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9

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
12

13 ENVIRONMENTAL RESEARCH
14 CENTER, a California non-profit
corporation,

15 Plaintiffs,

16 vs.

17 FOREVERGREEN WORLDWIDE
18 CORPORATION, FOREVERGREEN
INTERNATIONAL, LLC,
19 FOREVERGREEN IP, LLC and DOES 1-
20 25, Inclusive,

21 Defendants.

) **Case No.: 30-2012-00576544-CU-MC-CJC**

) Judge: Hon. Franz. E. Miller

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

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

) Action Filed: June 13, 2012

) Trial Date: July 22, 2013

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24 **1. INTRODUCTION**

25 **1.1** This Action arises out of the alleged violations of California's Safe Drinking
26 Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5
27 *et seq.* (also known as and herein after referred to as "Proposition 65") regarding the following
28 products (hereinafter collectively the "Covered Products" or "Covered Product" to refer to a

1 single product):

- 2 1) ForeverGreen O3 World FIXX Meal Replacement Shake
- 3 2) ForeverGreen International SmartFood Thunder 24 Karat Chocolate Meal
- 4 Replacement Shake
- 5 3) ForeverGreen International LLC LegaSea Azul 40
- 6 4) Forevergreen International Smartfood Pulse-8

7 **1.2** Plaintiff Environmental Research Center, Inc. (“ERC”) is a California non-profit
8 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other
9 causes, helping safeguard the public from health hazards by reducing the use and misuse of
10 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
11 and encouraging corporate responsibility. ERC brings this Action in the public interest pursuant
12 to California Health and Safety Code Section 25249.7.

13 **1.3** Defendant Forevergreen Worldwide Corporation is a Nevada Corporation that is a
14 person within the meaning of H&S Code §25249.11(a). Defendant Forevergreen International,
15 LLC is a Utah Limited Liability Company that is a person within the meaning of H&S Code
16 §25249.11(a). Defendant Forevergreen IP, LLC is a Utah Limited Liability Company that is a
17 person within the meaning of H&S Code §25249.11(a). At all material times, Defendants
18 Forevergreen Worldwide Corporation, Forevergreen International, LLC and Forevergreen IP,
19 LLC were under the same ownership, dominion and control and as such were the agents,
20 servants, and employees of each other, and acted in the course and scope of the authority granted
21 each other. Defendants Forevergreen Worldwide Corporation, Forevergreen International, LLC
22 and Forevergreen IP, LLC are collectively referred to herein as (“FOREVERGREEN”).
23 FOREVERGREEN manufactures, distributes and sells the Covered Products.

24 **1.4** ERC and FOREVERGREEN are hereinafter sometimes referred to individually as
25 a “Party” or collectively as the “Parties.”

26 **1.5** On December 19, 2011, pursuant to California Health and Safety Code Section
27 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 (“Notice of Violations”) on
28 the California Attorney General, other public enforcers, and FOREVERGREEN. A true and

1 correct copy of the Notice of Violations is attached hereto as Exhibit A.

2 **1.6** After more than sixty (60) days passed since service of the Notice of Violations,
3 and no designated governmental agency filed a complaint against FOREVERGREEN with
4 regard to the Covered Products or the alleged violations, ERC filed the Complaint in this Action
5 (the "Complaint") for injunctive relief and civil penalties. The Complaint is based on the
6 allegations in the Notice of Violations.

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

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

27 **1.9** The "Effective Date" of this Consent Judgment shall be the date this Consent
28 Judgment is entered by the Court.

1 **2. JURISDICTION AND VENUE**

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

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

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

16 **3.2 Calculation of Lead Levels**

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

20 **3.3 Clear and Reasonable Warnings**

21 For those Covered Products that are subject to the warning requirement of Section 3.1,
22 FOREVERGREEN shall provide the following warning:

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

26 The text in brackets in the warning above is optional, except that the term “cancer” must
27 be included only if the maximum daily dose recommended on the label contains more than 15
28 micrograms of lead.

