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Attorneys for Defendant
MUSCLEPHARM CORP.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ENVIRONMENTAL RESEARCH CENTER,)	Case No. BC454453
a non-profit California corporation,)	
Plaintiff,)	Hon. Richard Fruin
v.)	[PROPOSED] STIPULATED
MUSCLE PHARM, LLC, et al.,)	CONSENT JUDGMENT
Defendants.)	

I. INTRODUCTION

1.1 Plaintiff ENVIRONMENTAL RESEARCH CENTER ("ERC" or "Plaintiff") is a citizen enforcer of California Health and Safety Code §§ 25249.6 *et seq.* ("Proposition 65") and is a non-profit corporation organized under California's Non-Profit Public Benefit Corporation Law.

1.2 Defendant MUSCLEPHARM CORP. ("MusclePharm" or "Defendant") is a person doing business within the meaning of California Health and Safety Code § 25249.11. ERC and

1 MusclePharm are referred to collectively herein as the "Parties" and each as a "Party." The names
2 of the Products covered under this Consent Judgment are: MusclePharm Shred Matrix,
3 MusclePharm Battle Fuel, MusclePharm Recon, and MusclePharm Battle Fuel Performance Pack.
4 The products listed in this Section 1.2 are referred to herein as the "Covered Products."

5 MusclePharm has manufactured, distributed and/or sold the Covered Products.

6 1.3 On February 27, 1987, the State of California officially listed the chemical lead as a
7 chemical known to cause reproductive toxicity, pursuant to California Health and Safety Code §
8 25249.8. On October 1, 1992, the State of California officially listed the chemicals lead and lead
9 compounds as chemicals known to cause cancer, pursuant to California Health and Safety Code §
10 25249.8.

11 1.4 On October 8, 2010, ERC served MusclePharm and each of the appropriate public
12 enforcement agencies with a document entitled "60-Day Notice" that provided notice that
13 MusclePharm was allegedly in violation of Proposition 65 for failing to warn purchasers and
14 individuals that the use of the Covered Products exposes them to lead, a chemical known to the
15 State of California to cause cancer and/or reproductive toxicity ("Notice"), a copy of which is
16 attached as Exhibit A.

17 1.5 At least sixty (60) days after ERC provided the Notice to MusclePharm and the
18 appropriate public enforcement agencies, ERC filed a complaint in the above-titled lawsuit (the
19 "Action" or "Complaint") pursuant to Cal. Health & Safety Code § 25249.7(d) in the public
20 interest. When ERC filed the Action, no public enforcement agencies had commenced and begun
21 diligently prosecuting an action against MusclePharm with regard to the Covered Products or the
22 alleged violations. On June 22, 2011, ERC dismissed the Action in its entirety as to defendant
23 Muscle Pharm, LLC.

24 1.6 For purposes of this Proposed Stipulated Consent Judgment ("Consent Judgment")
25 only, the Parties stipulate that this Court has jurisdiction over the subject matter of this action and
26 personal jurisdiction over the Parties, that venue is proper in this Court, and that this Court has
27 jurisdiction to enter the Consent Judgment pursuant to the terms set forth herein.

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1 1.7 MusclePharm denies and disputes the claims asserted in the Notice and the Action.
2 Furthermore, MusclePharm contends that any lead present in the Covered Products is the result of
3 naturally occurring levels, as provided for in California Code of Regulations, Title 27, Section
4 25501(a). Furthermore, MusclePharm maintains that all of its products satisfy applicable federal
5 standards and requirements.

6 1.8 The Parties have entered into this Consent Judgment in order to settle, compromise
7 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this
8 Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by any
9 of their respective officers, directors, shareholders, employees, agents, parent companies,
10 subsidiaries, divisions, affiliates, franchisors, franchisees, licensors, licensees, customers
11 (excluding private label customers), distributors, wholesalers, or retailers, of any fact, conclusion
12 of law, issue of law, violation of law, fault, wrongdoing, or liability, including without limitation,
13 any admission concerning any alleged violation of Proposition 65, nor shall this Consent Judgment
14 be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any
15 court, agency, or forum, except with respect to an action seeking to enforce the terms of this
16 Consent Judgment. This paragraph shall not diminish or otherwise affect the obligations,
17 responsibilities, and duties of any Party to this Consent Judgment.

18 1.9 The "Effective Date" of this Consent Judgment shall be the date upon which this
19 Consent Judgment is entered by the Court. The "Compliance Date" is the date that is six months
20 after the Effective Date.

21 **2. JURISDICTION AND VENUE**

22 2.1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
24 over MusclePharm as to the acts alleged in the Complaint, that venue is proper in Los Angeles
25 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
26 resolution of all claims which were or could have been asserted in this action based on the facts
27 alleged in the Notice or the Complaint.

