



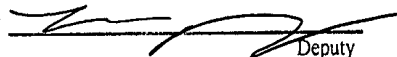
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FILED
 ALAMEDA COUNTY

AUG 29 2019

Attorney for Plaintiff Environmental Research Center, Inc.

CLERK OF THE SUPERIOR COURT

By  Deputy

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Attorney for Defendants Synergy CHC Corp., Nomad Choice Pty Ltd.,
 and Flat Tummy Co.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

CASE NO. RG19020554

**STIPULATED CONSENT
 JUDGMENT**

Plaintiff,

vs.

Health & Safety Code § 25249.5 *et seq.*

**SYNERGY CHC CORP.; NOMAD
 CHOICE PTY LTD.; FLAT TUMMY CO.;
 and DOES 1-100**

Action Filed: May 28, 2019
 Trial Date: None set

Defendants.

1. INTRODUCTION

1.1 On May 28, 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 Synergy CHC Corp., Nomad Choice Pty Ltd., Flat Tummy Co.

1 (collectively "Synergy CHC") and Does 1-100. In this action, ERC alleges that 3 products
2 manufactured, distributed, or sold by Synergy CHC contain lead and/or cadmium, chemicals
3 listed under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to
4 these chemicals at a level requiring a Proposition 65 warning. These products (referred to
5 hereinafter individually as a "Covered Product" or collectively as "Covered Products") are: (1)
6 Flat Tummy Shakes Meal Replacement Vanilla Pod Flavor (lead, cadmium), (2) Flat Tummy
7 Shakes Meal Replacement Chocolate Flavor (lead, cadmium), and (3) Flat Tummy Shakes
8 Meal Replacement Strawberry Flavor (lead, cadmium).

9 1.2 ERC and Synergy CHC are hereinafter referred to individually as a "Party" or
10 collectively as the "Parties."

11 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
12 causes, helping safeguard the public from health hazards by reducing the use and misuse of
13 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
14 and encouraging corporate responsibility.

15 1.4 For purposes of this Consent Judgment, the Parties agree that each defendant is a
16 business entity each of which has employed ten or more persons at all times relevant to this
17 action, and qualifies as a "person in the course of doing business" within the meaning of
18 Proposition 65. Synergy CHC manufactures, distributes, and/or sells the Covered Products.

19 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
20 dated March 8, 2019 that was served on the California Attorney General, other public
21 enforcers, and Synergy CHC ("Notice"). A true and correct copy of the 60-Day Notice dated
22 March 8, 2019 is attached hereto as **Exhibit A** and incorporated herein by reference. More than
23 60 days have passed since the Notice was served on the Attorney General, public enforcers,
24 and Synergy CHC and no designated governmental entity has filed a Complaint against
25 Synergy CHC with regard to the Covered Products or the alleged violations.

26 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes
27 persons in California to lead and/or cadmium without first providing clear and reasonable
28 warnings in violation of California Health and Safety Code section 25249.6. Synergy CHC

1 denies all material allegations contained in the Notice and Complaint.

2 1.7 The Parties have entered into this Consent Judgment in order to settle,
3 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
4 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
5 or be construed as an admission by any of the Parties or by any of their respective officers,
6 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
7 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
8 issue of law, or violation of law. Synergy CHC denies all material allegations contained in the
9 Notice and Complaint and maintains that it has complied with Proposition 65 with respect to
10 the Covered Products.

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

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

16 **2. JURISDICTION AND VENUE**

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

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

25 3.1 Beginning on the Effective Date, Synergy CHC shall be permanently enjoined
26 from manufacturing for sale in the State of California, "Distributing into the State of
27 California," or directly selling in the State of California, any Covered Products which expose a
28 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or

1 "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it
2 meets the warning requirements under Section 3.2.

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

7 3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure
8 Level" shall be measured in micrograms, and shall be calculated using the following formula:
9 micrograms of lead per gram of product, multiplied by grams of product per serving of the
10 product (using the largest serving size appearing on the product label), multiplied by servings
11 of the product per day (using the largest number of recommended daily servings appearing on
12 the label), which equals micrograms of lead exposure per day. If the label contains no
13 recommended daily servings, then the number of recommended daily servings shall be one.

14 3.1.3 For purposes of this Consent Judgment, the "Daily Cadmium Exposure
15 Level" shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of cadmium per gram of product, multiplied by grams of product per serving of
17 the product (using the largest serving size appearing on the product label), multiplied by
18 servings of the product per day (using the largest number of recommended daily servings
19 appearing on the label), which equals micrograms of cadmium exposure per day. If the label
20 contains no recommended daily servings, then the number of recommended daily servings
21 shall be one.

