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**ENDORSED
FILED
ALAMEDA COUNTY**

NOV 28 2012

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9 ENVIRONMENTAL RESEARCH CENTER

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19 Attorneys for Defendant
20 THE HIMALAYA DRUG COMPANY

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

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

25 Plaintiff,

26 v.

27 THE HIMALAYA DRUG COMPANY; and
28 DOES 1-100;

Defendants.

CASE NO. RG10545713

~~[PROPOSED]~~ STIPULATED CONSENT
JUDGMENT; ~~[PROPOSED]~~ ORDER

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: November 9, 2010
TRIAL DATE: None Set

1. INTRODUCTION

1.1 On November 9, 2010, Plaintiff Environmental Research Center ("ERC" or "Plaintiff"), a non-profit corporation, as a private enforcer, and in the public interest, filed a legal action pursuant to the provisions of Cal. Health & Safety Code Section 25249.5 *et seq.* ("Proposition 65") against Ayurvedic Concepts, Ltd. In this action, ERC filed a First Amended Complaint on February 1, 2011 and a Second Amended Complaint on March 4, 2011, both of which

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1 name The Himalaya Drug Company ("Himalaya" or "Defendant") as the proper defendant in the
2 case. The First Amended Complaint and Second Amended Complaint are collectively referred to
3 herein as the "Complaint." On February 15, 2011, the action against Ayurvedic Concepts Ltd. was
4 dismissed. In this action, ERC claims that the products manufactured and distributed by Himalaya,
5 as more fully described in Section 1.3, contain lead, a chemical listed under Proposition 65 as a
6 carcinogen and reproductive toxin, and that such products expose consumers at a level requiring a
7 Proposition 65 warning. ERC and Himalaya shall sometimes be referred to individually as a
8 "Party" or collectively as the "Parties."

9 1.2 ERC is a California non-profit corporation dedicated to, among other causes, helping
10 safeguard the public from health hazards by bringing about a reduction in the use and misuse of
11 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and
12 encouraging corporate responsibility. ERC has diligently prosecuted this matter and is settling this
13 case in the public interest.

14 1.3 Himalaya is a business entity that employs ten or more persons. Himalaya arranges
15 the manufacture, distribution and/or sale of Himalaya Herbal Healthcare Organic Chyavanprash
16 with Honey Paste; Himalaya Herbal Healthcare Mind Care Jr. Capsules; Himalaya Herbal
17 Healthcare HeartCare Capsules; The Himalaya Drug Company Himalaya Herbal Healthcare -
18 LeanCare Capsules; The Himalaya Drug Company Himalaya Pure Herbs Guggul - Cholesterol
19 Support Vegetarian Capsules; The Himalaya Drug Company Himalaya Herbal Healthcare
20 GlucoCare for Natural Blood Glucose Health Vegetarian Capsules; The Himalaya Drug Company
21 Himalaya Herbal Healthcare Veincare - Vegetarian Capsules; The Himalaya Drug Company
22 LeanCare Vegetarian Capsules; The Himalaya Drug Company CoughCare Liquid; The Himalaya
23 Drug Company Gotu Kola Caplets; The Himalaya Drug Company Bitter Melon Caplets; The
24 Himalaya Drug Company Triphala Caplets; The Himalaya Drug Company Gokshura Caplets; The
25 Himalaya Drug Company Bacopa Caplets; The Himalaya Drug Company Arjuna Caplets; The
26 Himalaya Drug Company Garcinia Caplets; The Himalaya Drug Company MenoCare Vegetarian
27 Capsules; The Himalaya Drug Company HemoCare Vegetarian Capsules; The Himalaya Drug
28 Company OsteoCare Vegetarian Capsules; The Himalaya Drug Company Andrographis Caplets;

1 The Himalaya Drug Company StressCare Vegetarian Capsules; The Himalaya Drug Company
2 MenstriCare Vegetarian Capsules; The Himalaya Drug Company MindCare Vegetarian Capsules;
3 and The Himalaya Drug Company Dermacare Vegetarian Capsules (the "Covered Products").

