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8 ENVIRONMENTAL RESEARCH CENTER

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14 Attorney for Defendant
15 BEAUTY & HEALTH INTERNATIONAL, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

ENVIRONMENTAL RESEARCH CENTER,
a California non-profit corporation,

Plaintiffs,

vs.

BEAUTY & HEALTH, INTERNATIONAL
and DOES 1-25, Inclusive,

Defendants.

CASE NO. **30-2012-00566985-CU-MC-CJC**

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

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: May 4, 2012

TRIAL DATE: None Set

1 **1. INTRODUCTION**

2 1.1 On May 4, 2012, Plaintiff Environmental Research Center (“ERC”), a non-profit
3 corporation, as a private enforcer and in the public interest, initiated this action by filing its
4 Complaint for civil penalties and injunctive relief pursuant to the provisions of California Health
5 & Safety Code section 25249.5, *et seq.* (“Proposition 65”) against Defendant BEAUTY &
6 HEALTH, INTERNATIONAL (“Beauty & Health”). On August 8, 2012, Plaintiff ERC filed a
7 First Amended Complaint. The Complaint and First Amended complaint are collectively referred
8 to as the “Complaint.” ERC alleges in the Complaint that certain products (“Covered Products”)
9 manufactured, distributed and sold by Beauty & Health contain lead, a chemical listed under
10 Proposition 65 as a carcinogen and reproductive toxin, and require a Proposition 65 warning. The
11 Covered Products are listed by name in Exhibit A to this Consent Judgment. ERC and Beauty &
12 Health shall sometimes be referred to individually as a “Party” or collectively as the “Parties.”

13 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
14 helping safeguard the public from health hazards by bringing about a reduction in the use and
15 misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and
16 employees and encouraging corporate responsibility. ERC has diligently prosecuted this matter
17 and is settling this case in the public interest.

18 1.3 For a portion of the relevant time period covered by the claims described above,
19 Beauty & Health employed ten or more persons. At the time of the execution of this Consent
20 Judgment Beauty & Health contends that it presently employs not more than 7 employees,
21 consisting of President, customer service clerk, three manufacturing assistants, and a bookkeeper.
22 Beauty & Health manufactures, distributes and sells the Covered Products. Beauty & Health
23 agrees to notify the California Attorney General at such time it has 10 or more employees.

24 1.4 The Complaint is based on allegations contained in the Notices of Violation dated
25 March 25, 2011 and December 19, 2011, served on the California Attorney General, other public
26 enforcers, and Beauty & Health by ERC. True and correct copies of the Notices of Violation are
27 attached hereto as Exhibit B. No public enforcer has filed suit against Beauty & Health with
28 regard to the Covered Products or the alleged violations.

1 1.5 ERC’s Notices of Violation and the Complaint in this action allege that Beauty &
2 Health exposed and continues to expose persons in California to lead without first providing clear
3 and reasonable warnings, in violation of California Health & Safety Code section 25249.6. Beauty
4 & Health denies all material allegations of the Notices of Violation and the Complaint, has
5 asserted numerous affirmative defenses, and specifically denies that the Covered Products require
6 a Proposition 65 warning or otherwise cause harm to any person.

7 1.6 The Parties have entered into this Consent Judgment in order to settle, compromise
8 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this
9 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission
10 by any of the Parties, or by any of their respective officers, directors, shareholders, employees,
11 agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees,
12 distributors, wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law,
13 fault, wrongdoing, or liability, including without limitation, any admission concerning any alleged
14 violation of Proposition 65 nor shall this Consent Judgment be offered or admitted as evidence in
15 any administrative or judicial proceeding or litigation in any court, agency, or forum, except in an
16 action seeking to enforce the terms of this Consent Judgment or for purposes of issue or claim
17 preclusion or any other similar defense.

18 1.7 Except as expressly set forth herein, nothing in this Consent Judgment shall
19 prejudice, waive or impair any right, remedy, argument, claim, or defense the Parties may have in
20 any other or future legal proceeding unrelated to these proceedings.

