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ENVIRONMENTAL RESEARCH CENTER, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

**ORIGIN LABS, LLC, individually and dba
ORIGIN USA and/or JOCKO; and DOES
1-100**

Defendants.

Case No. RG21112443

NOTICE OF ENTRY OF JUDGMENT

**ASSIGNED FOR ALL PURPOSES TO
JUDGE DELBERT GEE
DEPARTMENT 514**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on December 15, 2021, the Court entered and approved the settlement by Stipulated Consent Judgment in the above-entitled matter. A true and correct copy the Stipulated Consent Judgment is attached hereto as Exhibit A.

///

Dated: December 31, 2021

ENVIRONMENTAL RESEARCH CENTER, INC.



Charles Poss
In-House Counsel

EXHIBIT A

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Attorney for Defendant Origin Labs, LLC, individually and dba Origin
USA and/or Jocko

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

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

Plaintiff,
vs.

**ORIGIN LABS, LLC, individually and dba
ORIGIN USA and/or JOCKO; and DOES
1-100**

Defendants.

CASE NO. RG21112443

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 3, 2021
Trial Date: None set

1. INTRODUCTION

1.1 On September 3, 2021, 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 Origin Labs, LLC, individually and dba Origin USA and/or Jocko

FILED
ALAMEDA COUNTY

NOV 18 2021

CLERK OF THE SUPERIOR COURT

By: *Esther Cal* Deputy

FILED

Superior Court of California
County of Alameda

12/15/2021

Clad Fiske, Executive Officer/Clerk of the Court

By: *Stephanie Gould* Deputy
S. Gould

FILE BY FAX

1 (“Origin Labs”) and Does 1-100. In this action, ERC alleges that a number of products
2 manufactured, distributed, or sold by Origin Labs contain lead and/or mercury, 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 Jocko MÖlk JockoFuel Smashing Pumpkin Protein (mercury), (2) Jocko MÖlk JockoFuel
7 Vanilla Gorilla Protein (mercury), (3) Jocko MÖlk JockoFuel Chocolate Peanut Butter Protein
8 (mercury), (4) Jocko MÖlk JockoFuel Mint Chocolate Protein (lead, mercury), (5) Jocko MÖlk
9 JockoFuel Naturally Flavored The Darkness Chocolate Protein (lead, mercury), (6) Jocko
10 Discipline by JockoFuel Citrus Psycho (lead) and (7) Jocko Discipline by JockoFuel Jocko
11 Pom’R (lead).

12 **1.2** ERC and Origin Labs are hereinafter referred to individually as a “Party” or
13 collectively as the “Parties.”

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

18 **1.4** For purposes of this Consent Judgment, the Parties agree that Origin Labs is a
19 business entity that has employed ten or more persons at all times relevant to this action, and
20 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
21 Origin Labs manufactures, distributes, and/or sells the Covered Products.

22 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
23 dated May 27, 2021, June 10, 2021, and June 24, 2021 that were served on the California
24 Attorney General, other public enforcers, and Origin Labs (“Notices”). True and correct copies
25 of the 60-Day Notices dated May 27, 2021, June 10, 2021, and June 24, 2021 are attached
26 hereto as *Exhibits A, B, and C* and each is incorporated herein by reference. More than 60 days
27 have passed since the Notices were served on the Attorney General, public enforcers, and
28 Origin Labs and no designated governmental entity has filed a Complaint against Origin Labs

1 with regard to the Covered Products or the alleged violations.

2 **1.6** ERC's Notices and Complaint allege that use of the Covered Products by
3 California consumers exposes them to lead and/or mercury without first receiving clear and
4 reasonable warnings from Origin Labs, which is in violation of California Health and Safety
5 Code section 25249.6. Origin Labs denies all material allegations contained in the Notices and
6 Complaint.

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

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

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

19 **2. JURISDICTION AND VENUE**

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

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

28 **3.1** Beginning on the Effective Date, Origin Labs shall be permanently enjoined

1 from manufacturing for sale in the State of California, "Distributing into the State of
2 California," or directly selling in the State of California, any Covered Product that exposes a
3 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or
4 "Daily Mercury Exposure Level" of more than 0.3 micrograms of mercury per day unless it
5 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 Origin Labs knows or has reason to
9 know will sell the 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, excluding, pursuant to Section
16 3.1.3, amounts of allowances of lead in the ingredients listed in **Table 1** below. If the label
17 contains no recommended daily servings, then the number of recommended daily servings
18 shall be one.