4 **1.4** The Complaint is based on allegations contained in the Notices of Violation dated
5 November 23, 2010 and December 23, 2010 (collectively referred to as the "Notices") served on the
6 California Attorney General, other public enforcers and Himalaya. A true and correct copy of the
7 Notices is attached hereto as Exhibit A. More than 60 days have passed since these Notices were
8 mailed and no public enforcement entity has filed a complaint against Himalaya with regard to the
9 Covered Products or the alleged violations.

10 **1.5** On August 24, 2012, ERC issued a Proposition 65 60-day Notice of Violation, which
11 ERC served on the California Attorney General, other public enforcers and Himalaya (referred to as
12 the "Supplemental Notice"). A true and correct copy of the Supplemental Notice is attached hereto
13 as Exhibit B. The Supplemental Notice identifies additional dietary supplement products, which
14 ERC claims require warnings under Cal. Health & Safety Code Section 25249.6 for alleged
15 exposures to lead. The nutritional products listed in Exhibit C are referred to herein as the
16 "Additional Products." Additional Products are not Covered Products, but are subject to certain
17 terms of this Consent Judgment, including its injunctive terms. The Covered Products and
18 Additional Products are collectively referred to in this Consent Judgment as "Products."

19 **1.6** ERC's Notices and the Complaint in this action allege that Himalaya exposes
20 persons in California to lead from the Covered Products without first providing clear and reasonable
21 warnings, in violation of Cal. Health & Safety Code Section 25249.6. Himalaya denies and
22 disputes the claims asserted in the Notices, the Supplemental Notice, and the Complaint.
23 Furthermore, Defendant contends that any lead present in the Products is the result of naturally
24 occurring lead levels, as provided for in California Code of Regulations, Title 27, Section 25501(a).
25 Defendant additionally maintains that all of the products at issue are in full compliance with
26 applicable U.S. Federal Standards, as well as standards established by the World Health
27 Organization (WHO), Health Canada, the European Union, and the Food & Agricultural
28 Organization (FAO).

1 1.7 Subsequent to receiving ERC's Notices, Himalaya engaged in an effort to
2 reformulate the Covered Products and, based on test batches carried out in small scale testing, has
3 reduced the lead levels to less than 0.5 micrograms of lead per day in the following products:
4 Arjuna Caplets, Bacopa 60 Caplets, Bitter Melon Caplets, Dermacare Vegetarian Capsules,
5 Garcinia Caplets, GlucoCare for Natural Blood Glucose Health Vegetarian Capsules, Gokshura
6 Caplets, Gotu Kola Caplets, HeartCare, HemoCare Vegetarian Capsules, MenstriCare Vegetarian
7 Capsules, Mind Care Jr., MindCare Vegetarian Capsules, StressCare Vegetarian Capsules, Triphala
8 Caplets, and VeinCarè Vegetarian Capsules.

9 1.8 The Parties have entered into this Consent Judgment in order to settle, compromise
10 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent
11 Judgment shall constitute or be construed as an admission by any of the Parties, or by any of their
12 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
13 divisions, affiliates, franchisors, franchisees, licensors, licensees, customers, distributors,
14 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
15 wrongdoing, or liability, including without limitation, any admission concerning any alleged
16 violation of Proposition 65, nor shall this Consent Judgment be offered or admitted as evidence in
17 any administrative or judicial proceeding or litigation in any court, agency, or forum, except with
18 respect to an action seeking to enforce the terms of this Consent Judgment.

19 1.9 Except as expressly set forth herein, nothing in this Consent Judgment shall
20 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
21 other or future legal proceeding unrelated to these proceedings.

22 1.10 The Effective Date of this Consent Judgment shall be the date on which it is entered
23 as a judgment by this Court. As used herein, the term "Compliance Deadline" is the date that is six
24 months after the Effective Date.

25 **2. JURISDICTION AND VENUE**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
28 over Himalaya as to the acts alleged in the Complaint, that venue is proper in Alameda County, and

1 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
2 claims which were or could have been asserted in this action based on the facts alleged in the
3 Notices or the Complaint.

