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World Health Products dba GAT

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13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
15
16

17 ENVIRONMENTAL RESEARCH
18 CENTER, a California non-profit
corporation,

19 Plaintiffs,

20 vs.

21 WORLD HEALTH PRODUCTS, LLC,
22 GERMAN AMERICAN
TECHNOLOGIES, WORLD HEALTH
23 PRODUCTS dba GAT, GAT, and DOES
1-25, Inclusive,

24 Defendants.
25

) Case No.: 30-2012-00586828-CU-MC-CJC

) Judge: Hon. Franz. E. Miller

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

) [Health & Safety Code § 25249.5, *et seq.*]

) Action Filed: July 26, 2013

) Trial Date: September 3, 2013
26

27 1. INTRODUCTION

28 1.1 This Action arises out of the alleged violations of California's Safe Drinking
Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5

1 *et seq.* (also known as and herein after referred to as "Proposition 65") regarding the following
2 four products (hereinafter collectively the "Covered Products" or "Covered Product" to refer to a
3 single product):

- 4 1) German American Technologies GAT Jetfuel Pyro
- 5 2) German American Technologies GAT Jetfuel
- 6 3) German American Technologies Testagen
- 7 4) GAT Testrol

8 **1.2** Plaintiff Environmental Research Center, Inc. ("ERC") is a California non-profit
9 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other
10 causes, helping safeguard the public from health hazards by reducing the use and misuse of
11 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
12 and encouraging corporate responsibility. ERC brings this Action in the public interest pursuant
13 to California Health and Safety Code Section 25249.7.

14 **1.3** Defendant WORLD HEALTH PRODUCTS is a Connecticut Limited Liability
15 Company that does business as GAT (collectively referred to herein as "World Health"). For
16 purposes of this Consent Judgment, at all relevant times, World Health employed ten or more
17 persons, and is a "person in the course of doing business" within the meaning of Proposition 65.
18 World Health manufactures, distributes, and sells the Covered Products.

19 **1.4** ERC and World Health are hereinafter sometimes referred to individually as a
20 "Party" or collectively as the "Parties."

21 **1.5** On October 21, 2011, pursuant to California Health and Safety Code Section
22 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 ("Notice of Violations") on
23 the California Attorney General, other public enforcers, and World Health. A true and correct
24 copy of the Notice of Violations is attached hereto as Exhibit A.

25 **1.6** After more than sixty (60) days passed since service of the Notice of Violations,
26 and no designated governmental agency filed a complaint against World Health with regard to
27 the Covered Products or the alleged violations, ERC filed the Complaint in this Action (the
28 "Complaint") for injunctive relief and civil penalties. The Complaint is based on the allegations

1 in the Notice of Violations.

2 **1.7** The Complaint and the Notice of Violations each allege that World Health
3 manufactured, distributed, and/or sold in California the Covered Products, which contain lead, a
4 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
5 consumers at a level requiring a Proposition 65 warning. Further, the Complaint and Notice of
6 Violations allege that use of the Covered Products exposes persons in California to lead without
7 first providing clear and reasonable warnings, in violation of California Health and Safety Code
8 Section 25249.6. World Health denies all material allegations of the Notices of Violation and
9 the Complaint, asserts numerous affirmative defenses, and specifically denies that the Covered
10 Products require a Proposition 65 warning or otherwise cause harm to any person.

11 **1.8** The Parties enter into this Consent Judgment in order to settle, compromise, and
12 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
13 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any
14 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
15 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
16 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
17 wrongdoing, or liability, including without limitation, any admission concerning any alleged
18 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent
19 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties
20 may have in any other or future legal proceeding unrelated to these proceedings. However,
21 nothing in this Section shall affect the enforceability of this Consent Judgment.

22 **1.9** The "Effective Date" of this Consent Judgment shall be the date this Consent
23 Judgment is entered by the Court.

24 **2. JURISDICTION AND VENUE**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that
27 venue is proper in this Court, and that this Court has jurisdiction to enter this Consent Judgment
28 pursuant to the terms set forth herein.

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

2 **3.1** Beginning on the Effective Date, World Health shall be permanently enjoined
3 from manufacturing for sale in California, directly selling to a consumer in California, or
4 "Distributing into California" any of the Covered Products for which the maximum daily dose
5 recommended on the label contains more than 0.5 micrograms of lead, unless such Covered
6 Product complies with the warning requirements in Section 3.3 or qualifies as a "Reformulated
7 Covered Product" pursuant to Section 3.4. "Distributing into California" means to directly ship
8 any of the Covered Products into California for sale or to sell any of the Covered Products to a
9 distributor that World Health knows or has reason to know will sell the Covered Product in
10 California.

