



21200362

BY FAX

1 Charles W. Poss (SBN 325366)
2 Environmental Research Center, Inc.
3 3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108
5 Ph: (619) 500-3090
6 Fax: (706) 858-0326

7 Attorney for Plaintiff Environmental Research Center, Inc.

FILED
ALAMEDA COUNTY
SEP 12 2019
CLERK OF THE SUPERIOR COURT
By Denise Salas Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

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

17 Plaintiff,

18 vs.

19 MTN OPS, LLC and DOES 1-100

20 Defendants.

CASE NO. RG19022841

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 13, 2019
Trial Date: None set

22 1. INTRODUCTION

23 1.1 On June 13, 2019, Plaintiff Environmental Research Center, Inc. ("ERC"), a
24 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
25 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")
26 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
27 ("Proposition 65"), against MTN OPS, LLC ("MTN OPS") and Does 1-100. In this action,
28 ERC alleges that a number of products manufactured, distributed, or sold by MTN OPS

1 contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and
2 reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition
3 65 warning. These products (referred to hereinafter individually as a "Covered Product" or
4 collectively as "Covered Products") are: (1) MTN OPS Ignite Supercharged Energy & Focus
5 Drink Tigers Blood (lead), (2) MTN OPS Magnum 100% Whey Protein Isolate + BCAA's
6 Banana Cream (lead), (3) MTN OPS Keep Hammering Ramp It Up Prework Daiquiri Ice
7 (lead), (4) MTN OPS Magnum 100% Whey Protein Isolate + BCAA's White Chocolate Candy
8 Cane (lead), (5) MTN OPS Yeti Monster Pre-Workout Blue Raspberry (lead), (6) MTN OPS
9 Ignite Supercharged Energy & Focus Drink Green Apple (lead), (7) MTN OPS Ignite
10 Supercharged Energy & Focus Drink Grape (lead), (8) MTN OPS Ignite Hot Energy & Focus
11 Blend Mountain Mocha (lead), (9) MTN OPS Ignite Hot Energy & Focus Blend Apple Cider
12 (lead), (10) MTN OPS Magnum 100% Whey Protein Isolate Chocolate Malt Flavor (lead), (11)
13 MTN OPS Magnum 100% Whey Protein Isolate Vanilla Milkshake Flavor (lead), (12) MTN
14 OPS Keep Hammering Whey Protein Ultimate Post-Workout Muscle Formula Chocolate
15 Caramel (lead), (13) MTN OPS Yeti Monster Pre-Workout Green Apple Flavor (lead), (14)
16 MTN OPS Magnum 100% Whey Protein Isolate Strawberries & Cream Flavor (lead), (15)
17 MTN OPS Slumber Deep Sleep Recovery Hibern8 Formula Sleepy Chai (lead), (16) MTN
18 OPS Enduro Cardio Enhancement Non-Caffeinated Raspberry (lead), (17) MTN OPS Enduro
19 Cardio Enhancement Black Cherry Flavor (lead), (18) MTN OPS Magnum 100% Whey
20 Protein Isolate + BCAA'S Lemon Poppyseed (lead), (19) MTN OPS Magnum 100% Whey
21 Protein Isolate + BCAA'S Berries & Cream (lead), (20) MTN OPS Magnum 100% Whey
22 Protein Isolate + BCAA'S Birthday Cake (lead), (21) MTN OPS Renu Body Cleanse (lead),
23 (22) MTN OPS Ammo Whey Protein Meal Replacement Cookies & Cream (lead, cadmium),
24 (23) MTN OPS Ammo Whey Protein Meal Replacement Berries & Cream (lead, cadmium),
25 (24) MTN OPS Magnum 100% Whey Protein Isolate + BCAA'S Pumpkin Spice (lead), (25)
26 MTN OPS Magnum 100% Whey Protein Isolate + BCAA'S Eggnog (lead), (26) MTN OPS
27 Magnum 100% Whey Protein Isolate + BCAA'S Cookies & Cream (lead), (27) MTN OPS
28 Ignite Supercharged Energy & Focus Drink Pink Lemonade (lead), (28) MTN OPS Ignite