19 **3.1.1** In calculating the Daily Lead Exposure Level for a Covered Product,
20 Origin Labs shall be allowed to deduct the amount of lead which is deemed "naturally occurring"
21 in any ingredient listed in **Table 1** that is contained in that Covered Product under the following
22 conditions: For the first three (3) years that Origin Labs claims entitlement to a "naturally
23 occurring" allowance, Origin Labs shall provide ERC with the following information: (a) Origin
24 Labs must produce to ERC a list of each ingredient in the Covered Product, and the amount,
25 measured in grams, of each such ingredient contained therein, for which a "naturally occurring"
26 allowance is claimed; (b) Origin Labs must provide ERC with documentation of laboratory
27 testing that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any,
28 contained in any ingredient listed in **Table 1** that is contained in the Covered Product and for

1 which Origin Labs intends to deduct "naturally occurring" lead; (c) If the laboratory testing
2 reveals the presence of lead in any ingredient listed in Table 1 that is contained in the Covered
3 Product, Origin Labs shall be entitled to deduct up to the full amount of the allowance for that
4 ingredient, as listed in Table 1, but not to exceed the total amount of lead actually contained in
5 that ingredient in the Covered Product; and (d) If the Covered Product does not contain an
6 ingredient listed in Table 1, Origin Labs shall not be entitled to a deduction for "naturally
7 occurring" lead in the Covered Product for that ingredient. The information required by Sections
8 3.1.3 (a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date or
9 anniversary thereof for the first (3) three years that Origin Labs shall claim entitlement to the
10 "naturally occurring" allowance. After the first (3) three years, ERC may request this
11 information, no more than once per year thereafter, and Origin Labs shall provide the requested
12 information to ERC within thirty (30) days of such request.

13 **TABLE 1**

| 14 INGREDIENT | ALLOWANCES OF AMOUNT OF LEAD |
|------------------------|-------------------------------------|
| 15 Cocoa Powder | Up to 1.0 microgram/gram |
| 16 Chocolate Liquor | Up to 1.0 microgram/gram |
| 17 Cocoa Butter | Up to 0.1 micrograms/gram |
| 18 Calcium (elemental) | Up to 0.8 micrograms/gram |
| 19 Ferrous Fumarate | Up to 0.4 micrograms/gram |
| 20 Zinc Oxide | Up to 8.0 microgram/gram |
| 21 Magnesium Oxide | Up to 0.4 micrograms/gram |
| 22 Magnesium Carbonate | Up to 0.332 micrograms/gram |
| 23 Magnesium Hydroxide | Up to 0.4 micrograms/gram |
| 24 Zinc Gluconate | Up to 0.8 micrograms/gram |
| 25 Potassium Chloride | Up to 1.1 micrograms/gram |

1 **3.1.2** For purposes of this Consent Judgment, the "Daily Mercury Exposure
2 Level" shall be measured in micrograms, and shall be calculated using the following formula:
3 micrograms of mercury per gram of product, multiplied by grams of product per serving of the
4 product (using the largest serving size appearing on the product label), multiplied by servings of
5 the product per day (using the largest number of recommended daily servings appearing on the
6 label), which equals micrograms of mercury exposure per day. If the label contains no
7 recommended daily servings, then the number of recommended daily servings shall be one.

8 **3.1.3** So long as Origin Labs can provide documentation, if requested in writing
9 by ERC, Covered Products shipped, sold, or Distributed into the State of California by Origin
10 Labs prior to the Effective Date are not bound by the injunctive terms set forth in this Section 3,
11 including but not limited to the Daily Lead Exposure Level, Daily Mercury Exposure Level, and
12 warning and testing requirements, and are instead permitted to be sold as is to California
13 Consumers and are expressly released by Section 8 of this Consent Judgment.