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1 **3. INJUNCTIVE RELIEF**

2 **3.1** Any Covered Products manufactured after the Compliance Date that MusclePharm
3 thereafter sells in California, distributes for sale in California, or manufactures for sale in
4 California must (1) meet the warning requirements set out in Section 3.2 or (2) meet the
5 reformulation requirements in Section 3.3. Any Covered Products that have been manufactured
6 before the Compliance Date shall additionally be subject to the release of claims in Section 5 of
7 this Consent Judgment, without regard to when such Covered Products were, or are in the future,
8 put into the stream of commerce. The obligations of this Section 3 do not apply to any Covered
9 Products manufactured before the Compliance Date. Prior to the Compliance Date, MusclePharm
10 shall provide ERC with the range of lot numbers and expiration dates of each Covered Product
11 covered by Paragraph 3.1.

12 **3.2 Warnings**

13 **3.2.1** If MusclePharm provides a warning pursuant to Section 3.1, the warning
14 shall state as follows:

15 **WARNING:** This product contains lead, a substance known to the
16 State of California to cause birth defects or other reproductive harm.

17 The term "cancer" shall be included in the warning only if the maximum daily dose recommended
18 on the label contains more than 15 micrograms ("mcg") of lead as determined by the quality control
19 methodology set forth in Section 3.3.4.

20 The warning statement shall be prominently and securely displayed on, or affixed to, the
21 container or label of the Covered Products with such conspicuousness, as compared with other
22 words, statements, or designs so as to render it likely to be read and understood by an ordinary
23 individual purchasing or using the Covered Products.

24 **3.3 Reformulation**

25 **3.3.1** In complying with Section 3.1, MusclePharm shall not be required to provide
26 the warning specified in Section 3.2 for any Covered Product if the daily dose or serving
27 recommended on the Covered Product's label contains no more than 0.5 mcg of lead per day as
28 defined in Section 3.3.3, and with regard to the Recon product only, excluding the amounts of

1 to ERC within fifteen (15) working days. MusclePharm shall retain all such test results and related
2 documentation for a period of at least two years after reintroduction into California.

3 3.3.3 As used in this Consent Judgment, "no more than 0.5 mcg of lead per day"
4 means that the samples tested by MusclePharm pursuant to this Consent Judgment each result in a
5 daily exposure of no more than 0.5 mcg per day based on the maximum daily dose or serving
6 recommended on a Covered Product's label after excluding any naturally occurring levels of lead as
7 provided in Section 3.3.1, after the two samples that each represent the highest and lowest lead
8 results are excluded. Five (5) randomly selected samples of such Covered Product (in the form
9 intended for sale to the end-user) shall be tested. Before MusclePharm's first distribution or sale of
10 a Covered Product manufactured after the Compliance Date, and continuing for at least four (4)
11 years thereafter, at least once every year, MusclePharm shall test the Covered Products for lead
12 content in the manner provided for in this Consent Judgment.

13 3.3.4 All testing pursuant to this Consent Judgment shall be performed by a
14 laboratory that is approved by, accredited by, or registered with the United States Food & Drug
15 Administration for the analysis of heavy metals. All testing pursuant to this Consent Judgment shall
16 be performed using a laboratory method that complies with the performance and quality control
17 factors appropriate for the method used (including limit of detection, limit of quantification,
18 accuracy, and precision) and that meets the following criteria: Closed-vessel, microwave-assisted
19 acid digestion employing high-purity reagents, followed by Inductively Coupled Plasma-Mass
20 Spectrometry (ICP-MS), or any other testing method agreed upon in writing by the Parties. Nothing
21 in this Consent Judgment shall limit MusclePharm's ability to conduct, or require that others
22 conduct, additional testing of the Covered Products, including the raw materials used in their
23 manufacture. This Consent Judgment, including the testing and sampling methodology set forth in
24 this paragraph, is the product of negotiation and compromise, and is accepted by the Parties for
25 purposes of settling, compromising, and resolving issues disputed in this action, including future
26 compliance by MusclePharm with this Consent Judgment, and shall not be used for any other
27 purpose, or in any other matter and, except for the purpose of determining future compliance with
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1 this Consent Judgment, shall not constitute an adoption or employment of a method of analysis for a
2 listed chemical in a specific medium as set forth in 27 California Code of Regulations § 25900(g).

3 **4. SETTLEMENT PAYMENT**

4 4.1 In full satisfaction of all potential civil penalties, payments in lieu of penalties,
5 attorneys' fees and costs (which include, but are not limited to, fees and the costs of attorneys,
6 experts, and investigators), MusclePharm shall make a total payment of \$59,950 to be allocated
7 and paid as set forth in Sections 4.1.1 through 4.1.3.