1 Supercharged Energy & Focus Drink Piña Colada (lead), (29) MTN OPS Enduro Cardio
2 Enhancement Peach Flavor (lead), (30) MTN OPS Enduro Cardio Enhancement Pink
3 Lemonade (lead), (31) MTN OPS Yeti Monster Pre-Workout Watermelon, (32) MTN OPS
4 Yeti Monster Pre-Workout Peach Flavor, (33) MTN OPS BCAA Optimum 2:1:1 Ratio
5 Strawberry Dragon Fruit (lead), (34) MTN OPS Ammo Whey Protein Meal Replacement
6 Vanilla Flavor (lead, cadmium), (35) MTN OPS Ammo Whey Protein Meal Replacement
7 Chocolate Flavor (lead, cadmium), (36) MTN OPS Ignite Mystery Flavor B Bravo (lead), (37)
8 MTN OPS Ammo Whey Protein Meal Replacement Strawberries & Cream (lead, cadmium),
9 (38) MTN OPS Slumber Deep Sleep Recovery Hibern8 Formula Sleepy Cider (lead), and (39)
10 MTN OPS Slumber Deep Sleep Recovery Hibern8 Formula Sleepy Cocoa (lead).

11 1.2 ERC and MTN OPS are hereinafter referred to individually as a "Party" or
12 collectively as the "Parties."

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

17 1.4 ERC contends that MTN OPS is a business entity that has employed ten or more
18 persons at times relevant to this action, and qualifies as a "person in the course of doing business"
19 within the meaning of Proposition 65, and for purposes of this Consent Judgment only MTN OPS
20 does not dispute this contention. MTN OPS manufactures, distributes, and/or sells the Covered
21 Products.

22 1.5 The Complaint is based on allegations contained in ERC's Notices of Violation
23 dated March 8, 2019, March 20, 2019 and April 2, 2019 that were served on the California
24 Attorney General, other public enforcers, and MTN OPS ("Notices"). True and correct copies of
25 the 60-Day Notices dated March 8, 2019, March 20, 2019, and April 2, 2019 are attached hereto
26 as Exhibits A, B, and C and each is incorporated herein by reference. More than 60 days have
27 passed since the Notices were served on the Attorney General, public enforcers, and MTN OPS,
28 and no designated governmental entity has filed a Complaint against MTN OPS with regard to

1 the Covered Products or the alleged violations.

2 1.6 ERC's Notices and Complaint allege that use of the Covered Products exposes
3 persons in California to lead and/or cadmium without first providing clear and reasonable
4 warnings in violation of California Health and Safety Code section 25249.6. MTN OPS denies
5 all material allegations contained in the Notices and Complaint.

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

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

16 1.9 The Effective Date of this Consent Judgment is the date on which it is entered
17 as a Judgment by this Court.

18 2. JURISDICTION AND VENUE

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

26 3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

27 3.1 Beginning on the Effective Date, and for all times that MTN OPS employs ten
28 or more employees as defined by 27 California Code of Regulations section 25102(h), MTN

1 OPS shall be permanently enjoined from manufacturing for sale in the State of California,
2 "Distributing into the State of California," or directly selling in the State of California, any
3 Covered Products which expose a person to a "Daily Lead Exposure Level" of more than 0.5
4 micrograms of lead per day and/or "Daily Cadmium Exposure Level" of more than 4.1
5 micrograms of cadmium per day unless it meets the warning requirements under Section 3.2.

6 3.1.1 As used in this Consent Judgment, the term "Distributing into the State
7 of California" shall mean to directly ship a Covered Product into California for sale in
8 California or to sell a Covered Product to a distributor that MTN OPS knows will sell the
9 Covered Product in California.

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

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

25 ///
26 ///
27 ///
28 ///

1 **3.2 Clear and Reasonable Warnings**

2 If MTN OPS is required to provide a warning pursuant to Section 3.1, the following
3 warning must be utilized ("Warning"):

4 **FOR PRODUCTS CONTAINING LEAD:**

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

8 **FOR PRODUCTS CONTAINING LEAD AND CADMIUM:**

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

12 MTN OPS shall use the phrase "cancer and" in the Warning only if the "Daily Lead
13 Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality
14 control methodology set forth in Section 3.4 or if MTN OPS knows that another Proposition 65
15 chemical is present which requires a cancer warning. As identified in the brackets, the warning
16 shall appropriately reflect whether there is lead, cadmium, or both chemicals present in each of the
17 Covered Products.