14 **3.2 Clear and Reasonable Warnings**

15 If Origin Labs is required to provide a warning pursuant to Section 3.1, one of the
16 following warnings must be utilized ("Warning"):

17 **OPTION 1:**

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

21 OR

22 **OPTION 2:**

23 ⚠ **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov/food
24

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

1 the Option 2 Warning, the entire Warning must be in a type size no smaller than the largest type
2 size used for other consumer information on the product. In no case shall the Warning appear in a
3 type size smaller than 6-point type. Further, for Option 2, a symbol consisting of a black
4 exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the
5 left of the text of the Warning, in a size no smaller than the height of the word **"WARNING."**
6 Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol
7 may be printed in black and white. As identified in the brackets, the Option 1 Warning shall
8 appropriately reflect whether there is lead or mercury present in each of the Covered Products.
9 Origin Labs may list both chemicals at its option, but in any event at least one chemical must be
10 named in the Option 1 warning.

11 The Warning shall be provided through one of the following methods: (1) a product-
12 specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at
13 each point of display of the product; or (2) a product-specific warning provided via any
14 electronic device or process that automatically provides the warning to the purchaser prior to or
15 during the purchase of the consumer product, without requiring the purchaser to seek out the
16 warning; or (3) a warning on the label that is securely affixed to or printed upon the label and
17 complies with this Section 3.2. If the Warning is printed upon the label of the Covered
18 Product, it must be set off from other surrounding information and enclosed in a box. In
19 addition, for any Covered Product sold over the internet, the Warning shall appear prior to
20 checkout on the primary product page, or as a pop-up when a California zip code is input into
21 the shipping instructions, or on the checkout page when a California delivery address is
22 indicated for any purchase of any Covered Product. Where a Warning subject to this section is
23 provided solely on the checkout page, an asterisk or other identifying method must be utilized
24 to identify which products on the checkout page are subject to the Warning. The Warning may
25 be provided with a conspicuous hyperlink stating **"WARNING"** in all capital and bold letters
26 so long as the hyperlink goes directly to a page prominently displaying the Warning without
27 content that detracts from the Warning. Given Origin Labs' lack of control over third-party
28 websites, the online warning requirements expressed in this Section apply only to Covered

1 Products sold through Origin Labs' website. With respect to any downstream reseller
2 customers of Origin Labs who are subject to Proposition 65, Origin Labs may give written
3 notice, including labels, labeling, shelf signs, or tags bearing the Warning, and all other
4 necessary warning materials, to the authorized agent of such downstream reseller customers.
5 Such written notice shall instruct the downstream reseller customers that the labels, labeling,
6 shelf signs, or tags bearing the Warning must be displayed on or in proximity to the Covered
7 Products with such conspicuousness, as compared with other words, statements or designs as to
8 render the Warning likely to be seen, read, and understood by an ordinary individual prior to
9 sale.

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

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

20 For purposes of this Consent Judgment, the term "label" means a display of written,
21 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
22 container or wrapper.

23 If subsequently enacted changes to Proposition 65 or its implementing regulations require
24 the use of additional or different information on any warning specifically applicable to the
25 Covered Products (the "New Safe Harbor Warning"), the Parties agree that the New Safe Harbor
26 warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this
27 Section.

28 ///

1 **3.3 Conforming Covered Products**

2 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
3 Level" is no greater than 0.5 micrograms of lead per day and/or the "Daily Mercury Exposure
4 Level" is no greater than 0.3 micrograms of mercury per day as determined by the exposure
5 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
6 3.4, and that is not known by Origin Labs to contain other chemicals that violate Proposition 65's
7 safe harbor thresholds.

8 **3.4 Testing and Quality Control Methodology**

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

21 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or the
22 "Daily Mercury Exposure Level," the highest lead and/or mercury detection result of the three
23 (3) randomly selected samples of the Covered Products will be controlling.

24 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
25 laboratory method that complies with the performance and quality control factors appropriate
26 for the method used, including limit of detection and limit of quantification, sensitivity,
27 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
28 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.005

1 mg/kg.

2 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
3 independent third party laboratory certified by the California Environmental Laboratory
4 Accreditation Program or an independent third-party laboratory that is registered with the
5 United States Food & Drug Administration.

