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ENVIRONMENTAL RESEARCH CENTER

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Attorneys for Defendants
MEDICAL RESEARCH INSTITUTE and
VMI NUTRITION, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH CENTER,
a California non-profit corporation,

Plaintiff,

v.

VMI NUTRITION, INC. and MEDICAL
RESEARCH INSTITUTE

Defendants.

CASE NO.

**[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER**

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: June 5, 2012
TRIAL DATE: Not Set

1. INTRODUCTION

1.1 On July 9, 2012, Plaintiff Environmental Research Center (“ERC”), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing its Complaint for injunctive and declaratory relief and civil penalties pursuant to the provisions of Cal. Health & Safety Code Section 25249.5 *et seq.* (“Proposition 65”), against VMI Nutrition,

Inc. ("VMI") and Medical Research Institute ("MRI") ("Defendants"). ERC claims that products manufactured and distributed by Defendants, namely, MRI No2 Ripcuts Cellular Fat Burn-Grape, Medical Research Institute War Berry Attack, and MRI Black Powder Blue Raspberry (the "Covered Products") contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and exposes consumers at a level requiring a Proposition 65 warning. ERC and Defendants shall sometimes be referred to individually as a "Party" or collectively as the "Parties."

1.2 ERC is a California non-profit organization dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC has diligently prosecuted this matter and is settling this case in the public interest.

1.3 VMI is a privately owned contract manufacturer that specializes in the formulation, blending, packaging, and testing of nutritional consumer goods. MRI is a company that develops and markets nutraceuticals and is a subsidiary of Natrol, Inc. VMI manufactures and MRI distributes the Covered Products to the public. Defendants are business entities that employ ten or more persons.

1.4 The Complaint is based on allegations contained in Notices of Violation against VMI dated November 5, 2010 and January 14, 2011, and a Notice of Violation against MRI dated July 9, 2010 served on the California Attorney General, other public enforcers and Defendants. A true and correct copy of these Notices of Violation is attached hereto as Exhibit A. More than 60-days have passed since these Notices of Violation were mailed and ERC has filed a complaint against Defendants with regard to the Covered Products or the alleged

violations. On September 24, 2010, ERC withdrew the product named No2 Charger Chocolate Blast from the July 9, 2010 Notice of Violation against MRI.

1.5 ERC's Notices of Violation and the Complaint in this action allege that the Covered Products expose persons in California to lead without first providing clear and reasonable warnings, in violation of Cal. Health & Safety Code Section 25249.6. Defendants deny all material allegations of the Notices of Violation and the Complaint and specifically deny that the Covered Products require a Proposition 65 warning.

1.6 The Parties have entered into this Consent Judgment in order to settle, compromise and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, distributors, wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or liability, including without limitation, any admission concerning any alleged violation of Proposition 65, nor shall this Consent Judgment be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum, except with respect to an action seeking to enforce the terms of this Consent Judgment.

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

1.8 The Effective Date of this Consent Judgment shall be the date on which it is entered as a judgment by this Court.

1.9 Subsequent to ERC's Notices of Violation, Defendants stopped selling MRI Black Powder Blue Raspberry in California.

2. JURISDICTION AND VENUE

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been asserted in this action based on the facts alleged in the Notices of Violation or the Complaint.

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING

3.1 On or after the Effective Date, Defendants shall be permanently enjoined from manufacturing for sale in California, distributing into California, or directly selling to a consumer in California any Covered Product for which the maximum daily dose recommended on the label contains more than 0.5 micrograms of lead using the following formula for calculating the exposure level: $\mu\text{g/day (ppm) of lead} \times \text{g/serving (using the serving appearing on the current product label)} \times \text{servings/day (using the largest number of servings currently appearing on the product label)} = \mu\text{g/day lead exposure}$. ("the Agreed Formula") unless such Covered Product complies with the warning requirement set forth in Section 3.4.

3.2 **Clear and Reasonable Warnings.** For those Covered Products that are subject to the warning requirement of Section 3.1, Defendants shall provide the following warning as specified below:

WARNING: California Residents Only: This product contains lead, a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.

The term "cancer" shall be used in the warning only if the maximum dose recommended on the label contains more than 15 micrograms of lead while using the testing protocol set forth in Section 3.5.

3.3 The warning shall be prominently affixed to or printed upon the product's label of any the Covered Products so as to be clearly conspicuous, as compared with other statements or designs on the label as to render it likely to be read and understood by an ordinary purchaser or user of the product. If the warning is displayed on the product's label, the warning shall be at least the same size as the largest of any other health or safety warnings on the product and the word "warning" shall be in all capital letters and in bold print.

3.4 **Further Labeling.** Defendants shall modify the label on Covered Products MRI No2 Ripcuts Cellular Fat Burn-Grape and Medical Research Institute War Berry Attack so that the number of servings per day for each product is one. This language shall be printed on the label in a conspicuous manner as set forth in Section 3.3.

