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MATTHEW C. MACLEAR (SBN 209228)
ANTHONY M. BARNES (SBN 199048)
AQUA TERRA AERIS LAW GROUP
490 43rd Street, Suite 108
Oakland, CA 94609
Telephone: (415) 568-5200
Email: mcm@atalawgroup.com

Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

TRENTON H. NORRIS (SBN 164781)
SARAH ESMAILI (SBN 206053)
ARNOLD & PORTER KAYE SCHOLER LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
Telephone: (415) 471-3283
Email: trenton.norris@arnoldporter.com
sarah.esmaili@arnoldporter.com

Attorneys for Defendant
THE UCAN COMPANY, individually and doing
business as GENERATION UCAN

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

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

Plaintiff,

v.

THE UCAN COMPANY, individually and
doing business as GENERATION UCAN, a
Delaware corporation; and DOES 1 – 25,

Defendants.

CASE NO. RG18933808

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: December 28, 2018

Trial Date: None set

1. INTRODUCTION

1.1 On December 28, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Permanent Injunction, Civil Penalties and Other Relief (the “Complaint”) pursuant

1 to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
2 against THE UCAN COMPANY, individually and doing business as GENERATION UCAN
3 (“UCAN”) and DOES 1-25. In this action, ERC alleges that a number of products manufactured,
4 distributed, or sold by UCAN contain lead, a chemical listed under Proposition 65 as a carcinogen
5 and reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
6 warning. These products (referred to hereinafter individually as a “Covered Product” or
7 collectively as “Covered Products”) are:

- 8 • Generation UCAN The Revolutionary Nutrition Cocoa Delite
- 9 • UCAN Snack Chocolate Peanut Butter Bar with SuperStarch
- 10 • UCAN Snack Chocolate Bar with SuperStarch
- 11 • UCAN Snack Cinnamon Swirl Bar with SuperStarch
- 12 • UCAN Snack Coffee Bean Bar with SuperStarch
- 13 • Generation UCAN Powered By Superstarch Chocolate Powdered
14 Nutrition Drink Mix

15 1.2 ERC and UCAN are hereinafter referred to individually as a “Party” or collectively
16 as the “Parties.”

17 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
18 causes, helping safeguard the public from health hazards by reducing the use and misuse of
19 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and
20 encouraging corporate responsibility.

21 1.4 For purposes of this Consent Judgment, the Parties agree that UCAN is a business
22 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a
23 “person in the course of doing business” within the meaning of Proposition 65. UCAN
24 manufactures, distributes, and/or sells the Covered Products.

25 1.5 The Complaint is based on allegations contained in ERC’s Notice of Violation dated
26 August 31, 2018 that was served on the California Attorney General, other public enforcers, and
27 UCAN (“Notice”). A true and correct copy of the 60-Day Notice is attached hereto as **Exhibit A**
28 and incorporated herein by reference. More than 60 days have passed since the Notice was served

1 on the Attorney General, public enforcers, and UCAN and no designated governmental entity has
2 filed a Complaint against UCAN with regard to the Covered Products or the alleged violations.

3 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
4 persons in California to lead without first providing clear and reasonable warnings in violation of
5 California Health and Safety Code section 25249.6. UCAN denies all material allegations
6 contained in the Notice and Complaint and denies that the Covered Products require warnings under
7 Proposition 65.

8 **1.7** The Parties have entered into this Consent Judgment in order to settle, compromise,
9 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent
10 Judgment nor compliance with this Consent Judgment shall constitute or be construed as an
11 admission by any of the Parties or by any of their respective officers, directors, shareholders,
12 employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers,
13 suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or violation of law.

14 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
15 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
16 current or future legal proceeding unrelated to these proceedings.

17 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as a
18 Judgment by this Court.

19 **2. JURISDICTION AND VENUE**

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

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

2 **3.1** Any Covered Product that UCAN manufactures, or that is manufactured for or on
3 behalf of UCAN, on or after the Effective Date that is thereafter sold in California or “Distributed
4 for sale in the State of California” shall either qualify as a Reformulated Covered Product under
5 Section 3.3 or comply with the warning requirements under Section 3.2.

