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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 ENVIRONMENTAL RESEARCH
13 CENTER, a California non-profit
14 corporation,

15 Plaintiff,

16 v.

17 THORNE RESEARCH, INC., an Idaho
18 corporation

19 Defendant.

CASE NO. RG14717655

**NOTICE OF ENTRY OF
STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 et seq.

Action Filed: March 17, 2014

20 **TO ALL PARTIES TO THIS ACTION:** Please take notice that on January 28, 2015,
21 the Court entered the Stipulated Consent Judgment, a copy of which is attached hereto as
22 Exhibit A.

23 Dated: February 2, 2015

24 LOZEAU | DRURY LLP

25 By: 

Michael R. Lozeau

Richard T. Drury

Attorneys for Environmental Research Center

EXHIBIT A



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READ
complex

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

15 ENVIRONMENTAL RESEARCH
16 CENTER, a California non-profit
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CASE NO. RG14717655

23 ~~STIPULATED~~ CONSENT JUDGMENT;
~~PROPOSED~~ ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: March 17, 2014

Trial Date: None set

23 1. INTRODUCTION

24 1.1 On March 17, 2014, Plaintiff Environmental Research Center ("ERC"), as a
25 private enforcer, and in the public interest, initiated this action by filing a Complaint for
26 Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant to the
27 provisions of California Health and Safety Code section 25249.5 et seq. ("Proposition 65"),
28 against Thorne Research, Inc. ("THORNE"). In this action, ERC alleges that the products

STIPULATED CONSENT JUDGMENT, ~~PROPOSED~~ ORDER

CASE NO. RG14717655

1 manufactured and distributed by THORNE, as more fully described below, contain lead, a
2 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and that such
3 products expose consumers at a level requiring a Proposition 65 warning. These products
4 ("Products") are:

- 5 1. Thorne Research Inc. Thorne Performance Prevail Vegan Protein
6 Chocolate
- 7 2. Thorne Research Inc. Thorne Performance Rebound
- 8 3. JJ Virgin and Associates Inc. The Virgin Diet Chocolate All-In-One
9 Shake
- 10 4. JJ Virgin and Associates Inc. The Virgin Diet Vanilla All-In-One Shake
- 11 5. JJ Virgin and Associates Inc. The Virgin Diet All-In-One Shake Chai
- 12 6. Thorne Research Inc. Bio-PMT
- 13 7. Thorne Research Inc. Pepti-Guard
- 14 8. Thorne Research Inc. Medibulk
- 15 9. Thorne Research Inc. VegaLite Chocolate
- 16 10. Thorne Research Inc. VegaLite Vanilla
- 17 11. Thorne Research Inc. MediClear Plus
- 18 12. Thorne Research Inc. MediClear-SGS Chocolate
- 19 13. Thorne Research Inc. Artecine
- 20 14. Thorne Research Inc. Uristatin
- 21 15. Thorne Research Inc. Fractionated Pectin Powder
- 22 16. Thorne Research Inc. IM-Encap
- 23 17. Thorne Research Inc. MediPro Vegan All-In-One Shake Chocolate
- 24 18. Thorne Research Inc. MediPro Vegan All-In-One Shake Vanilla

25 1.2 The Complaint is based on allegations contained in ERC's Notice of Violations,
26 dated December 13, 2013, that was served on the California Attorney General, other public
27 enforcers, and THORNE ("Notice I"). A true and correct copy of Notice I is attached as
28 Exhibit A and is hereby incorporated by reference. More than sixty (60) days have passed

1 since Notice I was mailed and uploaded onto the California Attorney General's website, and no
2 designated governmental entity has filed a complaint against THORNE with regard to the
3 Products or the allegations contained in Notice I.

4 1.3 On November 7, 2014, ERC issued an additional Proposition 65 60-Day Notice
5 of Violations ("Notice II") to THORNE that was served on the California Attorney General,
6 other public enforcers, and THORNE regarding the lead and/or cadmium in the following
7 additional products ("Additional Products"):

- 8 19. Extra Nutrients – Lead
- 9 20. Basic Nutrients V – Lead
- 10 21. MediClear – Lead
- 11 22. MediBolic – Lead
- 12 23. Basic Nutrients IV – Lead
- 13 24. Basic Detox Nutrients – Lead
- 14 25. Cal-MagCitrates (Effervescent Powder) – Lead
- 15 26. Phytogen – Lead
- 16 27. Meta-Fem – Lead
- 17 28. Nutri-Fem (240's) – Lead
- 18 29. MediPro Vegan Chai – Lead
- 19 30. Vegalite Chocolate – Cadmium
- 20 31. Mediclear SGS – Cadmium

21 A true and correct copy of Notice II is attached as Exhibit B and is hereby incorporated by
22 reference.

23 1.4 All twenty-nine (29) products listed in Sections 1.1 and 1.3 shall be addressed by
24 this Consent Judgment and shall hereinafter be referred to individually as "Covered Product" or
25 collectively as "Covered Products." Notice I and Notice II shall hereinafter collectively be
26 referred to as "the Notices."

27 1.5 The Parties hereby agree and stipulate that, upon Court approval, Plaintiff be given
28 leave to amend the Complaint, attached hereto as Exhibit "C", to include the Additional Products

1 and allegations listed in Notice II and that the Complaint be deemed filed and served on THORNE
2 on the date of the Superior Court Judge's signature on the accompanying Order.

3 1.6 ERC is a California non-profit corporation dedicated to, among other causes,
4 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
5 and toxic chemicals, facilitating a safe environment for consumers and employees, and
6 encouraging corporate responsibility.

7 1.7 THORNE is a business entity that employs ten or more persons. THORNE
8 manufactures and distributes the Covered Products.

9 1.8 ERC and THORNE shall hereinafter be referred to collectively as "the Parties".

10 1.9 The Notices and the Complaint allege that use of the Covered Products exposes
11 persons in California to lead or cadmium without first providing clear and reasonable warnings
12 in violation of California Health and Safety Code section 25249.6. THORNE denies all
13 material allegations contained in the Notices and the Complaint.

14 1.10 The Parties have entered into this Consent Judgment in order to settle,
15 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
16 Nothing in this Consent Judgment shall constitute or be construed as an admission by the
17 Parties, or by their respective officers, directors, shareholders, employees, agents, parent
18 companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
19 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
20 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
21 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
22 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
23 purpose.

24 1.11 Except as expressly set forth herein, nothing in this Consent Judgment shall
25 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
26 other or future legal proceeding unrelated to these proceedings.