4 **3. INJUNCTIVE RELIEF, WARNINGS AND TESTING**

5 **3.1** Any Products manufactured on or after the Compliance Deadline that Himalaya
6 thereafter sells in California, markets or distributes for sale in California, or offers for sale to a third
7 party for retail sale to California must either (1) qualify as a "Reformulated Product" under Section
8 3.3 or (2) meet the warning requirements set out in Section 3.2. Products manufactured before the
9 Compliance Deadline are therefore not subject to the obligations imposed by Section 3 irrespective
10 of when they are distributed or sold. The final lot numbers of Products manufactured before the
11 Compliance Deadline will be provided to ERC no more than 10 days after the Compliance
12 Deadline.

13 **3.2 Warnings**

14 If Himalaya provides a warning pursuant to Section 3.1, the warning shall comply with the
15 requirements of either Section 3.2.1 or 3.2.2.

16 **3.2.1** Himalaya shall provide the following warning:

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

19 The term "cancer" shall be included in the warning only if the maximum daily dose recommended
20 on the label contains more than 15 micrograms ("mcg") of lead as determined by the quality control
21 methodology set forth in Section 3.4.2.

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

1 **3.2.2** In the alternative to Section 3.2.1, Himalaya shall provide the warning in
2 accordance with Section 2.2 of the consent judgment attached as Exhibit D hereto, which was
3 entered in *People v. 21st Century Healthcare, Inc., et al.*, Alameda County Superior Court No.
4 RG08-426937.

5 **3.3 Reformulated Products**

6 A Reformulated Product is one for which the maximum recommended daily serving on the
7 label contains no more than 0.5 micrograms of lead per day as determined by the quality control
8 methodology described in Section 3.4.2.

9 **3.3.1** For purposes of this Consent Judgment, daily lead exposures levels shall be
10 measured in micrograms, and shall be calculated using the following formula: micrograms of lead
11 per gram of product, multiplied by grams of product per serving of the product (using the largest
12 serving size appearing on the product label), multiplied by servings of the product per day (using
13 the largest number of servings in a recommended dosage appearing on the product label), which
14 equals micrograms of lead exposure per day.

15 **3.3.2** As used in this Consent Judgment, "no more than 0.5 mcg of lead per day"
16 means that the samples tested by Himalaya under Section 3.4 collectively yield an average daily
17 exposure of no more than 0.5 mcg of lead (with daily exposure calculated pursuant to Section 3.3.1
18 of this Consent Judgment).

19 **3.4 Testing**

20 **3.4.1** Before Himalaya's first distribution or sale of a Product in California
21 manufactured after the Compliance Deadline, Himalaya shall arrange for the lead testing of at least
22 five (5) randomly selected samples of each Product (in the form intended for sale to the end-user) to
23 be distributed or sold to California. Before Himalaya's first distribution or sale of a Product
24 manufactured after the Compliance Deadline, and continuing for at least four (4) years thereafter, at
25 least once every year, Himalaya shall test the Products for lead content in the manner provided for
26 in this Consent Judgment for those Products to be distributed or sold in California. Himalaya shall
27 continue to arrange for lead testing, at a minimum, once a year, of at least five (5) randomly
28 selected samples of each Product to be distributed or sold to California. The testing requirements of

1 Section 3.4 do not apply to a Product for which Himalaya has provided the warning specified in
2 Section 3.2 since the Compliance Deadline or during the preceding year.

3 3.4.2 All testing pursuant to this Consent Judgment shall be performed using a
4 laboratory method that complies with the performance and quality control factors appropriate for
5 the method used (including limit of detection, limit of quantification, accuracy, and precision) and
6 that meets the following criteria: Closed-vessel, microwave-assisted acid digestion employing high-
7 purity reagents, followed by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), achieving
8 a limit of quantification of ≤ 0.010 mg/kg, or any other testing method agreed upon in writing by
9 the Parties.

10 3.4.3 All testing pursuant to this Consent Judgment shall be performed by a
11 laboratory that is approved by, accredited by, or registered with the United States Food & Drug
12 Administration for the analysis of heavy metals. Nothing in this Consent Judgment shall limit
13 Himalaya's ability to conduct, or require that others conduct, additional testing of any Products used
14 in their manufacture.

15 3.4.4 Upon written request by ERC, Himalaya shall provide to ERC any test results
16 and documentation of testing undertaken by Himalaya pursuant to Section 3.4 within ten working
17 days of receipt by Himalaya of ERC's request. Himalaya shall retain all test results and
18 documentation for a period of four years from the date of the test.