1 The warning shall be prominently affixed to or printed upon the label of the Covered
2 Product so as to be clearly conspicuous, as compared with other statements or designs on the
3 label as to render it likely to be read and understood by an ordinary purchaser or user of the
4 product. If the warning is displayed on the product's label, it shall be at least the same size as the
5 largest of any other health or safety warnings on the product and the word "WARNING" shall
6 be in all capital letters and in bold print and, if used, the words "California Proposition 65" shall
7 be in bold print.

8 For any products sold via a website, the warning shall appear on FOREVERGREEN's
9 checkout page on its website for California consumers relating to any of the Covered Products
10 being sold.

11 FOREVERGREEN shall not provide any additional information, statements, or
12 comments regarding Proposition 65 in addition to the warning.

13 **3.4 Reformulated Covered Products.**

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

16 **3.5 Testing and Quality Control Methodology**

17 (a) Beginning within one year of the Effective Date, FOREVERGREEN shall test
18 five (5) randomly selected samples of each of the Covered Products (in the form intended for
19 sale to the end-user) for lead content. The testing requirement does not apply to any of the
20 Covered Products for which FOREVERGREEN has provided the warning specified in Section
21 3.3.

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

25 (c) All testing pursuant to this Consent Judgment shall be performed by a laboratory
26 certified by the California Environmental Laboratory Accreditation Program or a laboratory that
27 is registered with the United States Food & Drug Administration for the analysis of heavy
28 metals.

1 (d) FOREVERGREEN shall retain all test results and documentation for a period of
2 four (4) years from the date of the test. FOREVERGREEN shall provide copies of the test results
3 to ERC within 10 days of FOREVERGREEN's receipt of the test results.

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

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

20 **4. SETTLEMENT PAYMENT**

21 **4.1** FOREVERGREEN shall make a total payment of \$75,000.00 in two installments
22 as set forth in Section 4.2 below, which when paid in full shall be in full and final satisfaction of
23 all potential civil penalties, payment in lieu of civil penalties, and attorney's fees and costs. The
24 payments will made by check payable to the "Wraith Law Client Trust Account" and will be sent
25 to counsel for ERC, William F. Wraith, Wraith Law, 16485 Laguna Canyon Road, Suite 250,
26 Irvine, California, 92618.

27 **4.2** The two installments, set forth below, shall be made by the "Due Date," which
28 means the date the installment must be received in the office of ERC's counsel:

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Installment	Amount	Due Date
Number 1	\$50,000.00	30 days after Court's approval of Consent Judgment
Number 2	\$25,000.00	60 days after Installment Number 1 is due

4.3 The total payment shall be apportioned as follows, and it is up to ERC's discretion how to allocate any individual installment:

4.4 \$10,916.00 as civil penalties pursuant to California Health and Safety Code Section 25249.7(b)(1). Of this amount, \$8,187.00 shall be payable to the Office of Environmental Health Hazard Assessment ("OEHHA"), and \$2,729.00 shall be payable to ERC. (Cal. Health & Safety Code § 25249.12(c)(1) & (d)). ERC's counsel will forward the civil penalty to OEHHA.

4.5 \$16,000.00 payable to ERC as reimbursement to ERC for reasonable costs associated with the enforcement of Proposition 65 and other costs incurred as a result of work in bringing this Action.

4.6 \$32,754.00 payable to ERC in lieu of further civil penalties, for the day-to-day business activities such as (1) continued enforcement of Proposition 65, which includes work, analyzing, researching and testing consumer products that may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are the subject matter of the current Action; (2) the continued monitoring of past consent judgments and settlements to ensure companies are complying with Proposition 65; and (3) giving a donation of \$1,638.00 to As You Sow to address reducing toxic chemical exposures in California.

4.7 \$15,330.00 payable to William F. Wraith as reimbursement of ERC's attorney's fees and attorney's costs.

5. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment may be modified only by: (i) Written agreement and stipulation of the Parties or (ii) Upon entry of a modified Consent Judgment by the Court. ERC is entitled to

1 reimbursement all reasonable attorneys' fees and costs regarding any modification requested or
2 initiated by FOREVERGREEN.

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

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

6 **6.2** Any Party may, by motion or application for an order to show cause filed with
7 this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing
8 party in any such motion or application may request that the Court award its reasonable
9 attorneys' fees and costs associated with such motion or application.

10 **7. APPLICATION OF CONSENT JUDGMENT**

11 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their
12 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
13 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
14 wholesalers, retailers, predecessors, successors, and assigns.

15 **7. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

16 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
17 behalf of itself and in the public interest, and FOREVERGREEN, of any alleged violation of
18 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
19 exposure to lead from the handling, use, or consumption of the Covered Products and fully
20 resolves all claims that have been or could have been asserted in this action up to and including
21 the date of entry of Judgment for failure to provide Proposition 65 warnings for the Covered
22 Products regarding lead. ERC, on behalf of itself and in the public interest, hereby discharges
23 FOREVERGREEN and its respective officers, directors, shareholders, employees, agents, parent
24 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not
25 including private label customers of FOREVERGREEN), distributors, wholesalers, retailers, and
26 all other upstream and downstream entities in the distribution chain of any Covered Product, and
27 the predecessors, successors and assigns of any of them (collectively, "Released Parties"), from
28 all claims for violations of Proposition 65 up through the Effective Date based on exposure to

1 lead from the Covered Products as set forth in the Notice of Violations and the Complaint.

2 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released Parties
3 from all known and unknown claims for alleged violations of Proposition 65, or for any other
4 statutory or common law claims arising from or relating to alleged exposures to lead in the
5 Covered Products as set forth in the Notice of Violations and the Complaint.

6 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
7 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to
8 lead in the Covered Products.

9 **8.4 Unknown Claims**

10 It is possible that other claims not known to the Parties arising out of the facts alleged in
11 the Notice of Violations or the Complaint and relating to lead in the Covered Products that were
12 manufactured before the Effective Date will develop or be discovered. ERC, on behalf of itself
13 only, acknowledges that this Consent Judgment acknowledges the claims released herein may
14 include unknown claims, and nevertheless waives California Civil Code Section 1542 as to any
15 such unknown claims. California Civil Code Section 1542 reads as follows:

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

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

23 **8.5** ERC, on one hand, and FOREVERGREEN, on the other hand, each release and
24 waive all claims they may have against each other for any statements or actions made or
25 undertaken by them in connection with the Notice of Violations or the Complaint. However, this
26 shall not affect or limit any Party’s right to seek to enforce the terms of this Consent Judgment.

27 **9. CONSTRUCTION AND SEVERABILITY**

28 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the

1 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
2 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
3 construction of this Consent Judgment, the terms and conditions shall not be construed against
4 any Party.

5 **9.2** In the event that any of the provisions of this Consent Judgment is held by a court
6 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
7 affected.

8 **9.3** The terms and conditions of this Consent Judgment shall be governed by and
9 construed in accordance with the laws of the State of California.

10 **10. PROVISION OF NOTICE**

11 All notices required to be given to either Party to this Consent Judgment by the other
12 shall be in writing and sent to the following agents listed below by: (a) first-class, registered, (b)
13 certified mail, (b) overnight courier, or (c) personal delivery to the following

14 **For Environmental Research Center**

15 Chris Heptinstall, Executive Director
16 Environmental Research Center
17 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

18 William F. Wraith, Esq.
19 Wraith Law
20 16485 Laguna Canyon Road, Suite 250
Irvine, CA 92618

21 **For Defendants Forevergreen Worldwide Corporation, Forevergreen International, LLC**
22 **and Forevergreen IP, LLC**

23 MARK O. VAN WAGONER (SBN 79688)
24 SAVAGE, YEATES & WALDRON, P.C.
170 South Main Street, Suite 500
Salt Lake City, Utah 84101

25 With a copy to:

26 Allen K. Davis
27 Attorney-at-Law
979 South 420 West
28 Salem, Utah 84653

1 **11. COURT APPROVAL**

2 11.1 Upon execution of this Consent Judgment by the Parties, ERC shall file a Motion
3 for Court Approval. The Parties shall use their best efforts to support entry of this Consent
4 Judgment.