6 **3.1.1** As used in this Consent Judgment, the terms “Distributed for sale in the State
7 of California” and “Distributing into the State of California” shall mean to directly ship a Covered
8 Product into California for sale in California or to sell a Covered Product to a distributor that UCAN
9 knows or has reason to know will sell the Covered Product in California.

10 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure Level”
11 shall be measured in micrograms, and shall be calculated using the following formula: micrograms
12 of lead per gram of product, multiplied by grams of product per serving of the product (using the
13 largest serving size appearing on the product label), multiplied by servings of the product per day
14 (using the largest number of recommended daily servings appearing on the label), which equals
15 micrograms of lead exposure per day. If the label contains no recommended daily servings, then
16 the number of recommended daily servings shall be one.

17 **3.2 Clear and Reasonable Warnings**

18 If UCAN is required to provide a warning pursuant to Section 3.1, one of the following two
19 warning statements must be utilized (“Warning”):

20 Option 1:

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

24 Option 2:

25 \triangle **WARNING:** [Cancer and] Reproductive Harm –www.P65Warnings.ca.gov.

26 UCAN shall use the phrase “cancer and” in the Warning if the “Daily Lead Exposure Level”
27 is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set
28 forth in Section 3.4 or if UCAN has reason to believe that another Proposition 65 chemical is
present which may require a cancer warning.

1 The Warning shall be securely affixed to or printed upon the container or label of each
2 Covered Product. The Warning shall be at least the same size as the largest of any other health or
3 safety warnings also appearing the label or container of UCAN's product packaging and the word
4 "WARNING" shall be in all capital letters and in bold print. If the Warning is provided on the
5 label, it must be set off from other surrounding information and enclosed in a box. No other
6 statements discussing Proposition 65 or lead shall accompany the Warning on the container or label
7 of the Covered Product or on UCAN's website from which a consumer can purchase the Covered
8 Product. For the Warning set forth under Option 2, the pictogram shall be in yellow with a black
9 exclamation mark; provided however, the pictogram may be in white instead of yellow if the
10 Covered Product label does not contain the color yellow. The pictogram shall be placed to the left
11 of the text of the Warning, in a size no smaller than the height of the word "WARNING."

12 In addition, for any Covered Product sold over the internet by UCAN, the Warning shall
13 comply with the requirements of 27 Cal. Code Regs. § 25602(b), effective August 30, 2018.

14 UCAN must display the above Warning with such conspicuousness, as compared with other
15 words, statements or designs on the label or container, or on its website, if applicable, to render the
16 Warning likely to be read and understood by an ordinary individual under customary conditions of
17 purchase or use of the product.

18 3.3 Reformulated Covered Products

19 3.3.1 A Reformulated Covered Product is a Covered Product for which the Daily
20 Lead Exposure Level does not exceed 0.5 micrograms ("mcg") of lead per day after subtracting the
21 amount of lead deemed to be "naturally occurring" for each ingredient listed in **Table 1**, pursuant to
22 the method outlined below, for Covered Products that contain lead, and as determined under the
23 testing and quality control methodology of Section 3.4.

24 3.3.2 The amount of lead deemed "naturally occurring" in each of the
25 Reformulated Covered Products is the sum of the amounts of "naturally occurring" lead supplied by
26 the quantity of each ingredient listed in **Table 1** that is present in each Reformulated Covered
27 Product. For each ingredient listed in **Table 1**, the amount of lead deemed "naturally occurring" is
28

1 listed in **Table 1** in micrograms of “naturally occurring” lead per gram of the ingredient that is
2 contained in the Reformulated Covered Product.

3 To subtract the “naturally occurring” lead in any Covered Product for purposes of
4 determining the Daily Lead Exposure Level and whether the Covered Product qualifies as a
5 Reformulated Covered Product under this Consent Judgment, as provided in Section 3.3.1, UCAN
6 shall provide to ERC, within thirty (30) days after the first anniversary of the Effective Date, the
7 documentation required under Section 3.3.3(a)-(c). No deduction for “naturally occurring” lead
8 shall be permitted until after UCAN provides to ERC the documentation required under Section
9 3.3.3(a)-(c) as indicated in the preceding sentence. Thereafter, for three (3) additional consecutive
10 anniversaries after the Effective Date, if UCAN deducts “naturally occurring” lead in calculating
11 the Daily Lead Exposure Level, UCAN shall provide to ERC, within thirty (30) days after each
12 such anniversary date, the documentation required under Section 3.3.3(a)-(c) for each such
13 applicable twelve-month period preceding the applicable anniversary of the Effective Date.