6 **3.4.5** Nothing in this Consent Judgment shall limit Origin Labs' ability to
7 conduct, or require that others conduct, additional testing of the Covered Products, including
8 the raw materials used in their manufacture.

9 **3.4.6** Within thirty (30) days of ERC's written request, which request shall not
10 be made more than once per year, Origin Labs shall deliver lab reports obtained pursuant to
11 Section 3.4 to ERC. Origin Labs shall retain all test results and documentation for a period of
12 three years from the date of each test.

13 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to any
14 Covered Product for which Origin Labs is providing a Warning, continuously and without
15 interruption from the Effective Date, pursuant to Section 3.2 of this Consent Judgment. In the
16 event a Warning is provided after the Effective Date but Origin Labs thereafter ceases to provide
17 the Warning, the testing and reporting requirements of Section 3.4 of this Consent Judgment
18 shall apply beginning within one year after the date the Warning ceases to be provided, unless
19 Origin Labs can show to the satisfaction of ERC that the cessation in providing the Warning was
20 a temporary error that was resolved when discovered.

21 **4. SETTLEMENT PAYMENT**

22 **4.1** In full satisfaction of all potential civil penalties, additional settlement
23 payments, attorney's fees, and costs, Origin Labs shall make a total payment of \$75,000.00
24 ("Total Settlement Amount") to ERC in two equal monthly payments ("Periodic Payments"),
25 according to the following payment schedule ("Due Dates"):

- 26 • Payment 1 -- \$37,500.00 within 5 days of the Effective Date
- 27 • Payment 2 -- \$37,500.00 within 35 days of the Effective Date.

28 Origin Labs shall make these Periodic Payments by wire transfer to ERC's account, for which

1 ERC will give Origin Labs the necessary account information. The Total Settlement Amount
2 shall be apportioned as follows:

3 **4.2** \$34,550.00 shall be considered a civil penalty pursuant to California Health and
4 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$25,912.50) of the civil penalty to
5 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% (\$8,637.50) of the civil penalty.

8 **4.3** \$3,690.56 shall be distributed to ERC as reimbursement to ERC for reasonable
9 costs incurred in bringing this action.

10 **4.4** \$25,713.22 shall be distributed to ERC as an Additional Settlement Payment
11 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
12 and 3204. ERC will utilize the ASP for activities that address the same public harm as
13 allegedly caused by Defendants in this matter. These activities are detailed below and support
14 ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in
15 dietary supplement products in California. ERC's activities have had, and will continue to
16 have, a direct and primary effect within the State of California because California consumers
17 will be benefitted by the reduction and/or elimination of exposure to lead and/or mercury in
18 dietary supplements and/or by providing clear and reasonable warnings to California
19 consumers prior to ingestion of the products.

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

1 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
2 (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products from
3 companies, developing and maintaining a case file, testing products from these companies,
4 providing the test results and supporting documentation to the companies, and offering
5 guidance in warning or implementing a self-testing program for lead and/or mercury in dietary
6 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got
7 Lead?" Program which reduces the numbers of contaminated products that reach California
8 consumers by providing access to free testing for lead in dietary supplement products (Products
9 submitted to the program are screened for ingredients which are suspected to be contaminated,
10 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and
11 the results shared with the consumer that submitted the product).

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

17 4.5 \$11,046.22 shall be distributed to ERC for its in-house legal fees. Except as
18 explicitly provided herein, each Party shall bear its own fees and costs.

19 4.6 In the event that Origin Labs fails to remit, in full, either of the Periodic
20 Payments on or before the applicable Due Date, Origin Labs shall be deemed to be in material
21 breach of its obligations under this Consent Judgment. ERC shall provide written notice of the
22 delinquency to Origin Labs via electronic mail. If Origin Labs fails to deliver the delinquent
23 payment within five (5) days from the written notice, the Total Settlement Amount, less any
24 amounts previously paid pursuant to Section 4.1, shall be immediately due and owing and shall
25 accrue interest at the statutory judgment interest rate provided in the California Code of Civil
26 Procedure section 685.010. Additionally, Origin Labs agrees to pay ERC's reasonable
27 attorney's fees and costs for any efforts to collect the payment due under this Consent
28 Judgment.