27 1.12 The Effective Date of this Consent Judgment is the date on which it is entered as
28 a Judgment by this Court.

1 **2. JURISDICTION AND VENUE**

2 For purposes of this Consent Judgment and for any further court action that may become
3 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
4 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
5 over THORNE as to the acts alleged in the Complaint, that venue is proper in Alameda County,
6 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
7 all claims up through and including the Effective Date which were or could have been asserted in
8 this action based on the facts alleged in the Notices and the Complaint.

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

10 **3.1** Beginning on the Effective Date, THORNE shall not manufacture for sale in the
11 State of California, distribute into the State of California, or directly sell in the State of
12 California, any Covered Product that exposes a person to a daily dose of lead more than 0.5
13 micrograms per day or a daily dose of cadmium of more than 4.1 micrograms per day when the
14 maximum daily recommended serving(s) is(are) taken as directed on the Covered Product's
15 label, unless it meets the warning requirements under Section 3.2, below. A warning shall not
16 be required if THORNE elects to reformulate a Covered Product resulting in a Reformulated
17 Covered Product as defined in Section 3.3, below.

18 As used in this Consent Judgment, the terms "distribute into the State of California" and
19 "distributed into California" shall mean to directly ship a Covered Product into California for
20 sale in California or to sell a Covered Product to a distributor that THORNE knows will sell the
21 Covered Product in California.

22 **3.2 Clear and Reasonable Warnings**

23 If THORNE elects to provide a warning for Covered Products pursuant to Section 3.1,
24 above, the following warning (hereinafter referred to as "the warning") must be utilized:

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

27 THORNE shall use the phrase "cancer and" in the warning only if the maximum daily
28 recommended serving on the label contains more than fifteen (15) micrograms of lead as

1 determined pursuant to the quality control methodology set forth in Section 3.4. The phrase "a
2 chemical" shall be utilized for Covered Products that THORNE has knowledge contain one
3 Proposition 65 chemical above the Safe Harbor Level (as identified by the Office of Health
4 Hazard Assessment's ("OEHHA")'s publication titled Proposition 65 No Significant Risk Levels
5 (NSRLs) for Carcinogens and Maximum Allowable Dose Level for Chemicals Causing
6 Reproductive Toxicity"), while the word "chemicals" shall be utilized for Covered Products that
7 THORNE has knowledge contain more than one Proposition 65 chemical above the Safe Harbor
8 Level.

9 THORNE shall provide, or shall cause to be provided, the warning on the label of the
10 Covered Products distributed into California. The warning shall be at least the same size as the
11 largest of any other health or safety warnings correspondingly appearing on the label and the word
12 "WARNING" shall be in all capital letters and in bold print. No other statements about
13 Proposition 65 or lead or cadmium may accompany the warning.

14 THORNE must display the warning with such conspicuousness, as compared with other
15 words, statements, or design of the label or container, as applicable, to render the warning likely to
16 be read and understood by an ordinary individual under customary conditions of purchase or use
17 of the Covered Product.

18 For each of the Covered Products, THORNE is required to discontinue, reformulate, or
19 reduce the maximum daily recommended serving(s) of the Covered Product resulting in a
20 Reformulated Covered Product as defined in Section 3.3, below, or display the warning on the
21 Covered Product's label.

22 THORNE represents that the following six (6) Covered Products have been
23 discontinued and shall at all times hereafter remain discontinued:

- 24 a. JJ Virgin and Associates Inc. The Virgin Diet Chocolate All-In-One
- 25 Shake
- 26 b. JJ Virgin and Associates Inc. The Virgin Diet Vanilla All-In-One Shake
- 27 c. JJ Virgin and Associates Inc. The Virgin Diet All-In-One Shake Chai
- 28

1 d. Thorne Research Inc. Thorne Performance Prevail Vegan Protein
2 Chocolate

3 e. Thorne Research Inc. Thorne Performance Rebound

4 f. Thorne Research Inc. IM-Encap

5 THORNE represents that the following eight (8) Covered Products will include the
6 warning if THORNE is unable to reformulate a Covered Product to reach the 0.5 micrograms
7 per day threshold for lead and/or the 4.1 micrograms threshold per day for cadmium as
8 calculated pursuant to Sections 3.3 and 3.4, below.

9 a. Thorne Research Inc. MediClear SGS (for lead and cadmium)

10 b. Thorne Research Inc VegaLite Chocolate (for lead and cadmium)

11 c. Thorne Research Inc VegaLite Vanilla (for lead)

12 d. Thorne Research Inc. MediClear Plus (for lead)

13 e. Thorne Research Inc. MediBulk (for lead)

14 f. Thorne Research Inc. Fractionated Pectin Powder (for lead)

15 g. MediClear (for lead)

16 h. MediBolic (for lead)

17 THORNE represents that the following fifteen (15) Covered Products will meet the 0.5
18 micrograms per day threshold for lead after reducing the maximum daily recommended
19 serving(s) and/or taking into account the naturally occurring allowances as calculated pursuant
20 to Sections 3.3 and 3.4, below.

21 a. Thorne Research Inc. Uristatin

22 b. Thorne Research Inc. Artecina

23 c. Thorne Research Inc. Bio-PMT

24 d. Thorne Research Inc. Pepti-Guard

25 e. Thorne Research Inc. MediPro Vegan All-In-One Shake Vanilla

26 f. Thorne Research Inc. MediPro Vegan All-In-One Shake Chocolate

27 g. MediPro Vegan Chai

28 h. Basic Nutrients V

- i. Basic Nutrients IV
- j. Basic Detox Nutrients
- k. Cal-MagCitate (Effervescent Powder)
- l. Phytogen
- m. Meta-Fem
- n. Nutri-Fem (240's)
- o. Extra Nutrients

3.3 Reformulated Covered Products; Calculation of Lead Levels

A Reformulated Covered Product is one for which the maximum recommended daily serving on the label contains no more than 0.5 micrograms of lead per day and no more than 4.1 micrograms of cadmium per day as determined by the testing and quality control methodology described in Section 3.4, below. As used in this Consent Judgment, "no more than 0.5 micrograms of lead per day and no more than 4.1 micrograms of cadmium per day" means that the samples of the testing performed by THORNE under Section 3.4 yield a daily exposure of no more than 0.5 micrograms of lead and no more than 4.1 micrograms of cadmium (with daily exposure calculated pursuant to Section 3.4 of this Consent Judgment). For a Covered Product that causes exposure in excess of 0.5 micrograms of lead per day and in excess of 4.1 micrograms of cadmium even after reformulation, THORNE shall provide the warning set forth in Section 3.2. For purposes of determining which warning, if any, is required pursuant to Section 3.2, the second highest lead and/or cadmium detection result of the five (5) randomly selected samples of the Covered Product will be controlling.