5 11.2 If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 11.3 If this Stipulated Consent Judgment is not approved by the Court despite the
9 Parties best efforts, it shall be null and void and have no force or effect.

10 **12. EXECUTION AND COUNTERPARTS**

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

14 **13. ENTIRE AGREEMENT, AUTHORIZATION**

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

21 13.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized
22 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
23 provided herein, each Party shall bear its own fees and costs.

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

25 14.1 This Consent Judgment has come before the Court upon the request of the Parties.
26 The Parties request the Court to fully review this Consent Judgment and, being fully informed
27 regarding the matters which are the subject of this action, to:

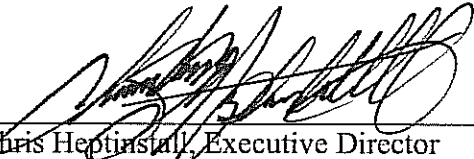
28 (a) Find that the terms and provisions of this Consent Judgment represent a good

1 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been
2 diligently prosecuted, and that the public interest is served by such settlement; and

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

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6 **IT IS SO STIPULATED:**

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8 **ENVIRONMENTAL RESEARCH CENTER**

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11 _____
Chris Heptinstall, Executive Director

Dated: 6/5/2013

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13 **FOREVERGREEN WORLDWIDE CORPORATION**

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16 Ronald Williams

Dated: _____

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18 **FOREVERGREEN INTERNATIONAL, LLC**

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21 Ronald Williams

Dated: _____

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23 **FOREVERGREEN IP, LLC**

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26 Ronald Williams

Dated: _____

1 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been
2 diligently prosecuted, and that the public interest is served by such settlement; and


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

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6 **IT IS SO STIPULATED:**


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8 **ENVIRONMENTAL RESEARCH CENTER**

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10 _____ Dated: _____
11 Chris Heptinstall, Executive Director

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13 **FOREVERGREEN WORLDWIDE CORPORATION**

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15 _____ Dated: 6-14-13
16 Ronald Williams

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18 **FOREVERGREEN INTERNATIONAL, LLC**

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21 Ronald Williams

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23 **FOREVERGREEN IP, LLC**

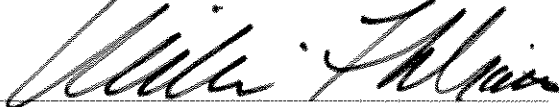
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25 _____ Dated: 6-14-13
26 Ronald Williams

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1 APPROVED AS TO FORM:

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3 WRAITH LAW

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Dated: 6/5/2013

5 William F. Wraith
6 Counsel for Environmental Research Center

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9 SAVAGE, YEATES & WALDRON, P.C.

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11 _____ Dated: _____

12 Mark O. Van Wagoner
13 Counsel for Defendants

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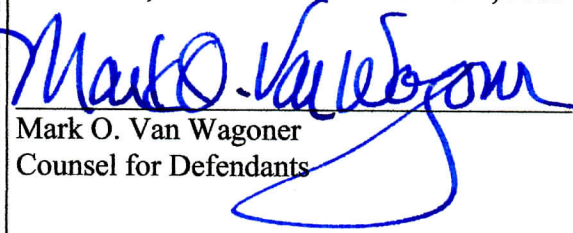
APPROVED AS TO FORM:

WRAITH LAW

William F. Wraith
Counsel for Environmental Research Center

Dated: _____

SAVAGE, YEATES & WALDRON, P.C.



Mark O. Van Wagoner
Counsel for Defendants

Dated: 14 JUNE 2013

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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____

Judge, Superior Court of the State of California