14 **3.3.3** In calculating the Daily Lead Exposure Level to determine whether a
15 Covered Product qualifies as a Reformulated Covered Product, UCAN shall be allowed to deduct
16 the amount of lead which is deemed to be “naturally occurring” in any ingredient listed in **Table 1**
17 (“Lead Ingredient”) that is contained in that Covered Product under the following conditions:
18 (a) UCAN itself or from its Lead Ingredient supplier shall obtain either (i) a valid test result
19 showing lead is present in the Lead Ingredient at a specific concentration or in a range; or (ii) a
20 certificate of analysis or certificate of compliance that shows lead is present in the Lead Ingredient
21 at a specific concentration or in a range; and (b) UCAN shall obtain the documentation in Section
22 3.3.3(a) (i) or (ii) for each lot of that Lead Ingredient that is delivered to UCAN (or its manufacturer
23 if UCAN does not manufacture the Covered Product) within twelve (12) months after the Effective
24 Date (or its anniversary date as applicable) for incorporation into the Covered Product; and
25 (c) UCAN shall document the total amount (in grams) of each Lead Ingredient contained in the
26 Covered Product. If the documentation obtained pursuant to Section 3.3.3(a) and (b) documents the
27 presence of lead in any Lead Ingredient in **Table 1**, UCAN shall be entitled to deduct the amount of
28 the “naturally occurring” lead for that Lead Ingredient, as listed in **Table 1**. If the Covered Product

1 does not contain a Lead Ingredient listed in **Table 1**, UCAN shall not be entitled to a deduction for
2 “naturally occurring” lead in **Table 1** for that Covered Product.

3 **Table 1**

Ingredient	Amount of lead (Pb) per gram of ingredient deemed naturally occurring
Calcium (elemental)	0.8 mcg Pb per gram of elemental calcium
Ferrous Fumarate	0.4 mcg Pb per gram of ferrous fumarate
Zinc Oxide	8.0 mcg Pb per gram of zinc oxide
Magnesium Oxide	0.4 mcg Pb per gram of magnesium oxide
Magnesium Carbonate	0.332 mcg Pb per gram of magnesium carbonate
Magnesium Hydroxide	0.4 mcg Pb per gram of magnesium hydroxide
Zinc Gluconate	0.8 mcg Pb per gram of zinc gluconate
Potassium Chloride	1.1 mcg Pb per gram of potassium chloride
Cocoa powder	1.0 mcg Pb per gram of cocoa powder
Cocoa Liquor	1.0 mcg Pb per gram of cocoa liquor
Cocoa Butter	0.1 mcg Pb per gram of cocoa butter

17 **3.4 Testing and Quality Control Methodology**

18 **3.4.1** Prior to UCAN’s first distribution or sale of Covered Products manufactured
19 after the Effective Date and at least once a year for a minimum of three consecutive years, UCAN
20 shall arrange for lead testing of the Covered Products by arranging for testing of five randomly
21 selected samples of each of the Covered Products, in the form intended for sale to the end-user,
22 which UCAN intends to sell or is manufacturing for sale in California, directly selling to a
23 consumer in California or “Distributing into the State of California.” If tests conducted pursuant to
24 this Section demonstrate that no Warning is required for a Covered Product during each of three
25 consecutive years, then the testing requirements of this Section will no longer be required as to that
26 Covered Product. However, if during or after the three-year testing period, UCAN, or its
27 manufacturer, changes ingredient suppliers for any of the Covered Products and/or changes the
28 formulation of the Covered Products with respect to (a) any ingredient listed in **Table 1** and/or

1 (b) any ingredient that contributes more than 0.1 mcg/day of lead in the finished product (as
2 calculated by the formula set forth in Section 3.1.2), UCAN shall test that Covered Product annually
3 for at least three (3) consecutive years after such change is made. Nothing in Section 3.4.1 shall be
4 construed to add, change or increase any "naturally occurring" allowance as provided in Section 3.3
5 or impact, reduce or diminish any requirement for Warning pursuant to Section 3 of this Consent
6 Judgment.

