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19 Attorneys for Defendant
20 THE SYNERGY COMPANY OF UTAH, LLC

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF ALAMEDA

23 ENVIRONMENTAL RESEARCH
24 CENTER, a California non-profit
25 corporation,

26 Plaintiff,

27 v.

28 THE SYNERGY COMPANY OF UTAH,
LLC; and DOES 1-100,

Defendants.

CASE NO. RG13686687

[PROPOSED] STIPULATED
CONSENT JUDGMENT; [PROPOSED]
ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: July 05, 2013
Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On July 5, 2013, Plaintiff Environmental Research Center (“ERC”), a non-
3 profit corporation, as a private enforcer, and in the public interest, initiated this action by
4 filing a Complaint for Injunctive and Declaratory relief and Civil Penalties (the “Complaint”)
5 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.
6 (“Proposition 65”), against The Synergy Company of Utah, LLC and DOES 1-100
7 (collectively “Synergy”). In this action, ERC alleges that the products manufactured,
8 distributed or sold by Synergy, as more fully described below, contain lead, a chemical listed
9 under Proposition 65 as a carcinogen and reproductive toxin, and that such products expose
10 consumers at a level requiring a Proposition 65 warning. These products are: The Synergy
11 Company Vita Synergy for Men (now called Organic Vita-Min-Herb for Men); The Synergy
12 Company Vita Synergy for Women (now called Organic Vita-Min-Herb for Women); and
13 The Synergy Company Pure Synergy (collectively, the “Covered Products”). ERC and
14 Synergy are referred to individually as a “Party” or collectively as the “Parties.”
15

16 **1.2** ERC is a California non-profit corporation dedicated to, among other causes,
17 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
18 and toxic chemicals, facilitating a safe environment for consumers and employees, and
19 encouraging corporate responsibility.

20 **1.3** Synergy is a business entity that employed ten or more persons. Synergy
21 conducts or arranges the manufacture, distribution and sale of the Covered Products.

22 **1.4** The Complaint is based on allegations contained in ERC’s Notice of Violations,
23 dated June 1, 2011, that was served on the California Attorney General, other public
24 enforcers, and Synergy. A true and correct copy of the Notice of Violations is attached as
25 Exhibit A. More than 60 days have passed since the Notice of Violations was mailed, and no
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1 designated public prosecutor has filed a complaint against Synergy with regard to the Covered
2 Products or the alleged violations.

3 **1.5** ERC's Notice of Violations and the Complaint allege that use of the Covered
4 Products exposes persons in California to lead without first providing clear and reasonable
5 warnings in violation of California Health and Safety Code section 25249.6. Synergy denies
6 all material allegations contained in the Notice of Violations and Complaint and specifically
7 denies that the Covered Products require a Proposition 65 warning or otherwise caused harm
8 to any person. Synergy asserts that any detectible levels of lead in the Covered Products are
9 the result of naturally occurring lead levels, as provided for in California Code of Regulations,
10 Title 27, Section 25501(a).

11 **1.6** The Parties have entered into this Consent Judgment in order to settle,
12 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
13 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
14 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
15 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers,
16 suppliers, distributors, wholesalers, or retailers. Nothing in this Consent Judgment shall be
17 construed as an admission by Synergy or ERC of any fact, issue of law, or violation of law,
18 nor shall compliance with this Consent Judgment be construed as an admission by Synergy or
19 ERC of any fact, issue of law, or violation of law, at any time, for any purpose, except the
20 foregoing shall not impair enforcement of this Consent Judgment.

21 **1.7** Except as expressly set forth herein, including in Section 8.3, nothing in this
22 Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense
23 the Parties may have in any other or future legal proceeding unrelated to these proceedings.