3.4 Testing and Quality Control Methodology

3.4.1 For purposes of this Consent Judgment, a Covered Product's daily lead exposure level shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in the suggested use appearing on the product label), which equals micrograms of lead exposure per day, excluding

1 the amounts that, for purposes of this Consent Judgment only, are deemed to have naturally
2 occurring lead in the ingredients listed in the table below in the amounts contained in the table.

3 For purposes of this Consent Judgment, a Covered Product's daily cadmium
4 exposure level shall be measured in micrograms, and shall be calculated using the following
5 formula: micrograms of cadmium per gram of product, multiplied by grams of product per
6 serving of the product (using the largest serving size appearing on the product label), multiplied
7 by servings of the product per day (using the largest number of servings in the suggested use
8 appearing on the product label), which equals micrograms of cadmium exposure per day.

9 If at any time after the Effective Date, ERC tests a Covered Product and the test
10 results indicate that the daily exposure level is greater than 0.5 micrograms per gram for lead,
11 then THORNE agrees to confidentially supply ERC with a list of ingredients of that particular
12 Covered Product so that ERC may be able to calculate the daily exposure of lead based on the
13 allowances contained in the table below. If at any time THORNE refuses to provide said list of
14 ingredients to ERC following a test result of greater than 0.5 micrograms per gram for lead,
15 then THORNE shall not receive the allowances for that particular Covered Product.

16	INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
17	Elemental Calcium	0.8 micrograms/gram
18	Ferrous Fumarate	0.4 micrograms/gram
19	Zinc Oxide	8.0 micrograms/gram
20	Magnesium Oxide	0.4 micrograms/gram
21	Magnesium Carbonate	0.332 micrograms/gram
22	Magnesium Hydroxide	0.4 micrograms/gram
23	Zinc Gluconate	0.8 micrograms/gram
24	Potassium Chloride	1.1 micrograms/gram
25	Cocoa-powder	1.0 micrograms/gram
26	Chocolate liquor	1.0 micrograms/gram
27	Cocoa butter	0.1 micrograms/gram
28		

1 3.4.2 All testing pursuant to this Consent Judgment shall be performed using a
2 laboratory method that complies with the performance and quality control factors appropriate
3 for the method used, including limit of detection, qualification, accuracy, and precision that
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)
5 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
6 method subsequently agreed on in writing by the Parties.

7 3.4.3 All testing pursuant to this Consent Judgment shall be performed by an
8 independent third-party laboratory certified by the California Environmental Laboratory
9 Accreditation Program, an independent third-party laboratory that is registered with the United
10 States Food & Drug Administration, or by THORNE'S in-house laboratory that meets the
11 qualifications required by Section 3.4.2. Nothing in this Consent Judgment shall limit
12 THORNE's ability to conduct, or require that others conduct, additional testing of the Covered
13 Products, including the raw materials used in their manufacture.

14 3.4.4 THORNE shall perform lead testing and cadmium testing if applicable,
15 for at least five (5) consecutive years and at least once per year, on five (5) randomly selected
16 samples of each Covered Product in the form intended for sale to the end user to be distributed
17 into California. THORNE shall continue testing the raw materials in the Covered Products so
18 long as the Covered Products are distributed into California. If the lead and/or cadmium testing
19 of a Covered Product in the form intended for sale to the end user to be distributed into
20 California conducted pursuant to this Section 3.4.4 demonstrates that no warning is required for
21 a Covered Product during each of five consecutive years, then the testing requirements of this
22 Section 3.4.4 will no longer be required as to that Covered Product. If THORNE changes
23 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered
24 Products, then THORNE shall test that Covered Product in the form intended for sale to the end
25 user to be distributed into California at least once after such change is made and send those test
26 results to ERC within ten (10) working days of receiving the test results. The testing
27 requirements discussed in this Section 3.4.4 are not applicable to any Covered Product for
28 which THORNE has provided the warning as specified in Section 3.2.

1 3.4.5 Beginning on the Effective Date and continuing for a period of five (5)
2 years thereafter, THORNE shall send copies of all laboratory reports with results of testing for
3 lead and cadmium content under Section 3.4.4 for Covered Products in the form intended for
4 sale to the end user to be distributed into California directly to ERC within ten (10) working
5 days after reporting of that testing. These laboratory reports shall be deemed and treated by
6 ERC as confidential information under the terms of the confidentiality agreement entered into
7 by the Parties. THORNE shall retain all such laboratory reports for a period of five (5) years
8 from the date of each test.

9 4. SETTLEMENT PAYMENT

10 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil
11 penalties, attorney's fees, and costs, THORNE shall make a total payment of \$250,000.00 (the
12 "Total Settlement Amount") to ERC according to the following schedule:

- 13 a. \$85,000 within 5 days of the Effective Date.
14 b. \$45,000 within 35 days of the Effective Date.
15 c. \$45,000 within 60 days of the Effective Date.
16 d. \$45,000 within 90 days of the Effective Date.
17 e. \$30,000 within 120 days of the Effective Date.

18 THORNE shall make these payments by wire transfer to ERC's escrow account, for which
19 ERC will give THORNE the necessary account information. Said payments shall be for the
20 following:

21 4.2 As a portion of the Total Settlement Amount, \$93,420.00 shall be considered a
22 civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit
23 75% (70,065.00) of the civil penalty to the OEHHA for deposit in the Safe Drinking Water and
24 Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c).
25 ERC will retain the remaining 25% (23,355.00) of the civil penalty.

26 4.3 As a portion of the Total Settlement Amount, \$9,036.89 shall be distributed to
27 ERC as reimbursement for reasonable costs incurred bringing this action; and \$70,471.75 shall
28 be distributed to ERC in lieu of further civil penalties, for the day-to-day business activities

1 such as (1) continued enforcement of Proposition 65, which includes work, analyzing,
2 researching, and testing consumer products that may contain Proposition 65 chemicals,
3 focusing on the same or similar types of ingestible products that are the subject matter of the
4 current action; (2) the continued monitoring of past consent judgments and settlements to
5 ensure companies are in compliance with Proposition 65; and (3) giving a donation of
6 \$3,523.00 to As You Sow to address reducing toxic chemical exposures in California.