3.5 **Testing.** Defendants shall continue to test the Covered Products for lead content to ensure lead levels are below 0.5 micrograms per day. Testing for lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and closed-vessel, microwave-assisted digestion employing high-purity reagents that is consistent with the procedure set forth in Exhibit B or any substantively similar other testing method subsequently agreed upon in writing by the Parties. Defendants shall continue to arrange for lead testing, at a minimum, once a year, on or before the anniversary of the entry of the Consent Judgment, of at least five (5) randomly selected samples of each Covered Product. The testing shall continue so long as the Covered Products are sold in California or sold to a third party for retail sale in California. All testing pursuant to this Consent Judgment shall be performed by a laboratory

certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the United States Food & Drug Administration for the analysis of heavy metals. Defendants may test the product themselves if they are a qualified laboratory as described above and utilize the testing procedure and methodology set forth in this Section. The laboratory shall follow this testing methodology and the Agreed Formula. The method of selecting samples for testing must comply with the regulations of the Food and Drug Administration as set forth in Title 21, Part 111, Subpart E of the Code of Federal Regulations, including section 111.80 (c). Nothing in this Consent Judgment shall limit Defendants' ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

3.6 Defendants shall retain all test results and documentation for a period of four years from the date of the test and shall provide copies to ERC upon written request within 10 days of receipt of this request.

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorney's fees and costs, Defendants shall make a total payment of \$75,000.00 within ten (10) business days of receiving the Notice of Entry of Judgment. Said payment shall be for the following:

4.2 \$6,500.00 shall be payable as civil penalties pursuant to Health & Safety Code Section 25249.7 (b) (1). Of this amount, \$4,875.00 shall be payable to the Office of Environmental Health Hazard Assessment ("OEHHA") and \$1,625.00 shall be payable to Environmental Research Center. Cal. Health & Safety Code Section 25249.12 (c) (1) & (d). Defendants shall send both civil penalty payments to ERC's counsel who shall be responsible to

forward the civil penalty payment to OEHHA along with a copy of the transmittal to counsel for Defendants.

4.3 \$24,116.00 payable to Environmental Research Center as reimbursement to ERC for (A) reasonable investigation costs associated with the enforcement of Proposition 65 and other costs incurred as a result of investigating, bringing this action and (B) \$19,884.00 payable to Environmental Research Center in lieu of further civil penalties, for activities such as: (1) investigating, researching and testing consumer products that may contain Proposition 65 chemicals; (2) the continued monitoring of past consent judgments and settlements to ensure companies are in compliance with Proposition 65; and (3) awarding grants to California non-profit foundations/entities dedicated to public health as set forth in the Addendum and taking into account: (a) the nexus between the alleged harm in the underlying cases(s) and the grant program work; (b) the potential for toxics reduction, prevention, remediation or education benefits to California residents from the proposal; (c) and ERC's assessment of the grantee's chances for success in its program work.

4.4 \$19,500.00 payable to Michael Freund as reimbursement of ERC's attorney's fees and \$5,000.00 payable to Karen Evans as reimbursement ERC's attorney's fees.

4.5 Defendants' payments shall be mailed to the Law Office of Michael Freund.

5. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment may be modified only by written agreement and stipulation of the Parties, or upon noticed motion filed by any Party, followed by entry of a modified consent judgment by the Court.

6. RETENTION OF JURISDICTION, ENFORCMENT OF CONSENT JUDGMENT

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

6.2 Any Party may, by motion or application for an order to show cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing party may request that the Court award its reasonable attorney's fees and costs associated with such motion or application.

6.3 In any action brought by ERC or another enforcer alleging subsequent violations of Proposition 65 regarding the Covered Products, so long as Defendants are in compliance with Section 3 of this Consent Judgment, Defendants may assert any and all defenses that are available, including the res judicata or collateral estoppel effect of this Consent Judgment. Furthermore, the rights of Defendants to defend themselves and its actions in law or equity shall not be abrogated or reduced in any fashion by any terms of this Consent Judgment, and Settling Defendants shall be entitled to raise any and all applicable defenses and/or counterclaims, arising in law or equity against the Plaintiffs.

7. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment may apply to, be binding upon and benefit the Parties, and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, distributors, wholesalers, retailers, and all predecessors, successors and assigns of any of them.

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself, and in the public interest, and Defendants, of any alleged violation of Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to

lead from the handling, use or consumption of the Covered Products. ERC, on behalf of itself, and in the public interest, hereby discharges Defendants and each of its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, distributors, wholesalers, retailers, and all other entities in the distribution chain down to the consumer of any Covered Product, and the predecessors, successors and assigns of any of them (collectively, "Released Parties"), from any and all claims asserted, or that could have been asserted, in this action arising from or related to the alleged failure to provide Proposition 65 warnings for the Covered Products regarding lead.