8 4.1.1 Civil Penalty Assessment. MusclePharm agrees to pay a civil penalty in the
9 amount of \$4,860.00 pursuant to Health & Safety Code §25249.7(b). Plaintiff ERC shall remit 75%
10 of this amount to the State of California pursuant to Health & Safety Code §25192. This payment
11 shall be made payable to ERC.

12 4.1.2 Payment In Lieu of Further Civil Penalties. MusclePharm agrees to make
13 an additional payment in lieu of further civil penalties in the amount of \$14,583.00 to ERC for
14 projects to reduce exposures to toxic chemicals, and to increase consumer, worker and community
15 awareness of the health hazards posed by toxic chemicals. This payment shall be made payable to
16 ERC.

17 4.1.3 Reimbursement of Plaintiff's Fees and Costs. MusclePharm agrees to
18 reimburse Plaintiff's reasonable investigative, expert and attorneys' fees and costs incurred as a
19 result of investigating and bringing this matter to the attention of MusclePharm, of bringing and
20 pursuing this action, and of negotiating a settlement in the public interest, in the total amount of
21 \$40,507.00. This payment shall be made payable to Gideon Kracov.

22 4.1.4 Payment Schedule. MusclePharm shall remit the payments required in
23 Section 4.1 to the Law Office of Gideon Kracov at the law firm's address noted in the notice
24 provision in Section 11.1, below. All such payments shall be delivered on or before fifteen (15)
25 days following entry and approval of this Consent Judgment.

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1 **5. RELEASE OF CLAIMS**

2 **5.1 Plaintiff's Release of Defendant**

3 This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of
4 itself, and in the public interest, and MusclePharm, of any alleged violation of Proposition 65 or its
5 implementing regulations for failure to provide Proposition 65 warnings of exposure to lead from
6 the handling, use or consumption of the Covered Products. ERC, on behalf of itself, its agents,
7 officers, representatives, attorneys, successors and/or assignees, and in the public interest, hereby
8 releases and discharges: (a) MusclePharm and its parent companies, subsidiaries, affiliates, and
9 divisions, as well as Muscle Pharm LLC; (b) their respective licensors, licensees, franchisors,
10 franchisees, joint venturers, partners, vendors, manufacturers, packagers, contractors, and finished
11 product and ingredient suppliers; (c) each of the distributors, wholesalers, retailers, users,
12 packagers, retail customers (but not including private label customers) and all other entities in the
13 distribution chain down to the consumer of any Covered Product of the persons and entities
14 described in (a) and (b) above; and (d) each of the respective officers, directors, shareholders,
15 employees, and agents of the persons and entities described in (a) through (c), above (the persons
16 and entities identified in (a), (b), (c), and (d), above, including the predecessors, successors and
17 assigns of any of them are collectively referred to as the "Released Parties"), from any and all
18 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees (including but
19 not limited to investigation fees, attorney's fees and expert fees), costs and expenses (collectively,
20 "Claims") as to any alleged violation of Proposition 65 arising from or related to the failure to
21 provide Proposition 65 warnings regarding lead for Covered Products manufactured up through the
22 Compliance Date.

23 **5.2** ERC, on behalf of itself, its agents, representatives, attorneys, successors and/or
24 assignees, and not on behalf of the general public, hereby releases and discharges the Released
25 Parties from any and all known and unknown Claims for alleged violations of Proposition 65, or
26 for any other statutory or common law, arising from or relating to alleged exposures to lead or lead
27 compounds in the Covered Products. It is possible that other Claims not known to the Parties
28 arising out of the facts alleged in the Notice or the Complaint and relating to the Covered Products

1 will develop or be discovered. ERC, on behalf of itself only, acknowledges that this Consent
2 Judgment is expressly intended to cover and include all such Claims, including all rights of action
3 therefor. ERC has full knowledge of the contents of California Civil Code section 1542. ERC, on
4 behalf of itself only, acknowledges that the Claims released in Sections 5.1 and 5.2 may include
5 unknown Claims, and nevertheless waives California Civil Code section 1542 as to any such
6 unknown Claims. California Civil Code section 1542 reads as follows:

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

11 ERC, on behalf of itself only, acknowledges and understands the significance and consequences of
12 this specific waiver of California Civil Code section 1542.

13 **5.3 Release of Environmental Research Center**

14 ERC, on one hand, and MusclePharm, on the other hand, release and waive all claims they
15 may have against each other for any statements of actions made or undertaken by them in
16 connection with the Notice or the Action.

