

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1502
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF ENTRY OF JUDGMENT

Please print or type required information Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) ENVIRONMENTAL RESEARCH CENTER, a non-profit California corporation, Plaintiff		
	DEFENDANT(S) INVOLVED IN JUDGMENT MEDA CONSUMER HEALTHCARE, INC., a Delaware Corporation; MEDA PHARMECEUTICALS, INC., a Delaware Corporation, Defendants		
CASE INFO	COURT DOCKET NUMBER RG13678826	COURT NAME Alameda County Superior Court	
	SHORT CASE NAME ENVIRONMENTAL RESEARCH CENTER v. MEDA CONSUMER HEALTHCARE, INC. et al.		
REPORT INFO	INJUNCTIVE RELIEF Yes. See Paragraphs 1-5 of attached settlement		
	PAYMENT: CIVIL PENALTY \$11,130.00	PAYMENT: ATTORNEYS FEES \$45,000.00	PAYMENT: OTHER \$33,870.00
	DATE SUBMITTED TO COURT 06 /14 /2013	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 08 /19 /2013
	COPY OF JUDGMENT MUST BE ATTACHED		
FILER INFO	NAME OF CONTACT Richard Drury / Christina Caro		
	ORGANIZATION Lozeau Drury LLP		TELEPHONE NUMBER ((510)) 836-4200
	ADDRESS 410 12th Street, Suite 250		FAX NUMBER ((510)) 836-4205
	CITY Oakland	STATE CA	ZIP E-MAIL ADDRESS richard@lozeaudrury.com

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the judgment to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.



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17 Attorney for Defendants
 18 MEDA CONSUMER HEALTHCARE, INC. and MEDA PHARMACEUTICALS, INC.

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

21 ENVIRONMENTAL RESEARCH CENTER,)
 22 a non-profit California corporation,

23 Plaintiff,

24 v.

25 MEDA CONSUMER HEALTHCARE, INC.,)
 26 a Delaware corporation, and MEDA
 27 PHARMACEUTICALS, INC., a Delaware
 28 corporation,

Defendants.

Case No. **RG13-678826**

~~PROPOSED~~ STIPULATED CONSENT
 JUDGMENT

Dept: **20**

FILED
 ALAMEDA COUNTY

AUG 09 2013

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

1
CONSENT JUDGMENT

Environmental Research Center v. Meda Consumer Healthcare, Inc.

LA:18020513.3
 2659456.1

1 IT IS HEREBY STIPULATED AND AGREED by the Parties hereto, as follows:

2 **WHEREAS:**

3 A. ENVIRONMENTAL RESEARCH CENTER (“ERC” or “Plaintiff”) is a citizen
4 enforcer of California Health and Safety Code § 25249.6 *et seq.* (“**Proposition 65**”) and is a non-
5 profit corporation organized under California’s Non-Profit Public Benefit Corporation Law.

6 B. MEDA CONSUMER HEALTHCARE, INC. is a Delaware Corporation, and
7 MEDA PHARMACEUTICALS, INC. is a Delaware Corporation, and they are referred to
8 collectively hereinafter as “Meda” or “Defendant”. “Parties” means ERC and Meda only.

9 C. The name of the Products covered under this Consent Judgment are set forth in
10 **Exhibit A**, attached hereto (“**Covered Products**”).

11 D. On February 27, 1987, the State of California listed the chemical lead as a chemical
12 known to cause reproductive toxicity, pursuant to California Health and Safety Code § 25249.8.

13 E. On October 1, 1992, the State of California listed the chemicals lead and lead
14 compounds as chemicals known to cause cancer, pursuant to California Health and Safety Code
15 § 25249.8.

16 F. ERC alleges that the Covered Products have been sold by Defendant in California
17 since October 26, 2009.

18 G. On October 26, 2012 ERC served Defendant and public enforcement agencies with
19 a document entitled “60-Day Notice” that provided Defendant and the public enforcement
20 agencies with notice alleging that Defendant was in violation of Proposition 65 for failing to
21 warn purchasers and individuals using the Covered Products that such use exposes them to lead,
22 a chemical known to the State of California to cause cancer and/or reproductive toxicity
23 (“**Proposition 65 Notice**”). A copy of the Proposition 65 Notice is attached hereto as **Exhibit B**.