7 4.4 As a portion of the Total Settlement Amount, \$45,462.46 shall be distributed to
8 Lozeau | Drury LLP as reimbursement of ERC's attorney's fees and \$31,608.90 shall be
9 distributed to ERC as reimbursement for its in-house legal fees.

10 5. MODIFICATION OF CONSENT JUDGMENT

11 5.1 This Consent Judgment may be modified only (i) by written stipulation of the
12 Parties or pursuant to Section 5.4, below, and (ii) upon entry by the Court of a modified
13 Consent Judgment.

14 5.2 If THORNE seeks to modify this Consent Judgment under Section 5.1, then
15 THORNE must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
16 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
17 provide written notice to THORNE within thirty (30) days of receiving the Notice of Intent. If
18 ERC notifies THORNE in a timely manner of ERC's intent to meet and confer, then the Parties
19 shall meet and confer in good faith as required in this Section 5. The Parties shall meet in
20 person or via telephone within thirty (30) days of ERC's notification of its intent to meet and
21 confer. Within thirty (30) days of such meeting, if ERC disputes the proposed modification,
22 ERC shall provide to THORNE a written basis for its position. The Parties shall continue to
23 meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.
24 Should it become necessary, the Parties may agree in writing to different deadlines for the
25 meet-and-confer period.

26 5.3 In the event that THORNE initiates or otherwise requests a modification under
27 Section 5.1, and the meet and confer process leads to a joint motion or application of the
28 Consent Judgment, then THORNE shall reimburse ERC its costs and reasonable attorney's fees

1 for the time spent in the meet-and-confer process and filing and arguing the motion or
2 application.

3 5.4 In the event that the meet-and-confer process does not lead to a joint motion or
4 application in support of a modification of the Consent Judgment, then either Party may seek
5 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and
6 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
7 means a party who is successful in obtaining relief more favorable to it than the relief that the
8 other party was amenable to providing during the Parties' good faith attempt to resolve the
9 dispute that is the subject of the modification.

10 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
11 **JUDGMENT**

12 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
13 this Consent Judgment.

14 6.2 Only after it complies with Section 15 below may a Party, by motion or
15 application for an order to show cause filed with this Court, enforce the terms and conditions
16 contained in this Consent Judgment.

17 6.3 If ERC alleges that a Covered Product fails to qualify as a Reformulated
18 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
19 inform THORNE in a reasonably prompt manner of its test results, including information
20 sufficient to permit THORNE to identify the Covered Product at issue. THORNE shall, within
21 thirty (30) days following such notice, provide ERC with testing information, from an
22 independent third-party laboratory meeting the requirements of Sections 3.4.2 and 3.4.3,
23 demonstrating Defendant's compliance with the Consent Judgment, if warranted. The Parties
24 shall first attempt to resolve the matter prior to ERC taking any further legal action.

25 **7. APPLICATION OF CONSENT JUDGMENT**

26 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their
27 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
28 divisions, affiliates, franchisees, licensees, customers (excluding private labelers except for JJ

Virgin), distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application to Covered Products that are distributed or sold exclusively outside the State of California and that are not used by California consumers.

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself and in the public interest, and THORNE, of any alleged violation of Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to lead and/or cadmium from the handling, use, or consumption of the Covered Products as set forth in the Notices and Complaint and fully resolves all claims that have been or could have been asserted in this action up to and including the Effective Date for failure to provide Proposition 65 warnings for lead and/or cadmium in the Covered Products as set forth in the Notices and Complaint. ERC, on behalf of itself and in the public interest, hereby discharges THORNE and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label customers of THORNE, except JJ Virgin) distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Product, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties"), from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted, as to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding lead or cadmium as set forth in the Notices and Complaint.

8.2 The Parties further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notices or the Complaint up through and including the Effective Date, provided, however, that nothing in this Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

8.3 It is possible that other claims not known to the Parties arising out of the facts

1 alleged in the Notices or the Complaint and relating to the Covered Products will develop or be
2 discovered. The Parties acknowledge that this Consent Judgment is expressly intended to cover
3 and include all such claims up through the Effective Date, including all rights of action
4 therefore. The Parties acknowledge that the claims released in Sections 8.1 and 8.2, above,
5 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
6 any such unknown claims. California Civil Code section 1542 reads as follows:

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

11 The Parties acknowledge and understand the significance and consequences of this specific
12 waiver of California Civil Code Section 1542.

13 8.4 Compliance with the terms of this Consent Judgment shall be deemed to
14 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures
15 to lead and/or cadmium in the Covered Products as set forth in the Notices and the Complaint.

16 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or
17 environmental exposures arising under Proposition 65, nor shall it apply to any of THORNE's
18 products other than the Covered Products.

19 9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

22 10. GOVERNING LAW

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

25 11. PROVISION OF NOTICE

26 All notices required to be given to either Party to this Consent Judgment by the other shall
27 be in writing and sent to the following agents listed below by: (a) first-class, registered, or
28 certified mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also

1 be sent.

2 **FOR ENVIRONMENTAL RESEARCH CENTER:**

3 Chris Heptinstall, Executive Director
4 Environmental Research Center
5 3111 Camino Del Rio North, Suite 400
6 San Diego, CA 92108
7 Ph: 619-500-3090
8 Fx: 706-858-0326
9 email: chris_erc501c3@yahoo.com

10 With a copy to:

11 Michael R. Lozeau (CBN 142893)
12 Richard T. Drury (CBN 163559)
13 LOZEAU | DRURY LLP
14 410 12th Street, Suite 250
15 Oakland, CA 94607
16 Ph: 510-836-4200
17 Fax: 510-836-4205
18 Email: michael@lozeaudrury.com
19 Email: richard@lozeaudrury.com

20 **FOR THORNE RESEARCH, INC.**

21 Kim Randall Pearson
22 General Counsel
23 Thorne Research, Inc.
24 25820 Highway 2 West
25 P.O. Box 25
26 Dover, ID 83825

27 With a copy to:

28 Jeffrey D. Polsky (SBN 120975)
FOX ROTHSCHILD LLP
345 California Street, Suite 2200
San Francisco, California 94104
Telephone: 415-364-5540
Facsimile: 415-391-4436
jpolsky@foxrothschild.com

12. COURT APPROVAL

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

1 12.2 Following court approval of this Consent Judgment, ERC shall comply with
2 California Health and Safety Code section 25249.7(f) and with Title II of the California Code
3 of Regulations, Section 3003.