24 **1.8** The Effective Date of this Consent Judgment is the date on which it is entered as
25 a Judgment by this Court.
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1 **2. JURISDICTION AND VENUE**

2 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
3 jurisdiction over the allegations of violations contained in the Complaint and personal
4 jurisdiction over Synergy as to the acts alleged in the Complaint, that venue is proper in
5 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
6 final resolution of all claims which were or could have been asserted in his action based on the
7 facts alleged in the Notice of Violations and the Complaint.
8

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

10 **3.1** Synergy shall not manufacture for sale in the State of California, distribute into
11 the State of California¹, or directly sell in the State of California, any Covered Products which
12 expose a person to a daily dose of lead more than 0.5 micrograms per day, as determined
13 under Sections 3.3 and 3.4, unless each such unit of the Covered Product (1) qualifies as a
14 “Reformulated Covered Product” under Section 3.3, or (2) meets the warning requirements
15 under Section 3.2. Synergy shall bring the Covered Products into compliance with this
16 Section no later than five (5) months after the Effective Date (the “Compliance Date”). For
17 all Covered Products, if the product has been manufactured and packaged into final form for
18 consumer sale and use prior to the five month Compliance Date then such Covered Products
19 may be sold and/or distributed into the State of California at any time. Six (6) months after
20 the Effective Date, Synergy shall provide ERC with the last lot number and expiration date
21 for the Covered Products which have been manufactured and placed in final form for
22 consumer distribution as of the applicable Compliance Date.
23

24 **3.2 Clear and Reasonable Warnings**

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¹ As used in this Consent Judgment, the term “distribute into the State of California” shall
27 mean Synergy directly ships a Covered Product into California for sale in California or sells a
28 Covered Product to a distributor that Synergy knows will sell the Covered Product in California.

1 After the Compliance Date in Section 3.1, excepting such Covered Products as have been
2 manufactured and packaged into final form for consumer sale and use prior to the Compliance
3 Date, for any Covered Product that does not qualify as a Reformulated Covered Product under
4 Section 3.3, the following warning shall be provided:

5
6 **[California] [Proposition 65] WARNING: This product contains lead, a chemical**
7 **known to the State of California to cause [cancer and] birth defects or other**
8 **reproductive harm.**

9 The text in brackets is optional in Synergy's sole discretion except that Synergy shall use the
10 phrase "cancer and" in the warning only if the maximum daily dose recommended on the label
11 contains more than 15 micrograms of lead as determined pursuant to the provisions of Sections
12 3.3, 3.4.1, 3.4.2, 3.4.3, 3.4.7, 3.4.8, and 3.4.9

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14 Synergy shall provide the warning in any one or more of the following manners: 1) on
15 Synergy's checkout page on its website for California consumers prior to completion of the sale;
16 2) on Synergy's receipt/invoice in or on boxes of Covered Products shipped to California; and/or
17 3) on the label or container (other than on the underside or bottom of the container) of each
18 individual unit of a Covered Product in retail stores in California or shipped to California
19 consumers. No other statements about Proposition 65 or lead may be included on or near the
20 warning text.
21

- 22 1) In the website warning, Synergy shall identify each Covered Product to which the warning
23 applies.
24
25 2) For the receipt/invoice warnings, the receipt/invoice shall identify each Covered Product to
26 which the warning applies and the warning shall be present on the front of the
27 receipt/invoice.
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1 Synergy must display the warning with such conspicuousness, as compared with other
2 words, statements, or design of the label, container, webpage, or receipt/invoice, as applicable, to
3 render the warning likely to be read and understood by an ordinary individual under customary
4 conditions of purchase or use of the Covered Product.

5 **3.3 Calculation of Lead Levels; Reformulated Covered Products**

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7 A Reformulated Covered Product is one for which the maximum recommended daily
8 serving on the label contains no more than 0.5 micrograms of lead per day as determined by the
9 provisions in Section 3.4. As used in this Consent Judgment, “no more than 0.5 micrograms of
10 lead per day” means that the samples of the testing performed by Synergy under Section 3.4
11 yield a daily exposure of no more than 0.5 micrograms of lead (with daily exposure calculated
12 pursuant to Section 3.4 of this Consent Judgment). For products that cause exposures in excess
13 of 0.5 micrograms of lead per day, Synergy shall provide the warning set forth in Section 3.2.
14 For purposes of determining which warning, if any, is required pursuant to Section 3.2, the
15 second highest lead detection result of five (5) randomly selected samples of the Covered
16 Products (as specified in the sample selection process set forth in Section 3.4.4) will be
17 controlling.
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20 **3.4 Testing and Quality Control Methodology**