24 H. Concurrent with the filing of this Consent Judgment, ERC has filed a Complaint
25 against Defendant in the Alameda County Superior Court (the “**Action**”), alleging violations of
26 Proposition 65, based on the Proposition 65 Notice. The Action is brought by ERC in the public
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1 interest at least sixty (60) days after ERC provided notice of the alleged Proposition 65 violations
2 to Defendant and the public enforcement agencies and none of the public enforcement agencies
3 had commenced and/or begun diligently prosecuting an action against Defendant for such
4 violations.

5 I. For purposes of this Consent Judgment only, the Parties stipulate that this Court
6 has jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is
7 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
8 provisions of this Consent Judgment. This Consent Judgment shall have no application or effect
9 on Defendant for Covered Products or other products manufactured, distributed or sold by
10 Defendant to consumers outside of the State of California only.

11 J. Defendant denies the material, factual and legal allegations contained in Plaintiff's
12 Complaint and maintains that all Covered Products that Defendant sold and distributed in
13 California have been and are in compliance with all laws, including Proposition 65. The Parties
14 enter into this Consent Judgment pursuant to a settlement of disputed claims between them as
15 alleged in the Complaint for the purposes of avoiding prolonged and costly litigation. By
16 execution of this Consent Judgment, Defendant does not admit any facts or conclusions of law
17 suggesting or demonstrating any violations or the applicability of Proposition 65, or any other
18 statutory, common law or equitable requirements relating to the Covered Products. Nothing in
19 this Consent Judgment shall be construed as an admission by Defendant or Plaintiff of any fact,
20 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
21 be construed as an admission by Defendant or Plaintiff of any fact, issue of law, or violation of
22 law.
23

24 K. Except as expressly provided herein, nothing in this Consent Judgment shall
25 prejudice, waive or impair any right, remedy or defense the Parties may have in any other or
26 further legal proceeding. This paragraph shall not diminish or otherwise affect the obligations,
27 responsibilities, and duties of any Party to this Consent Judgment; and,
28

1 L. The "Effective Date" of this Consent Judgment shall be the date upon which this
2 Consent Judgment is entered by the Court.

3 NOW, THEREFORE, in consideration of the promises, covenants and agreements
4 herein contained, the sufficiency and adequacy of which is hereby acknowledged by the Parties:

5 1. **Injunctive Relief.** On and after the Effective Date of this Consent Judgment,
6 Defendant shall not distribute into the State of California, or directly sell in the State of
7 California any Covered Product for which the maximum dose recommended on the label
8 contains more than 0.5 micrograms (mcg) of lead, as calculated in accordance with the formula
9 set forth in Paragraph 4, unless each individual Covered Product (in the form intended for sale
10 to the end-user) bears one of the warning statements specified below on its individual unit label
11 or unit packaging.

12
13 2. On and after the Effective Date of this Consent Judgment, for Covered Products for
14 which the maximum dose recommended on the label contains more than 0.5 mcg of lead,
15 Defendant shall, at the point of manufacture, prior to Defendant's shipment to California, or
16 prior to Defendant's distribution within California, affix to or print on the Covered Product
17 container, cap, label, or unit package the following warning

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

20 The term "cancer" shall be included in the warning only if the maximum recommended dose
21 stated on the Covered Product's label contains in excess of 15 micrograms (mcg) of lead as
22 calculated in accordance with the formula set forth in Paragraph 4 below.

