

1 time, for any purpose. Nothing in this Agreement shall be construed as giving rise to any
2 presumption or inference of admission or concession or waiver of a defense by THINCARE as to
3 any fault, wrongdoing or liability whatsoever, including, but not limited to, any alleged violation
4 of Proposition 65.

5 1.7 Except as expressly provided herein, nothing in this Agreement shall prejudice,
6 waive or impair any right, remedy or defense that the Parties may have in any legal proceeding.
7 This paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties
8 of any Party to this Agreement.

9 1.8 This Agreement memorializes the Parties' prior oral Agreement, which was reach
10 on December 30, 2013 and is, therefore, dated as of December 30, 2013.

11 1.9 The only products covered by this Agreement are the Covered Products, and the
12 only chemical covered by this Agreement is the chemical lead as related to the Covered
13 Products. No provision of this Agreement shall apply to THINCARE's operations outside of the
14 State of California unless, and only to the extent that, such operations result in shipment or sale
15 of Covered Products into California.

16 2. INJUNCTIVE RELIEF

17 2.1 Reformulation of Covered Product

18 Beginning on March 1, 2014, THINCARE shall not manufacture for sale in California,
19 distribute into California, sell to any consumer located in California, or supply to distributors or
20 retailers in California, any Covered Products for which the maximum daily dose recommended
21 on the label contains more than 0.5 micrograms (mcg) of lead, unless each individual product (in
22 the form intended for sale to the end user) bears the warning statement specified in Section 2.2
23 below on its individual unit label or unit packaging. In the case where the individual product is
24 part of a kit, the kit packaging shall also bear the warning statement. The term "distribute into
25 California" means to ship any of the Covered Products into California for sale in California or to
26 sell or provide any of the Covered Products to any person or entity, wherever located, that
27 THINCARE knows intends to or will ship any of the Covered Products into or sell any of the
28 Covered Products in California.

2.2 Clear and Reasonable Warnings

1 (a) If the daily lead exposure level is greater than 0.5 micrograms (mcg) for any lot of
2 the Covered Products, the following warning shall be provided:

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

6 (b) The term "cancer" shall be included only if the maximum dose recommended
7 on the label contains a daily lead exposure level greater than 15 micrograms (mcg) for
8 any lot of the Covered Products.

9 (c) The warning shall be prominently and securely affixed to or printed upon the
10 "label" (as that term is defined in Section 25602 of Title 27(d) of the California Code of
11 Regulations), cap, or packaging of the Covered Product. In the case where the individual
12 product is part of a kit, the kit packaging shall also bear the warning statement. The warning
13 shall be displayed with such conspicuousness, as compared with other words, statements, or
14 designs on the label, cap, or package, so as to render it likely to be read and understood by an
15 ordinary individual under customary conditions of purchase or use. If the warning is displayed
16 on the product label, the warning shall be at least the same size as the largest of any other health
17 or safety warnings on the product and the word "WARNING" shall be in all capital letters and
18 in bold print. If the warning is affixed to the product with a sticker, THINCARE must use a
19 permanent adhesive. No other statements relating to Proposition 65 or lead may accompany the
20 warning except that the warning label may contain a statement that it applies only to California
21 consumers of the product.

22 (d) Nothing in this Agreement shall be construed to require THINCARE to continue
23 to provide a warning for Covered Products hereunder if THINCARE modifies or reformulates
24 the Covered Products so the amount of lead contained in the Covered Products is below the
25 threshold required for a warning under Proposition 65. THINCARE shall provide ERC with a
26 minimum of thirty (30) days notice prior to discontinuation of a warning for Covered Products
27 pursuant to this Section.

28 2.5 Products in the Stream of Commerce

1 The injunctive relief set forth in Section 2 shall not apply to any of the Covered Products
2 that THINCARE put into the stream of commerce before March 1, 2014 or that were part of
3 THINCARE's existing inventory allocated to fill purchase orders entered into prior to March 1,
4 2014. Within 10 days of April 9, 2014, THINCARE shall provide to ERC the last lot number
5 and expiration date for each of the Covered Products put into the stream of commerce pursuant
6 to Section 2.5.

