

FILED
ALAMEDA COUNTY

MAY 19 2020

CLERK OF THE SUPERIOR COURT
By Danielle Salinas
Deputy

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

Attorney for Plaintiff Environmental Research Center, Inc.

David W. Tufts (CA Bar No. 180817)
Durham Jones & Pinegar, P.C.
111 South Main Street, Suite 2400
Salt Lake City, UT 84111
Ph: (801) 415-3000
Email: dtufts@djplaw.com

Attorney for Defendants DAS Labs, LLC and Bucked Up, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

DAS LABS LLC, individually and dba
BUCKED UP; BUCKED UP, LLC and
DOES 1-100

Defendants.

CASE NO. RG19043611
JUDGMENT and ORDER on
STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 18, 2019

Trial Date: None set

1. INTRODUCTION

1.1 On November 18, 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 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),

1 against DAS Labs LLC, individually and dba Bucked Up and Bucked Up, LLC (collectively
2 "DAS Labs¹") and Does 1-100. Subsequently, on December 26, 2019, ERC filed a First
3 Amended Complaint for Injunctive and Declaratory Relief and Civil Penalties (the operative
4 Complaint, referred to hereafter as the "Complaint") pursuant to the provisions of Proposition
5 65, against DAS Labs and Does 1-100. In this action, ERC alleges that a number of products
6 manufactured, distributed, or sold by DAS Labs contain lead, a chemical listed under Proposition
7 65 as a carcinogen and reproductive toxin, and have exposed consumers to this chemical at a
8 level requiring a Proposition 65 warning. These products (referred to hereinafter individually as
9 a "Covered Product" or collectively as "Covered Products") are: (1) Bucked Up Pre-Workout
10 Grape Gainz, (2) Bucked Up Keto Protein Vanilla, (3) Buck Feed Protein Chocolate, (4) Bucked
11 Up Pre-Workout Gym N' Juice, (5) Bucked Up Pre-Workout Blood Raz, (6) Bucked Up Pre-
12 Workout Blue Raz, (7) Woke AF Pre-Workout Grape Gainz, (8) Bucked Up Pre-Workout Killa
13 OJ (9) Bucked Up Keto Protein Chocolate, (10) BAMF Nootropic Preworkout Strawberry Kiwi,
14 (11) Bucked Up Racked Branched Chain Amino Acids Intra-Workout Peach Mango, (12)
15 Bucked Up Racked Branched Chain Amino Acids Intra-Workout Piña Colada, (13) Woke AF
16 High-Stimulant Pre-Workout 'Merica Rocket Pop, (14) BAMF High-Stimulant Nootropic
17 Preworkout Gym N' Juice, (15) Bucked Up CL Exclusive All-Natural Pre-Workout Pink
18 Lemonade, (16) Bucked Up CL Exclusive All-Natural Pre-Workout Blueberry Pomegranate,
19 (17) Bucked UP Stag Multivitamin, (18) Bucked Up Pre-Workout Watermelon, (19) Bucked Up
20 Non-Stimulant Pre-Workout Raspberry Lime Ricky, (20) Bucked Up CL Exclusive Pre-
21 Workout Sour Watermelon, (21) Bucked Up Pre-Workout Strawberry Kiwi, (22) Woke AF
22 High-Stimulant Pre-Workout Killa OJ, (23) Bucked Up Organic Greens Unflavored, (24)
23 Bucked Up Organic Greens Mixed Berry, (25) Woke AF High-Stimulant Blood Raz, (26) Woke
24 AF High-Stimulant Blue Raz, (27) Bucked Up CL Exclusive Nursing Support, (28) Exogenous
25 Ketones Raspberry Lemonade Flavor, (29) Bucked Up Non-Stimulant Pre-Workout Grape
26
27

28 ¹ References to "DAS Labs" in Sections 3, 4 and 6 shall include Bucked Up, LLC only at times that Bucked Up, LLC qualifies as a "person in the course of doing business" and is engaged in manufacturing, distributing and/or selling the Covered Products.

