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14 COSMETICS, INC.; PM-INTERNATIONAL USA LLC; PM-
15 INTERNATIONAL LOGISTICS CENTER AMERICA, LLC; and PM-
16 INTERNATIONAL AG

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

15 ENVIRONMENTAL RESEARCH CENTER,
16 INC., a non-profit California corporation,

17 Plaintiff,

18 v.

19 PM INTERNATIONAL NUTRITION and
20 COSMETICS, INC., a California corporation;
21 PM-INTERNATIONAL USA LLC, a Florida
22 limited liability company; PM-
23 INTERNATIONAL LOGISTICS CENTER
24 AMERICA, LLC, a Florida limited liability
25 company; PM-INTERNATIONAL AG, a
26 German public limited company; and DOES 1
27 - 25,

28 Defendants.

CASE NO. RG18931221

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: December 6, 2018

Trial Date: None set

FILED
ALAMEDA COUNTY
JUN 1 2019
CLERK OF THE SUPERIOR COURT
By Pam Hillier
Deputy

1 **1. INTRODUCTION**

2 **1.1** On December 6, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Permanent Injunction, Civil Penalties, and Other Relief (the
5 “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5
6 *et seq.* (“Proposition 65”), against PM INTERNATIONAL NUTRITION and COSMETICS,
7 INC., PM-INTERNATIONAL USA LLC, PM-INTERNATIONAL LOGISTICS CENTER
8 AMERICA, LLC, and PM-INTERNATIONAL AG (collectively “PM INTERNATIONAL”)
9 and DOES 1-25. In this action, ERC alleges that two products manufactured, distributed, or
10 sold by PM INTERNATIONAL contain lead and/or cadmium, chemicals listed under
11 Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these
12 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter
13 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) FitLine
14 ProShape All-In-1 Mousse au Chocolat (lead, cadmium) and (2) FitLine ProShape All-In-1
15 Bourbon Vanilla (lead).

16 **1.2** ERC and PM INTERNATIONAL are hereinafter referred to individually as a
17 “Party” or collectively as the “Parties.”

18 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
19 causes, helping safeguard the public from health hazards by reducing the use and misuse of
20 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
21 and encouraging corporate responsibility.

22 **1.4** For purposes of this Consent Judgment, the Parties agree that each defendant is a
23 business entity each of which has employed ten or more persons at all times relevant to this action,
24 and qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
25 PM INTERNATIONAL manufactures, distributes, and/or sells the Covered Products.

26 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
27 dated August 31, 2018 that was served on the California Attorney General, other public
28 enforcers, and PM INTERNATIONAL (“Notice”). A true and correct copy of the 60-Day

1 Notice dated August 31, 2018 is attached hereto as Exhibit A and incorporated herein by
2 reference. More than 60 days have passed since the Notice was served on the Attorney
3 General, public enforcers, and PM INTERNATIONAL and no designated governmental entity
4 has filed a Complaint against PM INTERNATIONAL with regard to the Covered Products or
5 the alleged violations.

6 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
7 persons in California to lead and/or cadmium without first providing clear and reasonable
8 warnings in violation of California Health and Safety Code section 25249.6. PM
9 INTERNATIONAL denies all material allegations contained in the Notice and Complaint.

10 **1.7** The Parties have entered into this Consent Judgment in order to settle,
11 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
12 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
13 be construed as an admission by any of the Parties or by any of their respective officers,
14 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
15 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
16 violation of law. This Consent Judgment shall not constitute an admission with respect to any
17 material allegation of the Complaint, each and every allegation of which PM
18 INTERNATIONAL denies, nor may this Consent Judgment, or compliance with it, be used as
19 evidence of any wrongdoing, misconduct, culpability or liability on the part of PM
20 INTERNATIONAL in any other case.

21 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
22 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
23 current or future legal proceeding unrelated to these proceedings.

24 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
25 a Judgment by this Court.

26 **2. JURISDICTION AND VENUE**

27 For purposes of this Consent Judgment and any further court action that may become
28 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter

1 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
2 over PM INTERNATIONAL as to the acts alleged in the Complaint, that venue is proper in
3 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
4 final resolution of all claims up through and including the Effective Date which were or could
5 have been asserted in this action based on the facts alleged in the Notice and Complaint.