7 **2.6 Impact of Statutory and/or Regulatory Changes**

8 Should there be an amendment to Proposition 65 or should OEHHA promulgate
9 regulations that establish a Maximum Allowable Dose Level that is more or less stringent than
10 0.5 micrograms per day, this Agreement shall be deemed modified on the date the amendment
11 becomes final or the regulations become effective to incorporate that new standard into this
12 Section 2.

13 **3. SETTLEMENT PAYMENT**

14 **3.1 Total Payment**

15 In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,
16 ERC's expenses, and ERC's attorney fees, THINCARE shall make a total payment of
17 \$80,000.00 ("Total Settlement Amount"). Sections 3.2-3.6 below describe the agreed partition
18 and timing of payment of the Total Settlement Amount.

19 **3.2 Civil Penalty**

20 As a portion of the Total Settlement Amount, \$12,676.00 shall be considered a civil
21 penalty pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75%
22 (\$9,507.00) of the civil penalties to the Office of Environmental Health Hazard Assessment
23 ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance
24 with California Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be
25 sent to THINCARE's counsel. ERC will retain the remaining 25% (\$3,169.00) of the civil
26 penalty.

27 **3.3 Payment in Lieu of Further Civil Penalties**

28 As a portion of the Total Settlement Amount, \$38,031.86 shall be considered a payment

1 to ERC in lieu of further civil penalties for activities such as (1) funding the purchasing and
2 testing of consumer products that may contain Proposition 65 listed chemicals; and (2) funding
3 the continued day-to-day business of enforcement of Proposition 65 matters that address
4 contaminated ingestible products similar to the subject matter of this action.

5 **3.4 Reimbursement of Expenses and Costs**

6 As a portion of the Total Settlement Amount, \$14,542.14 shall be considered a
7 reimbursement to ERC for its reasonable expenditures associated with the enforcement of
8 Proposition 65 and other expenses and costs incurred as a result of preparing and bringing this
9 matter to THINCARE's attention, and negotiating a settlement.

10 **3.5 Attorney Fees**

11 As a portion of the Total Settlement Amount, \$14,750.00 shall be allocated by ERC as
12 payment to Karen Evans, Esq. as reimbursement for ERC's attorneys' fees.

13 **3.6 Payment Schedule**

14 Within ten (ten) days from the date this Agreement is executed by the Parties,
15 THINCARE shall pay ERC the full settlement sum of \$80,000.00 dollars by one check made
16 payable to "Environmental Research Center" and sent by first-class registered or certified mail,
17 or overnight delivery, directly to ERC at the following address:

18 Environmental Research Center
19 3111 Camino Del Rio North, Suite 400
20 San Diego, CA 92108

21
22 **4. COSTS AND FEES**

23 Except as expressly set forth herein in Section 3, each Party shall bear its own attorneys'
24 fees, costs, and expenses in this action.

25 **5. Plaintiff's Release of Defendant; includes a "Downstream Release."**

26 **5.1 Release Terms**

27 ERC, acting on behalf of itself, permanently and fully releases THINCARE, its parents,
28 subsidiaries, affiliates (including those companies that are under common ownership and/or

1 common control), shareholders, directors, members, officers, employees, and attorneys, and each
2 entity to whom each of them directly or indirectly distributed or sold the Covered Products,
3 including, but not limited to distributors, wholesalers, retailers, franchisees, and any other person
4 or entity in the course of doing business who distributed, marketed or sold the Covered Products
5 (not including any private label customers of THINCARE), from all claims of any nature
6 asserted in the Notice of Violations based on exposure to lead from the Covered Products up
7 through the Effective Date.

8 **5.2 Claims included in Release**

9 ERC, on its own behalf, has full knowledge of the contents of Section 1542 of the
10 Civil Code. ERC acknowledges that the claims released herein include unknown claims and
11 therefore ERC waives Section 1542 as to any such unknown claims. Section 1542 reads as
12 follows:

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

18 ERC, on its own behalf, acknowledges and understands the significance and consequences of
19 this specific waiver of Civil Code Section 1542.