1 Gainz, (30) Bucked Up Non-Stimulant Pre-Workout Pink Lemonade, (31) Exogenous Ketones
2 Orange-Mango Flavor, (32) BAMF High-Stimulant Nootropic Preworkout Pump N' Grind, (33)
3 Bucked Up Racked Branched Chain Amino Acids Intra-Workout Grape Flavor, and (34) BAMF
4 High-Stimulant Nootropic Preworkout Blue Raz. The term "Covered Products" includes
5 Covered Products that are repackaged but that otherwise remain the same product. The term
6 "Coverd Products" also includes all forms of delivery of the Covered Products including bulk,
7 individual container, stick pack sample, and energy pack sample, so long as the only change to
8 the Covered Product is the form of delivery.

9 1.2 ERC and DAS Labs 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 and qualifies as a "person in the course of doing business" within the meaning of
17 Proposition 65. DAS Labs manufactures, distributes, and/or sells the Covered Products.

18 1.5 The Complaint is based on allegations contained in ERC's Notices of Violation
19 dated September 6, 2019 and October 16, 2019, both of which were served on the California
20 Attorney General, other public enforcers, and DAS Labs (the "First and Second Notices").
21 True and correct copies of the First and Second Notices, dated September 6, 2019 and October
22 16, 2019, are attached hereto as **Exhibits A and B**, respectively and are incorporated herein by
23 reference. More than 60 days have passed since the First and Second Notices were served on
24 the Attorney General, public enforcers, and DAS Labs and no designated governmental entity
25 has filed a Complaint against DAS Labs with regard to the Covered Products or the alleged
26 violations.

27 1.6 On December 30, 2019, ERC served a third Notice of Violation on the California
28 Attorney General, other public enforcers, and DAS Labs (the "Third Notice"). A true and correct

1 copy of the Third Notice is attached hereto as **Exhibit C** and incorporated herein by reference.
2 On January 14, 2020, ERC served a fourth Notice of Violation on the California Attorney
3 General, other public enforcers, and DAS Labs (the "Fourth Notice"). A true and correct copy
4 of the Fourth Notice is attached hereto as **Exhibit D** and incorporated herein by reference. The
5 parties stipulate that the Complaint shall be deemed amended as of March 25, 2020 to include
6 the products set forth in ERC's Third Notice and Fourth Notice and that references hereinafter
7 to the Complaint refer to the Complaint as deemed amended. This Consent Judgment applies to
8 all Covered Products set forth in Paragraph 1.1, effective 60 days after January 14, 2020,
9 provided no public enforcer is diligently pursuing the allegations set forth in ERC's Third Notice
10 and Fourth Notice. On March 25, 2020 more than 60 days will have passed since ERC's Third
11 Notice and Fourth Notice were served on the Attorney General, public enforcers, and DAS Labs.

12 **1.7** The First and Second Notices, the Third Notice and the Fourth Notice are
13 hereafter collectively referred to as the "Notices."

14 **1.8** ERC's Notices and Complaint allege that use of the Covered Products exposes
15 persons in California to lead without first providing clear and reasonable warnings in violation
16 of California Health and Safety Code section 25249.6. DAS Labs denies all material
17 allegations contained in the Notices and Complaint.

18 **1.9** The Parties have entered into this Consent Judgment in order to settle,
19 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
20 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
21 or be construed as an admission by any of the Parties or by any of their respective officers,
22 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
23 franchisees, licensees, customers, suppliers, distributors, wholesalers, manufacturers,
24 producers, or retailers of any fact, issue of law, or violation of law.

25 **1.10** Except as expressly set forth herein, nothing in this Consent Judgment shall
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
27 any current or future legal proceeding unrelated to these proceedings.

28 **1.11** The Effective Date of this Consent Judgment is the date on which it is entered

1 as a Judgment by this Court.

2 **2. JURISDICTION AND VENUE**

3 For purposes of this Consent Judgment and any further court action that may become
4 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
5 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
6 over DAS Labs as to the acts alleged in the Complaint, that venue is proper in Alameda County,
7 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
8 all claims up through and including the Effective Date which were or could have been asserted in
9 this action based on the facts alleged in the Notices and Complaint.