4 **13. EXECUTION AND COUNTERPARTS**

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

8 **14. DRAFTING**

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

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

15 If a dispute arises with respect to either Party's compliance with the terms and provisions
16 of this Consent Judgment entered by the Court, the Parties shall meet in person or by telephone
17 and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in
18 the absence of such a good faith attempt to resolve the dispute beforehand. In the event an action
19 or motion is filed, however, the prevailing party may seek to recover costs and reasonable
20 attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who
21 is successful in obtaining relief more favorable to it than the relief that the other party was
22 amenable to providing during the Parties' good faith attempt to resolve the dispute that is the
23 subject of such enforcement action.

24 **16. ENTIRE AGREEMENT, AUTHORIZATION**

25 16.1 This Consent Judgment contains the sole and entire agreement and
26 understanding of the Parties with respect to the entire subject matter herein, and any and all
27 prior discussions, negotiations, commitments, and understandings related hereto. No
28 representations, oral or otherwise, express or implied, other than those contained herein have

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
2 herein, shall be deemed to exist or to bind any Party.

3 16.2 Each signatory to this Consent Judgment certifies that he is fully authorized by
4 the Party he represents to stipulate to this Consent Judgment. Except as explicitly provided
5 herein, each Party shall bear its own fees and costs.

6 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
7 **CONSENT JUDGMENT**

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

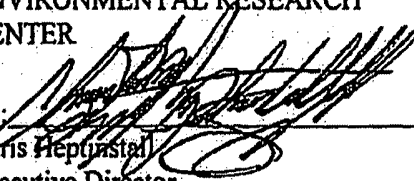
11 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
12 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
13 been diligently prosecuted, and that the public interest is served by such settlement; and

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

16
17 **IT IS SO STIPULATED:**

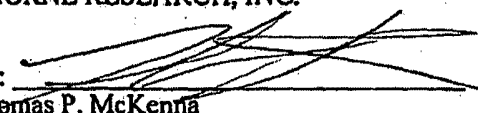
18
19 Dated: 1/16/, 2015

ENVIRONMENTAL RESEARCH
CENTER

20 By: 
21 Chris Hepinstall
Executive Director

22
23 Dated: 1/21, 2015

THORNE RESEARCH, INC.

24 By: 
25 Thomas P. McKenna
Chief Operating Officer

1 APPROVED AS TO FORM:

2 Dated: Jan 21, 2015

LOZEAU | DRURY LLP

3 By: Michael R. Lozeau
4 Michael R. Lozeau
5 Richard T. Drury
6 Attorneys for Environmental Research
7 Center

8 Dated: January 26, 2015

FOX ROTHSCHILD LLP

9 By: Jeffrey D. Polsky
10 Jeffrey D. Polsky
11 Attorneys for Thorne Research, Inc.

12 JUDGMENT

13 Based on the Parties' Stipulation, and good cause appearing, the Complaint is deemed
14 amended to include the Additional Products and allegations in Notice II, Plaintiff's First Amended
15 Complaint, attached hereto as Exhibit "C", is deemed filed and served on Defendant THORNE as
16 of the date of signature below, this Consent Judgment is approved, and Judgment is hereby entered
17 according to its terms.

18 Dated: Jan. 28, 2015

19 [Signature]
20 Judge of the Superior Court

A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
richard@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
Thorne Research, Inc.
25820 Highway 2 West
Sandpoint, ID 83864

Current CEO or President
Thorne Research, Inc.
PO Box 25
Dover, ID 83825

Kim Randall Pearson
(Thorne Research, Inc.'s
Registered Agent for Service of Process)
25820 Highway 2 West
Sandpoint, ID 83864

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

The name of the Company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

Thorne Research, Inc.

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Thorne Research Inc Thorne Performance Prevail Vegan Protein Chocolate - Lead**
2. **Thorne Research Inc Uristatin - Lead**
3. **JJ Virgin and Associates Inc The Virgin Diet All-In-One Shake Chai - Lead**
4. **Thorne Research Inc Artecina - Lead**
5. **Thorne Research Inc. IM-Encap - Lead**
6. **Thorne Research Inc. Bio-PMT - Lead**
7. **Thorne Research Inc. Pepti-Guard - Lead**
8. **Thorne Research Inc. Medibulk - Lead**
9. **Thorne Research Inc. VegaLite Chocolate - Lead**
10. **Thorne Research Inc. VegaLite Vanilla - Lead**
11. **Thorne Research Inc. MediClear Plus - Lead**
12. **Thorne Research Inc. MediClear-SGS Chocolate - Lead**
13. **JJ Virgin and Associates Inc. The Virgin Diet Vanilla All-In-One Shake - Lead**
14. **Thorne Research Inc. Thorne Performance Rebound - Lead**
15. **Thorne Research Inc. Fractionated Pectin Powder - Lead**
16. **JJ Virgin and Associates Inc. The Virgin Diet Chocolate All-In-One Shake - Lead**
17. **Thorne Research Inc. MediPro Vegan All-In-One Shake Vanilla - Lead**
18. **Thorne Research Inc. MediPro Vegan All-In-One Shake Chocolate - 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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

December 13, 2013

Page 3

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since December 13, 2010, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Cathy D. Lee

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Thorne Research, Inc. and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

**Re: Environmental Research Center's Notice of Proposition 65 Violations by
Thorne Research, Inc.**

I, Cathy D. Lee, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged 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: December 13, 2013



Cathy D. Lee

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 December 13, 2013, I served the following documents: **NOTICE OF VIOLATIONS 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 in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Thorne Research, Inc.
25820 Highway 2 West
Sandpoint, ID 83864

Kim Randall Pearson
(Thorne Research, Inc.'s
Registered Agent for Service of Process)
25820 Highway 2 West
Sandpoint, ID 83864


Current CEO or President
Thorne Research, Inc.
PO Box 25
Dover, ID 83825

On December 13, 2013, I electronically served the following documents: **NOTICE OF VIOLATION, 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)** on the following party by uploading a true and correct copy thereof 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 December 13, 2013, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on December 13, 2013, in Fort Oglethorpe, Georgia.


Tiffany Capehart

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

December 13, 2013

Page 6

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 1800 Los Angeles, CA 90012	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, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	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, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd 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, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3 rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	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, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 319 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

EXHIBIT B



WASH

30% POST CONSUMER
RECYCLED PAPER

B



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
michael@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
Thorne Research, Inc.
25820 Highway 2 West
Sandpoint, ID 83864

Current CEO or President
Thorne Research, Inc.
PO Box 25
Dover, ID 83825

Kim Randall Pearson
(Thorne Research, Inc.'s
Registered Agent for Service of Process)
25820 Highway 2 West
Sandpoint, ID 83864

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent the Environmental Research Center, Inc. ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

The name of the Company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

Thorne Research, Inc.