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

7 **3.1** Beginning on the Effective Date, PM INTERNATIONAL shall be permanently
8 enjoined from manufacturing for sale in the State of California, "Distributing into the State of
9 California," or directly selling in the State of California, any Covered Products which expose a
10 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or
11 "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it
12 meets the warning requirements under Section 3.2.

13 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
14 of California" shall mean to directly ship a Covered Product into California for sale in
15 California or to sell a Covered Product to a distributor that PM INTERNATIONAL knows will
16 sell the Covered Product in California.

17 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
18 Level" shall be measured in micrograms, and shall be calculated using the following formula:
19 micrograms of lead per gram of product, multiplied by grams of product per serving of the
20 product (using the largest serving size appearing on the product label), multiplied by servings
21 of the product per day (using the largest number of recommended daily servings appearing on
22 the label), which equals micrograms of lead exposure per day. If the label contains no
23 recommended daily servings, then the number of recommended daily servings shall be one.

24 **3.1.3** For purposes of this Consent Judgment, the "Daily Cadmium Exposure
25 Level" shall be measured in micrograms, and shall be calculated using the following formula:
26 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the
27 product (using the largest serving size appearing on the product label), multiplied by servings
28 of the product per day (using the largest number of recommended daily servings appearing on

1 the label), which equals micrograms of cadmium exposure per day. If the label contains no
2 recommended daily servings, then the number of recommended daily servings shall be one.

3 3.2 Clear and Reasonable Warnings

4 If PM INTERNATIONAL is required to provide a warning pursuant to Section 3.1, the
5 following warning must be utilized (“Warning”):

6 **WARNING:** Consuming this product can expose you to chemicals including lead which is
7 known to the State of California to cause [cancer and] birth defects or other reproductive
8 harm. For more information go to www.P65Warnings.ca.gov/food.

9 PM INTERNATIONAL shall use the phrase “cancer and” in the Warning if PM
10 INTERNATIONAL has reason to believe that the the “Daily Lead Exposure Level” is greater
11 than 15 micrograms of lead as determined pursuant to the quality control methodology set forth
12 in Section 3.4 or if PM INTERNATIONAL has reason to believe that another Proposition 65
13 chemical is present which may require a cancer warning. If the Warning is being provided for
14 more than one endpoint (cancer and reproductive toxicity) the Warning must include the name of
15 one or more chemicals for each endpoint, unless the named chemical is listed as known to cause
16 both cancer and reproductive toxicity and has been so identified in the Warning.

17 PM INTERNATIONAL also may, at its sole option, utilize the short-form warning
18 option as set forth in Title 27, California Code of Regulations, Section 25603(b), effective
19 August 30, 2018. The Warning shall be securely affixed to or printed upon the container or label
20 of each Covered Product. If the Warning is provided on the label, it must be set off from other
21 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
22 the internet, the Warning shall meet one of the following requirements: (i) appear on the
23 checkout page when a California delivery address is indicated for any purchase of any Covered
24 Product; (ii) appear on the product description page; or (iii) appear via a clearly marked
25 hyperlink using the word “**WARNING**” (in all capital and bold letters) on the product
26 description page. An asterisk or other identifying method must be utilized to identify which
27 products on the checkout page are subject to the Warning.

28 The Warning shall be at least the same size as the largest of any other health or safety
warnings also appearing on its website or on the label or container of PM INTERNATIONAL’s

1 product packaging and the word "WARNING" shall be in all capital letters and in bold print. No
2 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
3 average lay person shall accompany the Warning. Further no statements may accompany the
4 Warning that state or imply that the source of the listed chemical has an impact on or results in a
5 less harmful effect of the listed chemical.

6 PM INTERNATIONAL must display the above Warning with such conspicuousness, as
7 compared with other words, statements or designs on the label or container, or on its website, if
8 applicable, to render the Warning likely to be read and understood by an ordinary individual under
9 customary conditions of purchase or use of the product.