18 The Warning shall be provided using one or more of the following methods: (a) a
19 product-specific Warning securely affixed to or printed upon the container or label of each
20 Covered Product, (b) a product-specific Warning provided on a posted sign, shelf tag, or shelf
21 sign, for the Covered Product at each point of display of the product, or (c) a product-specific
22 Warning provided via any electronic device or process that automatically provides the Warning
23 to the purchaser prior to or during the purchase of the Covered Product, without requiring the
24 purchaser to seek out the Warning. If the Warning is provided on the label, it must be set off
25 from other surrounding information and enclosed in a box. In addition, for any Covered
26 Product sold over the internet, the Warning shall appear on the checkout page when a
27 California delivery address is indicated for any purchase of any Covered Product. An asterisk
28 or other identifying method must be utilized to identify which products on the checkout page
are subject to the Warning. In no event shall any internet or website Warning be contained in

1 or made through a link.

2 The Warning shall be at least the same size as the largest of any other health or safety
3 warnings also appearing on its website or on the label or container of MTN OPS' product
4 packaging and the word "WARNING" shall be in all capital letters and in bold print. No other
5 statements about Proposition 65, lead or cadmium may accompany the warning.

6 MTN OPS must display the above Warning with such conspicuousness, as compared with
7 other words, statements or designs on the label or container, or on its website, if applicable, to
8 render the Warning likely to be read and understood by an ordinary individual under customary
9 conditions of purchase or use of the product. Nothing herein is intended to require MTN OPS to
10 provide warnings beyond those required by Proposition 65.

11 3.3 Conforming Covered Products

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

16 3.4 Testing and Quality Control Methodology

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

1 3.4.2 For purposes of measuring the "Daily Lead Exposure Level" and/or
2 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the five
3 (5) randomly selected samples of the Covered Products will be controlling.

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

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

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

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

19 **4. ORDERED PAYMENT**

20 4.1 In full satisfaction of all potential civil penalties, additional settlement
21 payments, attorney's fees, and costs, ordered, decreed, and adjudged by the Superior Court,
22 MTN OPS shall make a total payment of \$187,500.00 ("Total Payment Amount") to ERC in
23 two periodic payments (the "Periodic Payments") according to the following payment schedule
24 ("Due Dates"):

- 25 • Payment 1 -- \$100,000.00 within 5 days of the Effective Date
- 26 • Payment 2 -- \$87,500.00 within 35 days of the Effective Date

27 MTN OPS shall make these payments by wire transfer to ERC's account, for which
28 ERC will give MTN OPS the necessary account information. ERC shall also provide its W-9

1 form to MTN OPS prior to payment. The Total Payment Amount shall be apportioned as
2 follows:

3 4.2 \$100,000.00 shall be considered a civil penalty pursuant to California Health
4 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$75,000.00) of the civil penalty
5 to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
6 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
7 Code section 25249.12(c). ERC will retain the remaining 25% (\$25,000.00) of the civil
8 penalty.

9 4.3 \$7,751.47 shall be distributed to ERC as reimbursement to ERC for reasonable
10 costs incurred in bringing this action.

11 4.4 \$43,200.68 shall be distributed to ERC as an Additional Settlement Payment
12 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
13 and 3204. ERC will utilize the ASP for activities that address the same public harm as
14 allegedly caused by Defendant in this matter. These activities are detailed
15 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic
16 chemicals in dietary supplement products in California. ERC's activities have had, and will
17 continue to have, a direct and primary effect within the State of California because California
18 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or
19 cadmium in dietary supplements and/or by providing clear and reasonable warnings to
20 California consumers prior to ingestion of the products.

