connection
3 with the Notices of Violation or this action.

4 **9. CONSTRUCTION OF CONSENT JUDGMENT, SEVERABILITY**

5 9.1 The terms and conditions of this Consent Judgment have been reviewed by the respective
6 counsel for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the
7 terms and conditions with its counsel. In any subsequent interpretation or construction of this Consent
8 Judgment, the terms and conditions shall not be construed against any Party.

9 9.2 In the event that any of the provisions of this Consent Judgment are held by a court to be
10 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

11 **10. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

16 **11. GOVERNING LAW**

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

19 **12. PROVISION OF NOTICE**

20 All notices required by this Consent Judgment shall be sent by first-class, registered, or certified
21 mail, or overnight delivery, to the following:

22 **For Environmental Research Center:**

23 Chris Heptinstall, Executive Director
24 Environmental Research Center
25 3111 Camino del Rio North, Suite 400
26 San Diego, CA 92108

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1 Michael Bruce Freund
2 Law Offices of Michael Freund
3 1919 Addison Street, Suite 105
4 Berkeley, CA 94704

4 Karen Evans
5 Coordinating Counsel
6 Environmental Research Center
7 4218 Biona Place
8 San Diego, CA 92116

7 For 4Life:
8 Steven D. Tew, President
9 4Life Research, LLC
10 9850 South 300 West
11 Sandy, Utah 84070

10 Greenberg Traurig, LLP
11 James Mattesich
12 Nancy J. Doig
13 1201 K Street, Suite 1100
14 Sacramento, CA 95814-3938

14 **13. COURT APPROVAL**

15 13.1 If this Stipulated Consent Judgment is not approved by the Court, it shall be void and
16 have no force or effect.

17 13.2 ERC shall comply with California Health & Safety Code section 25249.7(f) and with
18 Title 11 of the California Code Regulations, section 3003.

19 **14. EXECUTION AND COUNTERPARTS**

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

23 **15. ENTIRE AGREEMENT, AUTHORIZATION**

24 15.1 This Consent Judgment contains the sole and entire agreement and understanding of the
25 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
26 commitments and understandings related hereto. No representations, oral or otherwise, express or
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1 implied, other than those contained herein have been made by any Party. No other agreements not
2 specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

3 15.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
4 Party he or she represents to stipulate to the terms and conditions of this Consent Judgment, to enter into
5 and execute this Consent Judgment on behalf of the Party represented, and legally to bind that Party to
6 this Consent Judgment. The undersigned have read, understand and agree to all of the terms and
7 conditions of this Consent Judgment. Except as explicitly provided herein, each Party shall bear its own
8 fees and costs.

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

11 16.1 This Consent Judgment has come before the Court upon the request of the Parties. The
12 Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the
13 matters which are the subject of this action, to:

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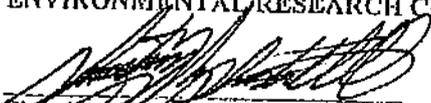
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- (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and
- (2) Make the findings pursuant to Health & Safety Code § 25249.7 (f) (4), approve the Settlement and approve this Consent Judgment.

IT IS SO STIPULATED:

ENVIRONMENTAL RESEARCH CENTER


 Chris Lepinstaff, Executive Director

Dated: 6/4/2012

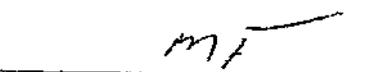
4LIFE RESEARCH, LLC


 Steven D. Tew, President

Dated: 6-1-12

APPROVED AS TO FORM:

LAW OFFICE OF MICHAEL FREUND


 Michael Freund, Counsel for
 Environmental Research Center

Dated: 6/4/12

GREENBERG TRAURIG, LLC


 James Mattesich, Counsel for 4Life
 Research, LLC

Dated: 6/1/12

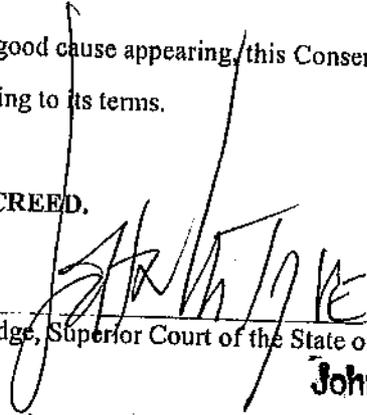
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JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 12-3, 2012



Judge, Superior Court of the State of California

John M. True, III

Addendum

St. Jude Children's Research Hospital is a national resource whose impact is felt throughout the world. St. Jude freely shares all research findings with the global medical and scientific community, and plays a critical leadership role in groundbreaking studies on childhood cancer, sickle cell disease and infectious diseases. St. Jude is the first and only pediatric cancer center to be designated as a Comprehensive Cancer Center by the National Cancer Institute. During the past five years, 81 cents of every dollar received has supported the research and treatment of St. Jude Children's Research Hospital.