11 **3.2 Calculation of Lead Levels**

12 As used in this Consent Judgment, lead levels are calculated pursuant to the testing
13 protocol described in Section 3.5. For purposes of measuring the lead, the highest lead detection
14 result of the five (5) randomly selected samples of the Covered Products will be controlling.

15 **3.3 Clear and Reasonable Warnings.**

16 For those Covered Products that are subject to the warning requirement of Section 3.1,
17 World Health shall provide the following warning:

18 **WARNING: This product contains chemicals known to the State of**
19 **California to cause [cancer and] birth defects or other reproductive harm.**

20 **Do not use while pregnant, nursing or trying to become pregnant.**

21 The text in brackets in the warning above is optional, except that the term "cancer and"
22 must be included only if the maximum daily dose recommended on the label contains more than
23 15 micrograms of lead.

24 The warning shall be prominently affixed to or printed upon the label of the Covered
25 Product so as to be clearly conspicuous, as compared with other statements or designs on the
26 label, and to render it likely to be read and understood by an ordinary purchaser or user of the
27 Covered Product. If the warning is displayed on the Covered Product's label, it shall be at least
28 the same size as the largest of any other health or safety warnings on the Covered Product and

1 the word "**WARNING**" shall be in all capital letters and in bold print.

2 For any Covered Products sold via any and all websites owned or operated by World
3 Health or GAT, the warning shall appear on all of the checkout pages on the websites for
4 California consumers relating to any of the Covered Products being sold. The website warning
5 shall conspicuous, as compared with other statements or designs on the webpage, so as to render
6 it likely to be read and understood by an ordinary purchaser or user of the product.

7 World Health shall not provide any additional information, statements, or comments
8 regarding Proposition 65 in addition to the warning.

9 **3.4 Reformulated Covered Products.**

10 A Reformulated Covered Product is one for which the maximum recommended daily
11 serving on the label contains no more than 0.5 micrograms of lead per day.

12 **3.5 Testing and Quality Control Methodology**

13 (a) Beginning within one year of the Effective Date, World Health shall test five (5)
14 randomly selected samples of each of the Covered Products (in the form intended for sale to the
15 end-user) for lead content to determine the daily lead exposure when taken as directed on the
16 Covered Product's Label. The testing requirement does not apply to any of the Covered
17 Products for which World Health has provided the warning specified in Section 3.3.

18 (b) Testing for lead shall be performed using Inductively Coupled Plasma-Mass
19 Spectrometry ("ICP-MS") and closed-vessel, microwave-assisted digestion employing high-
20 purity reagents or any other testing method subsequently agreed to in writing by the Parties.

21 (c) All testing pursuant to this Consent Judgment shall be performed by an
22 independent third-party laboratory certified by the California Environmental Laboratory
23 Accreditation Program or a laboratory that is registered with the United States Food & Drug
24 Administration for the analysis of heavy metals.

25 (d) World Health shall retain all test results and documentation for a period of four
26 (4) years from the date of the test. World Health shall provide copies of the test results to ERC
27 within 10 days of World Health's receipt of the test results.

28 (e) World Health shall test each of the Covered Products at least once a year for a

1 minimum of four (4) consecutive years by testing five (5) randomly selected samples of each
2 Covered Product which World Health intends to sell or is manufacturing for sale in California,
3 directly selling to a consumer in California, or Distributing into California. If tests conducted
4 pursuant to this Section demonstrate that no warning is required for a Covered Product during
5 each of four (4) consecutive years, then the testing requirements of this Section will no longer be
6 required as to that Covered Product. However, if during or after the four (4) year period, World
7 Health changes ingredient suppliers for any of the Covered Products and/or reformulates any of
8 the Covered Products, World Health shall test that Covered Product annually for at least four (4)
9 consecutive years after such change is made.

10 (f) For purposes of this Consent Judgment, daily lead exposure levels shall be
11 measured in micrograms, and shall be calculated using the following formula: Micrograms of
12 lead per gram of product, multiplied by grams per serving of the product (using the largest
13 serving size appearing on the product label), multiplied by servings of the product per day (using
14 the largest number of servings in the recommended dosage appearing on the product label) which
15 equals micrograms of lead exposure per day.