21 Based on a review of past years' actual budgets, ERC is providing the following list of
22 activities ERC engages in to protect California consumers through Proposition 65 citizen
23 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
24 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
25 supplement products that may contain lead and/or cadmium and are sold to California
26 consumers. This work includes continued monitoring and enforcement of past consent
27 judgments and settlements to ensure companies are in compliance with their obligations
28 thereunder, with a specific focus on those judgments and settlements concerning lead and/or

1 cadmium. This work also includes investigation of new companies that ERC does not obtain
2 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
3 (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products from
4 companies, developing and maintaining a case file, testing products from these companies,
5 providing the test results and supporting documentation to the companies, and offering
6 guidance in warning or implementing a self-testing program for lead and/or cadmium in dietary
7 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got
8 Lead?" Program which reduces the numbers of contaminated products that reach California
9 consumers by providing access to free testing for lead in dietary supplement products (Products
10 submitted to the program are screened for ingredients which are suspected to be contaminated,
11 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and
12 the results shared with the consumer that submitted the product). MTN OPS has no information
13 regarding ERC's budget and activities and, accordingly, MTN OPS takes no position with
14 respect to the contents of this paragraph.

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

20 4.5 \$36,547.85 shall be distributed to ERC for its in-house legal fees. Except as
21 explicitly provided herein, each Party shall bear its own fees and costs.

22 4.6 In the event that MTN OPS fails to remit the Periodic Payments owed under
23 Section 4.1 of this Consent Judgment on or before the applicable Due Date, MTN OPS shall be
24 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
25 provide written notice of the delinquency to MTN OPS via electronic mail. If MTN OPS fails
26 to deliver the delinquent payment within five (5) days from the written notice, the entire unpaid
27 balance of the Total Payment Amount shall immediately become due and payable. Interest on
28 the unpaid amount shall accrue at the statutory judgment interest rate provided in the California

1 Code of Civil Procedure section 685.010. Additionally, MTN OPS agrees to pay ERC's
2 reasonable attorney's fees and costs for any efforts to collect the payment due under this
3 Consent Judgment.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

5 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
6 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
7 or (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
8 modified consent judgment.

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

21 **5.3** In the event that MTN OPS initiates or otherwise requests a modification under
22 Section 5.1, and the meet and confer process leads to a joint motion or application for a
23 modification of the Consent Judgment, MTN OPS shall reimburse ERC its costs and
24 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
25 arguing the motion or application.

26 **5.4** Where the meet-and-confer process does not lead to a joint motion or
27 application in support of a modification of the Consent Judgment, then either Party may seek
28 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any

1 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure
2 section 1021.5.

3 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
4 **JUDGMENT**

5 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or
6 terminate this Consent Judgment.

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

15 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

23 8.1 This Consent Judgment is a full, final, and binding resolution between ERC,
24 on behalf of itself and in the public interest, and MTN OPS and its respective officers,
25 directors, members, shareholders, employees, agents, parent companies, subsidiaries, divisions,
26 suppliers, franchisees, licensees, customers (not including private label customers of MTN
27 OPS), distributors, wholesalers, retailers, and all other upstream and downstream entities in the
28 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any

1 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
2 hereby fully releases and discharges the Released Parties from any and all claims, actions,
3 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
4 asserted, or that could have been asserted from the handling, use, or consumption of the
5 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
6 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
7 lead and/or cadmium up to and including the Effective Date.

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

14 8.3 It is possible that other claims not known to the Parties, arising out of the facts
15 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
16 discovered. ERC on behalf of itself only, and MTN OPS on behalf of itself only, acknowledge
17 that this Consent Judgment is expressly intended to cover and include all such claims up
18 through and including the Effective Date, including all rights of action therefore. ERC and
19 MTN OPS acknowledge that the claims released in Sections 8.1 and 8.2 above may include
20 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
21 unknown claims. California Civil Code section 1542 reads as follows:

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
23 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
24 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
25 AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
26 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
27 PARTY.

26 ERC on behalf of itself only, and MTN OPS on behalf of itself only, acknowledge and
27 understand the significance and consequences of this specific waiver of California Civil Code
28 section 1542.

1 8.4 Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
3 and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

4 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or
5 environmental exposures arising under Proposition 65, nor shall it apply to any of MTN OPS'
6 products other than the Covered Products.