7 3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the arithmetic
8 mean of the five (5) randomly selected samples of the Covered Products will be controlling.

9 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
10 laboratory method that complies with the performance and quality control factors appropriate for
11 the method used, including limit of detection, qualification, accuracy, and precision that meets the
12 following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit of
13 quantification of less than or equal to 0.010 mg/kg.

14 3.4.4 All testing pursuant to this Consent Judgment shall be performed by an
15 independent third party laboratory certified by the California Environmental Laboratory
16 Accreditation Program or an independent third-party laboratory that is registered with the United
17 States Food & Drug Administration.

18 3.4.5 Nothing in this Consent Judgment shall limit UCAN's ability to conduct, or
19 require that others conduct, additional testing of the Covered Products, including the raw materials
20 used in their manufacture.

21 3.4.6 Within thirty (30) days of ERC's written request, UCAN shall deliver lab
22 reports obtained pursuant to Section 3.4 to ERC. UCAN shall retain all test results and
23 documentation for a period of five years from the date of each test.

24 **4. SETTLEMENT PAYMENT**

25 4.1 In full satisfaction of all potential civil penalties, additional settlement payments,
26 attorney's fees, and costs, UCAN shall make a total payment of \$85,000.00 ("Total Settlement
27 Amount") to ERC within 5 days of the Effective Date ("Due Date"). UCAN shall make this
28

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

3 **4.2** \$28,339.03 shall be considered a civil penalty pursuant to California Health and
4 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$21,254.28) of the civil penalty to the
5 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking
6 Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section
7 25249.12(c). ERC will retain the remaining 25% (\$7,084.75) of the civil penalty.

8 **4.3** \$2,633.12 shall be distributed to ERC as reimbursement to ERC for reasonable costs
9 incurred in bringing this action.

10 **4.4** \$21,254.25 shall be distributed to ERC as an Additional Settlement Payment
11 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
12 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly caused
13 by UCAN in this matter. These activities are detailed below and support ERC's overarching goal of
14 reducing and/or eliminating hazardous and toxic chemicals in dietary supplement products in
15 California. ERC's activities have had, and will continue to have, a direct and primary effect within
16 the State of California because California consumers will be benefitted by the reduction and/or
17 elimination of exposure to lead in dietary supplements and/or by providing clear and reasonable
18 warnings to California consumers prior to ingestion of the products.

19 Based on a review of past years' actual budgets, ERC is providing the following list of
20 activities ERC engages in to protect California consumers through Proposition 65 citizen
21 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
22 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
23 supplement products that may contain lead and are sold to California consumers. This work
24 includes continued monitoring and enforcement of past consent judgments and settlements to ensure
25 companies are in compliance with their obligations thereunder, with a specific focus on those
26 judgments and settlements concerning lead. This work also includes investigation of new
27 companies that ERC does not obtain any recovery through settlement or judgment;
28 (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary

1 Compliance Program by acquiring products from companies, developing and maintaining a case
2 file, testing products from these companies, providing the test results and supporting documentation
3 to the companies, and offering guidance in warning or implementing a self-testing program for lead
4 in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's
5 "Got Lead?" Program which reduces the numbers of contaminated products that reach California
6 consumers by providing access to free testing for lead in dietary supplement products (products
7 submitted to the program are screened for ingredients which are suspected to be contaminated, and
8 then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and the results
9 shared with the consumer that submitted the product).

10 ERC shall be fully accountable in that it will maintain adequate records to document and
11 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are being
12 spent only for the proper, designated purposes described in this Consent Judgment. ERC shall
13 provide the Attorney General, within thirty days of any request, copies of documentation
14 demonstrating how such funds have been spent.

15 **4.5** \$13,300.00 shall be distributed to Aqua Terra Aeris Law Group as reimbursement of
16 ERC's attorney's fees, while \$19,473.60 shall be distributed to ERC for its in-house legal fees.
17 Except as explicitly provided herein, each Party shall bear its own fees and costs.