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

11 **3.1** Beginning on the Effective Date, DAS Labs shall be permanently enjoined
12 from manufacturing for sale in the State of California, "Distributing into the State of California,"
13 or directly selling in the State of California, any Covered Product which exposes a person to a
14 "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the
15 warning requirements under Section 3.2.

16 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
17 of California" shall mean to directly ship a Covered Product into California for sale in
18 California or to sell a Covered Product to a distributor that DAS Labs knows or has reason to
19 know will sell the Covered Product in California.

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

27 **3.2 Clear and Reasonable Warnings**

28 If DAS Labs is required to provide a warning pursuant to Section 3.1, one of the following

warnings must be utilized ("Warning"):

OPTION 1:

⚠ WARNING: Consuming this product can expose you to chemicals including [lead], 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.

or

OPTION 2:

⚠ WARNING
Reproductive Harm
www.P65Warnings.ca.gov

DAS Labs shall use the phrase "cancer and" in the OPTION 1 Warning or replace the phrase "Reproductive Harm" with the phrase "Cancer and Reproductive Harm" in the OPTION 2 Warning if DAS Labs 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 DAS Labs has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

The Warning shall be securely affixed to or printed upon the container or label of each Covered Product. If the Warning is provided on the label, it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet, the Warning shall appear on the checkout page when a California delivery address is indicated for any purchase of any Covered Product. An asterisk 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 or made through a link.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label or container of DAS Labs' product packaging and the word "WARNING" shall be in all capital letters and in bold print. No

1 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
2 average lay person shall accompany the Warning. Further, no statements may accompany the
3 Warning that state or imply that the source of the listed chemical has an impact on or results in a
4 less harmful effect of the listed chemical.

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

9 3.3 Conforming Covered Products

10 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
11 Level" is no greater than 0.5 micrograms of lead per day as determined by the quality control
12 methodology described in Section 3.4.

13 3.4 Testing and Quality Control Methodology

14 3.4.1 Beginning within one year of the Effective Date, DAS Labs shall
15 arrange for lead testing of the Covered Products at least once a year for a minimum of five
16 consecutive years by arranging for testing of five randomly selected samples of each of the
17 Covered Products, in the form intended for sale to the end-user, which DAS Labs intends to
18 sell or is manufacturing for sale in California, directly selling to a consumer in California or
19 "Distributing into the State of California." If tests conducted pursuant to this Section
20 demonstrate that no Warning is required for a Covered Product during each of five consecutive
21 years, then the testing requirements of this Section will no longer be required as to that
22 Covered Product. However, if during or after the five-year testing period, DAS Labs changes
23 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered
24 Products, DAS Labs shall test that Covered Product annually for at least four (4) consecutive
25 years after such change is made.

26 3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the highest
27 lead detection result of the five (5) randomly selected samples of the Covered Products will be
28 controlling.

1 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
2 laboratory method that complies with the performance and quality control factors appropriate
3 for the method used, including limit of detection, qualification, accuracy, and precision that
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
5 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

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

10 **3.4.5** Nothing in this Consent Judgment shall limit DAS Labs' ability to
11 conduct, or require that others conduct, additional testing of the Covered Products, including
12 the raw materials used in their manufacture.

13 **3.4.6** Within thirty (30) days of ERC's written request, or later if agreed upon
14 in writing by the Parties, DAS Labs shall deliver lab reports obtained pursuant to Section 3.4 to
15 ERC. DAS Labs shall retain all test results and documentation for a period of five years from
16 the date of each test.

17 **4. SETTLEMENT PAYMENT**

18 **4.1** In full satisfaction of all potential civil penalties, additional settlement
19 payments, attorney's fees, and costs, DAS Labs shall make a total payment of \$150,000.00
20 ("Total Settlement Amount") to ERC within 5 days of the Effective Date ("Due Date"). DAS
21 Labs shall make this payment by wire transfer to ERC's account, for which ERC will give
22 DAS Labs the necessary account information. The Total Settlement Amount shall be
23 apportioned as follows:

24 **4.2** \$100,000.00 shall be considered a civil penalty pursuant to California Health
25 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$75,000.00) of the civil penalty
26 to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
27 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
28 Code section 25249.12(c). ERC will retain the remaining 25% (\$25,000.00) of the civil

1 penalty.