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- **Extra Nutrients - Lead**
- **Basic Nutrients V - Lead**
- **Mediclear - Lead**
- **Medibolic - Lead**
- **Basic Nutrients IV - Lead**
- **Basic Detox Nutrients - Lead**
- **Cal-MagCitrates (Effervescent Powder)- Lead**
- **Phytogen - Lead**
- **Meta-Fem - Lead**
- **Nutri-Fem (240's) - Lead**
- **MediPro Vegan Chai - Lead**
- **Vegalite Chocolate - Cadmium**
- **Mediclear SGS - Cadmium**

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. Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while Cadmium and Cadmium Compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and cadmium. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to these chemicals. The method of warning should be a warning that appears on the product's label. The Violator violated

November 7, 2014

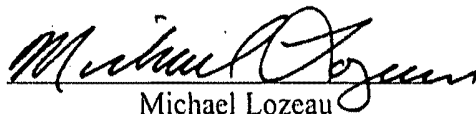
Page 3

Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead and cadmium. Each of these ongoing violations has occurred on every day since November 7, 2011, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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 products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Michael Lozeau

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Thorne Research, Inc. and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

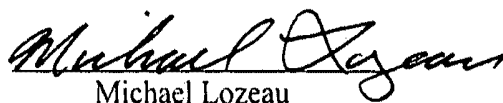
CERTIFICATE OF MERIT

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations
by Thorne Research, Inc.**

I, Michael Lozeau, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged 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 chemicals that are 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: November 7, 2014


Michael Lozeau

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 November 7, 2014, I served the following documents: **NOTICE OF VIOLATIONS 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 in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Thorne Research, Inc.
25820 Highway 2 West
Sandpoint, ID 83864

Kim Randall Pearson
(Thorne Research, Inc.'s Registered Agent
for Service of Process)
25820 Highway 2 West
Sandpoint, ID 83864

Current CEO or President
Thorne Research, Inc.
PO Box 25
Dover, ID 83825

On November 7, 2014, I electronically served 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)** on the following party by uploading a true and correct copy thereof 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 November 7, 2014, I served the following documents: **NOTICE OF VIOLATIONS, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on November 7, 2014, in Fort Oglethorpe, Georgia.


Tiffany Capehart

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

November 7, 2014

Page 6

Service List

District Attorney, Alameda County
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ENVIRONMENTAL RESEARCH CENTER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 ENVIRONMENTAL RESEARCH CENTER,
11 a non-profit California corporation,

12 Plaintiff,

13 v.

14 THORNE RESEARCH, INC., an Idaho
15 corporation

16 Defendant.

Case No. RG14717655

**FIRST AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

Health & Safety Code §25249.5, *et seq.*

17
18 Plaintiff Environmental Research Center ("PLAINTIFF" OR "ERC") brings this action
19 in the interests of the general public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy the continuing failure of Defendant Thorne
22 Research, Inc. ("DEFENDANT" or "THORNE RESEARCH") to warn consumers in
23 California that they are being exposed to lead and cadmium (hereinafter, the "LISTED
24 CHEMICALS"), substances known to the State of California to cause cancer, birth defects, and
25 other reproductive harm. DEFENDANT manufactures, packages, distributes, markets, and/or
26 sells in California certain products containing the LISTED CHEMICALS, including each of

1 the following products (collectively the "PRODUCTS"):

- 2 • Thorne Research Inc. Thorne Performance Prevail Vegan Protein Chocolate-Lead
- 3 • Thorne Research Inc. Uristatin-Lead
- 4 • JJ Virgin and Associates Inc. The Virgin Diet All-In-One Shake Chai-Lead
- 5 • Thorne Research Inc. Artecina-Lead
- 6 • Thorne Research Inc. IM-Encap-Lead
- 7 • Thorne Research Inc. Bio-PMT-Lead
- 8 • Thorne Research Inc. Pepti-Guard-Lead
- 9 • Thorne Research Inc. Medibulk-Lead
- 10 • Thorne Research Inc. VegaLite Chocolate-Lead
- 11 • Thorne Research Inc. VegaLite Vanilla-Lead
- 12 • Thorne Research Inc. MediClear Plus-Lead
- 13 • Thorne Research Inc. MediClear-SGS Chocolate-Lead
- 14 • JJ Virgin and Associates Inc. The Virgin Diet Vanilla All-In-One Shake-Lead
- 15 • Thorne Research Inc. Thorne Performance Rebound-Lead
- 16 • Thorne Research Inc. Fractionated Pectin Powder-Lead
- 17 • JJ Virgin and Associates Inc. The Virgin Diet Chocolate All-In-One Shake-Lead
- 18 • Thorne Research Inc. MediPro Vegan All-In-One Shake Vanilla-Lead
- 19 • Thorne Research Inc. MediPro Vegan All-In-One Shake Chocolate-Lead
- 20 • Extra Nutrients-Lead
- 21 • Basic Nutrients V -Lead
- 22 • Mediclear-Lead
- 23 • Medibolic-Lead
- 24 • Basic Nutrients IV-Lead
- 25 • Basic Detox Nutrients-Lead
- 26 • Cal-MagCitrate (Effervescent Powder) -Lead
- Phytogen-Lead
- Meta-Fem-Lead
- Nutri-Fem (240's)
- MediPro Vegan Chai-Lead
- Vegalite Chocolate-Cadmium
- Mediclear SGS-Cadmium

21 2. The LISTED CHEMICALS are substances known to the State¹ of California to
22 cause cancer, birth defects, and other reproductive harm.

23 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED
24 CHEMICALS at levels requiring a "clear and reasonable warning" under California's Safe
25 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code")
26 §25249.5, *et seq.* (also known as "Proposition 65"). DEFENDANT has failed to provide the

¹ All statutory and regulatory references herein are to California law, unless otherwise specified.

1 health hazard warnings required by Proposition 65.

2 4. DEFENDANT's continued manufacturing, packaging, distributing, marketing
3 and/or sales of the PRODUCTS without the required health hazard warnings, causes
4 individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS
5 that violate Proposition 65.

6 5. PLAINTIFF seeks injunctive relief enjoining DEFENDANT from the
7 continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS
8 in California without provision of clear and reasonable warnings regarding the risks of cancer,
9 birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICALS
10 through the use and/or handling of the PRODUCTS. PLAINTIFF seeks an injunctive order
11 compelling DEFENDANT to bring its business practices into compliance with Proposition 65
12 by providing a clear and reasonable warning to each individual who has been and who in the
13 future may be exposed to the LISTED CHEMICALS from the use of the PRODUCTS.