21 **3.4.1** For purposes of this Consent Judgment, for the Organic Vita-Min-Herb
22 for Men and Organic Vita-Min-Herb for Women Covered Products, the daily lead exposure
23 levels shall be measured in micrograms, and shall be calculated using the following formula:
24 micrograms of lead per gram of product, multiplied by grams of product per serving of the
25 Covered Product (using the largest serving size directed on the product label), multiplied by
26 servings of the Covered Product per day (using the largest number of servings recommended
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1 as a daily serving), which equals micrograms of lead exposure per day. For purposes of this
2 Consent Judgment, for the Pure Synergy Covered Product, daily lead exposure levels shall be
3 calculated using the following formula: micrograms of lead per gram of product, multiplied
4 by 3.5 grams of product, multiplied by one serving per day (provided there are no directions
5 on the product label to consume more than one serving per day), which equals micrograms of
6 lead exposure per day.

7 **3.4.2** All testing pursuant to this Consent Judgment shall be performed using a
8 laboratory method that complies with the performance and quality control factors appropriate
9 for the method used, including limit of detection, limit of qualification, accuracy, and
10 precision and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry
11 (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other
12 testing method subsequently agreed upon in writing by the Parties.

13 **3.4.3** All testing pursuant to this Consent Judgment shall be performed by an
14 independent third-party laboratory certified by the California Environmental Laboratory
15 Accreditation Program for the analysis of heavy metals or an independent third-party
16 laboratory that is registered with the United States Food & Drug Administration. Synergy
17 may perform this testing itself only if it provides, in an attachment to the test results Synergy
18 provides to ERC, proof that its laboratory meets the requirements in Section 3.4.2 and this
19 Section 3.4.3. Nothing in this Consent Judgment shall limit Synergy's ability to conduct, or
20 require that others conduct, additional testing of the Covered Products, including the raw
21 materials used in their manufacture.

22 **3.4.4** Synergy shall arrange, for at least three (3) consecutive years and at least
23 once per year prior to each anniversary of the Effective Date, for the lead testing of five (5)
24 randomly selected samples chosen from available lots of each Covered Product in the form
25 intended for sale to the end-user to be distributed or sold to California consumers. Available
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1 lots shall be those lots manufactured after the Compliance Date. If five (5) different lots are
2 not available, then samples shall be drawn from such lots as are available. If tests conducted
3 pursuant to this Section demonstrate that no warning is required for a Covered Product during
4 each of three consecutive years, then the testing requirements of this Section will no longer be
5 required as to that Covered Product. However, if after the three-year period, Synergy
6 materially reformulates any of the Covered Products, Synergy shall test that Covered Product
7 at least once after such change is made. Synergy shall send the five (5) test results undertaken
8 pursuant to this Consent Judgment to ERC. Such results shall be sent to ERC within 30 days
9 after each anniversary of the Effective Date. The testing requirements discussed in Section 3.4
10 are not applicable to any Covered Product for which Synergy has provided the warning as
11 specified in Section 3.2. Nothing in this Consent Judgment limits or prevents Synergy from
12 conducting any additional testing of any Covered Products, any ingredients therein, or any
13 other products.
14

15 **3.4.5** Synergy shall retain all test results and documentation for a period of
16 four years from the date of each test.

17 **3.4.6.** Defendant shall continue employing good manufacturing practices, which
18 may be adjusted from time to time, and shall continue employing quality control measures,
19 which may be adjusted from time to time, intended to reduce natural chemical contaminants to
20 the “lowest level currently feasible,” as this term is used in 21 C.F.R. Section 110.110(c) (2001).

21 **3.4.7 Calculation of “Naturally Occurring” Lead Content.** Synergy shall not
22 be required to warn respecting exposures to lead deemed “naturally occurring” under this
23 Consent Judgment. Such “naturally occurring” lead amounts shall be deducted from the
24 exposure levels calculated under Section 3.4.1 for the Organic Vita-Min-Herb for Men and
25 Organic Vita-Min-Herb for Women Covered Products. For the purposes of Section 3 of this
26 Consent Judgment, the amount of lead deemed “naturally occurring” in the Organic Vita-Min-
27 Herb for Men and Organic Vita-Min-Herb for Women Covered Products is the sum of the
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1 amounts of “naturally occurring” lead supplied by the quantity of each ingredient listed in Table
 2 3.4.7 that is present in the maximum daily dose recommended on the label of the Covered
 3 Product. For each ingredient, the amount of “naturally occurring” lead is listed in Table 3.4.7 in
 4 micrograms (“mcg”) of “naturally occurring” lead per gram of the ingredient contained in the
 5 maximum daily dose recommended on the label of the Covered Product. If the amount of
 6 elemental calcium contained in the maximum daily dose recommended on the label of a Covered
 7 Product exceeds 1500 milligrams, then the amount of “naturally occurring” lead supplied by
 8 each ingredient listed in Table 3.4.7 is limited to that amount of lead supplied by the quantity of
 9 the ingredient that would be contained in that fraction of the maximum daily dose of the Covered
 10 Product that would supply only 1500 milligrams of elemental calcium.

