



SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

FILED
ALAMEDA COUNTY

OCT 16 2019

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

Plaintiff,

vs.

THE HEALTH MANAGEMENT GROUP,
INC., an Ohio corporation; PHYSICIANS
WEIGHT LOSS CENTERS OF
AMERICA, INC., an Ohio corporation;
ADVANCED FAT BURNING 24 HOUR
THERMOGENICS, LLC., an Ohio limited
liability company; THE DISTRIBUTION
CENTER, INC., an Ohio corporation; and
DOES 1-25,

Defendants.

CASE NO. RG19009596 CLERK OF THE SUPERIOR COURT

By Danielle Calneque
Deputy

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et*
seq.

Action Filed: March 5, 2019

Trial Date: None set

1. INTRODUCTION

1.1 On March 5, 2019, 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 Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against THE HEALTH MANAGEMENT GROUP, INC.; PHYSICIANS WEIGHT LOSS CENTERS OF AMERICA, INC.; ADVANCED FAT BURNING 24 HOUR THERMOGENICS, LLC.; and THE DISTRIBUTION CENTER, INC. (collectively “HMG”) and DOES 1-25. In this action, ERC alleges that a number of products manufactured, distributed, or sold by HMG contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Physicians Weight Loss

1 Centers Meal Replacement Drink Mix Chocolate (lead), (2) Physicians Weight Loss Centers
2 Meal Replacement Drink Mix Strawberry (lead), (3) Physicians Weight Loss Centers Premium
3 Plus 35 High Protein Meal Replacement Drink Mix Vanilla (lead), (4) Physicians Weight Loss
4 Centers PhysiciansFAST Protein Bar Fudge Graham (lead), (5) Physicians Weight Loss Centers
5 PhysiciansFAST Protein Bar Dark Chocolate S'mores (lead), (6) Physicians Weight Loss Centers
6 PhysiciansFAST Protein Bar Cinnamon Roll (lead), (7) 24Hour Advanced Fat Burning
7 Thermogenics Maximum Strength Water Enhancer (lead), (8) 24Hour Advanced Fat Burning
8 Thermogenics All New Protein Bar Fudge Graham (lead), (9) 24Hour Advanced Fat Burning
9 Thermogenics Gold Premium Protein Supplement Chocolate (lead), (10) Physicians Weight Loss
10 Centers Shake Creamy Vanilla (lead), (11) Physicians Weight Loss Centers Shake Creamy
11 Chocolate (lead), (12) Physicians Weight Loss Centers Smoothie Strawberry Crème Meal
12 Replacement (lead), (13) Physicians Weight Loss Centers Nutrition Bar Marshmallow Brownie
13 Crisp with Chocolate Flavored Coating (lead), (14) Physicians Weight Loss Centers Nutrition
14 Bar Chocolate Mint with Chocolate Flavored Coating (lead), (15) Physicians Weight Loss
15 Centers Nutrition Bar Oatmeal Cinnamon Raisin with Yogurt Flavored Coating (lead), (16)
16 Physicians Weight Loss Centers Nutrition Bar Double Chocolate with Chocolate Flavored
17 Coating (lead), (17) Advanced Fat Burning 24 Hour Thermogenics Appetite Suppressing Choco-
18 Lettes (lead, cadmium), (18) Advanced Fat Burning 24 Hour Thermogenics Gold Premium
19 Protein Supplement Fat Burning & Appetite Control Vanilla (lead), (19) Advanced Fat Burning
20 24 Hour Thermogenics Gold Premium Protein Supplement Fat Burning & Appetite Control Hot
21 Cocoa (lead), (20) Physicians Weight Loss Centers Hot Drink Nutritionally Designed
22 Cappuccino Decaffeinated (lead), (21) Physicians Weight Loss Centers Hot Drink Nutritionally
23 Designed Creamy Hot Cocoa (lead), (22) Physicians Weight Loss Centers Hot Drink
24 Nutritionally Designed Mint Hot Cocoa (lead), (23) Physicians Weight Loss Centers
25 PhysiciansFAST Protein Bar Peppermint Cocoa (lead, cadmium), (24) Physicians Weight Loss
26 Centers PhysiciansFAST Protein Bar Shortbread Cookie (lead), (25) Physicians Weight Loss
27 Centers Pudding Custard Crème with Toffee Bits (lead), (26) Physicians Weight Loss Centers
28 Pudding Lemon Chiffon (lead), (27) Physicians Weight Loss Centers Pudding Chocolate

1 Marshmallow with Chocolate Chips (lead), (28) Physicians Weight Loss Centers Pudding
2 Double Chocolate (lead), and (29) Physicians Weight Loss Centers Dessert Cheesecake (lead).