14 PLAINTIFF also seeks an order compelling DEFENDANT to identify and locate each
15 individual person who in the past has purchased the PRODUCTS, and to provide to each such
16 purchaser a clear and reasonable warning that the use of the PRODUCTS will cause exposures
17 to the LISTED CHEMICALS.

18 6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil
19 penalties in excess of \$15 million to remedy DEFENDANT's failure to provide clear and
20 reasonable warnings regarding exposures to the LISTED CHEMICALS.

21 JURISDICTION AND VENUE

22 7. This Court has jurisdiction over this action pursuant to California Constitution
23 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes
24 except those given by statute to other trial courts." The statute under which this action is
25 brought does not specify any other basis for jurisdiction.

26 8. This Court has jurisdiction over DEFENDANT because, based on information

1 and belief, DEFENDANT is a business having sufficient minimum contacts with California, or
2 otherwise intentionally availing itself of the California market through the distribution and sale
3 of the PRODUCTS in the State of California to render the exercise of jurisdiction over it by the
4 California courts consistent with traditional notions of fair play and substantial justice.

5 9. Venue in this action is proper in the Alameda Superior Court because the
6 DEFENDANT has violated California law in the County of Alameda.

7 10. On December 13, 2013 and November 7, 2014, PLAINTIFF sent 60-Day
8 Notices of Proposition 65 violations ("Notices") to the requisite public enforcement agencies,
9 and to DEFENDANT. The Notices were issued pursuant to, and in compliance with, the
10 requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding
11 the notice of the violations to be given to certain public enforcement agencies and to the
12 violator. The Notices included, *inter alia*, the following information: the name, address, and
13 telephone number of the noticing individual; the name of the alleged violator; the statute
14 violated; the approximate time period during which violations occurred; and descriptions of the
15 violations, including the chemicals involved, the routes of toxic exposure, and the specific
16 product or type of product causing the violations, and was issued as follows:

- 17 a. DEFENDANT was provided a copy of the Notices by Certified Mail.
- 18 b. DEFENDANT was provided a copy with each Notice of a document entitled
19 "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition
20 65): A Summary," which is also known as Appendix A to Title 27 of CCR
21 §25903.
- 22 c. The California Attorney General was provided a copy of the Notices via
23 online submission.
- 24 d. The California Attorney General was provided with a Certificate of Merit
25 with each Notice by the attorney for the noticing party, stating that there is a
26 reasonable and meritorious case for this action, and attaching factual
information sufficient to establish a basis for the certificate, including the
identity of the persons consulted with and relied on by the certifier, and the

1 facts, studies, or other data reviewed by those persons, pursuant to H&S
2 Code §25249.7(h) (2).

3 11. At least 60-days have elapsed since PLAINTIFF sent the Notices to
4 DEFENDANT. The appropriate public enforcement agencies have failed to commence and
5 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against
6 DEFENDANT based on the allegations herein.

7 **PARTIES**

8 12. PLAINTIFF is a non-profit corporation organized under California's
9 Corporation Law. ERC is dedicated to, among other causes, reducing the use and misuse of
10 hazardous and toxic substances, consumer protection, worker safety, and corporate
11 responsibility.

12 13. ERC is a person within the meaning of H&S Code §25118 and brings this
13 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

14 14. DEFENDANT is a corporation organized under the State of Idaho's
15 Corporation Law and is a person doing business within the meaning of H&S Code §25249.11.

16 15. DEFENDANT manufactures, packages, distributes, markets and/or sells the
17 PRODUCTS for sale or use in California and in Alameda County.

18 **STATUTORY BACKGROUND**

19 16. The People of the State of California have declared in Proposition 65 their right
20 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
21 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

22 17. To effect this goal, Proposition 65 requires that individuals be provided with a
23 "clear and reasonable warning" before being exposed to substances listed by the State of
24 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent
25 part:

26 No person in the course of doing business shall knowingly and intentionally
expose any individual to a chemical known to the state to cause cancer or
reproductive toxicity without first giving clear and reasonable warning to such
individual....

1 18. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release
2 of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No
3 knowledge that the discharge, release or exposure is unlawful is required.” 27 California Code
4 of Regulations (“CCR”) §25102(n).

5 19. Proposition 65 provides that any person “violating or threatening to violate” the
6 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The
7 phrase “threatening to violate” is defined to mean creating “a condition in which there is a
8 substantial likelihood that a violation will occur.” (H&S Code §25249.11(e)). Violators are
9 liable for civil penalties of up to \$2,500 per day for each violation of the Act. (H&S Code
10 §25249.7.)

11 FACTUAL BACKGROUND

12 20. On February 27, 1987, the State of California officially listed lead as a chemical.
13 known to cause reproductive toxicity. Lead became subject to the warning requirement one
14 year later and was therefore subject to the "clear and reasonable" warning requirements of
15 Proposition 65 beginning on February 27, 1988. (27 California Code of Regulations (“CCR”)
16 §25000, *et seq.*; H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum
17 allowable dose level for lead is 0.5 ug/day (micrograms a day) for reproductive toxicity. 27
18 CCR § 25805(b).

19 21. On October 1, 1992, the State of California officially listed lead and lead
20 compounds as chemicals known to cause cancer. Lead and lead compounds became subject to
21 the warning requirement one year later and were therefore subject to the "clear and reasonable"
22 warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR § 25000, *et*
23 *seq.*; H&S Code §25249.6, *et seq.*). Due to the carcinogenicity of lead, the no significant risk
24 level for lead is 15 ug/day (micrograms a day) 27 CCR § 25705(b)(1).

25 22. On May 1, 1997, the State of California officially listed Cadmium and Cadmium
26 Compounds as chemicals known to cause developmental toxicity and male reproductive
toxicity. Cadmium and Cadmium Compounds became subject to the warning requirement one
year later and were therefore subject to the “clear and reasonable” warning requirements of

1 Proposition 65 beginning on May 1, 1998. Due to the high toxicity of Cadmium and Cadmium
2 Compounds, the maximum allowable dose level for these chemicals is 4.1 ug/day (micrograms
3 a day) for reproductive toxicity. 27 CCR § 25805(b).