11 **TABLE 3.4.7**

<u>INGREDIENT</u>	<u>NATURALLY OCCURRING AMOUNT OF LEAD</u>
Calcium (elemental)	0.8 mcg Pb per gram of elemental Calcium
Ferrous Fumarate	0.4 mcg Pb per gram of Ferrous Fumarate
Zinc Oxide	8.0 mcg Pb per gram of Zinc Oxide
Magnesium Oxide	0.4 mcg Pb per gram of Magnesium Oxide
Magnesium Carbonate	0.332 mcg Pb per gram of Magnesium Carbonate
Magnesium Hydroxide	0.4 mcg Pb per gram of Magnesium Hydroxide
Zinc Gluconate	0.8 mcg Pb per gram of Zinc Gluconate
Potassium Chloride	1.1 mcg Pb per gram of Potassium Chloride.

21 **3.4.8 Reporting of “Naturally Occurring” Allowances.** ERC acknowledges that
 22 Synergy has provided calculations documenting how the “naturally occurring” allowances are
 23 determined in the current formulations of the Organic Vita-Min-Herb for Men and Organic Vita-
 24 Min-Herb for Women Covered Products. If Synergy materially reformulates either Covered
 25 Product within three (3) years of the Effective Date, Synergy shall provide to ERC updated
 26 calculations of the “naturally occurring” allowances in the reformulated products. After the three
 27 (3) year period, ERC may in writing request updated calculations of the “naturally occurring”

1 allowances in the materially reformulated Organic Vita-Min-Herb for Men and Organic Vita-
2 Min-Herb for Women Covered Products, and may request test results documenting lead levels in
3 such materially reformulated products. Synergy shall provide such requested information within
4 fifteen (15) business days of Synergy's receipt of ERC's request.

5 **3.4.9.** Should there be an amendment to Proposition 65 or should OEHHA adopt a final
6 regulation that establishes a Maximum Allowable Dose Level ("MADL") applicable to the
7 ingestion of lead that is more or less stringent than 0.5 micrograms per day, this Consent
8 Judgment shall be deemed modified to incorporate that new MADL on the date the amendment
9 becomes final or the regulation becomes effective; provided, however, such time period shall be
10 extended to include the completion through final appeal of timely filed legal challenges. The
11 new MADL shall thereafter replace the references in this Consent Judgment to 0.5 micrograms.
12 Synergy shall have six (6) months after modification of the MADL to come into compliance with
13 such amended terms of this Consent Judgment. In addition, if ERC agrees in a future court
14 approved consent judgment under Proposition 65 that additional ingredients include "naturally
15 occurring" lead, as that term is used in California Code of Regulations, title 27, Section 25501,
16 then either Party may move the Court to modify this Consent Judgment to include such
17 additional "naturally occurring" allowance or allowances.

18 **4. SETTLEMENT PAYMENT**

19 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
20 penalties, attorney's fees, and costs, Synergy shall make a total payment of \$160,000.00 by
21 check within ten business days of receiving the Notice of Entry of Judgment. Said payment
22 shall be for the following:

23 **4.2** \$25,956.00 shall be payable as civil penalties pursuant to California Health
24 and Safety Code section 25249.7(b)(1). Of this amount, \$19,467.00 shall be payable to the
25 Office of Environmental Health Hazard Assessment ("OEHHA") and \$6,489.00 shall be
26 payable to Environmental Research Center. California Health and Safety Code section
27

1 25249.12(c)(1) & (d). Synergy shall send both civil penalty payments to ERC's counsel who
2 will be responsible for forwarding the civil penalty.