3 **1.2** ERC and HMG are hereinafter referred to individually as a “Party” or
4 collectively as the “Parties.”

5 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
6 causes, helping safeguard the public from health hazards by reducing the use and misuse of
7 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
8 and encouraging corporate responsibility.

9 **1.4** For purposes of this Consent Judgment, the Parties agree that each defendant is a
10 business entity each of which has employed ten or more persons at all times relevant to this action,
11 and qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
12 HMG manufactures, distributes, and/or sells the Covered Products.

13 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
14 dated November 13, 2018 and December 21, 2018 that were served on the California Attorney
15 General, other public enforcers, and HMG (“Notices”). True and correct copies of the 60-Day
16 Notices dated November 13, 2018 and December 21, 2018 are attached hereto as **Exhibits A**
17 and **B** respectively and each is incorporated herein by reference. More than 60 days have
18 passed since the Notices were served on the Attorney General, public enforcers, and HMG and
19 no designated governmental entity has filed a Complaint against HMG with regard to the
20 Covered Products or the alleged violations.

21 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes
22 persons in California to lead and/or cadmium without first providing clear and reasonable
23 warnings in violation of California Health and Safety Code section 25249.6. HMG denies all
24 material allegations contained in the Notices and Complaint.

25 **1.7** The Parties have entered into this Consent Judgment in order to settle,
26 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
27 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
28 be construed as an admission by any of the Parties or by any of their respective officers,

1 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
2 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
3 violation of law.

4 **1.8** Except as expressly set forth herein, including the release of Proposition 65
5 claims contained herein, nothing in this Consent Judgment shall prejudice, waive, or impair any
6 right, remedy, argument, or defense the Parties may have in any current or future legal
7 proceeding unrelated to these proceedings.

8 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
9 a Judgment by this Court.

10 **2. JURISDICTION AND VENUE**

11 For purposes of this Consent Judgment and any further court action that may become
12 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
13 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
14 over HMG as to the acts alleged in the Complaint, that venue is proper in Alameda County, and
15 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
16 claims up through and including the Effective Date which were or could have been asserted in this
17 action based on the facts alleged in the Notices and Complaint.

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

19 **3.1** Beginning on the Effective Date, HMG shall be enjoined from manufacturing
20 for sale in the State of California, "Distributing into the State of California," or directly selling
21 in the State of California, any Covered Products which expose a person to a "Daily Lead
22 Exposure Level" of more than 0.5 micrograms of lead per day and/or "Daily Cadmium
23 Exposure Level" of more than 4.1 micrograms of cadmium per day unless it meets the warning
24 requirements under Section 3.2. HMG shall not be subject to further liability for Covered
25 Products sold to third parties without a warning prior to the Effective Date.

26 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of
27 California" shall mean to directly ship a Covered Product into California for sale in California or
28 to sell a Covered Product to a distributor that HMG knows or has reason to know will sell the

1 Covered Product in California.

2 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure Level”
3 shall be measured in micrograms, and shall be calculated using the following formula:
4 micrograms of lead per gram of product, multiplied by grams of product per serving of the
5 product (using the largest serving size appearing on the product label), multiplied by servings of
6 the product per day (using the largest number of recommended daily servings appearing on the
7 label), which equals micrograms of lead exposure per day, excluding, pursuant to Section 3.1.3,
8 amounts of allowances of lead in the ingredients listed in **Table 1** below. If the label contains no
9 recommended daily servings, then the number of recommended daily servings shall be one.

10 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
11 HMG shall be allowed to deduct the amount of lead which is deemed “naturally occurring” in
12 any ingredient listed in **Table 1** that is contained in that Covered Product under the following
13 conditions: For each year that HMG claims entitlement to a “naturally occurring” allowance,
14 HMG shall provide ERC with the following information: (a) HMG must produce to ERC a list of
15 each ingredient in the Covered Product for which a “naturally occurring” allowance is claimed;
16 (b) HMG must provide ERC with documentation of laboratory testing that complies with
17 Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in any ingredient
18 listed in **Table 1** that is contained in the Covered Product and for which HMG intends to deduct
19 “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in any
20 ingredient listed in **Table 1** that is contained in the Covered Product, HMG shall be entitled to
21 deduct up to the full amount of the allowance for that ingredient, as listed in **Table 1**, but not to
22 exceed the total amount of lead actually contained in that ingredient in the Covered Product; and
23 (d) If the Covered Product does not contain an ingredient listed in **Table 1**, HMG shall not be
24 entitled to a deduction for “naturally occurring” lead in the Covered Product for that ingredient.
25 The information required by Sections 3.1.3 (a) and (b) shall be provided to ERC within thirty
26 (30) days of the Effective Date or anniversary thereof for any year that HMG shall claim
27 entitlement to the “naturally occurring” allowance.