8.2 ERC, on behalf of itself only, hereby releases and discharges the Released Parties from any and all known and unknown past, present, and future rights, claims, causes of action, suits, damages, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees, costs, and expenses arising from or related to the claims asserted, or that could have been asserted, under state or federal law, regarding the presence of lead in the Covered Products or the facts alleged in the Notices of Violation or the Complaint, including without limitation any and all claims concerning the failure to provide clear and reasonable warnings of exposure to lead from the handling, use or consumption of the Covered Products or any other claim based on the facts or conduct alleged in the Complaint as to such products.

8.3 It is the intention of the Parties to this release that, upon entry of this Consent Judgment by the court, this Consent Judgment shall be effective as a full and final accord and satisfaction and release of every released claim up to and including the date of entry of the Consent Judgment.

8.4 Unknown Claims. It is possible that other injuries, damages, liability, or claims not now known to the Parties arising out of the facts alleged in the Notices of Violation or the

Complaint and relating to the Covered Products will develop or be discovered. ERC, on behalf of itself only, acknowledges that this Consent Judgment is expressly intended to cover and include all such injuries, damages, liability, and claims, including all rights of action therefor. ERC has full knowledge of the contents of Cal. Civil Code Section 1542. ERC, on behalf of itself only, acknowledges that the claims released in Section 8.1 and 8.2 above may include unknown claims, and nevertheless waives Cal. Civil Code Section 1542 as to any such unknown claims. Cal. Civil Code Section 1542 reads as follows:

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

ERC, on behalf of itself only, acknowledges and understands the significance and consequences of this specific waiver of Cal. Civil Code Section 1542.

8.5 ERC, on one hand, and Defendants, on the other hand, release and waive all claims they may have against each other for any statements of actions made or undertaken by them in connection with the Notices of Violation or this action.

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

10. GOVERNING LAW

The terms and conditions of this Consent Judgment shall be 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 sent to the following agents:

FOR ENVIRONMENTAL RESEARCH CENTER:

Chris Heptinstall, Executive Director
Environmental Research Center
3111 Camino del Rio North, Suite 400
San Diego, CA 92108

Michael Bruce Freund
Law Offices of Michael Freund
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

Karen Evans
Coordinating Counsel
Environmental Research Center
4218 Biona Place
San Diego, CA 92116
Telephone: (619) 640-8100

FOR VMI NUTRITION, INC. AND MEDICAL RESEARCH INSTITUTE

Mesrop Khoudagoulian
Khoudagoulian & Foster
130 North Brand Boulevard, Suite 202
Glendale, CA 91203
Telephone: (818) 507-6666
Facsimile: (818) 507-6667

Bruce Remund
VMI Nutrition, Inc.
391 S. Orange Street
Salt Lake City, UT 84104

12. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for the Parties to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment entered thereon, the terms and provisions shall not be construed against any Party.

13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

In the event 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 either in person or by telephone 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. In the event an action or motion is filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief that the other party was amenable to providing during the parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

14. ENTIRE AGREEMENT, AUTHORIZATION

14.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, 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 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

14.2 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.

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

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

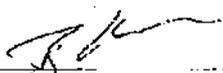
(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

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

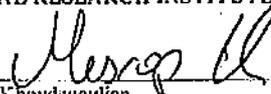
IT IS SO STIPULATED:

VMI NUTRITION, INC.

Dated: 8/27, 2012

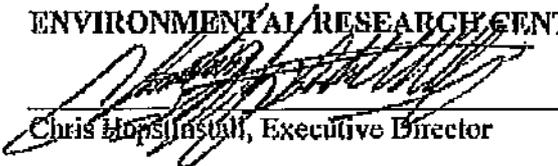

Bruce Legend, Chief Operating Officer

Dated: 8/27, 2012

MEDICAL RESEARCH INSTITUTE

Mesrop Khoudagoulian

ENVIRONMENTAL RESEARCH CENTER

Dated: 8/28/, 2012


Chris Hopps/Install, Executive Director

APPROVED AS TO FORM:

KHOUDAGOULIAN AND FOSTER

Dated: _____, 2012

Mesrop Khoudagoulian

Dated: _____, 2012

LAW OFFICE OF MICHAEL FREUND

Michael Freund
Attorney for Environmental Research Center

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.

Dated: _____, 2012

Judge, Superior Court of the State
of California

ENVIRONMENTAL RESEARCH CENTER

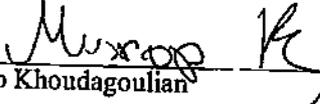
Dated: _____, 2012

Chris Hepstinstall, Executive Director

APPROVED AS TO FORM:

KHOUDAGOULIAN AND FOSTER

Dated: 9-4, 2012



Mesrop Khoudagoulian

Dated: 9-6, 2012

LAW OFFICE OF MICHAEL FREUND



Michael Freund
Attorney for Environmental Research Center

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.

Dated: _____, 2012

Judge, Superior Court of the State
of California