19 3.4.5 If testing conducted pursuant to this Consent Judgment demonstrates that no
20 warning is required for a Product during each of four consecutive years, then the testing
21 requirements of this Section 3.4 are no longer required as to that Product. However, if after the
22 four-year period Himalaya changes ingredient suppliers for any Products and/or reformulates any of
23 the Products, Himalaya shall test that Product at least once after such test is made.

24 4. SETTLEMENT PAYMENT

25 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties,
26 attorneys' fees and costs (which includes, but is not limited to, filing fees and costs of attorneys,
27 experts and investigators and testing nutritional health supplements), Himalaya shall make a total
28 payment of \$275,000 (Two Hundred Seventy-Five Thousand Dollars). Such total payment shall be

1 made in three separate installments. A first installment of \$100,000 shall be paid by a check
2 payable to the Environmental Research Center within ten (10) business days of receiving the Notice
3 of Entry of Judgment (the "Notice of Entry Date") in this action. A second installment of \$100,000
4 shall be paid by a check payable to the Environmental Research Center within thirty (30) days after
5 the Notice of Entry Date. A third and final installment of \$75,000 shall be paid by a check payable
6 to the Environmental Research Center within sixty (60) days after the Notice of Entry Date. The
7 total payment of \$275,000 shall be allocated by ERC as follows in Sections 4.1.1 through 4.1.3:

8 **4.1.1** A total of \$46,000 shall be payable as civil penalties pursuant to Health &
9 Safety Code Section 25249.7(b)(1). This civil penalty payment shall be apportioned by ERC in
10 accordance with Cal. Health & Safety Code Section 25249.12 (25% to ERC and 75% to the State of
11 California's Office of Environmental Health Hazard Assessment). ERC's counsel shall be
12 responsible to forward the civil penalty payment to OEHHA along with a copy of the transmittal to
13 Himalaya.

14 **4.1.2** A total of \$138,142 shall be payable to Environmental Research Center in
15 lieu of further civil penalties, for (A) activities such as (1) analysis, researching and testing
16 consumer products that may contain Proposition 65 listed chemicals; (2) awarding grants to
17 California non-profit foundations/entities dedicated to public health; (3) funding the ERC Eco
18 Scholarship Fund for high school students in California interested in pursuing an education in the
19 field of environmental sciences; (4) funding ERC's Voluntary Compliance Program to work with
20 companies not subject to Proposition 65 to reformulate their products to reduce potential consumer
21 exposures; (5) funding ERC's RxY Program to assist various medical personnel to provide testing
22 assistance to independent distributors of various products; (6) funding ERC's Got Lead? Program to
23 assist consumers in testing products for lead; (7) funding the ERC Cancer Scholarship Fund to
24 provide scholarships to college students in California who have previously been diagnosed with a
25 form of cancer; (8) aiding various cancer research centers and organizations in their ongoing efforts
26 to assist families and children in cancer treatment facilities; (9) maintaining, supporting and
27 increasing ERC's Database of lead-free and Proposition 65 complaint products; (10) increasing
28 ERC's tracking and cataloging of contamination-free sources for specific ingredients used in the

1 types of products ERC test, and sharing this information with companies to try and reduce lead
2 levels in their products; (11) post-settlement monitoring of past consent judgments; and (12) the
3 continuing enforcement of Proposition 65; and (B) a total of \$27,569 shall be payable to ERC as
4 reimbursement to ERC for reasonable investigation costs associated with the enforcement of
5 Proposition 65 and other costs incurred as a result of investigating, bringing this matter to

6 Himalaya's attention, litigating and negotiating this settlement in the public interest. *All funds paid in lieu
of civil penalties will be used solely for projects and activities related to the enforcement of Prop. 65 in California.*

7 4.1.3 A total of \$44,588 shall be payable to Michael Freund as reimbursement of
8 ERC's attorneys' fees. A total of \$14,746 shall be payable to Karen Evans as reimbursement
9 ERC's attorneys' fees. A total of \$2,485 shall be payable to Richard Drury as reimbursement of
10 ERC's attorneys' fees. A total of \$1,470 shall be payable to Ryan Hoffman as reimbursement of
11 ERC's attorneys' fees.