3 **4.3** \$31,447.00 shall be payable to Environmental Research Center as
4 reimbursement to ERC for (A) reasonable costs associated with the enforcement of
5 Proposition 65 and other costs incurred as a result of work in bringing this action; and
6 (B) \$73,955.00 shall be payable to Environmental Research Center in lieu of further civil
7 penalties, for the day-to-day business activities such as (1) continued enforcement of
8 Proposition 65, which includes work, analyzing, researching and testing consumer products
9 that may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible
10 products that are the subject matter of the current action; (2) the continued monitoring of past
11 consent judgments and settlements to ensure companies are in compliance with Proposition
12 65; and (3) giving a donation of \$3,892.00 to the Woman's Voices For The Earth to address
13 reducing toxic chemical exposures in California.
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15 **4.4** \$24,750.00 shall be payable to Michael Freund as reimbursement of ERC's
16 attorney's fees.

17 **4.5** Synergy shall mail or deliver the payments in this Section by check to the
18 Law Office of Michael Freund at the address stated in Section 11. Synergy will be provided
19 with taxpayer identification information to enable Synergy to process the payments.

20 **5. MODIFICATION OF CONSENT JUDGMENT**

21 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
22 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
23 judgment. The Attorney General shall be served with any such stipulations or motions to
24 modify this Consent Judgment.

25 **5.2** If Synergy seeks to modify this Consent Judgment under Section 5.1, then
26 Synergy must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to
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1 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
2 provide written notice to Synergy within thirty days of receiving the Notice of Intent. If ERC
3 notifies Synergy in a timely manner of ERC's intent to meet and confer, then the Parties shall
4 meet and confer in good faith as required in this Section. The Parties shall meet in person
5 within thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty
6 days of such meeting, if ERC disputes the proposed modification, ERC shall provide to
7 Synergy a written basis for its position. The Parties shall continue to meet and confer for an
8 additional thirty (30) days in an effort to resolve any remaining disputes. The Parties may
9 agree in writing to different deadlines for the meet-and-confer period.

10 **5.3** In the event that Synergy initiates or otherwise requests a modification under
11 Section 5.1, Synergy shall reimburse ERC its costs and reasonable attorney's fees for the time
12 spent in the meet-and-confer process and filing and arguing a joint motion or application in
13 support of a modification of this Consent Judgment. ERC shall notify Synergy
14 approximately at the time when ERC's costs and attorneys fees meet or are likely to exceed
15 \$4000.00, so that Synergy may reasonably track such expenses.

16 **5.4** Where the meet-and-confer process does not lead to a joint motion or
17 application in support of a modification of this Consent Judgment, then either Party may seek
18 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs
19 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
20 means a party who is successful in obtaining relief more favorable to it than the relief that the
21 other party was amenable to providing during the Parties' good faith attempt to resolve the
22 dispute that is the subject of the modification.

23 **5.5** Nothing in this Consent Judgment shall preclude Synergy from seeking to
24 modify this Consent Judgment to establish that any ingredient or ingredients not set forth in
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1 Table 3.4.7 contain lead that is “naturally occurring” at the lowest level currently feasible as
2 stated in California Code of Regulations, title 27, Section 25501.

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

4 **JUDGMENT**

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

7 **6.2** Only after it complies with Section 15 below may any Party, by motion or
8 application for an order to show cause filed with this Court, enforce the terms and conditions
9 contained in this Consent Judgment.

10 **6.3** If ERC alleges any violation of this Consent Judgment, the Parties shall first
11 attempt to resolve the matter prior to ERC taking further legal action. In addition, if ERC
12 alleges that any Covered Product fails to qualify as a Reformulated Covered Product (for
13 which ERC alleges that no warning has been provided), then ERC shall inform Synergy in a
14 reasonably prompt manner of its test results, including information sufficient to permit
15 Synergy to identify the Covered Products at issue. ERC may not allege a violation of the
16 warning obligations of this Consent Judgment unless one is established based on application
17 of the same provisions applicable to Synergy set forth in Sections 3.1, 3.2, 3.3, 3.4.1, 3.4.2,
18 3.4.3, 3.4.7, 3.4.8 and 3.4.9. Synergy shall, within thirty days following such notice, provide
19 ERC with testing information, from an independent third-party laboratory meeting the
20 requirements of Sections 3.4.2 and 3.4.3, demonstrating Defendant’s compliance with this
21 Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to
22 ERC taking any further legal action.