10 3.3 Reformulated Covered Products

11 A Reformulated Covered Product is a Covered Product which has been reformulated by
12 PM International so that the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of
13 lead per day and/or "Daily Cadmium Exposure Level" is no more than 4.1 micrograms of
14 cadmium per day as determined by the quality control methodology described in Section 3.4.

15 3.4 Testing and Quality Control Methodology

16 3.4.1 Beginning within one year of the Effective Date, PM INTERNATIONAL
17 shall arrange for lead and cadmium testing of the Covered Products at least once a year for a
18 minimum of five consecutive years by arranging for testing of five randomly selected samples of
19 each of the Covered Products, in the form intended for sale to the end-user, which PM
20 INTERNATIONAL intends to sell or is manufacturing for sale in California, directly selling to a
21 consumer in California or "Distributing into the State of California." If tests conducted pursuant to
22 this Section demonstrate that no Warning is required for a Covered Product during each of five
23 consecutive years, then the testing requirements of this Section will no longer be required as to
24 that Covered Product. However, if during or after the five-year testing period, PM
25 INTERNATIONAL changes ingredient suppliers for any of the Covered Products and/or
26 reformulates any of the Covered Products, PM INTERNATIONAL shall test that Covered Product
27 annually for at least four (4) consecutive years after such change is made.

28 3.4.2 For purposes of measuring the "Daily Lead Exposure Level" and/or "Daily

1 Cadmium Exposure Level," the highest lead and/or cadmium detection result of the five (5)
2 randomly selected samples of the Covered Products will be controlling.

3 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
4 laboratory method that complies with the performance and quality control factors appropriate for
5 the method used, including limit of detection, qualification, accuracy, and precision that meets the
6 following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit
7 of quantification of less than or equal to 0.010 mg/kg.

8 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
9 independent third party laboratory certified by the California Environmental Laboratory
10 Accreditation Program or an independent third-party laboratory that is registered with the United
11 States Food & Drug Administration.

12 **3.4.5** Nothing in this Consent Judgment shall limit PM INTERNATIONAL's
13 ability to conduct, or require that others conduct, additional testing of the Covered Products,
14 including the raw materials used in their manufacture.

15 **3.4.6** Within thirty (30) days of ERC's written request, PM INTERNATIONAL
16 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. PM INTERNATIONAL shall
17 retain all test results and documentation for a period of five years from the date of each test.

18 **3.4.7** The testing requirements of Section 3.4.1 do not apply to any Covered
19 Product or Reformulated Covered Product for which PM INTERNATIONAL has provided the
20 Warning specified in Section 3.2 continuously and uninterrupted after the Effective Date;
21 however, in the event PM INTERNATIONAL ceases to provide the Warning specified in
22 Section 3.2, PM INTERNATIONAL shall be required to comply with the testing requirements
23 of this section beginning immediately after the date the Warning ceases to be provided or one
24 year after the Effective Date, whichever date is later.

25 **4. SETTLEMENT PAYMENT**

26 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
27 attorney's fees, and costs, PM INTERNATIONAL shall make a total payment of \$45,000.00
28 ("Total Settlement Amount") to ERC within 10 days of the Effective Date ("Due Date"). PM

1 INTERNATIONAL shall make this payment by wire transfer to ERC's account, for which
2 ERC will give PM INTERNATIONAL the necessary account information. The Total
3 Settlement Amount shall be apportioned as follows:

4 **4.2** \$7,709.82 shall be considered a civil penalty pursuant to California Health and
5 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$5,782.36) of the civil penalty to the
6 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
7 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
8 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,927.46) of the civil penalty.
9 \$4,460.88 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in
10 bringing this action.

11 **4.3** \$14,120.00 shall be distributed to Aqua Terra Aeris Law Group as
12 reimbursement of ERC's attorney's fees, while \$18,709.30 shall be distributed to ERC for its
13 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
14 costs.

15 **4.6** In the event that PM INTERNATIONAL fails to remit the Total Settlement
16 Amount owed under Section 4.1 of this Consent Judgment on or before the Due Date, PM
17 INTERNATIONAL shall be deemed to be in material breach of its obligations under this
18 Consent Judgment. ERC shall provide written notice of the delinquency to PM
19 INTERNATIONAL via electronic mail. If PM INTERNATIONAL fails to deliver the Total
20 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
21 shall accrue interest at the statutory judgment interest rate provided in the California Code of
22 Civil Procedure section 685.010. Additionally, PM INTERNATIONAL agrees to pay ERC's
23 reasonable attorney's fees and costs for any efforts to collect the payment due under this
24 Consent Judgment.