2 4.3 \$8,115.21 shall be distributed to ERC as reimbursement to ERC for reasonable
3 costs incurred in bringing this action.

4 4.4 \$22,470.60 shall be distributed to ERC as an Additional Settlement Payment
5 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
6 and 3204. ERC will utilize the ASP for activities that address the same public harm as
7 allegedly caused by Defendant in this matter. These activities are detailed
8 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic
9 chemicals in dietary supplement products in California. ERC's activities have had, and will
10 continue to have, a direct and primary effect within the State of California because California
11 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary
12 supplements and/or by providing clear and reasonable warnings to California consumers prior
13 to ingestion of the products.

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

1 contaminated products that reach California consumers by providing access to free testing for
2 lead in dietary supplement products (Products submitted to the program are screened for
3 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
4 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
5 that submitted the product).

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

11 4.5 \$19,414.19 shall be distributed to ERC for its in-house legal fees. Except as
12 explicitly provided herein, each Party shall bear its own fees and costs.

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

22 5. MODIFICATION OF CONSENT JUDGMENT

23 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by
24 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
25 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
26 modified Consent Judgment.

27 5.2 If DAS Labs seeks to modify this Consent Judgment under Section 5.1, then
28 DAS Labs must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks

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

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

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

18 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
19 terminate this Consent Judgment.

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

1 **7. APPLICATION OF CONSENT JUDGMENT**

2 This Consent Judgment applies to, is binding upon, and benefits the Parties and their
3 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
4 divisions, suppliers, franchisees, licensees, customers (excluding private labelers), distributors,
5 wholesalers, retailers, manufacturers, producers, predecessors, successors, and assigns. This
6 Consent Judgment has no application to any Covered Product that is distributed or sold
7 exclusively outside the State of California and that 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,
10 on behalf of itself and in the public interest, and DAS Labs and its respective officers,
11 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
12 franchisees, licensees, customers (not including private label customers of DAS Labs),
13 distributors, wholesalers, retailers, manufacturers, producers, and all other upstream and
14 downstream entities in the distribution chain of any Covered Product, and the predecessors,
15 successors, and assigns of any of them (collectively, "Released Parties"). On behalf of itself
16 and in the public interest, ERC hereby fully releases and discharges the Released Parties from
17 any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,
18 fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or
19 consumption of the Covered Products, as to any alleged violation of Proposition 65 or its
20 implementing regulations arising from the failure to provide Proposition 65 warnings on the
21 Covered Products regarding lead up to and including the Effective Date.

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

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

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

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

ERC, on behalf of itself only, and DAS Labs, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

8.4 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to lead in the Covered Products as set forth in the Notices and Complaint.

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

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

In the event that any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the remaining enforceable provisions remain unaffected.

10. GOVERNING LAW

The terms and conditions of this Consent Judgment are governed by and construed in accordance with the laws of the State of California.

11. PROVISION OF NOTICE

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.

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

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

With a copy to:
Charles W. Poss
Environmental Research Center, Inc.
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Fax: (706) 858-0326
Email: charles.poss@erc501c3.org

FOR DAS LABS LLC, individually and dba BUCKED UP and BUCKED UP, LLC:

Ryan Gardner
781 South Automall Drive, Suite 102
American Fork, Utah 84003
Email: ryan@buckedup.com

With a copy to:
Phillip Hadfield
781 South Automall Drive, Suite 102
American Fork, Utah 84003
Email: phil@buckedup.com

and

Tyler R. Cahoon
Durham Jones & Pinegar, P.C.
111 South Main Street, Suite 2400
Salt Lake City, UT 84111
Email: tcagoon@djplaw.com

12. COURT APPROVAL

12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a Motion for Court Approval. The Parties shall cooperate and 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 cooperate and use their best efforts to resolve the concern in a timely manner, and if possible prior to the hearing on the motion.