23 **7. APPLICATION OF CONSENT JUDGMENT**

24 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
25 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
26 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
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1 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have
2 no application to Covered Products which are exclusively distributed and/or sold outside the
3 State of California. With respect to Covered Products that are distributed and/or sold both inside
4 and outside of California, the requirements in this Consent Judgment apply to the Covered
5 Products only to the extent that the distribution and/or sales occur in California. This Consent
6 Judgment shall terminate without further action by any Party when Synergy no longer
7 manufactures, distributes or sells all of the Covered Products and all of such Covered Products
8 previously “distributed for sale in California” have reached their expiration dates and are no
9 longer sold.
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12 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

13 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
14 on behalf of itself and in the public interest, and Synergy, of any alleged violation of
15 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings
16 of exposure to lead from the handling, use, or consumption of the Covered Products and fully
17 resolves all claims that have been or could have been asserted in this action up to and
18 including the Effective Date for failure to provide Proposition 65 warnings for the Covered
19 Products. ERC, on behalf of itself and in the public interest, hereby releases and discharges
20 Synergy and its respective officers, directors, shareholders, employees, agents, parent
21 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not
22 including private label customers of Synergy), distributors, wholesalers, retailers, and all
23 other upstream and downstream entities in the distribution chain of any Covered Product, and
24 the predecessors, successors and assigns of any of them (collectively, “Released Parties”),
25 from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
26 penalties, fees, costs and expenses asserted, or that could have been asserted, as to any alleged
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1 violations of Proposition 65 arising from or relating to the failure to provide Proposition 65
2 warnings regarding lead in the Covered Products.

3 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released
4 Parties from all known and unknown claims for alleged violations of Proposition 65 arising
5 from or relating to alleged exposures to lead in the Covered Products as set forth in the
6 Complaint and the Notice of Violations. It is possible that other claims not known to the
7 Parties arising out of the facts alleged in the Notice of Violations or the Complaint and
8 relating to the Covered Products will develop or be discovered. ERC, on behalf of itself only,
9 acknowledges that this Consent Judgment is expressly intended to cover and include all such
10 claims, including all rights of action therefore. ERC has full knowledge of the contents of
11 California Civil Code section 1542. ERC, on behalf of itself only, acknowledges that the
12 claims released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless
13 waives California Civil Code section 1542 as to any such unknown claims. California Civil
14 Code section 1542 reads as follows:
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16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
17 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
18 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
19 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

22 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
23 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures
24 to lead in the Covered Products as set forth in the Notice of Violations and the Complaint
25 regardless of when such Covered Products are sold to California consumers.
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1 **8.4** Nothing in this Consent Judgment is intended to apply to any occupational or
2 environmental exposures arising under Proposition 65, nor shall it apply to any of Synergy’s
3 products other than the Covered Products.

4 **8.5** ERC and Synergy each release and waive all claims they may have against
5 each other for any statements or actions made or undertaken by them in connection with the
6 Notice of Violations or the Complaint; provided, however, that nothing in Section 8 shall
7 affect or limit any Party’s right to seek to enforce the terms of this Consent Judgment.

8 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

12 **10. GOVERNING LAW**

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

15 **11. PROVISION OF NOTICE**

16 All notices required to be given to either Party to this Consent Judgment by the other shall be in
17 writing and sent to the following agents listed below by: (a) first-class, registered, or certified
18 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

19 **FOR ENVIRONMENTAL RESEARCH CENTER:**

20 Chris Heptinstall, Executive Director
21 Environmental Research Center
22 3111 Camino Del Rio North, Suite 400
23 San Diego, CA 92108

24 With a copy to:

25 Michael Freund (SBN 99687)
26 Michael Freund & Associates
27 1919 Addison Street, Suite 105
28 Berkeley, California 94704-1101

1 Telephone: (510) 540-1992
2 Facsimile: (510) 540-5543
3 freund1@aol.com

4 **FOR THE SYNERGY COMPANY OF UTAH, LLC**

5 Judith Praitis (SBN 151303)
6 Amy P. Lally (SBN 198555)
7 SIDLEY AUSTIN LLP
8 555 West Fifth Street, Suite 4000
9 Los Angeles, California 90013-1010
10 Telephone: (213)896-6000
11 Facsimile: (213) 896-6600
12 Email: jpraitis@sidley.com
13 Email: alally@sidley.com

14 With a copy to:

15 Current CEO or President
16 The Synergy Company of Utah, LLC
17 2279 Resource Blvd
18 Moab, UT 84532

19 **12. COURT APPROVAL**

20 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be
21 void and have no force or effect.