18 **4.6** In the event that UCAN fails to remit the Total Settlement Amount owed under
19 Section 4 of this Consent Judgment on or before the Due Date, UCAN shall be deemed to be in
20 material breach of its obligations under this Consent Judgment. ERC shall provide written notice of
21 the delinquency to UCAN via electronic mail. If UCAN fails to deliver the Total Settlement
22 Amount within five (5) days from the written notice, the Total Settlement Amount shall accrue
23 interest at the statutory judgment interest rate provided in the California Code of Civil Procedure
24 section 685.010. Additionally, UCAN agrees to pay ERC's reasonable attorney's fees and costs for
25 any efforts to collect the payment due under this Consent Judgment.

26 **5. MODIFICATION OF CONSENT JUDGMENT**

27 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by written
28 stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by

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

14 **5.3** In the event that UCAN initiates or otherwise requests a modification under Section
15 5.1, and the meet and confer process leads to a joint motion or application for a modification of the
16 Consent Judgment, UCAN shall reimburse ERC its costs and reasonable attorney's fees for the time
17 spent in the meet-and-confer process and filing and arguing the motion or application.

18 **5.4** Where the meet-and-confer process does not lead to a joint motion or application in
19 support of a modification of the Consent Judgment, then either Party may seek judicial relief on its
20 own. In any such contested court proceeding, ERC may seek costs and any attorney's fees incurred
21 in opposing the motion pursuant to California Code of Civil Procedure section 1021.5.

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

23 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate this
24 Consent Judgment.

25 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated Covered
26 Product (for which ERC alleges that no Warning has been provided), then ERC shall inform UCAN
27 in a reasonably prompt manner of its test results, including information sufficient to permit UCAN
28 to identify the Covered Products at issue. UCAN shall, within thirty (30) days following such

1 notice, provide ERC with testing information, from an independent third-party laboratory meeting
2 the requirements of Sections 3.4.3 and 3.4.4, demonstrating UCAN's compliance with the Consent
3 Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further legal
4 action.

5 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

13 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
14 behalf of itself and in the public interest, and UCAN and its respective officers, directors,
15 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees,
16 licensees, customers (not including private label customers of UCAN), distributors, wholesalers,
17 retailers, and all other upstream and downstream entities in the distribution chain of any Covered
18 Product, and the predecessors, successors, and assigns of any of them (collectively, "Released
19 Parties"). ERC, on behalf of itself and in the public interest, hereby fully releases and discharges
20 the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
21 damages, penalties, fees (including but not limited to attorneys' fees, investigation fees, and expert
22 fees), costs, and expenses (collectively "Claims") asserted, or that could have been asserted from
23 the handling, use, or consumption of the Covered Products, as to any alleged violation of
24 Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65
25 warnings regarding lead for the Covered Products manufactured, distributed, or sold by UCAN
26 before the Effective Date.

27 **8.2** ERC on behalf of itself and its respective owners, principals, shareholders, officers,
28 directors, employees, agents, parents, subsidiaries, successors, assigns, and legal representatives

1 (collectively referred to as "ERC Releasers"), and not on behalf of the general public, hereby
2 waives and releases the Released Parties from any and all Claims that were asserted, or that could
3 have been asserted, for any alleged violations of any other statutory or common law arising from
4 alleged exposures to lead in the Covered Products manufactured, distributed, or sold by UCAN
5 before the Effective Date.

6 **8.3** UCAN, on behalf itself and the Released Parties, hereby waives and releases any and
7 all claims it may have or have had against ERC for any actions or statements made or undertaken in
8 the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice and
9 Complaint up through and including the Effective Date.

10 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
11 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
12 discovered. ERC, on behalf of itself and the ERC Releasers, on the one hand, and UCAN, on
13 behalf of itself and the Released Parties, on the other hand, acknowledge that this Consent Judgment
14 is expressly intended to cover and include all such Claims up through and including the Effective
15 Date, including all rights of action therefore. ERC and UCAN acknowledge that the Claims released
16 in Sections 8.1, 8.2, and 8.3 above may include unknown Claims, and nevertheless waive California
17 Civil Code section 1542 as to any such unknown Claims. California Civil Code section 1542 reads
18 as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
21 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
22 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
23 SETTLEMENT WITH THE DEBTOR.