12 4.2 Himalaya's payments shall be mailed or delivered to the Law Office of Michael
13 Freund.

14 **5. MODIFICATION OF CONSENT JUDGMENT**

15 5.1 This Consent Judgment may be modified only by (i) written agreement and
16 stipulation of the Parties, followed by entry of a modified consent judgment by the Court, or (ii) as
17 provided in Sections 5.2 or 5.3.

18 5.2 In the event that Himalaya modifies the manner in which it distributes the Products,
19 which results in a change in the way the end user receives any of the Products, Himalaya may seek
20 to modify the terms of Section 3 subject to the procedures in Section 5.1 and Section 5.4 so long as
21 the proposed warning method is consistent with the manner in which Himalaya sells or distributes
22 the Products and with the provisions of 27 Cal. Code Regs. Section 25601.

23 5.3 Should ERC, or the California Attorney General, reach a settlement of a Proposition
24 65 claim regarding the same ingredient(s) as contained in a Product that establishes allowances for
25 naturally occurring lead that results in less stringent lead standards ("Alternative Lead Standard")
26 than those specified in Section 3.3, then Himalaya shall be entitled to seek to modify the Consent
27 Judgment to adopt such Alternative Lead Standard as to such Product, subject to the procedures in
28 Sections 5.1 and 5.4.

1 **5.3.1** Before the effective date of any modification, Himalaya shall additionally
2 provide to ERC test results or other data that independently confirm the percentage of such
3 ingredient being used in each Product(s). Himalaya may update such information from time to
4 time. Should Himalaya seek to exclude naturally occurring lead in its calculation of overall lead
5 content for any Product, Himalaya will provide separate documentation to ERC to include a
6 complete list of all ingredients, including the corresponding percentages of each ingredient within
7 each product, and other data that independently supports Himalaya's contention that the lead it
8 seeks to exclude is naturally occurring. Himalaya is entitled to submit to ERC documentation
9 pursuant to Section 5.3.1 which shall be held in confidence and kept confidential by ERC.

10 **5.4** If Himalaya seeks to modify the Consent Judgment under Section 5.2 or 5.3, then
11 Himalaya shall provide written notice to ERC of its intent and include the settlement containing the
12 alternative warnings or Alternative Lead Standard ("Notice of Intent"). If ERC seeks to meet and
13 confer regarding the proposed modification in the Notice of Intent, then ERC shall provide written
14 notice to Himalaya within thirty (30) days of receiving the Notice of Intent. If ERC notifies
15 Himalaya in a timely manner of ERC's intent to meet and confer, then the Parties shall meet in
16 confer in good faith as required in this Section 5.4. The Parties shall meet in person within thirty
17 (30) days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such
18 meeting, if ERC disputes the proposed modification, ERC shall provide to Himalaya a written
19 factual basis for its position. The Parties shall continue to meet and confer for an additional thirty
20 (30) days in an effort to resolve any remaining disputes. The Parties may agree in writing to
21 different deadlines for the meet and confer period herein.

22 **5.5** In the event of a modification under Section 5.2 or 5.3, Himalaya shall reimburse
23 ERC its reasonable attorneys' fees and costs in filing and arguing a joint motion or application in
24 support of a modification of the Consent Judgment; provided however, that those fees and costs
25 shall not exceed \$8,000 (eight thousand dollars) total without the prior written consent of Himalaya.

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

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

1 6.2 Any Party may, by motion or application for an order to show cause filed with this
2 Court, enforce the terms and conditions contained in this Consent Judgment provided that it first
3 undertakes a good faith effort to resolve the dispute informally as required under Section 13. The
4 prevailing Party may request that the Court award its reasonable attorney's fees and costs associated
5 with such motion or application.

6 6.3 In the event that ERC alleges that any Product fails to qualify as a Reformulated
7 Product (and for which ERC alleges that no warning has been provided pursuant to Section 3.2),
8 ERC shall inform Himalaya in a reasonably prompt manner of its test results, including information
9 sufficient to permit Defendant to identify the Products at issue. Himalaya shall, within thirty (30)
10 days following such notice, provide ERC with testing information demonstrating Himalaya's
11 compliance with Section 3.3 if warranted. The Parties shall first attempt to resolve the matter prior
12 to ERC taking any further legal action pursuant to Paragraph 13.