20 **5.3 Compliance with the terms of this Agreement constitutes compliance with**
21 **Proposition 65 with respect to exposures to lead from the Covered Products as set forth in the**
22 **Notice of Violations.**

23 **5.4 ERC on behalf of itself only, on the one hand, and THINCARE, on the other**
24 **hand, release and waive all claims they may have against each other and their respective officers,**
25 **directors, employees, agents, representatives and attorneys for any statements or actions made or**
26 **undertaken by them or their respective officers, directors, employees, agents, representatives and**
27 **attorneys in connection with the Notice of Violations.**

28 **5.5 Nothing in this release is intended to apply to any occupational or environmental**
exposures arising under Proposition 65, nor shall it apply to any of THINCARE's products other

1 than the Covered Products.

2 5.6 Nothing herein shall be construed as diminishing THINCARE's continuing
3 obligations to comply with Proposition 65.

4 **6. COMPLIANCE WITH *HEALTH & SAFETY CODE* § 25249.7(f)**

5
6 6.1 After execution of this Agreement, ERC will submit a Report of Settlement to the
7 California Attorney General. In addition, ERC will provide to the California Attorney General
8 the fully signed copy of this Agreement.

9 The Parties acknowledge and agree that the Parties shall provide as much information as they are
10 legally obligated to provide or as is requested by the California Attorney General, or any other
11 governmental agency, regarding this matter, its settlement, and this Agreement.

12 **7. MODIFICATION OF AGREEMENT**

13 This Agreement may be modified only upon written agreement of the Parties.

14 **8. ENFORCEMENT OF AGREEMENT; GOOD FAITH ATTEMPT TO**
15 **RESOLVE DISPUTES**

16 In the event a dispute arises with respect to any Party's compliance with the terms and/or
17 conditions of this Agreement, the Party seeking compliance of another Party shall make a good
18 faith attempt to resolve the dispute by conferring with the other Party in person, by telephone or
19 by written communication before seeking relief from a court. If the dispute is not resolved after
20 such an attempt, this Agreement may be enforced pursuant to Code of Civil Procedure § 664.4 or
21 any other valid provision of the law. The prevailing party in any such dispute brought to a court
22 for resolution shall be awarded all reasonable costs and attorney's fees. As used in the preceding
23 sentence, the term "prevailing party" means a party who is successful in obtaining relief more
24 favorable to it than the relief the other party was agreeable to providing during the Parties' good
25 faith attempt to resolve the dispute that is the subject of such an enforcement proceeding.

26 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

27 In the event that any of the provisions hereof are subsequently held by a court to be
28 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

1 **10. GOVERNING LAW**

2 This Agreement shall be deemed to have been entered into in the State of California, and
3 governed and interpreted by the laws of the State of California, regardless of the physical
4 locations of the individuals executing this Agreement at the time of execution.

5 **11. DRAFTING**

6 The terms of this Agreement have been reviewed by the respective legal counsel for the
7 Parties prior to its signing, and each Party has had an opportunity to fully discuss the terms and
8 conditions with its legal counsel. The Parties agree that, in any subsequent interpretation or
9 construction of this Agreement, no inference, assumption or presumption shall be drawn, and no
10 provision of this Agreement shall be construed against any Party, based on the fact that one of
11 the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of
12 this Agreement. It is conclusively presumed that all of the Parties participated equally in the
13 preparation and drafting of this Agreement.

14 **12. ENTIRE AGREEMENT**

15 This Agreement contains the sole and entire agreement and understanding of the Parties
16 with respect to the entire subject matter hereof, and supersedes and replaces any and all prior
17 agreements or understandings, written or oral, with regard to the matters set forth herein. No
18 other agreements or understandings not specifically referred to herein, oral or otherwise, shall be
19 deemed to exist or to bind any of the Parties.

