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13 SABRE SCIENCES, INC.

14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF SAN FRANCISCO

17 ENVIRONMENTAL RESEARCH  
CENTER, INC., a California non-profit  
18 corporation,

19 Plaintiff,

20 v.

21 SABRE SCIENCES, INC. and DOES 1-100

22 Defendants.  
23  
24

CASE NO. CGC-15-543826

STIPULATED CONSENT JUDGMENT;  
[PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: January 26, 2015  
Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On January 26, 2015, Plaintiff Environmental Research Center, Inc. ("ERC"), a  
27 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by  
28 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

**FILED**  
San Francisco County Superior Court

JUL 14 2015

CLERK OF THE COURT  
BY: [Signature]  
Deputy Clerk

1 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.  
2 (“Proposition 65”), against Sabre Sciences, Inc. and Does 1-100 (collectively “Sabre  
3 Sciences”). In this action, ERC alleges that the product, Sabre Sciences Inc. UltraD, (“Covered  
4 Product”) manufactured, distributed or sold by Sabre Sciences contains lead, a chemical listed  
5 under Proposition 65 as a carcinogen and reproductive toxin, and exposes consumers to this  
6 chemical at a level requiring a Proposition 65 warning.

7       1.2 ERC is a California non-profit corporation dedicated to, among other causes,  
8 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
9 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
10 encouraging corporate responsibility.

11       1.3 For purposes of this Consent Judgment, the parties agree that Sabre Sciences is a  
12 business entity that has employed ten or more persons at all times relevant to this action, and  
13 qualified as a “person in the course of business” within the meaning of Proposition 65. Sabre  
14 Sciences manufactures, distributes and sells the Covered Product.

15       1.4 ERC and Sabre Sciences are referred to individually as a “Party” or collectively  
16 as the “Parties.”

17       1.5 The Complaint is based on allegations contained in ERC’s Notice of Violation  
18 dated September 26, 2014, that was served on the California Attorney General, other public  
19 enforcers, and Sabre Sciences (“Notice”). A true and correct copy of the Notice is attached as  
20 Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the  
21 Notice was mailed and uploaded to the Attorney General’s website, and no designated  
22 governmental entity has filed a complaint against Sabre Sciences with regard to the Covered  
23 Product or the alleged violations.

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

1           1.7    The Parties have entered into this Consent Judgment in order to settle,  
2 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
3 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
4 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
5 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,  
6 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
7 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
8 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
9 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
10 purpose.

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

14           1.9    The Effective Date of this Consent Judgment is the date on which it is entered as  
15 a Judgment by this Court.

16       **2.    JURISDICTION AND VENUE**

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

24       **3.    INJUNCTIVE RELIEF AND WARNINGS**

25           3.1    Beginning on the Effective Date, Sabre Sciences shall be permanently enjoined  
26 from manufacturing for sale in the State of California, "Distributing into the State of  
27 California", or directly selling in the State of California, any Covered Product which exposes a  
28 person to a "Daily Exposure Level" of more than 0.5 micrograms per day when the maximum

1 suggested dose is taken as directed on the Covered Product's label, unless it meets the warning  
2 requirements under Section 3.2.

3           **3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
4 of California" shall mean to directly ship a Covered Product into California for sale in  
5 California or to sell a Covered Product to a distributor that Sabre Sciences knows will sell the  
6 Covered Product in California.

7           **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure  
8 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
9 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
10 product (using the largest serving size appearing on the product label), multiplied by servings  
11 of the product per day (using the largest number of servings in a recommended dosage  
12 appearing on the product label), which equals micrograms of lead exposure per day.

13           **3.2 Clear and Reasonable Warnings**

14           If Sabre Sciences is required to provide a warning pursuant to Section 3.1, the following  
15 warning must be utilized:

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

18 Sabre Sciences shall use the phrase "cancer and" in the warning only if the maximum daily dose  
19 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
20 the quality control methodology set forth in Section 3.4.

21 Sabre Sciences shall provide the warning on the following: 1) for website purchases, on  
22 Sabre Sciences' checkout page for California consumers identifying the Covered Product. A  
23 second warning shall appear prior to completing checkout on the website when a California  
24 delivery address is indicated. The purchaser shall be required to accept the warning prior to  
25 completing checkout for the Covered Product being sold; and 2) for non-website purchases, on the  
26 label or container of Sabre Sciences' product packaging for each Covered Product distributed into  
27 the State of California as defined in Section 3.1.1.

28           The warning shall be at least the same size as the largest of any other health or safety

1 warnings also appearing on its website or on the label or container of Sabre Sciences' product  
2 packaging and the word "WARNING" shall be in all capital letters and in bold print. No other  
3 statements about Proposition 65 or lead may accompany the warning.

4 Sabre Sciences must display the above warnings with such conspicuousness, as compared  
5 with other words, statements, or design of the label or container, as applicable, to render the  
6 warning likely to be read and understood by an ordinary individual under customary conditions of  
7 purchase or use of the product.