1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
3 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
4 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
5 modified consent judgment.

6 **5.2** If Origin Labs seeks to modify this Consent Judgment under Section 5.1, then
7 Origin Labs must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
8 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
9 provide written notice to Origin Labs within thirty (30) days of receiving the Notice of Intent.
10 If ERC notifies Origin Labs in a timely manner of ERC's intent to meet and confer, then the
11 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
12 person or via telephone within thirty (30) days of ERC's notification of its intent to meet and
13 confer. Within thirty (30) days of such meeting, if ERC disputes the proposed modification,
14 ERC shall provide to Origin Labs a written basis for its position. The Parties shall continue to
15 meet and confer for an additional thirty (30) days in an effort to resolve any remaining
16 disputes. Should it become necessary, the Parties may agree in writing to different deadlines
17 for the meet-and-confer period.

18 **5.3** In the event that Origin Labs initiates or otherwise requests a modification under
19 Section 5.1, and the meet and confer process leads to a joint motion or application for a
20 modification of the Consent Judgment, Origin Labs shall reimburse ERC its costs and
21 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
22 arguing the motion or application. ERC shall not be reimbursed for costs or attorney's fees for
23 an uncontested motion, or for a ministerial motion (such as a change in name or contact
24 information) or if ERC does not expend more than two (2) hours of attorney time on the joint
25 motion.

26 **5.4** In the event that Proposition 65 is repealed or preempted as to food products,
27 then Origin Labs shall have no further obligation pursuant to this Consent Judgment with
28 respect to, and to the extent that the Covered Products are so affected.

1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
2 **JUDGMENT**

3 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
4 terminate this Consent Judgment.

5 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
7 inform Origin Labs in a reasonably prompt manner of its test results, including information
8 sufficient to permit Origin Labs to identify the Covered Products at issue. Origin Labs shall,
9 within thirty (30) days following such notice, provide ERC with testing information, from an
10 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
11 demonstrating Origin Labs' compliance with the Consent Judgment. The Parties shall first
12 attempt to resolve the matter prior to ERC taking any further legal action.

13 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

21 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
22 on behalf of itself and in the public interest, and Origin Labs and its respective officers,
23 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
24 franchisees, licensees, customers (not including private label customers of Origin Labs),
25 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
26 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
27 of them (collectively, "Released Parties").

28 **8.2** ERC, acting in the public interest, releases the Released Parties from any

1 and all claims for violations of Proposition 65 up through the Effective Date based on exposure
2 to lead and/or mercury from the Covered Products as set forth in the Notices of Violation.
3 ERC, on behalf of itself only, hereby fully releases and discharges the Released Parties from
4 any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,
5 fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or
6 consumption of the Covered Products, as to any alleged violation of Proposition 65 or its
7 implementing regulations arising from the failure to provide Proposition 65 warnings on the
8 Covered Products regarding lead and/or mercury up to and including the Effective Date.

9 **8.3** ERC on its own behalf only, and Origin Labs on its own behalf only, further
10 waive and release any and all claims they may have against each other for all actions or
11 statements made or undertaken in the course of seeking or opposing enforcement of
12 Proposition 65 in connection with the Notices and Complaint up through and including the
13 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
14 right to seek to enforce the terms of this Consent Judgment.

15 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
16 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
17 discovered. ERC on behalf of itself only, and Origin Labs on behalf of itself only,
18 acknowledge that this Consent Judgment is expressly intended to cover and include all such
19 claims up through and including the Effective Date, including all rights of action therefore.
20 ERC and Origin Labs acknowledge that the claims released in Sections 8.2 and 8.3 above may
21 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any
22 such unknown claims. California Civil Code section 1542 reads as follows:

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

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

1 section 1542.

2 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
3 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
4 exposures to lead and/or mercury in the Covered Products as set forth in the Notices and
5 Complaint.

6 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
7 environmental exposures arising under Proposition 65, nor shall it apply to any of Origin Labs'
8 products other than the Covered Products.