21 1.8 The Effective Date of this Consent Judgment shall be the date on which it is
22 entered as a judgment by this Court.

23 **2. JURISDICTION AND VENUE**

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

1 alleged in the Notices of Violation or the Complaint. This Consent Judgment shall have no
2 application to or effect on Covered Products or other products manufactured, distributed or sold by
3 or on behalf of Beauty & Health to consumers outside of the state of California.

4 **3. INJUNCTIVE RELIEF**

5 3.1 The following provisions shall apply to the extent Beauty & Health is or ever
6 becomes a “person in the course of doing business” as that term is defined by California Health
7 & Safety Code Section 25249(b).

8 3.2 On and after the Effective Date, Beauty & Health shall be permanently enjoined
9 from manufacturing for sale in California, distributing into California, or directly selling to a
10 consumer in California any Covered Product for which the serving size on the label contains
11 more than 0.5 micrograms of lead, unless such Covered Product complies with the warning
12 requirement set forth in Section 3.2 below. “Distributing into California” means to directly ship a
13 Covered Product into California for sale in California or to sell a Covered Product to a distributor
14 that Beauty & Health knows will sell the Covered Product in California. This injunction shall not
15 apply to products which Beauty & Health puts into the stream of commerce before the Effective
16 Date.

17 3.3 Clear and Reasonable Warnings. For those Covered Products that are subject to the
18 warning requirement of Section 3.1, Beauty & Health shall provide the following warning as
19 specified below:

20 **[California Residents Proposition 65] WARNING [(California Proposition**
21 **65):** This product contains [lead,] [a] chemical[s] known to the State of California
to cause [cancer and] birth defects or other reproductive harm.

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

25 3.4 Testing.

26 (a) Once a year, on or before the anniversary of the entry of the Consent Judgment,
27 Beauty & Health shall test three (3) randomly selected samples of each Covered Product (in the
28

1 form intended for sale to the end-user) for lead content. This testing requirement does not apply to
2 a Covered Product for which Beauty & Health has provided the warning specified in Section 3.2
3 since the Effective Date or during the preceding year.

4 (b) Testing for lead shall be performed using Inductively Coupled Plasma-Mass
5 Spectrometry (“ICP-MS”) and closed-vessel, microwave-assisted digestion employing high-purity
6 reagents or any other testing method subsequently agreed upon in writing by the Parties.

7 (c) All testing pursuant to this Consent Judgment shall be performed by a laboratory
8 certified by the California Environmental Laboratory Accreditation Program or a laboratory that is
9 registered with the United States Food & Drug Administration.

10 (d) Beauty & Health shall retain all test results and documentation for a period of four
11 years from the date of the test. Beauty & Health shall provide copies of the test results to ERC
12 within 10 days of Beauty & Health’s receipt of the tests.

13 (e) Beauty & Health shall test the Covered Products for a minimum of three (3) years.
14 If tests conducted pursuant to this Consent Judgment demonstrate that no warning is required for a
15 Covered Product during each of three (3) consecutive years, then the testing requirements of this
16 Section 3.3 are no longer required as to that Covered Product. However, if after the three (3) year
17 period Beauty & Health changes ingredient suppliers for any of the Covered Products and/or
18 reformulates any of the Covered Products, Beauty & Health shall test that Covered Product at least
19 three consecutive years after such change is made.

20 (f) If Beauty & Health discontinues production of any Covered Product or ceases to
21 distribute any Covered Product into California, the testing obligation for such Covered Product
22 ends on the last date Beauty & Health ships Covered Product directly to California.

23 **4. SETTLEMENT PAYMENT**

24 4.1 In full and final satisfaction of all potential civil penalties, payment in lieu of civil
25 penalties, attorney’s fees, and costs, Beauty & Health shall make a total payment of \$47,000.00,
26 payable to the Environmental Research Center (ERC), in five installments set forth below. The
27 payments will be sent to counsel for ERC, William F. Wraith, 16485 Laguna Canyon Road, Suite
28 250, Irvine, CA 92618.