25 **5. MODIFICATION OF CONSENT JUDGMENT**

26 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by written
27 stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by
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1 motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a modified
2 consent judgment.

3 5.2 If PM INTERNATIONAL seeks to modify this Consent Judgment under Section
4 5.1, then PM INTERNATIONAL must provide written notice to ERC of its intent ("Notice of
5 Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of
6 Intent, then ERC must provide written notice to PM INTERNATIONAL within thirty (30) days
7 of receiving the Notice of Intent. If ERC notifies PM INTERNATIONAL in a timely manner
8 of ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as
9 required in this Section. The Parties shall meet in person or via telephone within thirty (30)
10 days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such
11 meeting, if ERC disputes the proposed modification, ERC shall provide to PM
12 INTERNATIONAL a written basis for its position. The Parties shall continue to meet and
13 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
14 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
15 confer period.

16 5.3 In the event that PM INTERNATIONAL initiates or otherwise requests a
17 modification under Section 5.1, and the meet and confer process leads to a joint motion or
18 application for a modification of the Consent Judgment, PM INTERNATIONAL shall
19 reimburse ERC its costs and reasonable attorney's fees for the time spent in the meet-and-
20 confer process and filing and arguing the motion or application.

21 5.4 Where the meet-and-confer process does not lead to a joint motion or
22 application in support of a modification of the Consent Judgment, then either Party may seek
23 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
24 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure
25 section 1021.5.

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1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**

2 **JUDGMENT**

3 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
4 this Consent Judgment.

5 6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
7 inform PM INTERNATIONAL in a reasonably prompt manner of its test results, including
8 information sufficient to permit PM INTERNATIONAL to identify the Covered Products at
9 issue. PM INTERNATIONAL shall, within thirty (30) days following such notice, provide
10 ERC with testing information, from an independent third-party laboratory meeting the
11 requirements of Sections 3.4.3 and 3.4.4, demonstrating PM INTERNATIONAL's compliance
12 with the Consent Judgment. The Parties shall first attempt to resolve the matter prior to ERC
13 taking any further legal action.

14 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

22 8.1 This Consent Judgment is a full, final and binding resolution between ERC,
23 acting on behalf of itself and in the public interest, and PM INTERNATIONAL and its
24 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries
25 and divisions, of: (i) any violation of Proposition 65 with respect to the Covered Products,
26 including but not limited to the claims made in the Complaint; and (ii) any other statutory or
27 common law claim relating to exposures to lead and cadmium, and lead compounds and
28 cadmium compounds, from Covered Products. The full, final and binding resolution

1 referenced in this Section 8.1 shall apply to the fullest extent that any of the foregoing
2 described in (i) or (ii) were or could have been asserted by any person or entity against PM
3 INTERNATIONAL or its parents, subsidiaries or affiliates, as well as its suppliers, franchisees,
4 licensees, customers (not including private label customers of PM INTERNATIONAL),
5 distributors, wholesalers, retailers, all other upstream and downstream entities in the
6 distribution chain of any Covered Product, and the successors and assigns of any of them, who
7 may use, maintain, distribute or sell the Covered Products ("Released Entities"), based on its or
8 their failure to provide clear and reasonable warnings of exposures to lead, cadmium, lead
9 compounds or cadmium compounds from Covered Products up to and including the Effective
10 Date. As to alleged exposures to lead, cadmium, lead compounds and cadmium compounds
11 from the Covered Products, compliance with the terms of this Consent Judgment resolves any
12 issue, now and in the future, concerning compliance by PM INTERNATIONAL and the
13 Released Entities, with the requirements of Proposition 65 with respect to the Covered
14 Products, and any alleged resulting exposure.