9 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13 **10. GOVERNING LAW**

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

16 **11. PROVISION OF NOTICE**

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

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

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

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

1 **FOR ORIGIN USA and/or JOCKO**

2 Peter Roberts

3 Origin Labs LLC

4 946 US Route 2 E

5 Wilton, ME 04294

6 Email: info@originmfg.com

7 With a copy to:

8 Abhishek K. Gurnani

9 Amin Talati Wasserman LLP

10 100 S. Wacker Drive, Suite 2000

11 Chicago, IL 60606

12 Ph: (312) 327-3325

13 Email: abhishek@amintalati.com

14 **12. COURT APPROVAL**

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

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

21 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
22 void and have no force or effect.

23 **13. EXECUTION AND COUNTERPARTS**

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

27 **14. DRAFTING**

28 The terms of this Consent Judgment have been reviewed by the respective 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

1 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
2 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
3 equally in the preparation and drafting of this Consent Judgment.

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

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

9 **16. ENFORCEMENT**

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

18 **17. ENTIRE AGREEMENT, AUTHORIZATION**

19 **17.1** This Consent Judgment contains the sole and entire agreement and
20 understanding of the Parties with respect to the entire subject matter herein, including any and
21 all prior discussions, negotiations, commitments, and understandings related thereto. No
22 representations, oral or otherwise, express or implied, other than those contained herein have
23 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
24 herein, shall be deemed to exist or to bind any Party.

25 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
26 authorized by the Party he or she represents to stipulate to this Consent Judgment.

27 ///

28 ///

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:

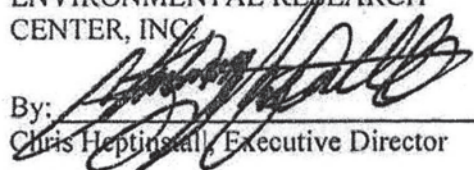
(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

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

IT IS SO STIPULATED:

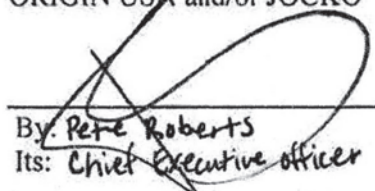
Dated: 9/17/, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Heptinstall, Executive Director

Dated: September 21, 2021

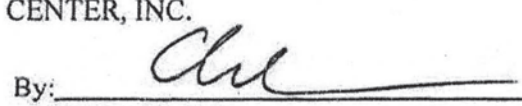
ORIGIN LABS, LLC, individually and dba
ORIGIN USA and/or JOCKO

By: 
Its: Chief Executive Officer

APPROVED AS TO FORM:

Dated: Sept. 17, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Charles W. Poss
In-House Counsel

1 Dated: September 21, 2021

AMIN TALATI WASSERMAN LLP

2
3 By: 

Jennifer Adams

4 Attorney for Defendant Origin Labs, LLC,
5 individually and dba Origin USA and/or
6 Jocko

7 **ORDER AND JUDGMENT**

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

10 IT IS SO ORDERED, ADJUDGED AND DECREED.

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12 Dated: 12/15/2021, 2021



Judge of the Superior Court

13 **Delbert Gee / Judge**
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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

Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

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

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

Plaintiff,

v.

**ORIGIN LABS, LLC, individually and dba
ORIGIN USA and/or JOCKO; and DOES 1-
100**

Defendants.

CASE NO. RG21112443

PROOF OF SERVICE

I am a citizen of the United States, over the age of eighteen years, and not a party to or interested in the above entitled case. I am an employee of Environmental Research Center, Inc., and my business address is 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108. On December 31, 2021, I caused the following documents to be served:

NOTICE OF ENTRY JUDGMENT

On the person(s) designated below:

Jennifer Adams
Abhishek Gurnani
Amin Talati Wasserman LLP
100 S. Wacker Drive, Suite 2000
Chicago, IL 60606
Email: jennifer@amintalati.com
abhishek@amintalati.com

**Attorneys for Defendant Origin Labs, LLC, individually
and dba Origin Labs USA, and/or Jocko**

1 By email or electronic transmission and/or by placing a true copy thereof enclosed in a
2 sealed envelope with postage fully prepaid, in the United States Post Office mailbox in San
3 Diego, California.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct. Executed December 31, 2021, at San Diego, California.

6 *Kristen O'Bee*

7 Kristen O'Bee
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