#### 8 4. SETTLEMENT PAYMENT

9 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil  
10 penalties, attorney's fees, and costs, Sabre Sciences shall make a total payment of \$35,000.00  
11 ("Total Settlement Amount") to ERC. An initial payment of \$7,000.00 shall be due within 5  
12 days of the Effective Date, followed by eleven (11) equal consecutive monthly payments of  
13 \$2,000.00 due and owing by the first of each month and one final payment of \$6,000.00 that  
14 shall be due and owing on the first of the 13<sup>th</sup> month from the Effective Date. Sabre Sciences  
15 shall make this payment by wire transfer to ERC's escrow account, for which ERC will give  
16 Sabre Sciences the necessary account information. The Total Settlement Amount shall be  
17 apportioned as follows:

18 4.2 \$9,000.00 shall be considered a civil penalty pursuant to California Health and  
19 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$6,750.00) of the civil penalty to the  
20 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
21 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
22 Code §25249.12(c). ERC will retain the remaining 25% (\$2,250.00) of the civil penalty.

23 4.3 \$768.94 shall be distributed to Environmental Research Center as  
24 reimbursement to ERC for reasonable costs incurred in bringing this action; and \$17,332.23  
25 shall be distributed to Environmental Research Center in lieu of further civil penalties, for the  
26 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
27 includes work, analyzing, researching and testing consumer products that may contain  
28 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are

1 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
2 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
3 donation of \$866.00 to the Center for Environmental Health to address reducing toxic chemical  
4 exposures in California.

5 4.4 \$950.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's  
6 outside counsel's attorney's fees, while \$6,948.83 shall be distributed to ERC for its in-house  
7 legal fees.

## 8 5. MODIFICATION OF CONSENT JUDGMENT

9 5.1 This Consent Judgment may be modified only (i) by written stipulation of the  
10 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
11 judgment.

12 5.2 If Sabre Sciences seeks to modify this Consent Judgment under Section 5.1, then  
13 Sabre Sciences must provide written notice to ERC of its intent ("Notice of Intent"). If ERC  
14 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC  
15 must provide written notice to Sabre Sciences within thirty days of receiving the Notice of  
16 Intent. If ERC notifies Sabre Sciences in a timely manner of ERC's intent to meet and confer,  
17 then the Parties shall meet and confer in good faith as required in this Section. The Parties  
18 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent  
19 to meet and confer. Within thirty days of such meeting, if ERC disputes the proposed  
20 modification, ERC shall provide to Sabre Sciences a written basis for its position. The Parties  
21 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
22 remaining disputes. Should it become necessary, the Parties may agree in writing to different  
23 deadlines for the meet-and-confer period.

24 5.3 In the event that Sabre Sciences initiates or otherwise requests a modification  
25 under Section 5.1, and the meet and confer process leads to a joint motion or application of the  
26 Consent Judgment, Sabre Sciences shall reimburse ERC its costs and reasonable attorney's fees  
27 for the time spent in the meet-and-confer process and filing and arguing the motion or  
28 application.

1           5.4     Where the meet-and-confer process does not lead to a joint motion or  
2 application in support of a modification of the Consent Judgment, then either Party may seek  
3 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and  
4 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
5 means a party who is successful in obtaining relief more favorable to it than the relief that the  
6 other party was amenable to providing during the Parties' good faith attempt to resolve the  
7 dispute that is the subject of the modification.

8           **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
9           **JUDGMENT**

10          6.1     This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
11 this Consent Judgment.

12          6.2     If at any time ERC alleges that a Covered Product exceeds the 0.5 µg/day  
13 threshold for lead exposure, and that no Proposition 65 warning has been provided, then ERC  
14 shall inform Sabre Sciences in a reasonably prompt manner of its test results, including  
15 information sufficient to permit Sabre Sciences to identify the Covered Product at issue. The  
16 Parties shall attempt to resolve the matter out of court prior to ERC taking any further legal  
17 action.

18           **7.     APPLICATION OF CONSENT JUDGMENT**

19           This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
20 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
21 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,  
22 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
23 application to a Covered Product which is distributed or sold exclusively outside the State of  
24 California and which is not used by California consumers.

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

26          8.1     This Consent Judgment is a full, final, and binding resolution between ERC, on  
27 behalf of itself and in the public interest, and Sabre Sciences, of any alleged violation of  
28 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of

1 exposure to lead from the handling, use, or consumption of the Covered Product and fully  
2 resolves all claims that have been or could have been asserted in this action up to and including  
3 the Effective Date for failure to provide Proposition 65 warnings for the Covered Product.  
4 ERC, on behalf of itself and in the public interest, hereby discharges Sabre Sciences and its  
5 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
6 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label  
7 customers of Sabre Sciences), distributors, wholesalers, retailers, and all other upstream and  
8 downstream entities in the distribution chain of the Covered Product, and the predecessors,  
9 successors and assigns of any of them (collectively, "Released Parties"), from any and all  
10 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and  
11 expenses asserted, or that could have been asserted, as to any alleged violation of Proposition  
12 65 arising from the failure to provide Proposition 65 warnings on the Covered Product  
13 regarding lead.