15 **8.2** ERC hereby fully releases and discharges the Released Entities from any and
16 all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs
17 and expenses asserted, or that could have been asserted from the manufacture, sale, handling or
18 use of the Covered Products, as to any alleged violation of Proposition 65 or its implementing
19 regulations arising from the failure to provide Proposition 65 warnings on the Covered
20 Products regarding lead, cadmium, lead compounds and/or cadmium compounds up to and
21 including the Effective Date.

22 **8.3** ERC on its own behalf only, and PM INTERNATIONAL on its own behalf
23 only, further waive and release any and all claims they may have against each other for all
24 actions or statements made or undertaken in the course of seeking or opposing enforcement of
25 Proposition 65 in connection with the Notice and Complaint up through and including the
26 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
27 right to seek to enforce the terms of this Consent Judgment.

28 **8.4** It is possible that other claims not known to the Parties, arising out of the facts

1 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
2 discovered. ERC on behalf of itself only, and PM INTERNATIONAL on behalf of itself only,
3 acknowledge that this Consent Judgment is expressly intended to cover and include all such
4 claims up through and including the Effective Date, including all rights of action therefore.
5 ERC and PM INTERNATIONAL acknowledge that the claims released in Sections 8.1 and 8.2
6 above may include unknown claims, and nevertheless waive California Civil Code section
7 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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.

12 ERC on behalf of itself only, and PM INTERNATIONAL on behalf of itself only,
13 acknowledge and understand the significance and consequences of this specific waiver of
14 California Civil Code section 1542.

15 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
16 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
17 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

18 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
19 environmental exposures arising under Proposition 65, nor shall it apply to any of PM
20 INTERNATIONAL's or any of the Released Entities' products other than the Covered
21 Products.

22 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

25 **10. GOVERNING LAW**

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

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1 **11. PROVISION OF NOTICE**

2 All notices required to be given to either Party to this Consent Judgment by the other shall
3 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
4 email may also be sent.

5 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

6 Chris Heptinstall, Executive Director, Environmental Research Center
7 3111 Camino Del Rio North, Suite 400
8 San Diego, CA 92108
9 Telephone: (619) 500-3090
10 Email: chris_erc501c3@yahoo.com

11 With a copy to:
12 MATTHEW C. MACLEAR
13 ANTHONY M. BARNES
14 AQUA TERRA AERIS LAW GROUP
15 490 43rd Street, Suite 108
16 Oakland, CA 94609
17 Telephone: (415) 568-5200
18 Email: mcm@atalawgroup.com

19 **PM INTERNATIONAL NUTRITION and COSMETICS, INC.; PM-INTERNATIONAL
20 USA LLC; PM-INTERNATIONAL LOGISTICS CENTER AMERICA, LLC; and PM-
21 INTERNATIONAL AG**

22 PM-International, AG
23 15 Waistrooss L-5445
24 Schengen, Luxembourg
25 Attention: General Counsel

26 With a copy to:
27 STEPHEN E. O'DAY (GA Bar No. 549337)
28 SMITH, GAMBRELL & RUSSELL, LLP
Promenade, Suite 3100
1230 Peachtree Street, N.E.
Atlanta, GA 30309-3592
Telephone: (404) 815-3500
Email: soday@sgrlaw.com

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1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

15 The terms of this Consent Judgment have been reviewed by the respective counsel for each
16 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
17 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
18 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
19 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
20 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
21 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
22 equally in the preparation and drafting of this Consent Judgment.

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

24 If a dispute arises with respect to either Party's compliance with the terms of this Consent
25 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
26 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
27 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

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1 **16. ENFORCEMENT**

2 ERC may, by motion or order to show cause before the Superior Court of Alameda
3 County, enforce the terms and conditions contained in this Consent Judgment. In any action
4 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
5 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
6 To the extent the failure to comply with the Consent Judgment constitutes a violation of
7 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
8 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
9 law for failure to comply with Proposition 65 or other laws.

10 **17. ENTIRE AGREEMENT, AUTHORIZATION**

11 17.1 This Consent Judgment contains the sole and entire agreement and
12 understanding of the Parties with respect to the entire subject matter herein, and any and all
13 prior discussions, negotiations, commitments, and understandings related hereto. No
14 representations, oral or otherwise, express or implied, other than those contained herein have
15 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
16 herein, shall be deemed to exist or to bind any Party.