1 4.2 The five installments shall be made as set forth below. The “Due Date” means the
2 date the installment payment must be received in the office of ERC’s counsel.

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4 Installment	5 Amount	6 Due Date
7 Number 1	8 \$15,000.00	9 10 days after Court’s approval of Consent Judgment
10 Number 2	11 \$8,000.00	12 30 days after Installment Number 1
13 Number 3	14 \$8,000.00	15 60 days after Installment Number 1
16 Number 2	17 \$8,000.00	18 90 days after Installment Number 1
19 Number 3	20 \$8,000.00	21 120 days after Installment Number 1

22 4.2 ERC’s counsel shall be responsible for allocating and sending the payments to the
23 other recipients as follows:

24 (a) \$3,253.00 as civil penalties pursuant to California Health & Safety Code
25 section 25249.7(b)(1). Of this amount, \$2,439.75 shall be payable to OEHHA, and \$813.25 shall
26 be payable to ERC. Cal. Health & Safety Code §§ 25249.12(c)(1) & (d). ERC shall forward the
27 civil penalty payment to OEHHA, and send a copy of the transmittal letter to counsel for Beauty
28 & Health.

 (b) \$21,472.00 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 bringing
this matter to Beauty & Health attention, litigating and negotiating this settlement in the public
interest.

 (c) \$9,000.00 payable to William F. Wraith and \$13,275.00 payable to Karen
Evans and as reimbursement of ERC’s attorney’s fees.

5. **MODIFICATION OF CONSENT JUDGMENT**

This Consent Judgment after its entry by the Court may only be modified upon written

1 agreement of the Parties, followed by the entry of a modified Consent Judgment by the Court
2 thereon.

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 terminate
6 this Consent Judgment.

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

11 **7. APPLICATION OF CONSENT JUDGMENT**

12 This Consent Judgment shall apply to, be binding upon and benefit the Parties, and their
13 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
14 divisions, affiliates, suppliers, franchisees, licensees, distributors, wholesalers, retailers, and all
15 other entities in the distribution chain of any Covered Product, the predecessors, successors and
16 assigns of any of them, and the general public.

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

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

1 exposure to lead from the Covered Products as set forth in the Notice of Violation and the
2 Complaint.

3 8.2 ERC, on behalf of itself only, hereby releases and discharges the Released Parties
4 from any and all known and unknown past, present, and future rights, claims, causes of action,
5 suits, damages, penalties, liabilities, injunctive relief, declaratory relief, and attorneys’ fees, costs,
6 and expenses arising from or related to the claims asserted, or that could have been asserted, under
7 state or federal law, regarding the presence of lead in the Covered Products or the facts alleged in
8 the Notices of Violation or the Complaint, including without limitation any and all claims
9 concerning exposure of any person to lead in the Covered Products.

10 8.3 Compliance with the terms of this Consent Judgment shall constitute compliance
11 by the Released Parties with Proposition 65 with respect to alleged exposures to lead contained in
12 the Covered Products.

13 8.4 Unknown Claims. It is possible that other injuries, damages, liability, or claims not
14 now known to the Parties arising out of the facts alleged in the Notices of Violation or the
15 Complaint and relating to the Covered Products will develop or be discovered. ERC, on behalf of
16 itself only, acknowledges that this Consent Judgment is expressly intended to cover and include all
17 such injuries, damages, liability, and claims, including all rights of action therefor. ERC has full
18 knowledge of the contents of California Civil Code section 1542. ERC, on behalf of itself only,
19 acknowledges that the claims released in Sections 8.1 and 8.2 above may include unknown claims,
20 and nevertheless waives California Civil Code section 1542 as to any such unknown claims.
21 California Civil Code section 1542 reads as follows:

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

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

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1 8.5 It is the intention of the Parties to this release that, upon entry of this Consent
2 Judgment by the Court, this Consent Judgment shall be effective as a full and final accord and
3 satisfaction and release of every released claim up to and including the date of entry of the
4 Consent Judgment.