23
24 3. The warning required by Paragraph 2 above shall be prominently affixed to or
25 printed on the labeling of each Covered Product intended for sale to a purchaser in the State of
26 California, with such conspicuousness, as compared with other words, statements, designs, or
27 devices on the labeling as to render it likely to be read and understood by an ordinary individual
28 under customary conditions of purchase or use. The warning shall not exceed the language

1 specified in Paragraph 2 above, and shall not be accompanied by any explanation of Proposition
2 65, lead, or the “naturally occurring” exemption. If the warning is displayed on the Covered
3 Product container or labeling, the warning shall be at least the same size as the largest of any
4 other health or safety warnings on the container or labeling, and the word “WARNING” shall be
5 in all capital letters and in bold print. If printed on the labeling itself, the warning shall be
6 contained in the same section of the labeling that states other safety warnings concerning the use
7 of the Covered Product. The injunctive relief set forth in Paragraphs 1, 2 and 3 above shall not
8 apply to any of the Covered Products that Defendant put into the stream of commerce before the
9 Effective Date.
10

11 4. Defendant may reformulate the Covered Products to reduce the lead content to
12 below levels requiring a Proposition 65 warning, in which case the Parties agree that the Covered
13 Products may be offered for sale in California without the warnings discussed in this Consent
14 Judgment. If Defendant contends that a Covered Product has been so reformulated, then at least
15 once each year for three consecutive years, Defendant shall undertake testing of any
16 reformulated Covered Product on which it does not intend to place a warning label discussed in
17 Paragraph 2 above. Defendant (itself or through another) shall test at least five (5) randomly-
18 selected samples of each such reformulated Covered Product for lead content, to confirm
19 whether the daily dose is more or less than 0.5 micrograms of lead when the maximum
20 recommended daily dose is taken as directed on the reformulated Covered Product’s label. For
21 purposes of determining whether a warning, if any, is required pursuant to Paragraph 1, the
22 highest lead detection result of the five (5) randomly selected samples of the reformulated
23 Covered Product will be controlling. For purposes of this Consent Judgment, daily lead
24 exposure levels shall be measured in micrograms and shall be calculated using the following
25 formula: micrograms of lead per gram of product, multiplied by grams of product per serving of
26 the product (using the largest serving size appearing on the product’s label), multiplied by
27 servings of the product per day (using the largest number of servings in a recommended dosage
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1 appearing on the product label), which equals micrograms of lead exposure per day. All testing
2 pursuant to this Consent Judgment shall be performed by a laboratory certified by the California
3 Environmental Laboratory Accreditation Program for the analysis of heavy metals or a
4 laboratory that is approved by, accredited by, or registered with the United States Food & Drug
5 Administration for the analysis of heavy metals. The method of selecting samples for testing
6 must comply with the regulations of the Food and Drug Administration as set forth in Title 21,
7 Part 111, Subpart E of the Code of Federal Regulations, including section 111.80(c). Testing for
8 lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and
9 closed-vessel, microwave-assisted digestion employing high-purity reagents¹ or any other testing
10 method agreed upon in writing by the Parties. Nothing in this Consent Judgment shall limit
11 Defendant's ability to conduct, or require that others conduct, additional testing of the Covered
12 Products, reformulated or otherwise, including the raw materials used in their manufacture. This
13 Consent Judgment, including the testing and sampling methodology set forth in this paragraph, is
14 the result of negotiation and compromise, and is accepted by the Parties for purposes of settling,
15 compromising, and resolving issues disputed in the Action, including future compliance by
16 Defendant with this Consent Judgment, and shall not be used for any other purpose, or in any
17 other matter and, except for the purpose of determining future compliance with this Consent
18 Judgment, shall not constitute an adoption or employment of a method of analysis for a listed
19 chemical in a specific medium as set forth in 27 California Code of Regulations § 25900(g). For
20 the three year reporting period, Defendant shall provide test results and documentation for any
21 reformulated Covered Product to ERC within thirty (30) working days of Defendant's receipt of
22 the test results, and shall retain all test results and documentation for a period of four (4) years
23 from the date of each test.
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26 5. The requirements set forth above will only apply to any time during which
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28 ¹ See Mindak, W.R., Cheng, J., Canas, B.J., & Bolger, P.M. Lead in Women's and Children's Vitamins,
J. Agric. Food Chem. 2008, 56, 6892-96.

1 Defendant is a "person in the course of doing business," as that term is defined in Health and
2 Safety Code § 25249.11(b).