24 ERC, on behalf of itself only, on the one hand, and UCAN, on the other hand, acknowledge and
25 understand the significance and consequences of this specific waiver of California Civil Code
26 section 1542.

27 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to constitute
28 compliance with Proposition 65 by any releasee regarding alleged exposures to lead in the Covered
Products as set forth in the Notice and Complaint.

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1 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
2 environmental exposures arising under Proposition 65, nor shall it apply to any of UCAN's products
3 other than the Covered Products.

4 **8.7** Nothing in Section 8 shall affect or limit any Party's right to seek to enforce the
5 terms of this Consent Judgment.

6 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

9 **10. GOVERNING LAW**

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

12 **11. PROVISION OF NOTICE**

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

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

17 Chris Heptinstall, Executive Director, Environmental Research Center
18 3111 Camino Del Rio North, Suite 400
19 San Diego, CA 92108
20 Telephone: (619) 500-3090
21 Email: chris_erc501c3@yahoo.com

22 With a copy to:

23 MATTHEW C. MACLEAR
24 ANTHONY M. BARNES
25 AQUA TERRA AERIS LAW GROUP
26 490 43rd Street, Suite 108
27 Oakland, CA 94609
28 Telephone: (415) 568-5200
29 Email: mcm@atalawgroup.com

30 **FOR THE UCAN COMPANY, individually and doing business as GENERATION UCAN:**

31 TRENTON H. NORRIS
32 SARAH ESMALI
33 ARNOLD & PORTER KAYE SCHOLER LLP
34 Three Embarcadero Center, 10th Floor

1 San Francisco, CA 94111
2 Ph: (415) 471-3283
3 Email: sarah.esmaili@apks.com

4 12. COURT APPROVAL

5 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a Motion
6 for Court Approval. The Parties shall use their best efforts to support entry of this Consent
7 Judgment.

8 12.2 If the California Attorney General objects to any term in this Consent Judgment, the
9 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
10 the hearing on the motion.

11 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be void and
12 have no force or effect.

13 13. EXECUTION AND COUNTERPARTS

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

17 14. DRAFTING

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

26 15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

1 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

2 **16. ENFORCEMENT**

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

11 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

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

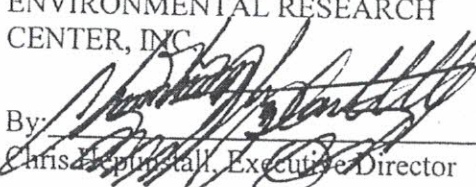
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1 (2) Make the findings pursuant to California Health and Safety Code section
2 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

3 **IT IS SO STIPULATED:**

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5 Dated: 1/28/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

6
7 By: 
Chris Deppin, Executive Director

8
9 Dated: 1/31/2019, 2019

THE UCAN COMPANY, individually
and doing business as GENERATION
UCAN

DocuSigned by:


Shoba Murali

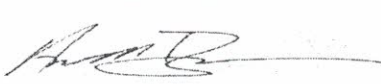
By: 59C99AE98B4042C
Shoba Murali
Its:

CEO

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13 **APPROVED AS TO FORM:**

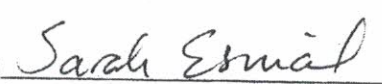
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15 Dated: January 28, 2019

AQUA TERRA AERIS LAW GROUP

16
17
18 By: 
Matthew C. Maclear
Anthony M. Barnes
Attorneys for Plaintiff Environmental
Research Center, Inc.

19
20
21 Dated: 1/31, 2019

ARNOLD & PORTER KAYE SCHOLER
LLP

22
23
24 By: 
Sarah Esmail
Attorneys for Defendant The UCAN
Company, individually and doing business
as Generation UCAN

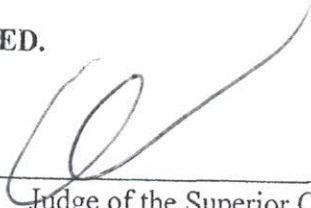
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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 5/17, 2019



Judge of the Superior Court