22 3.2 Clear and Reasonable Warnings

23 If Synergy CHC is required to provide a warning pursuant to Section 3.1, the following
24 warning must be utilized ("Warning"):

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

Synergy CHC shall use the phrase "cancer and" in the Warning if Synergy CHC has

1 reason to believe that the the "Daily Lead Exposure Level" is greater than 15 micrograms of lead
2 as determined pursuant to the quality control methodology set forth in Section 3.4 or if Synergy
3 CHC has reason to believe that another Proposition 65 chemical is present which may require a
4 cancer warning. As identified in the brackets, the warning shall appropriately reflect whether there
5 is lead, cadmium, or both chemicals present in each of the Covered Products.

6 The Warning shall be securely affixed to or printed upon the container or label of each
7 Covered Product. If the Warning is provided on the label, it must be set off from other
8 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
9 the internet, the Warning shall appear on the checkout page when a California delivery address
10 is indicated for any purchase of any Covered Product. An asterisk or other identifying method
11 must be utilized to identify which products on the checkout page are subject to the Warning.
12 In no event shall any internet or website Warning be contained in or made through a link.

13 The Warning shall be at least the same size as the largest of any other health or safety
14 warnings also appearing on the website or on the label or container of Synergy CHC's product
15 packaging and the word "WARNING" shall be in all capital letters and in bold print. No
16 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
17 average lay person shall accompany the Warning. Further no statements may accompany the
18 Warning that state or imply that the source of the listed chemical has an impact on or results in a
19 less harmful effect of the listed chemical.

20 Synergy CHC must display the above Warning with such conspicuousness, as compared
21 with other words, statements or designs on the label or container, or on its website, if applicable,
22 to render the Warning likely to be read and understood by an ordinary individual under customary
23 conditions of purchase or use of the product.

24 3.3 Conforming Covered Products

25 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
26 Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure
27 Level" is no more than 4.1 micrograms of cadmium per day as determined by the quality control
28 methodology described in Section 3.4.

1 **3.4 Testing and Quality Control Methodology**

2 **3.4.1** Beginning within one year of the Effective Date, Synergy CHC shall
3 arrange for lead and cadmium testing of the Covered Products at least once a year for a
4 minimum of three consecutive years by arranging for testing of three randomly selected
5 samples of each of the Covered Products, in the form intended for sale to the end-user, which
6 Synergy CHC intends to sell or is manufacturing for sale in California, directly selling to a
7 consumer in California or "Distributing into the State of California." If tests conducted
8 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
9 each of three consecutive years, then the testing requirements of this Section will no longer be
10 required as to that Covered Product. However, if during or after the three-year testing period,
11 Synergy CHC changes ingredient suppliers for any of the Covered Products and/or
12 reformulates any of the Covered Products, Synergy CHC shall test that Covered Product
13 annually for at least two (2) consecutive years after such change is made.

14 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or
15 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the
16 three (3) randomly selected samples of the Covered Products will be controlling.

17 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
18 laboratory method that complies with the performance and quality control factors appropriate
19 for the method used, including limit of detection, qualification, accuracy, and precision that
20 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
21 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

22 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
23 independent third party laboratory certified by the California Environmental Laboratory
24 Accreditation Program or an independent third-party laboratory that is registered with the
25 United States Food & Drug Administration.

26 **3.4.5** Nothing in this Consent Judgment shall limit Synergy CHC's ability to
27 conduct, or require that others conduct, additional testing of the Covered Products, including
28 the raw materials used in their manufacture.

1 3.4.6 Within thirty (30) days of ERC's written request, Synergy CHC shall
2 deliver lab reports obtained pursuant to Section 3.4 to ERC. Synergy CHC shall retain all test
3 results and documentation for a period of three years from the date of each test.

4 3.4.7 The testing requirements under this Section 3.4 do not apply to any
5 Covered Product for which Synergy CHC has provided the Warning specified in Section 3.2
6 continuously and uninterrupted after the Effective Date; however, in the event Synergy CHC
7 ceases to provide the Warning specified in Section 3.2, Synergy CHC shall be required to
8 comply with the testing requirements of this section beginning thirty (30) days after the date the
9 Warning ceases to be provided or one year after the Effective Date, whichever date is later.

10 4. SETTLEMENT PAYMENT

11 4.1 In full satisfaction of all potential civil penalties, additional settlement
12 payments, attorney's fees, and costs, Synergy CHC shall make a total payment of \$85,000.00
13 ("Total Settlement Amount") to ERC within 10 days of the Effective Date ("Due Date").
14 Synergy CHC shall make this payment by wire transfer to ERC's account, for which ERC will
15 give Synergy CHC the necessary account information. The Total Settlement Amount shall be
16 apportioned as follows:

17 4.2 \$35,107.55 shall be considered a civil penalty pursuant to California Health and
18 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$26,330.66) of the civil penalty to
19 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
20 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
21 Code section 25249.12(c). ERC will retain the remaining 25% (\$8,776.89) of the civil penalty.