16 4. SETTLEMENT PAYMENT

17 4.1 World Health shall make a total payment of \$72,500.00 within 10 business days
18 of the Effective Date, which shall be in full and final satisfaction of all potential civil penalties,
19 payment in lieu of civil penalties, and attorneys' fees and costs. The payment will be in the form
20 of checks sent to counsel for ERC, William F. Wraith, Wraith Law, 16485 Laguna Canyon Road,
21 Suite 250, Irvine, California, 92618. The payment shall be payable to and apportioned as
22 follows:

23 4.2 \$11,572.00 as civil penalties pursuant to California Health and Safety Code
24 Section 25249.7(b)(1). Of this amount, \$8,679.00 (75%) shall be payable to the Office of
25 Environmental Health Hazard Assessment ("OEIHA"), and \$2,893.00 (25%) shall be payable to
26 ERC. (Cal. Health & Safety Code § 25249.12(c)(1) & (d)). ERC's counsel will forward the civil
27 penalty to OEIHA.

28 4.3 \$15,350.00 payable to ERC as reimbursement to ERC for reasonable costs

1 associated with the enforcement of Proposition 65 and other costs incurred as a result of work in
2 bringing this Action.

3 **4.4** \$34,723.00 payable to ERC in lieu of further civil penalties, for the day-to-day
4 business activities such as (1) continued enforcement of Proposition 65, which includes work
5 analyzing, researching, and testing consumer products that may contain Proposition 65
6 chemicals, focusing on the same or similar type of ingestible products that are the subject matter
7 of the current Action; (2) the continued monitoring of past consent judgments and settlements to
8 ensure companies are complying with Proposition 65; and (3) giving a donation of \$1,736.00 to
9 Children's Environmental Health Network, an organization whose focus is to protect the
10 developing child from environmental health hazards and promote a healthier environment by
11 reducing toxic chemical exposures in California through their Eco Health Child Care Program.

12 **4.5** \$10,855.00 payable to William F. Wraith as reimbursement of ERC's attorney's
13 fees and attorney's costs.

14 **5. MODIFICATION OF CONSENT JUDGMENT**

15 This Consent Judgment may be modified only by: (i) Written agreement and stipulation
16 of the Parties or (ii) Upon entry of a modified Consent Judgment by the Court. ERC is entitled
17 to reimbursement all reasonable attorneys' fees and costs regarding any modification requested
18 or initiated by World Health.

19 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

20 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
21 this Consent Judgment.

22 **6.2** Any Party may, by motion or application for an order to show cause filed with
23 this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing
24 party in any such motion or application may request that the Court award its reasonable
25 attorneys' fees and costs associated with such motion or application.

26 **7. APPLICATION OF CONSENT JUDGMENT**

27 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their
28 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,

1 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
2 wholesalers, retailers, predecessors, successors, and assigns.

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

4 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
5 behalf of itself and in the public interest, and World Health, of any alleged violation of
6 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
7 exposure to lead from the handling, use, or consumption of the Covered Products, and fully
8 resolves all claims that have been or could have been asserted in this action up to and including
9 the date of entry of Judgment for failure to provide Proposition 65 warnings for the Covered
10 Products regarding lead. ERC, on behalf of itself and in the public interest, hereby discharges
11 World Health and its respective officers, directors, shareholders, employees, agents, parent
12 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not
13 including private label customers of World Health), distributors, wholesalers, retailers, and all
14 other upstream and downstream entities in the distribution chain of any Covered Product, and the
15 predecessors, successors and assigns of any of them (collectively, "Released Parties"), from all
16 claims for violations of Proposition 65 up through the Effective Date based on exposure to lead
17 from the Covered Products as set forth in the Notice of Violations and the Complaint.

18 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released Parties
19 from all known and unknown claims for alleged violations of Proposition 65, or for any other
20 statutory or common law claims arising from or relating to alleged exposures to lead in the
21 Covered Products as set forth in the Notice of Violations and the Complaint.

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 to
24 lead in the Covered Products.

25 **8.4 Unknown Claims**

26 It is possible that other claims not known to the Parties arising out of the facts alleged in
27 the Notice of Violations or the Complaint and relating to lead in the Covered Products that were
28 manufactured before the Effective Date will develop or be discovered. ERC, on behalf of itself

1 only, acknowledges that this Consent Judgment acknowledges the claims released herein may
2 include unknown claims, and nevertheless waives California Civil Code Section 1542 as to any
3 such unknown claims. California Civil Code Section 1542 reads as follows:

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

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

11 **8.5** ERC, on one hand, and World Health, on the other hand, each release and waive
12 all claims they may have against each other for any statements or actions made or undertaken by
13 them in connection with the Notice of Violations or the Complaint. However, this shall not
14 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

15 **9. CONSTRUCTION AND SEVERABILITY**

16 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the
17 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
18 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
19 construction of this Consent Judgment, the terms and conditions shall not be construed against
20 any Party.