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

13. EXECUTION AND COUNTERPARTS

This Consent Judgment may be executed in counterparts, which taken together constitute one original document. A facsimile or .pdf signature is valid as the original signature.

14. DRAFTING

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

15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

16. ENFORCEMENT

ERC may, by motion or order to show cause before the Superior Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment. In any action brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

To the extent the failure to comply with the Consent Judgment constitutes a violation of Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with Proposition 65 or other laws.

17. ENTIRE AGREEMENT, AUTHORIZATION

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

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

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

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

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

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

///

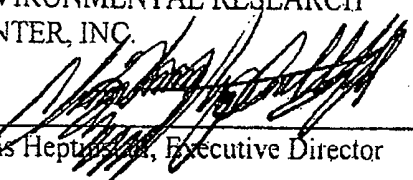
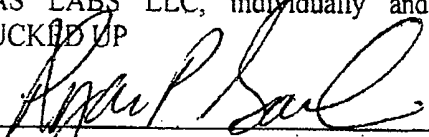
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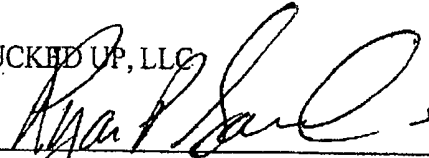

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1 IT IS SO STIPULATED:

2 Dated: 1/31/, 2020ENVIRONMENTAL RESEARCH
CENTER, INC.By: 
Chris Heptner, Executive Director3
4
5
6 Dated: 2/3/, 2020DAS LABS LLC, individually and dba
BUCKED UPBy: 
Its: Ryan P. Gardner
Manager7
8
9
10 Dated: 2/3/, 2020

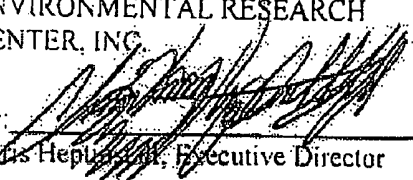
BUCKED UP, LLC

By: 
Its: Ryan P. Gardner
Manager11
12
13
14
15 APPROVED AS TO FORM:16 Dated: January 31, 2020ENVIRONMENTAL RESEARCH
CENTER, INC.By: 
Charles W. Poss
In-House Counsel17
18
19
20
21 Dated: _____, 2020


DURHAM JONES & PINEGAR, P.C.

By: _____
David W. Tufts
Attorney for DAS Labs, LLC and Bucked
Up, LLC

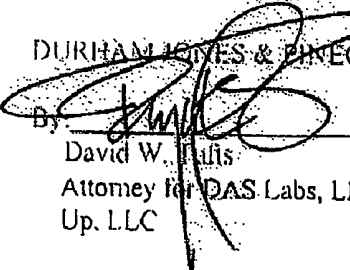
1 IT IS SO STIPULATED:

2 Dated: 1/31/, 2020ENVIRONMENTAL RESEARCH
CENTER, INC.By: 
Chris Hepburn, Executive Director3
4
5
6 Dated: 2/3/, 2020DAS LABS, LLC, individually and cba
BUCKED UPBy: 
Its:7
8
9
10 Dated: 2/3/, 2020

BUCKED UP, LLC

By: 
Its:11
12
13
14
15 APPROVED AS TO FORM:16 Dated: January 31, 2020ENVIRONMENTAL RESEARCH
CENTER, INC.By: 
Charles W. Poss
In-House Counsel17
18
19
20
21 Dated: 2/5/20, 2020

DURHAM JONES & PINEGAR, P.C.

By: 
David W. Jullis
Attorney for DAS Labs, LLC and Bucked
Up, LLC

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: 4/23/, 2020

Judge of the Superior Court

JULIA A. SPAIN

Case Title: Envirnmmental Research Center v. Das Labs LLC
Case No. RG19-043611

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 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
Enviornmental Research Center Inc.
31111 Camino Del Rio North Ste. 400
San Diego, CA 92108

Dated: 05/19/2020

Chad Finke
Executive Officer/Clerk of the Superior Court

By: *Danielle Labrecque*
Danielle Labrecque, Deputy Clerk