20 **13. EXECUTION IN COUNTERPARTS**

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

24 **14. NOTICE**

25 All Notice required by this Agreement to be given to any Party shall be sent by first-class
26 registered or certified mail, or overnight delivery, to the following:

27 **FOR ERC:**
28

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

5
6 Karen A. Evans
7 Law Office of Karen A. Evans
8 4218 Biona Place
9 San Diego, CA 92116

10 **FOR THINCARE:**
11
12 ThinCare International, LLC
13 5742 West Harold Gatty Drive
14 Salt Lake City, Utah 84116

15 Jason Kerr
16 Price Parkinson & Kerr
17 572 West Harold Gatty Drive
18 Salt Lake City, UT 84116

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20 **15. AUTHORITY TO STIPULATE TO THIS AGREEMENT**

21 Each person signing this Agreement on behalf of a Party certifies that he or she is fully
22 authorized by that Party to stipulate to the terms and conditions of this Agreement on behalf of
23 that Party, to enter into and execute this Agreement on behalf of that Party, and to legally bind
24 that Party to this Agreement. Each person signing this Agreement on behalf of a Party represents
25 and warrants that he or she has read and understands this Agreement, and agrees to all of the
26 terms and conditions of this Agreement on behalf of that Party.

27 **16. CONFIDENTIALITY**

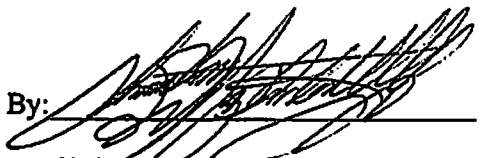
28 Each of the Parties and their attorneys agree that they shall keep the terms and conditions
of this Agreement confidential, and that except for any reporting obligations set forth in this

1 Agreement, and those to the California Attorney General and/or California courts, the Parties
2 shall not discuss or disclose the terms or conditions of, the negotiations leading up to, or the
3 positions of the Parties in arriving at, this Agreement with any person other than their respective
4 attorneys, representatives, and accountants, each of whom shall be advised to keep such
5 information confidential, unless compelled to do so by legal process, in which case such party
6 shall give reasonable advanced written notice of the proceedings to the other party, or notice
7 which is reasonable under the circumstances.

8
9 **IT IS SO STIPULATED:**

10
11
12 Dated: 4/7/2014

ENVIRONMENTAL RESEARCH CENTER

13
14 By: 

15 Chris Heptinstall
16 Executive Director

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20 Dated: _____

THINCARE INTERNATIONAL, LLC

21
22 By: _____

23 Name:
24 Title:

25
26
27 **APPROVED AS TO FORM:**

1 Agreement, and those to the California Attorney General and/or California courts, the Parties
2 shall not discuss or disclose the terms or conditions of, the negotiations leading up to, or the
3 positions of the Parties in arriving at, this Agreement with any person other than their respective
4 attorneys, representatives, and accountants, each of whom shall be advised to keep such
5 information confidential, unless compelled to do so by legal process, in which case such party
6 shall give reasonable advanced written notice of the proceedings to the other party, or notice
7 which is reasonable under the circumstances.

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9 **IT IS SO STIPULATED:**

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12 Dated: _____

ENVIRONMENTAL RESEARCH CENTER

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15 By: _____

16 Chris Heptinstall
17 Executive Director

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20 Dated: 4.10.14

THINCARE INTERNATIONAL, LLC

21
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23 By: 

24 Name:
25 Title:

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27 **APPROVED AS TO FORM:**

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Dated: 4-7-14

LAW OFFICE OF KAREN A. EVANS

By: Karen A. Evans

Karen A. Evans, Attorney for
ENVIRONMENTAL RESEARCH CENTER

Dated: _____

By: _____

Jason Kerr, Attorney for
THINCARE INTERNATIONAL, LLC

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Dated: _____

LAW OFFICE OF KAREN A. EVANS

By: _____

Karen A. Evans, Attorney for
ENVIRONMENTAL RESEARCH CENTER

Dated: 4.10.14

By:  _____
Jason Kerr, Attorney for
THINCARE INTERNATIONAL, LLC