3 **6. Payments.** In full satisfaction of all potential civil penalties, payment in lieu of
4 civil penalty, and investigation, experts, and attorneys' fees and costs, Defendant shall make a
5 total payment of \$90,000.00 (ninety thousand dollars), as follows:

6 **6.1. Civil Penalty Assessment.** Defendant agrees to pay a civil penalty in the
7 amount of \$11,130.00 (eleven thousand one hundred thirty dollars) pursuant to Health &
8 Safety Code §25249.7(b). Plaintiff shall remit 75% of this amount (\$8,347.50 (eight
9 thousand three hundred forty-seven dollars and fifty cents)) to the State of California
10 pursuant to Health & Safety Code §25192, and Plaintiff shall retain the remaining 25%
11 of this amount (\$2,782.50 (two thousand seven hundred eighty-two dollars and fifty
12 cents)).

13 **6.2. Payment In Lieu of Further Civil Penalties.** Defendant agrees to make an
14 additional payment in lieu of further civil penalties in the amount of \$33,870.00 (thirty-
15 three thousand eight hundred seventy dollars) to ERC for projects to reduce exposures to
16 toxic chemicals, and to increase consumer, worker and community awareness of the
17 health hazards posed by toxic chemicals.

18 **6.3. Reimbursement of Plaintiff's Fees and Costs.** Defendant agrees to
19 reimburse Plaintiff's reasonable investigative, expert and attorneys' fees and costs
20 incurred as a result of investigating and prosecuting this Action negotiating a settlement
21 in the public interest, and obtaining required approval from the Office the California
22 Attorney General and the Superior Court. Such fees and costs total \$45,000.00 (forty-
23 five thousand dollars).

24 **6.4. Payment Schedule.** Pursuant to Paragraphs 6.1., 6.2, and 6.3 herein,
25 Defendant agrees to remit the total amount of \$90,000.00 (ninety thousand dollars) to
26 Plaintiff, by check or money order payable to: the "Lozeau Drury LLP Client Trust
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1 Account" and remitted to the Law Office of Lozeau Drury LLP at the law firm's address
2 noted in the Notice provision below. Defendant shall remit payment in full within thirty
3 (30) calendar days of the Effective Date.

4 **7. Plaintiff's Release of Defendant.** Plaintiff, acting in both its individual capacity
5 on behalf of itself and acting in its representative capacity on behalf of the general public,
6 permanently and fully releases Defendant, its parents, subsidiaries, affiliates (including those
7 companies that are under common ownership and/or common control), shareholders, directors,
8 members, officers, employees, and attorneys, and each entity to whom each of them directly or
9 indirectly distributed or sold the Covered Products, including, but not limited to distributors,
10 wholesalers, customers, retailers, franchisees, and any other person or entity in the course of
11 doing business who distributed, marketed or sold the Covered Products, and excluding
12 Defendant's private label customers, from all claims asserted in the Proposition 65 Notice
13 regarding lead in the Covered Products.
14

15 **8. Limits of Release.** Nothing in this release is intended to apply to any
16 occupational or environmental exposures, as those terms are defined in Cal. Code Regs., tit. 27,
17 §§ 25602(c) and (f), respectively, arising under Proposition 65 nor shall it apply to any of
18 Defendant's products not set forth on Exhibit A to this Consent Judgment.
19

20 **9. Release of Environmental Research Center.** Defendant, by this Consent
21 Judgment, waives all rights to institute any form of legal action against ERC for actions or
22 statements made or undertaken by ERC in the course of seeking enforcement of Proposition 65
23 against Defendant by means of the Proposition 65 Notice.

24 **10. Motion for Approval of Consent Judgment/Notice to the California Attorney**
25 **General's Office.** Upon execution of this Consent Judgment by the Parties, Plaintiff shall file a
26 noticed Motion for Approval & Entry of Consent Judgment in the Alameda County Superior
27 Court pursuant to 11 California Code of Regulations §3000, *et seq.* This motion shall be served
28 upon all of the Parties to the Action and upon the California Attorney General. In the event that