13 **7. APPLICATION OF CONSENT JUDGMENT**

14 7.1 This Consent Judgment shall apply to, be binding upon and benefit the Parties, and
15 respective subsidiaries and divisions and the successors and assigns of any of them.

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

17 8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on
18 behalf of itself, and in the public interest, and Himalaya, of any alleged violation of Proposition 65
19 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to lead
20 from the handling, use or consumption of the Covered Products. ERC, on behalf of itself, its
21 agents, officers, representatives, attorneys, successors and/or assignees, and in the public interest,
22 hereby releases and discharges: (a) Himalaya and its parent companies, subsidiaries, affiliates, and
23 divisions; (b) each of their respective licensors, licensees, franchisors, franchisees, joint venturers,
24 partners, vendors, manufacturers, packagers, contractors, and finished product and ingredient
25 suppliers; (c) each of the distributors, wholesalers, retailers, users, packagers, customers, and all
26 other entities in the distribution chain down to the consumer, of the persons and entities described in
27 (a) and (b) above; and (d) each of the respective officers, directors, shareholders, employees, and
28 agents of the persons and entities described in (a) through (c), above (the persons and entities

1 identified in (a), (b), (c), and (d), above, including the predecessors, successors and assigns of any
2 of them, are collectively referred to as the "Released Parties"), from any and all claims, actions,
3 causes of action, suits, demands, liabilities, damages, penalties, fees (including but not limited to
4 investigation fees, attorney's fees and expert fees), costs and expenses (collectively, "Claims") as to
5 any alleged violation of Proposition 65 arising from or related to the failure to provide Proposition
6 65 warnings for the Covered Products manufactured before the Compliance Deadline. The
7 provisions in this section do not apply to private label customers of Himalaya. Compliance with the
8 terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65
9 regarding alleged exposures to lead in the Covered Products.

10 8.2 ERC, on behalf of itself, its agents, representatives, attorneys, successors and/or
11 assignees, and not on behalf of the general public, hereby releases and discharges the Released
12 Parties from any and all known and unknown Claims for any violations of Proposition 65 or based
13 on any other statutory or common law, which have been alleged or could have been alleged, arising
14 from or relating to any exposures or failure to warn concerning lead or lead compounds in the
15 Covered Products and the Additional Products. It is possible that other Claims not known to the
16 Parties arising from or relating to any exposures or failure to warn concerning lead or lead
17 compounds in the Covered Products and the Additional Products will develop or be discovered.
18 ERC, on behalf of itself only, acknowledges that this Consent Judgment is expressly intended to
19 cover and include all such Claims, including all rights of action therefor. ERC has full knowledge
20 of the contents of California Civil Code section 1542. ERC, on behalf of itself only, acknowledges
21 that the Claims released in Sections 8.1 and 8.2 may include unknown Claims, and nevertheless
22 waives California Civil Code section 1542 as to any such unknown Claims. California Civil Code
23 section 1542 reads as follows:

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

1 ERC, on behalf of itself only, acknowledges and understands the significance and consequences of
2 this specific waiver of California Civil Code section 1542. This release shall be effective as a full
3 and final accord and satisfaction as to, and as a bar to, the Claims released in this Section 8.2. ERC,
4 on behalf of itself, its agents, representatives, attorneys, successors and/or assignees, in its
5 individual capacity, further agrees that compliance with the terms of this Consent Judgment shall be
6 deemed to constitute compliance with Proposition 65, or any statutory or common law, regarding
7 any alleged exposures or failure to warn concerning lead or lead compounds in any of the Products.