21 **9.2** In the event that any of the provisions of this Consent Judgment are held by a
22 court to be unenforceable, the validity of the remaining enforceable provisions shall not be
23 adversely affected.

24 **9.3** The terms and conditions of this Consent Judgment shall be governed by and
25 construed in accordance with the laws of the State of California.

26 **10. PROVISION OF NOTICE**

27 All notices required to be given to either Party to this Consent Judgment by the other
28 shall be in writing and sent to the following agents listed below by: (a) first-class, registered, (b)

1 certified mail, (b) overnight courier, or (c) personal delivery to the following

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3
4 **For Environmental Research Center**

5 Chris Heptinstall, Executive Director
6 Environmental Research Center
7 3111 Camino Del Rio North, Suite 400
8 San Diego, CA 92108

9 William F. Wraith, Esq.
10 Wraith Law
11 16485 Laguna Canyon Road, Suite 250
12 Irvine, CA 92618

13 Karen Evans, Esq.
14 Environmental Research Center
15 4218 Biona Place
16 San Diego, CA 92116

17 **For World Health International, LLC**

18 Melissa A. Jones
19 STOEL RIVES LLP
20 500 Capitol Mall, Suite 1600
21 Sacramento, CA 95814

22 With a copy to: -

23 Charles P. Moser, President
24 World Health Products, LLC
25 64 Sunnyside Avenue
26 Stamford, CT 06902

27 **11. COURT APPROVAL**

28 **11.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
Motion for Court Approval. The Parties shall use their best efforts to support entry of this
Consent Judgment.

1 **11.2** If the California Attorney General objects to any term in this Consent Judgment,
2 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
3 prior to the hearing on the motion.

4 **11.3** If this Stipulated Consent Judgment is not approved by the Court despite the
5 Parties best efforts, it shall be null and void and have no force or effect.

6 **12. EXECUTION AND COUNTERPARTS**

7 This Stipulated Consent Judgment may be executed in counterparts, which taken together
8 shall be deemed one document. A facsimile or .pdf signature shall be construed as valid and as
9 the original signature.

10 **13. ENTIRE AGREEMENT, AUTHORIZATION**

11 **13.1** This Consent Judgment contains the sole and entire agreement and understanding
12 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
13 negotiations, commitments and understandings related hereto. No representations, oral or
14 otherwise, express or implied, other than those contained herein have been made by any Party.
15 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to
16 exist or to bind any Party.

17 **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
18 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
19 provided herein, each Party shall bear its own fees and costs.

20 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

21 **14.1** This Consent Judgment has come before the Court upon the request of the Parties.
22 The Parties request the Court to fully review this Consent Judgment and, being fully informed
23 regarding the matters which are the subject of this action, to:

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

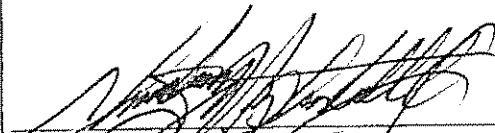
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1 (b) Make the findings pursuant to California Health and Safety Code Section
2 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.
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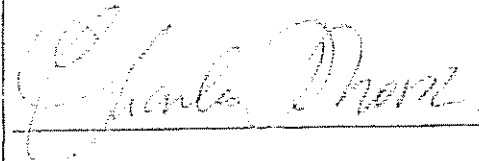
4 **IT IS SO STIPULATED:**

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6 **ENVIRONMENTAL RESEARCH CENTER**

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8 
9 Chris Heptinstall, Executive Director

Dated: 5/26/2013


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12 **WORLD HEALTH PRODUCTS dba GAT**

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14 
15

Dated: 5/20/13

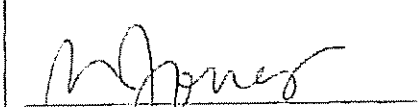
16 **APPROVED AS TO FORM:**

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18 **WRAITH LAW**

19
20 
21 William F. Wraith
22 Counsel for Environmental Research Center

Dated: 5/28/2013

23
24 **STOEL RIVES LLP**

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26 
27 Melissa A. Jones
28 World Health Products dba GAT

Dated: 5/22/13

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Dated: _____

Judge, Superior Court of the State of California