4 23. To test Defendant's PRODUCTS for lead and cadmium, PLAINTIFF hired a well-
5 respected and accredited testing laboratory that designed the testing protocol used and
6 approved by the California Attorney General years ago for testing heavy metals. The results of
7 testing undertaken by PLAINTIFF of DEFENDANT's PRODUCTS show that the
8 PRODUCTS tested were in violation of the 0.5 ug/day "safe harbor" daily dose limit set forth
9 in Proposition 65's regulations for lead or the 4.1 ug/day "safe harbor" daily dose limit set
10 forth in Proposition 65's regulations for Cadmium or Cadmium Compounds. The results of
11 testing undertaken by PLAINTIFF of DEFENDANT's MediClear Plus product show that
12 product was in violation of the 15 ug/day "safe harbor" no significant risk level for lead set
13 forth in Proposition 65's regulations for chemicals listed as carcinogens. Very significant is the
14 fact that people are being exposed to lead or cadmium through ingestion as opposed to other
15 not as harmful methods of exposure such as dermal exposure. Ingestion of lead or cadmium
16 produces much higher exposure levels and health risks than does dermal exposure to this
17 chemical.

18 24. At all times relevant to this action, DEFENDANT, therefore, has knowingly and
19 intentionally exposed the users and/or handlers of the PRODUCTS to the LISTED
20 CHEMICALS without first giving a clear and reasonable warning to such individuals.

21 25. The PRODUCTS have allegedly been sold by DEFENDANT for use in
22 California since at least December 13, 2010. The PRODUCTS continue to be distributed and
23 sold in California without the requisite warning information.

24 26. As a proximate result of acts by DEFENDANT, as a person in the course of
25 doing business within the meaning of Health & Safety Code §25249.11, individuals throughout
26 the State of California, including in the County of Alameda, have been exposed to the LISTED
CHEMICALS without a clear and reasonable warning. The individuals subject to the illegal
exposures include normal and foreseeable users of the PRODUCTS, as well as all other

1 persons exposed to the PRODUCTS.

2 **FIRST CAUSE OF ACTION**

3 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.***
4 **concerning the PRODUCTS described in the December 13, 2013 and November 7,**
5 **2014 Prop. 65 Notices) Against THORNE RESEARCH**

6 27. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 26,
7 inclusive, as if specifically set forth herein.

8 28. By committing the acts alleged in this Complaint, DEFENDANT at all times
9 relevant to this action, and continuing through the present, has violated H&S Code §25249.6
10 by, in the course of doing business, knowingly and intentionally exposing individuals who use
11 or handle the PRODUCTS set forth in the Notices to the LISTED CHEMICALS, without first
12 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§
13 25249.6 and 25249.11(f).

14 29. By the above-described acts, DEFENDANT has violated H&S Code § 25249.6
15 and are therefore subject to an injunction ordering DEFENDANT to stop violating Proposition
16 65, to provide warnings to all present and future customers, and to provide warnings to
17 DEFENDANT's past customers who purchased or used the PRODUCTS without receiving a
18 clear and reasonable warning.

19 30. An action for injunctive relief under Proposition 65 is specifically authorized by
20 Health & Safety Code §25249.7(a).

21 31. Continuing commission by DEFENDANT of the acts alleged above will
22 irreparably harm the citizens of the State of California, for which harm they have no plain,
23 speedy, or adequate remedy at law.

24 Wherefore, PLAINTIFF prays judgment against DEFENDANT, as set forth hereafter.

25 **SECOND CAUSE OF ACTION**

26 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
PRODUCTS described in PLAINTIFF's NOTICES)
Against THORNE RESEARCH

32. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 31
inclusive, as if specifically set forth herein.

1 33. By committing the acts alleged in this Complaint, DEFENDANT at all times
2 relevant to this action, and continuing through the present, has violated H&S Code §25249.6
3 by, in the course of doing business, knowingly and intentionally exposing individuals who use
4 or handle the PRODUCTS set forth in the Notices to the LISTED CHEMICALS, without first
5 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§
6 25249.6 and 25249.11(f).

7 34. By the above-described acts, DEFENDANT is liable, pursuant to H&S Code
8 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to
9 the LISTED CHEMICALS from the PRODUCTS, in an amount in excess of \$15 million.

10 Wherefore, PLAINTIFF prays judgment against DEFENDANT, as set forth hereafter.

11 **THE NEED FOR INJUNCTIVE RELIEF**

12 35. PLAINTIFF realleges and incorporates by this reference Paragraphs 1 through
13 34, as if set forth below.

14 36. By committing the acts alleged in this Complaint, DEFENDANT has caused
15 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence
16 of equitable relief, DEFENDANT will continue to create a substantial risk of irreparable injury
17 by continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED
18 CHEMICALS through the use and/or handling of the PRODUCTS.

19 **PRAYER FOR RELIEF**

20 Wherefore, PLAINTIFF accordingly prays for the following relief:

21 A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
22 enjoining DEFENDANT, its agents, employees, assigns and all persons acting in concert or
23 participating with DEFENDANT, from distributing or selling the PRODUCTS in California
24 without first providing a clear and reasonable warning, within the meaning of Proposition 65,
25 that the users and/or handlers of the PRODUCTS are exposed to the LISTED CHEMICALS.

26 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling
DEFENDANT to identify and locate each individual who has purchased the PRODUCTS since
December 13, 2010, and to provide a warning to such person that the use of the PRODUCTS

1 will expose the user to chemicals known to cause cancer, birth defects, and other reproductive
2 harm.

3 C. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
4 against DEFENDANT in the amount of \$2,500 per day for each violation of Proposition 65, in
5 an amount in excess of \$15 million;

6 D. an award to PLAINTIFF of its reasonable attorney's fees and costs of suit
7 pursuant to California Code of Civil Procedure §1021.5, as PLAINTIFF shall specify in further
8 application to the Court; and,

9 E. such other and further relief as may be just and proper.

10
11 DATED: _____

LOZEAU | DRURY LLP

12
13 _____
14 Michael R. Lozeau
15 Attorneys for Plaintiff
16 Environmental Research Center
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EXHIBIT 2

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I am a resident of the State of California, and employed in Oakland, California. I am over the age of 18 years and am not a party to the above-entitled action. My business address is 410 12th Street, Suite 250, Oakland, CA 94607.

• NOTICE OF ENTRY OF STIPULATED CONSENT JUDGMENT

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Office of the Attorney General
Proposition 65 Enforcement Reporting
<http://oag.ca.gov/prop65>

Stacey Ch

**PROOF OF SERVICE OF NOTICE OF ENTRY OF STIPULATED CONSENT JUDGMENT
CASE NO. RG14717655**