22 4.3 \$3,140.77 shall be distributed to ERC as reimbursement to ERC for reasonable
23 costs incurred in bringing this action.

24 4.4 \$26,330.62 shall be distributed to ERC as an Additional Settlement Payment
25 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
26 and 3204. ERC will utilize the ASP for activities that address the same public harm as
27 allegedly caused by Defendant in this matter. These activities are detailed
28 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic

1 chemicals in dietary supplement products in California. ERC's activities have had, and will
2 continue to have, a direct and primary effect within the State of California because California
3 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or
4 cadmium in dietary supplements and/or by providing clear and reasonable warnings to
5 California consumers prior to ingestion of the products.

6 Based on a review of past years' actual budgets, ERC is providing the following list of
7 activities ERC engages in to protect California consumers through Proposition 65 citizen
8 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
9 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
10 supplement products that may contain lead and/or cadmium and are sold to California
11 consumers. This work includes continued monitoring and enforcement of past consent
12 judgments and settlements to ensure companies are in compliance with their obligations
13 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
14 cadmium. This work also includes investigation of new companies that ERC does not obtain
15 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
16 (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products from
17 companies, developing and maintaining a case file, testing products from these companies,
18 providing the test results and supporting documentation to the companies, and offering
19 guidance in warning or implementing a self-testing program for lead and/or cadmium in dietary
20 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got
21 Lead?" Program which reduces the numbers of contaminated products that reach California
22 consumers by providing access to free testing for lead in dietary supplement products (Products
23 submitted to the program are screened for ingredients which are suspected to be contaminated,
24 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and
25 the results shared with the consumer that submitted the product).

26 ERC shall be fully accountable in that it will maintain adequate records to document
27 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
28 are being spent only for the proper, designated purposes described in this Consent Judgment.

1 ERC shall provide the Attorney General, within thirty days of any request, copies of
2 documentation demonstrating how such funds have been spent.

3 4.5 \$675.00 shall be distributed to Michael Freund as reimbursement of ERC's
4 attorney's fees and \$19,746.06 shall be distributed to ERC for its in-house legal fees. Except as
5 explicitly provided herein, each Party shall bear its own fees and costs.

6 4.6 In the event that Synergy CHC fails to remit the Total Settlement Amount owed
7 under Section 4 of this Consent Judgment on or before the Due Date, Synergy CHC shall be
8 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
9 provide written notice of the delinquency to Synergy CHC via electronic mail. If Synergy
10 CHC fails to deliver the Total Settlement Amount within five (5) days from the written notice,
11 the Total Settlement Amount shall accrue interest at the statutory judgment interest rate
12 provided in the California Code of Civil Procedure section 685.010. Additionally, Synergy
13 CHC agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the
14 payment due under this Consent Judgment.

15 5. MODIFICATION OF CONSENT JUDGMENT

16 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by
17 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
18 or (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
19 modified consent judgment.

20 5.2 If Synergy CHC seeks to modify this Consent Judgment under Section 5.1, then
21 Synergy CHC must provide written notice to ERC of its intent ("Notice of Intent"). If ERC
22 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
23 must provide written notice to Synergy CHC within thirty (30) days of receiving the Notice of
24 Intent. If ERC notifies Synergy CHC in a timely manner of ERC's intent to meet and confer,
25 then the Parties shall meet and confer in good faith as required in this Section. The Parties
26 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent
27 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
28 modification, ERC shall provide to Synergy CHC a written basis for its position. The Parties

1 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
2 remaining disputes. Should it become necessary, the Parties may agree in writing to different
3 deadlines for the meet-and-confer period.

4 **5.3** In the event that Synergy CHC initiates or otherwise requests a modification
5 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
6 modification of the Consent Judgment, Synergy CHC shall reimburse ERC its costs and
7 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
8 arguing the motion or application.

9 **5.4** Where the meet-and-confer process does not lead to a joint motion or
10 application in support of a modification of the Consent Judgment, then either Party may seek
11 judicial relief on its own. In any such contested court proceeding, the prevailing party may seek
12 costs and any attorney's fees incurred in opposing the motion pursuant to California Code of
13 Civil Procedure section 1021.5.

14 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
15 **JUDGMENT**

16 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
17 terminate this Consent Judgment.

18 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
19 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
20 inform Synergy CHC in a reasonably prompt manner of its test results, including information
21 sufficient to permit Synergy CHC to identify the Covered Products at issue. Synergy CHC
22 shall, within thirty (30) days following such notice, provide ERC with testing information,
23 from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and
24 3.4.4, demonstrating Synergy CHC's compliance with the Consent Judgment. The Parties shall
25 first attempt to resolve the matter prior to ERC taking any further legal action.