17 **5.4 Compliance with the terms of this Consent Judgment shall be deemed to constitute**
18 **compliance by any Released Party with Proposition 65 regarding alleged exposures to lead in the**
19 **Covered Products.**

20 **5.5 Nothing in this Section 5 shall affect or limit any Party's right to seek to enforce the**
21 **terms of this Consent Judgment in accordance with its terms.**

22 **6. MOTION FOR APPROVAL OF CONSENT JUDGMENT/NOTICE TO THE**
23 **CALIFORNIA ATTORNEY GENERAL'S OFFICE**

24 **6.1 Upon execution of this Consent Judgment by the Parties, Plaintiff shall notice a**
25 **Motion for Approval & Entry of Consent Judgment in the Los Angeles Superior Court pursuant to**
26 **11 California Code of Regulations §3000, et seq. This motion shall be served upon all of the**
27 **Parties to the Action and upon the California Attorney General's Office. In the event that the**
28 **Court fails to approve and order entry of the judgment, this Consent Judgment shall become null**

1 and void upon the election of any Party as to them and upon written notice to all of the Parties to
2 the Action pursuant to the notice provisions herein. MusclePharm and ERC shall use good faith,
3 reasonable efforts to support entry of this Consent Judgment in the form submitted to the Office of
4 the Attorney General. If the Attorney General objects in writing to any term in this Consent
5 Judgment, the Parties shall use good faith, reasonable efforts to attempt to resolve the concern in a
6 timely manner and prior to the hearing on the motion to approve this Consent Judgment.

7 **7. SEVERABILITY**

8 7.1 In the event that any of the provisions of this Consent Judgment are held by a court
9 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

10 **8. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

11 8.1 In the event a dispute arises with respect to either Party's compliance with the terms
12 of this Consent Judgment entered by the Court, the Parties shall meet either in person or by
13 telephone and endeavor to resolve the dispute in a good faith manner. No action or motion may be
14 filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the event an
15 action or motion is filed, however, the prevailing Party may seek to recover costs and reasonable
16 attorneys' fees. As used in the preceding sentence, the term "prevailing Party" means a Party who
17 is successful in obtaining relief more favorable to it than the relief that the other Party was
18 amenable to providing during the Parties' good faith attempt to resolve the dispute that is the
19 subject of such enforcement action

20 **9. ENFORCEMENT**

21 9.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate
22 this Consent Judgment. Any Party may, by motion or application for an order to show cause filed
23 with this Court, enforce the terms and conditions contained in this Consent Judgment provided that
24 it first undertakes a good faith effort to resolve the dispute informally as required under Section 8.
25 In accordance with Section 8, the prevailing Party may request that the Court award its reasonable
26 attorney's fees and costs associated with such motion or application.

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1 **10. GOVERNING LAW**

2 **10.1** The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **11. NOTICES**

5 **11.1** All correspondence and notices required to be provided under this Consent
6 Judgment shall be in writing and shall be sent by first class registered or certified mail addressed as
7 follows. All correspondence to ERC shall be mailed to:

8 Environmental Research Center
9 3111 Camino Del Rio North, Suite 400
10 San Diego, CA 92108

11 And to:

12 Gideon Kracov
13 801 S. Grand Ave., 11th Fl.
14 Los Angeles, CA 90017

15 All correspondence to Defendant, shall be mailed to:

16 Mark Campanini
17 MusclePharm
18 401 N. Tryon Street
19 10th Floor
20 Charlotte, NC
21 28202

22 With a copy to:

23 Trenton H. Norris
24 Sarah Esmaili
25 Arnold & Porter LLP
26 Three Embarcadero Center, 7th Floor
27 San Francisco, CA 94111

28 **12. INTEGRATION**

12.1 This Consent Judgment, together with the Exhibit attached hereto, which is
specifically incorporated herein by this reference, constitutes the entire agreement between the
Parties relating to the rights and obligations herein granted and assumed, and supersede all prior
agreements and understandings between the Parties.

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13. MODIFICATION

13.1 This Consent Judgment may be modified only upon written agreement or stipulation between the Parties and upon entry of a modified Consent Judgment by the Court thereon. ERC is entitled to reasonable attorney's fees and costs for any modification of the Consent Judgment initiated or requested by MusclePharm.

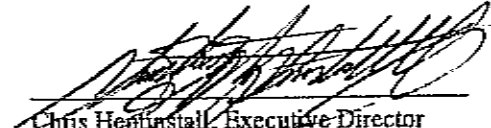
14. COUNTERPARTS

14.1 This Consent Judgment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

15. AUTHORIZATION

15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

DATED: 8/15/12

By: 
Chris Heptinstall, Executive Director
ENVIRONMENTAL RESEARCH CENTER

DATED: 10 AUG 2012

By: 
Mark Campanini
MUSCLEPHARM CORP.

IT IS SO ORDERED.

DATED: _____

JUDGE OF THE SUPERIOR COURT