28 ///

TABLE 1

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (Elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa-powder	Up to 1.0 micrograms/gram

3.1.4 For purposes of this Consent Judgment, the “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of cadmium per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one

3.2 Clear and Reasonable Warnings

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

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

HMG shall use the phrase “cancer and” in the Warning if HMG has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if HMG has reason to believe that

1 another Proposition 65 chemical is present which may require a cancer warning. As identified in
2 the brackets, the warning shall reflect at least one Proposition 65 substance (lead and/or cadmium)
3 for each end point (cancer and reproductive harm) that is present in each of the Covered Products.

4 The Warning shall be (1) securely affixed to or printed upon the label of each Covered
5 Product, (2) provided via a leaflet, containing only the Warning and an identification of the
6 associated Covered Product(s) (a representation on a leaflet that all products in a shipment are
7 associated with the Warning is compliant with this Consent Judgment), with each online order of
8 Covered Product shipped into California, or (3) provided by shelf tag in brick and mortar
9 locations. If the Warning is provided on the label, it must be set off from other surrounding
10 information and enclosed in a box and must be securely affixed using adhesives or printed upon
11 the label. In addition, for any Covered Product sold over the internet to a California address, the
12 Warning shall appear on the product's primary display page or checkout page. If the Warning is
13 provided on the checkout page it must be clearly linked to the Covered Product by use of an
14 asterisk or other identifying method. If the Warning is provided on the product's primary display
15 page, it may populate upon entry of a California zip code where the product at issue cannot be
16 added to a cart without a zip code, otherwise the Warning must be inserted either directly onto
17 the product's primary display page or with a conspicuous hyperlink stating "**WARNING**" in all
18 capital and bold letters so long as the hyperlink goes directly to a page prominently displaying
19 the Warning without content that detracts from the Warning. Given HMG's lack of control over
20 third-party websites, the online warning requirements expressed in this Section apply only to
21 Covered Products sold through HMG's website.

22 The Warning shall be at least the same size as the largest of any other health or safety
23 warnings also appearing on HMG's website or on the label of the Covered Product and the word
24 "**WARNING**" shall be in all capital letters and in bold print. No statements intended to or likely
25 to have the effect of diminishing the impact of the Warning on the average lay person shall
26 accompany the Warning. Further, no statements may accompany the Warning that state or imply
27 that the source of the listed chemical has an impact on or results in a less harmful effect of the
28 listed chemical.

1 HMG must display the above Warning with such conspicuousness, as compared with other
2 words, statements or designs on the label or on its website, if applicable, to render the Warning
3 likely to be read and understood by an ordinary individual under customary conditions of purchase
4 or use of the product.

5 **3.3 Conforming Covered Products**

6 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
7 Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level”
8 is no more than 4.1 micrograms of cadmium per day as determined by the quality control
9 methodology described in Section 3.4.

10 **3.4 Testing and Quality Control Methodology**

11 **3.4.1** Beginning within one year of the Effective Date, HMG shall arrange for
12 lead and cadmium testing of the Covered Products at least once a year for a minimum of three
13 consecutive years by arranging for testing of three randomly selected samples of each of the
14 Covered Products, in the form intended for sale to the end-user, which HMG intends to sell or
15 is manufacturing for sale in California, directly selling to a consumer in California or
16 “Distributing into the State of California.” If tests conducted pursuant to this Section
17 demonstrate that no Warning is required for a Covered Product during each of three
18 consecutive years, then the testing requirements of this Section will no longer be required as to
19 that Covered Product. However, if during or after the three-year testing period, HMG changes
20 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered
21 Products, HMG shall test that Covered Product annually for at least three (3) consecutive years
22 after such change is made.

23 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
24 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the
25 three (3) randomly selected samples of the Covered Products will be controlling.

26 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
27 laboratory method that complies with the performance and quality control factors appropriate
28 for the method used, including limit of detection, qualification, accuracy, and precision that

1 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
2 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

3 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
4 independent third party laboratory certified by the California Environmental Laboratory
5 Accreditation Program or an independent third-party laboratory that is registered with the
6 United States Food & Drug Administration.