8 **8.3** ERC, on one hand, and Himjalaya, on the other hand, release and waive all Claims
9 they may have against each other for any statements of actions made or undertaken by them in
10 connection with the Notices or the Complaint. Provided however, nothing in this Section 8 shall
11 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

12 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

13 **9.1** In the event that any of the provisions of this Consent Judgment are held by a court
14 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

15 **10. GOVERNING LAW**

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

18 **11. PROVISION OF NOTICES**

19 All notices required to be given to either Party to this Consent Judgment by the other shall
20 be in writing and sent to the following agents listed below by (a) first-class mail, (b) overnight
21 courier, or (c) personal delivery:

22 **FOR ENVIRONMENTAL RESEARCH CENTER:**

23 Chris Heptinstall, Executive Director
24 Environmental Research Center
25 3111 Camino del Rio North, Suite 400
San Diego, CA 2108

26
27 Michael Bruce Freund
28 Law Offices of Michael Freund
1919 Addison Street, Suite 105
Berkeley, CA 94704

1 Telephone: (510) 540-1992
2 Facsimile: (510) 540-5543

3 Karen Evans
4 Coordinating Counsel
5 Environmental Research Center
6 4218 Biona Place
7 San Diego, CA 92116
8 Telephone: (619) 640-8100

9 **FOR THE HIMALAYA DRUG COMPANY**

10 Nabeel Manal
11 CEO
12 The Himalaya Drug Company
13 1101 Gillingham Lane
14 Sugar Land, Texas 77478
15 Facsimile: (713) 863-1686

16 With a copy to:

17 Arnold & Porter, LLP
18 Trenton Norris
19 Sarah Esmaili
20 Three Embarcadero Center, 7th Floor
21 San Francisco, CA 94111
22 Telephone: (415) 471-3283
23 Facsimile: (415) 471-3400

24 **12. DRAFTING**

25 The terms of this Consent Judgment have been reviewed by the respective counsel for the
26 Parties to this Consent Judgment prior to its signing, and each Party has had an opportunity to fully
27 discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and
28 construction of this Consent Judgment entered thereon, the terms and provisions shall not be
construed against either Party.

29 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

30 In the event a dispute arises with respect to either Party's compliance with the terms of this
31 Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and
32 endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the
33 absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or
34 motion is filed, however, the prevailing Party may seek to recover costs and reasonable attorneys'
35 fees. As used in the preceding sentence, the term "prevailing party" means a party who is
36 successful in obtaining relief more favorable to it than the relief that the other party was amenable
37 to.

1 to providing during the parties' good faith attempt to resolve the dispute that is the subject of such
2 enforcement action.

3 **14. ENTIRE AGREEMENT, AUTHORIZATION, COUNTERPARTS**

4 **14.1** This Consent Judgment contains the sole and entire agreement and understanding of
5 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
6 negotiations, commitments and understandings related hereto. No representations, oral or
7 otherwise, express or implied, other than those contained herein have been made by any party
8 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
9 to exist or to bind any of the Parties.

10 **14.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to the Consent Judgment.

12 **14.3** The stipulations to this Consent Judgment may be executed in counterparts and by
13 means of facsimile or portable document format (pdf), which taken together shall be deemed to
14 constitute one document.

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

17 **15.1** This settlement has come before the Court upon the request of the Parties. The
18 Parties request the Court to fully review this settlement and, being fully informed regarding the
19 matters which are the subject of this action, to:

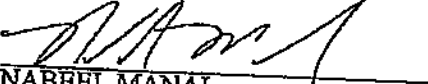
20 (1) Find that the terms and provisions of this Consent Judgment represent a fair
21 and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
22 been diligently prosecuted, and that the public interest is served by such settlement; and
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1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

3 **IT IS SO STIPULATED:**

4 Dated: October 3, 2012

THE HIMALAYA DRUG COMPANY


NABEEL MANAL


5
6
7 Dated: 10/4/, 2012

ENVIRONMENTAL RESEARCH CENTER


Carla Hopstunatal, Executive Director


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9
10 **APPROVED AS TO FORM:**

11 Dated: October 3, 2012


Sarah Esmail
Attorney for The Himalaya Drug Company

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13
14 Dated: 10/4/, 2012

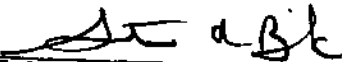
LAW OFFICE OF MICHAEL FREUND


Michael Freund
Attorney for Environmental Research Center

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17 **ORDER AND JUDGMENT**

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

20 Dated: Nov. 28, 2012


Judge, Superior Court of the State of California