26 **7. APPLICATION OF CONSENT JUDGMENT**

27 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
28 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,

1 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
2 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
3 application to any Covered Product which is distributed or sold exclusively outside the State of
4 California and which is not used by California consumers.

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

6 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
7 behalf of itself and in the public interest, and Synergy CHC and its respective officers,
8 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
9 franchisees, licensees, customers (not including private label customers of Synergy CHC),
10 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
11 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
12 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
13 hereby fully releases and discharges the Released Parties from any and all claims, actions,
14 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
15 asserted, or that could have been asserted from the handling, use, or consumption of the
16 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
17 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
18 lead and/or cadmium up to and including the Effective Date.

19 **8.2** ERC on its own behalf only, and Synergy CHC on its own behalf only, further
20 waive and release any and all claims they may have against each other for all actions or
21 statements made or undertaken in the course of seeking or opposing enforcement of
22 Proposition 65 in connection with the Notice and Complaint up through and including the
23 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
24 right to seek to enforce the terms of this Consent Judgment.

25 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
26 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
27 discovered. ERC on behalf of itself only, and Synergy CHC on behalf of itself only,
28 acknowledge that this Consent Judgment is expressly intended to cover and include all such

1 claims up through and including the Effective Date, including all rights of action therefore.
2 ERC and Synergy CHC acknowledge that the claims released in Sections 8.1 and 8.2 above
3 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
4 any such unknown claims. California Civil Code section 1542 reads as follows:

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

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

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

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

20 9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

24 10. GOVERNING LAW

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

27 11. PROVISION OF NOTICE

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

1 ///

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

3 Chris Heptinstall, Executive Director, Environmental Research Center
4 3111 Camino Del Rio North, Suite 400
5 San Diego, CA 92108
6 Ph: (619) 500-3090
7 Email: chris.heptinstall@erc501c3.org

8 With a copy to:
9 Charles W. Poss, In-House Counsel
10 Environmental Research Center, Inc.
11 3111 Camino Del Rio North, Suite 400
12 San Diego, CA 92108
13 Ph: (619) 500-3090
14 Email: charles.poss@erc501c3.org

15 **SYNERGY CHC CORP., NOMAD CHOICE PTY LTD. and
16 FLAT TUMMY CO.**

17 Attn: Jack Ross
18 865 Spring Street
19 Westbrook, ME. 04092

20 With a copy to:

21 Daniel S. Silverman
22 Venable LLP
23 2049 Century Park East, Ste 2300
24 Los Angeles, CA 90067
25 Ph: (310) 229-9900
26 Fax: (310) 229-9901

27 **12. COURT APPROVAL**

28 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
Motion for Court Approval. The Parties shall use their best efforts to support entry of this
Consent Judgment.

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

1 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
2 void and have no force or effect.

3 **13. EXECUTION AND COUNTERPARTS**

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

7 **14. DRAFTING**

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

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

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

21 **16. ENFORCEMENT**

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

1 provided by law for failure to comply with Proposition 65 or other laws.

2 **17. ENTIRE AGREEMENT, AUTHORIZATION**

3 **17.1** This Consent Judgment contains the sole and entire agreement and
4 understanding of the Parties with respect to the entire subject matter herein, and any and all
5 prior discussions, negotiations, commitments, and understandings related hereto. No
6 representations, oral or otherwise, express or implied, other than those contained herein have
7 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
8 herein, shall be deemed to exist or to bind any Party.

9 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment.

11 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
12 **CONSENT JUDGMENT**

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

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

19 (2) Make the findings pursuant to California Health and Safety Code section
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

21 **IT IS SO STIPULATED:**

22
23 Dated: 6/3/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

24
25 By: 

26 Chris Hemminger, Executive Director
27
28

1 Dated: 6/4, 2019

SYNERGY CHOICE CORP.

By: Jack Ross
Its: CEO

6 Dated: 6/4, 2019

NOMAD CHOICE PTY LTD.

By: Jack Ross
Its: CEO

11 Dated: 6/4, 2019

FLAT TUMMY CO.

By: Jack Ross
Its: CEO

16 APPROVED AS TO FORM:


18 Dated: 6/5, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: Charles W. Poss
Charles W. Poss
In-House Counsel

1 Dated: JUNE 5 2019

VENABLE LLP

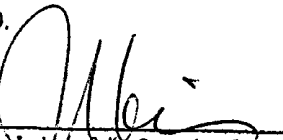
2
3 By: 
4 Daniel S. Silverman
5 Attorney for Defendants Synergy CHC
6 Corp., Nomad Choice Pty Ltd., and Flat
7 Tummy Co.

8
9 **ORDER AND JUDGMENT**

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

12 IT IS SO ORDERED, ADJUDGED AND DECREED.

13
14 Dated: Aug 27 2019


Judge of the Superior Court