7 **3.4.5** Nothing in this Consent Judgment shall limit HMG’s ability to conduct,
8 or require that others conduct, additional testing of the Covered Products, including the raw
9 materials used in their manufacture.

10 **3.4.6** Within thirty (30) days of ERC’s written request, HMG shall deliver lab
11 reports obtained pursuant to Section 3.4 to ERC. HMG shall retain all test results and
12 documentation for a period of five years from the date of each test. ERC shall treat all
13 documents provided by HMG pursuant to this Section as confidential.

14 **3.4.7** The testing requirements of Section 3.4 do not apply to any Covered
15 Product for which HMG has provided the Warning specified in Section 3.2 continuously and
16 uninterrupted after the Effective Date; however, in the event HMG ceases to provide the
17 Warning specified in Section 3.2, HMG shall be required to comply with the testing
18 requirements of this Section beginning immediately after the date the Warning ceases to be
19 provided or one year after the Effective Date, whichever date is later.

20 **4. SETTLEMENT PAYMENT**

21 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
22 attorney’s fees, and costs, HMG shall make a total payment of \$65,000.00 (“Total Settlement
23 Amount”) to ERC within 10 business days from the Effective Date (“Due Date”). HMG shall
24 make this payment by wire transfer to ERC’s account, for which ERC will give HMG the
25 necessary account information. The Total Settlement Amount shall be apportioned as follows:

26 **4.2** \$5,000.00 shall be considered a civil penalty pursuant to California Health and
27 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$3,750.00) of the civil penalty to the
28 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe

1 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
2 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,250.00) of the civil penalty.

3 **4.3** \$6,794.52 shall be distributed to ERC as reimbursement to ERC for reasonable
4 costs incurred in bringing this action.

5 **4.4** \$22,950.00 shall be distributed to Aqua Terra Aeris Law Group as
6 reimbursement of ERC's attorney's fees, while \$30,255.48 shall be distributed to ERC for its
7 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
8 costs.

9 **4.6** In the event that HMG fails to remit the Total Settlement Amount owed under
10 Section 4 of this Consent Judgment on or before the Due Date, HMG shall be deemed to be in
11 material breach of its obligations under this Consent Judgment. ERC shall provide written
12 notice of the delinquency to HMG via electronic mail. If HMG fails to deliver the Total
13 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
14 shall accrue interest at the statutory judgment interest rate provided in the California Code of
15 Civil Procedure section 685.010. Additionally, HMG agrees to pay ERC's reasonable
16 attorney's fees and costs for any efforts to collect the payment due under this Consent
17 Judgment.

18 **5. MODIFICATION OF CONSENT JUDGMENT**

19 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
20 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
21 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
22 modified consent judgment.

23 **5.2** If HMG seeks to modify this Consent Judgment under Section 5.1, then HMG
24 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and
25 confer regarding the proposed modification in the Notice of Intent, then ERC must provide
26 written notice to HMG within thirty (30) days of receiving the Notice of Intent. If ERC notifies
27 HMG in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and
28 confer in good faith as required in this Section. The Parties shall meet in person or via

1 telephone within thirty (30) days of ERC's notification of its intent to meet and confer. Within
2 thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall provide
3 to HMG a written basis for its position. The Parties shall continue to meet and confer for an
4 additional thirty (30) days in an effort to resolve any remaining disputes. Should it become
5 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer
6 period.

7 **5.3** In the event that HMG initiates or otherwise requests a modification under
8 Section 5.1, and the meet and confer process leads to a joint motion or application for a
9 modification of the Consent Judgment, HMG shall reimburse ERC its costs and reasonable
10 attorney's fees for the time spent in the meet-and-confer process and filing and arguing the
11 motion or application.

12 **5.4** Where the meet-and-confer process does not lead to a joint motion or
13 application in support of a modification of the Consent Judgment, then either Party may seek
14 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
15 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure
16 section 1021.5.

17 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
18 **JUDGMENT**

19 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
20 this Consent Judgment.

21 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
22 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
23 inform HMG in a reasonably prompt manner of its test results, including information sufficient
24 to permit HMG to identify the Covered Products at issue. HMG shall, within thirty (30) days
25 following such notice, provide ERC with testing information, from an independent third-party
26 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating HMG's
27 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve
28 the matter prior to ERC taking any further legal action.