1 the Court fails to approve and order entry of the judgment within one (1) year of the Consent
2 Judgment being filed, this Consent Judgment shall become null and void upon the election of any
3 Party as to them and upon written notice to all of the Parties to the Action pursuant to the notice
4 provisions herein. Defendant and ERC shall use their best efforts to support entry of this
5 Consent Judgment in the form submitted to the California Attorney General. If the Attorney
6 General or the Court objects in writing to any term in this Consent Judgment, the Parties shall
7 use their best efforts to resolve the concern in a timely manner, prior to the hearing on the motion
8 to approve this Consent Judgment. If the Attorney General elects to file papers with the Court
9 stating that the People shall appear at the hearing for entry of this Consent Judgment so as to
10 oppose entry of the Consent Judgment, then a Party may withdraw from this Consent Judgment
11 prior to the date of the hearing, with notice to all Parties and the Attorney General, and upon
12 such notice this Consent Judgment shall be null and void and any payments made pursuant to
13 this Consent Judgment shall be promptly returned to Defendant.

15 11. **Severability.** In the event that any of the provisions of this Consent Judgment
16 are held by a court to be unenforceable, the validity of the enforceable provisions shall not be
17 adversely affected.

18 12. **Enforcement.** In the event that a dispute arises with respect to any of the
19 provisions of this Consent Judgment, this Consent Judgment may be enforced pursuant to Code
20 of Civil Procedure § 664.6 or any other valid provision of law. The prevailing party in any such
21 dispute shall be awarded all reasonable fees and costs incurred.

23 13. **Governing Law.** The terms of this Consent Judgment shall be governed by the
24 laws of the State of California.

25 14. **Notices.** All correspondence and notices required to be provided under this
26 Consent Judgment shall be in writing and shall be sent by first class registered or certified mail
27 addressed as follows. All correspondence to ERC shall be mailed to:
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Richard Drury
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, CA 94607
Ph: (510) 836-4200
Fax: (510) 836-4205
Email: Richard@lozeaudrury.com

All correspondence to Defendant shall be mailed to:

Joshua A. Bloom
Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
San Francisco, CA 94104-1435
Ph: (415) 228-5406
Fax: (415) 228-5450
Email: jab@bcltlaw.com

15. **Integration & Modification.** This Consent Judgment, together with the Exhibits hereto which are specifically incorporated herein by this reference, constitutes the entire agreement between the Parties relating to the rights and obligations herein granted and assumed, and supersedes all prior agreements and understandings between the Parties. This Consent Judgment may be modified only upon the written agreement of the Parties.

16. **Counterparts.** This Consent Judgment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. Execution and delivery of this Agreement by facsimile transmission or other electronic means shall constitute legal and binding execution and delivery. Photocopies of the executed Agreement shall have the same force and effect as an Agreement bearing original signatures.

17. **Authorization.** The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

1 APPROVED AS TO FORM:

2 DATED: Apr 10, 2013 By: 

Richard Drury, Lozeau Drury LLP
Counsel for ENVIRONMENTAL RESEARCH CENTER

4 DATED: 4/23/13 By: 

Joshua A. Bloom, Barg Cofin Lewis & Trapp, LLP
Counsel for MEDA CONSUMER HEALTHCARE, INC.
and MEDA PHARMACEUTICALS, INC.

6 APPROVED AS TO SUBSTANCE:

8 DATED: 4/23/2013 By: 

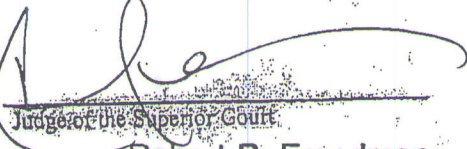
Chris Depina, Executive Director
ENVIRONMENTAL RESEARCH CENTER

10 DATED: 4/23/13 By: 

Mark N. Boste, CEO
MEDA CONSUMER HEALTHCARE, INC. and
MEDA PHARMACEUTICALS, INC.

12 IT IS SO ORDERED

14 Dated: 2/9/2013


Judge of the Superior Court

Robert B. Freedman

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CONSENT JUDGMENT

Environmental Research Center v. Meda Consumer Healthcare, Inc.

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EXHIBIT A

Product List

DrNatura Paranil Jr. Herbal Supplement for Children - Lead

DrNatura Paranil Liver & Colon Purifying Complex - Lead

DrNatura Colonix Intestinal Cleanser - Lead

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EXHIBIT B
Prop. 65 Notice of Violation