14       8.2 ERC on its own behalf only, on one hand, and Sabre Sciences on its own behalf  
15 only, on the other, further waive and release any and all claims they may have against each  
16 other for all actions or statements made or undertaken in the course of seeking or opposing  
17 enforcement of Proposition 65 in connection with the Notice or Complaint up through and  
18 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit  
19 any Party's right to seek to enforce the terms of this Consent Judgment.

20       8.3 It is possible that other claims not known to the Parties arising out of the facts  
21 alleged in the Notice or the Complaint and relating to the Covered Product will develop or be  
22 discovered. ERC on behalf of itself only, on one hand, and Sabre Sciences, on the other hand,  
23 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
24 claims up through the Effective Date, including all rights of action therefore. ERC and Sabre  
25 Sciences acknowledge that the claims released in Sections 8.1 and 8.2 above may include  
26 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
27 unknown claims. California Civil Code section 1542 reads as follows:  
28



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

6 ERC on behalf of itself only, on the one hand, and Sabre Sciences, on the other hand,  
7 acknowledge and understand the significance and consequences of this specific waiver of  
8 California Civil Code section 1542.

9 8.4 Compliance with the terms of this Consent Judgment shall be deemed to  
10 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
11 in the Covered Product as set forth in the Notice and the Complaint.

12 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or  
13 environmental exposures arising under Proposition 65, nor shall it apply to any of Sabre  
14 Sciences' products other than the Covered Product.

### 15 9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

### 18 10. GOVERNING LAW

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

### 21 11. PROVISION OF NOTICE

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

#### 25 FOR ENVIRONMENTAL RESEARCH CENTER:

26 Chris Heptinstall, Executive Director, Environmental Research Center  
27 3111 Camino Del Rio North, Suite 400  
28 San Diego, CA 92108  
Tel: (619) 500-3090  
Email: chris\_erc501c3@yahoo.com

With a copy to:

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

5 **SABRE SCIENCES, INC.**

6 Victor Salerno  
7 Sabre Sciences, Inc.  
2233 Faraday Avenue, Suite K  
8 Carlsbad, CA 92008

9 With a copy to:

10 J. Jeffrey Morris  
Law Office J. Jeffrey Morris  
11 22601 Pacific Coast Highway, Suite 270  
Malibu, CA 90265  
12 Telephone: (310) 430-1461  
13 Facsimile: (310) 921-5695

14 **12. COURT APPROVAL**

15 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
16 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
17 Consent Judgment.

18 **12.2** If the California Attorney General objects to any term in this Consent  
19 Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and  
20 if possible prior to the hearing on the motion.

21 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
22 void and have no force or effect.

23 **13. EXECUTION AND COUNTERPARTS**

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

27 **14. DRAFTING**

28 The terms of this Consent Judgment have been reviewed by the respective counsel for each

1 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms with  
2 counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent  
3 Judgment entered thereon, the terms and provisions shall not be construed against any Party.

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

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

14 **16. ENTIRE AGREEMENT, AUTHORIZATION**

15 **16.1** This Consent Judgment contains the sole and entire agreement and  
16 understanding of the Parties with respect to the entire subject matter herein, and any and all  
17 prior discussions, negotiations, commitments and understandings related hereto. No  
18 representations, oral or otherwise, express or implied, other than those contained herein have  
19 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
20 herein, shall be deemed to exist or to bind any Party.

21 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
22 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
23 explicitly provided herein, each Party shall bear its own fees and costs.

24 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
25 **CONSENT JUDGMENT**

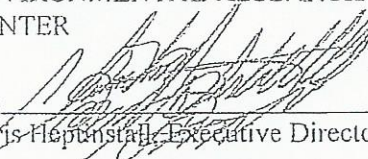
26 This Consent Judgment has come before the Court upon the request of the Parties. The  
27 Parties request the Court to fully review this Consent Judgment and, being fully informed  
28 regarding the matters which are the subject of this action, to:

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

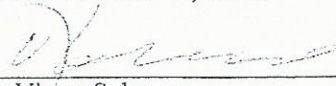
4 (2) Make the findings pursuant to California Health and Safety Code section  
5 25249.7(I)(4), approve the Settlement, and approve this Consent Judgment.

6 **IT IS SO STIPULATED:**

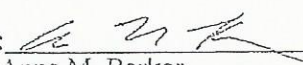
7 Dated: 3/12/, 2015

ENVIRONMENTAL RESEARCH  
CENTER  
By:   
Chris Heptinstall, Executive Director


10 Dated: 3-13, 2015

SABRE SCIENCES, INC.  
  
By: Victor Salerno  
Its:

14 **APPROVED AS TO FORM:**  
Dated: 3 / 12, 2015

ENVIRONMENTAL RESEARCH  
CENTER  
By:   
Anne M. Barker  
In-House Counsel

18 Dated: \_\_\_\_\_, 2015

LAW OFFICE OF J. JEFFREY MORRIS  
By:   
J. Jeffrey Morris  
Attorney for Defendant Sabre Sciences,  
Inc.

23 **ORDER AND JUDGMENT**

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

26 IT IS SO ORDERED, ADJUDGED AND DECREED.

27 Dated: JUL 14 2015

  
Ernest H. Goldsmith  
Judge of the Superior Court  
ERNEST H. GOLDSMITH