1 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

9 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
10 behalf of itself and in the public interest, and HMG and its respective officers, directors,
11 shareholders, employees, agents, parent companies, subsidiaries (including but not limited to
12 Diet Centers), divisions, suppliers, franchisees, licensees, customers (not including private label
13 customers of HMG), distributors, wholesalers, retailers, and all other upstream and downstream
14 entities in the distribution chain of any Covered Product, and the predecessors, successors, and
15 assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the
16 public interest, hereby fully releases and discharges the Released Parties from any and all
17 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
18 expenses asserted, or that could have been asserted from the handling, use, or consumption of
19 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
20 regulations arising from the failure to provide Proposition 65 warnings on Covered Products
21 placed into the stream of commerce up to and including the Effective Date.

22 **8.2** ERC on its own behalf only, and HMG on its own behalf only, further waive
23 and release any and all claims they may have against each other for all actions or statements
24 made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in
25 connection with the Notices and Complaint up through and including the Effective Date,
26 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
27 enforce the terms of this Consent Judgment.

28 **8.3** It is possible that other claims not known to the Parties, arising out of the facts

1 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
2 discovered, including Covered Products that were sold to third party distributors and/or
3 retailers, without a warning, prior to the Effective Date. ERC on behalf of itself only, and
4 HMG on behalf of itself only, acknowledge that this Consent Judgment is expressly intended to
5 cover and include all such claims up through and including the Effective Date, including all
6 rights of action therefore. ERC and HMG acknowledge that the claims released in Sections 8.1
7 and 8.2 above may include unknown claims, and nevertheless waive California Civil Code
8 section 1542 as to any such unknown claims. California Civil Code section 1542 reads as
9 follows:

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
13 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
14 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
15 DEBTOR OR RELEASED PARTY.

16 ERC on behalf of itself only, and HMG on behalf of itself only, acknowledge and understand
17 the significance and consequences of this specific waiver of California Civil Code section
18 1542.

19 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
20 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
21 and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

22 **8.5** Nothing in this Consent Judgment is intended to apply to any of HMG's
23 products other than the Covered Products.

24 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

27 **10. GOVERNING LAW**

28 The terms and conditions of this Consent Judgment shall be governed by and construed in
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 Ph: (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 **FOR THE HEALTH MANAGEMENT GROUP, INC.;**
20 **PHYSICIANS WEIGHT LOSS CENTERS OF AMERICA, INC.;**
21 **ADVANCED FAT BURNING 24 HOUR THERMOGENICS, LLC.;**
22 **THE DISTRIBUTION CENTER, INC.:**

23 Tony Pittman
24 The Health Management Group, Inc.
25 395 Springside Drive
26 Akron, OH 44333

27 With a copy to:

28 Willis M. Wagner
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814-3938
Telephone: (916) 868-0655
Email: wagnerw@gtlaw.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:**


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3 Dated: July 3, 2019

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ENVIRONMENTAL RESEARCH
CENTER, INC.

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By: 
Chris Heptinstall, Executive Director

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Dated: 7/16, 2019

THE HEALTH MANAGEMENT GROUP, INC.

Charles E Seherer

By:
Its: *President*

Dated: 7/16, 2019

PHYSICIANS WEIGHT LOSS CENTERS OF AMERICA, INC.

Charles E Seherer

By:
Its: *President*

Dated: 7/16, 2019

ADVANCED FAT BURNING 24 HOUR THERMOGENICS, LLC.

Charles E Seherer

By:
Its: *President*

Dated: 7/16, 2019

THE DISTRIBUTION CENTER, INC.

Charles E Seherer

By:
Its: *President*

1 **APPROVED AS TO FORM:**

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3 Dated: July 5, 2019


AQUA TERRA AERIS LAW GROUP

4
5 By: 

6 Matthew C. Maclear
7 Anthony M. Barnes
8 Attorneys for Plaintiff Environmental
9 Research Center, Inc.

10 Dated: July 16, 2019

GREENBERG TRAUIG, LLP

11 By: 

12 Willis M. Wagner
13 Attorney for Defendants The Health
14 Management Group, Inc.; Physicians
15 Weight Loss Centers of America, Inc.;
16 Advanced Fat Burning 24 Hour
17 Thermogenics, LLC.; The Distribution
18 Center, Inc.

19 **ORDER AND JUDGMENT**

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

22 IT IS SO ORDERED, ADJUDGED AND DECREED.

23 Dated: 10/15, 2019

24 
25 Judge of the Superior Court

JULIA A. SPAIN