17 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Consent Judgment.

19 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
20 **CONSENT JUDGMENT**

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

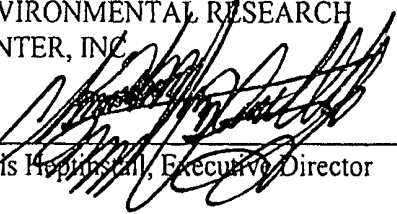
24 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
25 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
26 been diligently prosecuted, and that the public interest is served by such settlement; and

27 (2) Make the findings pursuant to California Health and Safety Code section
28 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

1 IT IS SO STIPULATED:

2 Dated: 1/24/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

3
4 By: 
5 Chris Heppinstall, Executive Director

6
7 Dated: _____, 2019

PM INTERNATIONAL NUTRITION and
COSMETICS, INC.

8
9
10 _____
11 By:
12 Its:

13
14 Dated: _____, 2019

PM-INTERNATIONAL USA LLC

15
16 _____
17 By:
18 Its:

19
20 Dated: _____, 2019

PM-INTERNATIONAL LOGISTICS
CENTER AMERICA, LLC

21
22 _____
23 By:
24 Its:

25
26 Dated: _____, 2019

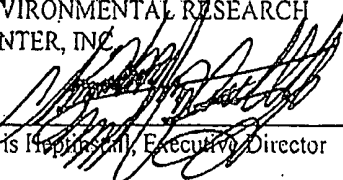
PM-INTERNATIONAL AG

27
28 _____
By:
Its:

1 IT IS SO STIPULATED:

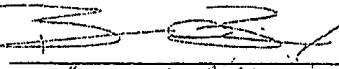
2 Dated: 1/24/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

3
4 By: 
Chris Hopkins, Executive Director

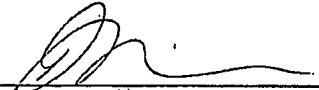
6
7 Dated: 2/5, 2019

PM INTERNATIONAL NUTRITION and
COSMETICS, INC.

8
9 
10 By: Lettina Obliger
11 Its:


12 Dated: 2-6, 2019

PM-INTERNATIONAL USA LLC

13
14 
15 By: Deb HUZARIE
16 Its: PRESIDENT

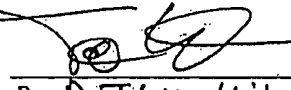
17 Dated: 2.6, 2019

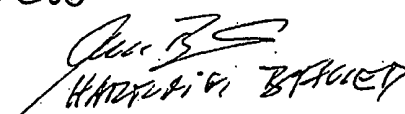
PM-INTERNATIONAL LOGISTICS
CENTER AMERICA, LLC

18
19 
20 By: Deb HUZARIE
21 Its: PRESIDENT

22 Dated: 02/07/, 2019

PM-INTERNATIONAL AG

23
24 
25 By: Dr. Tobias Uilene
26 Its: CSO

27
28 
Andrew Blaney
CFO

1 APPROVED AS TO FORM:

2 Dated: January 24, 2019

AQUA TERRA AERIS LAW GROUP

3

4

By: 

5

Matthew C. Maclear
Anthony M. Barnes
Attorneys for Plaintiff Environmental
Research Center, Inc.

6

7

8 Dated: Feb. 7, 2019

SMITH, GAMBRELL & RUSSELL, LLP

9

By: 

10

Anne K. Edwards
Attorney for Defendants PM International
Nutrition and Cosmetics, Inc., PM-
International USA LLC, PM-International
Logistics Center America, LLC and PM-
International AG

11

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ORDER AND JUDGMENT

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Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is

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approved and Judgment is hereby entered according to its terms.

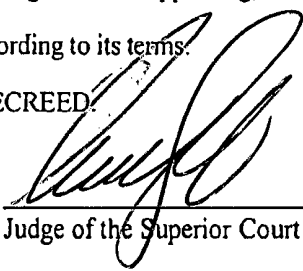
19

IT IS SO ORDERED, ADJUDGED AND DECREED.

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Dated: JUN 01 2019


Judge of the Superior Court

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