5 8.6 ERC, on the one hand, and Beauty & Health, on the other hand, release and waive
6 all claims they may have against each other for any statements or actions made or undertaken by
7 them in connection with the Notices of Violation or this action.

8 **9. CONSTRUCTION OF CONSENT JUDGMENT, SEVERABILITY**

9 9.1 The terms and conditions of this Consent Judgment have been reviewed by the
10 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
11 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
12 construction of this Consent Judgment, the terms and conditions shall not be construed against any
13 Party.

14 9.2 In the event that any of the provisions of this Consent Judgment are held by a court
15 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

16 **10. GOVERNING LAW**

17 The terms and conditions of this Consent Judgment shall be governed by and construed in
18 accordance with the laws of the State of California. In the event that Proposition 65 is repealed,
19 preempted or is otherwise rendered inapplicable, in whole or in part, by reason of law generally, or
20 as to the Covered Products, Beauty & Health may provide written notice to ERC of any asserted
21 change in the law, and shall have no further obligations pursuant to this Consent Judgment with
22 respect to, and to the extent that, the Covered Products are so affected.

23 **11. PROVISION OF NOTICE**

24 All notices required by this Consent Judgment shall be sent by first-class, registered, or
25 certified mail, or overnight delivery, to the following:

26 **For Environmental Research Center:**

27 William F. Wraith
28 Wraith Law

1 16485 Laguna Canyon Road, Suite 250
Irvine, CA 92618

2 Chris Heptinstall, Executive Director
3 Environmental Research Center
3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108

5 **For Beauty & Health:**

6 Geoffrey N. Lachner
7 Attorney at Law
5 Paloma Drive
8 Mission Viejo, CA 92692
Sacramento, CA 95814

9 Charles Myung
10 President
Beauty & Health International, Inc.
11 7541 Anthony Avenue
Garden Grove, CA 92841

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13 **12. COURT APPROVAL**

14 12.1 If this Consent Judgment is not approved by the Court, it shall be void and have no
15 force or effect.

16 12.2 ERC shall reasonably comply with the reporting requirements of California Health
17 and Safety Code Section 252.49.7(f) and Title 11 of the California Code of Regulations, section
18 3003.

19 **13. EXECUTION AND COUNTERPARTS**

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

23 **14. ENTIRE AGREEMENT, AUTHORIZATION**

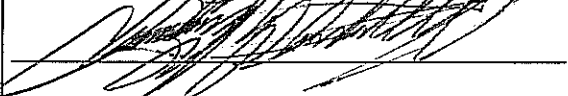
24 13.1 This Consent Judgment contains the sole and entire agreement and understanding
25 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
26 negotiations, commitments and understandings related hereto. No representations, oral or
27 otherwise, express or implied, other than those contained herein have been made by any Party. No
28 other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or

1 to bind any of the Parties.

2 13.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to stipulate to the terms and conditions of this Consent Judgment,
4 to enter into and execute this Consent Judgment on behalf of the Party represented, and legally to
5 bind that Party to this Consent Judgment. The undersigned have read, understand and agree to all
6 of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each
7 Party shall bear its own fees and costs.

8 **IT IS SO STIPULATED:**

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10 ENVIRONMENTAL RESEARCH CENTER

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Dated: 6/2/2013

12 Chris Heptinstall, Executive Director

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14 BEAUTY & HEALTH INC.

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Dated: _____

16 Beauty & Health, President

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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: _____, 2012

Judge, Superior Court of the State of California

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EXHIBIT A

1. Beauty & Health Int., Inc. Nutri-Well Colon Pure
2. Beauty & Health Int., Inc. Ginseng Gro
3. Beauty & Health Int. Inc. Nutri Well Shark Cartilage
4. Beauty & Health International Inc. Nutri-well Colonite
5. Beauty & Health Int. Inc Korean Ginseng
6. Beauty & Health Int. Inc Nutri-well Food For Diabetic
7. Beauty & Health International Inc. Nutri-well Colonite