22 **12.2** ERC shall comply with California Health and Safety Code section 25249.7(f)
23 and with Title II of the California Code Regulations, Section 3003.

24 **13. EXECUTION AND COUNTERPARTS**

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

28 **14. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for the each
Party prior to signing, and each Party has had an opportunity to fully discuss the terms with

1 counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent
2 Judgment entered thereon, the terms and provisions shall not be construed for or against any
3 Party based on which counsel drafted said provision.

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

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

16
17 **16. ENTIRE AGREEMENT, AUTHORIZATION**

18 **16.1** This Consent Judgment contains the sole and entire agreement and
19 understanding of the Parties with respect to the entire subject matter herein, and any and all
20 prior discussions, negotiations, commitments and understandings related hereto. No
21 representations, oral or otherwise, express or implied, other than those contained herein have
22 been made by any Party. No other agreements, oral or otherwise, unless specifically referred
23 to herein, shall be deemed to exist or to bind any Party.

24 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
25 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
26 explicitly provided herein, each Party shall bear its own fees and costs.
27
28

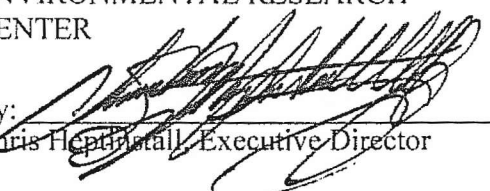
1 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
2 **CONSENT JUDGMENT**

3 This Consent Judgment has come before the Court upon the motion of Plaintiff. The Parties
4 request the Court to fully review this Consent Judgment and, being fully informed regarding the
5 matters which are the subject of this action, to make the findings pursuant to California Health
6 and Safety Code section 25249.7(f)(4) to approve this Consent Judgment.
7

8
9 **IT IS SO STIPULATED:**

10
11 Dated: 12/12/, 2013

ENVIRONMENTAL RESEARCH
CENTER

12
13 By: 
14 Chris Heppenthal, Executive Director

15
16 Dated: _____, 2013


THE SYNERGY COMPANY OF UTAH,
LLC

17
18 By: _____
Daniel Naistadt

19
20
21 **APPROVED AS TO FORM:**

22
23 Dated: 12/12, 2013

ENVIRONMENTAL RESEARCH
CENTER

24
25 By: 
26 Michael Freund
Michael Freund & Associates

1 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
2 **CONSENT JUDGMENT**

3 This Consent Judgment has come before the Court upon the motion of Plaintiff. The Parties
4 request the Court to fully review this Consent Judgment and, being fully informed regarding the
5 matters which are the subject of this action, to make the findings pursuant to California Health
6 and Safety Code section 25249.7(f)(4) to approve this Consent Judgment.
7

8
9 **IT IS SO STIPULATED:**

10
11 Dated: _____, 2013

ENVIRONMENTAL RESEARCH
CENTER

12
13 By: _____
14 Chris Heptinstall, Executive Director

15
16 Dated: 12/11, 2013

THE SYNERGY COMPANY OF UTAH,
LLC

17
18 By: 
19 Daniel Naistadt

20
21 **APPROVED AS TO FORM:**


22
23 Dated: _____, 2013

ENVIRONMENTAL RESEARCH
CENTER

24
25 By: _____
26 Michael Freund
27 Michael Freund & Associates

1 Dated: 12/12, 2013

THE SYNERGY COMPANY OF UTAH,
LLC

2
3 By: 
4 Judith Praitis
5 Amy P. Lally
6 SIDLEY AUSTIN LLP

7
8 **JUDGMENT**

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

11
12 Dated: _____, 2014

13 _____
14 Judge of the Superior Court