7 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

11 **10. GOVERNING LAW**

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

14 **11. PROVISION OF NOTICE**

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

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

19 Chris Heptinstall, Executive Director, Environmental Research Center
20 3111 Camino Del Rio North, Suite 400
21 San Diego, CA 92108
22 Ph: (619) 500-3090
23 Email: chris.heptinstall@erc501c3.org

24 With a copy to:

25 Charles W. Poss
26 Environmental Research Center
27 3111 Camino Del Rio North, Suite 400
28 San Diego, CA 92108
29 Ph: (619) 500-3090
30 Email: charles.poss@erc501c3.org

31 ///

1 MTN OPS, LLC
Nick Hanks, COO
2 251 S. Mountain Road
3 Fruit Heights, UT 84037
Ph: (801) 554-5050
4 Email: nick@mtnops.com

5 With a copy to:

6
7 Brett N. Anderson
Blackburn & Stoll, LC
8 257 East 200 South, Suite 800
Salt Lake City, UT 84111-2048
9 Ph: (801) 521-7900
10 Fax: (801) 521-7965
Email: bretta@blackburn-stoll.com

11 12 12. COURT APPROVAL

13 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
14 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
15 Consent Judgment.

16 12.2 If the California Attorney General objects to any term in this Consent Judgment,
17 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
18 prior to the hearing on the motion.

19 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
20 void and have no force or effect.

21 13. EXECUTION AND COUNTERPARTS

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

25 14. DRAFTING

26 The terms of this Consent Judgment have been reviewed by the respective counsel for
27 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
28 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and

1 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
2 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
3 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
4 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
5 equally in the preparation and drafting of this Consent Judgment.

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

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

11 **16. ENTIRE AGREEMENT, AUTHORIZATION**

12 16.1 This Consent Judgment contains the sole and entire agreement and
13 understanding of the Parties with respect to the entire subject matter herein, and any and all
14 prior discussions, negotiations, commitments, and understandings related hereto. No
15 representations, oral or otherwise, express or implied, other than those contained herein have
16 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
17 herein, shall be deemed to exist or to bind any Party.

18 16.2 Each signatory to this Consent Judgment certifies that he or she is fully
19 authorized by the Party he or she represents to stipulate to this Consent Judgment.

20 **17. 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
24 regarding 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

28 (2) Make the findings pursuant to California Health and Safety Code section

1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

2 **IT IS SO STIPULATED:**

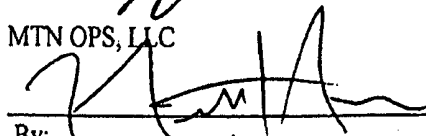
3 Dated: 7/21, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Heppner, Executive Director

7 Dated: 7/31, 2019


MTN OPS, LLC

By: 
Its: NICK HAWKS
COO

11 **APPROVED AS TO FORM:**


12 Dated: July 2, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Charles W. Poss
Attorney for Plaintiff Environmental
Research Center, Inc.

17 Dated: July 8, 2019, 2019

BLACKBURN & STOLL, LC

By: 
Brett N. Anderson
Attorney for Defendant MTN OPS, LLC

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

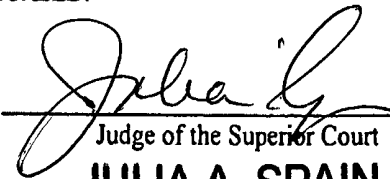
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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: 9/12, 2019


Judge of the Superior Court
JULIA A. SPAIN

Case Title: Environmental Research Center v. MTN OPS LLC
Case No. RG19-022841

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 24405 Amador Street, Hayward, California. I served the STIPULATED CONSENT JUDGMENT by placing copies in envelopes addressed as shown below and sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Poss, Charles
Environmental Research Center Inc.
3111 Camino Del Rio North Ste 400
San Diego, CA 92108

MTN OPS LLC
251 South Mountain Rd.
Fruit Heights, UT 84037

Brent N. Anderson
Blackburn & Stoll LC
257 East 200 South Ste 800
Salt Lake City UT 84111-2048

Dated: 09/12/19

Chad Finke
Executive Officer/Clerk of the Superior Court

By: *Danielle Labrecque*
Danielle Labrecque, Deputy Clerk