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10 Arbonne International, LLC

11
12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
14

15 ENVIRONMENTAL RESEARCH
16 CENTER, a California non-profit
17 corporation,

18 Plaintiffs,

19 vs.

20 ARBONNE INTERNATIONAL, LLC.
and DOES 1-25, Inclusive,

21 Defendants,

) Case No.:

) Judge: Hon.

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

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

) Action Filed: _____, 2013

) Trial Date: None Set

22
23
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 three products (hereinafter collectively the "Covered Products" or "Covered Product" to refer to

1 a single product):

- 2 1) Arbonne International LLC Arbonne Essentials Herbal Colon Cleanse
- 3 2) Arbonne International LLC Arbonne Essentials Metabolism Boost
- 4 3) Arbonne International LLC Arbonne Essentials 7-Day Body Cleanse

5 **1.2** Plaintiff Environmental Research Center, Inc. (“ERC”) is a California non-profit
6 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other
7 causes, helping safeguard the public from health hazards by reducing the use and misuse of
8 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
9 and encouraging corporate responsibility. ERC brings this Action in the public interest pursuant
10 to California Health and Safety Code Section 25249.7.

11 **1.3** Defendant Arbonne International, LLC (“Arbonne”) is a Delaware Corporation
12 and at all relevant times for purposes of this Consent Judgment, employed ten or more persons,
13 and is a “person in the course of doing business” within the meaning of Proposition 65. Arbonne
14 manufactures, distributes and sells the Covered Products.

15 **1.4** ERC and Arbonne are hereinafter sometimes referred to individually as a “Party”
16 or collectively as the “Parties.”

17 **1.5** On May 9, 2012, pursuant to California Health and Safety Code Section
18 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 (“Notice of Violations”) on
19 the California Attorney General, other public enforcers, and Arbonne. A true and correct copy of
20 the Notice of Violations is attached hereto as Exhibit A.

21 **1.6** After more than sixty (60) days passed from service of the Notice of Violations,
22 and no designated governmental agency filed a complaint against Arbonne with regard to the
23 Covered Products or the alleged violations, ERC filed the Complaint in this Action (the
24 “Complaint”) for injunctive relief and civil penalties. The Complaint is based on the allegations
25 in the Notice of Violations.

26 **1.7** The Complaint and the Notice of Violations each allege that Arbonne
27 manufactured, distributed, and/or sold in California the Covered Products, which contain lead, a
28 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose

1 consumers at a level requiring a Proposition 65 warning. Further, that use of the Covered
2 Products exposes persons in California to lead without first providing clear and reasonable
3 warnings, in violation of California Health and Safety Code Section 25249.6. Arbonne denies all
4 material allegations of the Notice of Violation and the Complaint, asserts numerous affirmative
5 defenses, and specifically denies that the Covered Products require a Proposition 65 warning or
6 otherwise cause harm to any person.

7 **1.8** The Parties enter into this Consent Judgment in order to settle, compromise and
8 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
9 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any
10 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
11 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
12 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
13 wrongdoing, or liability, including without limitation, any admission concerning any alleged
14 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent
15 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties
16 may have in any other or future legal proceeding unrelated to these proceedings. However,
17 nothing in this Section shall affect the enforceability of this Consent Judgment.

18 **1.9** The “Effective Date” of this Consent Judgment shall be the date this Consent
19 Judgment is entered by the Court.

20 **2. JURISDICTION AND VENUE**

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

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

26 **3.1** Beginning on the Effective Date, Arbonne shall be permanently enjoined from
27 manufacturing for sale in California, directly selling to a consumer in California or “Distributing
28 into California” any of the Covered Products for which the maximum daily dose recommended

1 on the label contains more than 0.5 micrograms of lead, unless such Covered Product complies
2 with the warning requirements in Section 3.3 or qualifies as a “Reformulated Covered Product”
3 pursuant to Section 3.4. “Distributing into California” means to directly ship any of the Covered
4 Products into California for sale or to sell any of the Covered Products to a distributor that
5 Arbonne knows will sell the Covered Product in California.

6 **3.2 Calculation of Lead Levels**

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

11 **3.3 Clear and Reasonable Warnings.**

12 For those Covered Products that are subject to the warning requirement of Section 3.1,
13 Arbonne shall provide the following warning:

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

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

20 The warning shall be prominently affixed to or printed upon the Covered Product’s label
21 so as to be clearly conspicuous, as compared with other statements or designs on the label as to
22 render it likely to be read and understood by an ordinary purchaser or user of the product. If the
23 warning is displayed on the product’s label, it shall be at least the same size as the largest of any
24 other health or safety warnings on the product and the word “**WARNING**” shall be in all capital
25 letters and in bold print and, if used, the words “**California Proposition 65**” shall be in bold
26 print.

27 For any products sold via a website, the warning shall appear on Arbonne's checkout
28 page on their website for California consumers relating to any of the Covered Products being

1 sold.

2 Arbonne shall not provide any additional information, statements, or comments regarding
3 Proposition 65 in addition to the warning, except that only on Arbonne's website a question mark
4 or help tab next to the warning is permissible, with a hover tab "What is this?" providing
5 information about Proposition 65, should a customer wish to click on the tab.

6 **3.4 Reformulated Covered Products.**

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

9 **3.5 Testing and Quality Control Methodology**

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

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

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

21 (d) Arbonne shall retain all test results and documentation for a period of four (4)
22 years from the date of the test. Arbonne shall provide copies of the test results to ERC within 30
23 days of Arbonne's receipt of the test results.

24 (e) Arbonne shall test each of the Covered Products at least once a year for a
25 minimum of four (4) consecutive years by testing five randomly selected samples of each
26 Covered Product which Arbonne intends to sell or is manufacturing for sale in California,
27 directly selling to a consumer in California, or "Distributing into California. If tests conducted
28 pursuant to this Section demonstrate that no warning is required for a Covered Product during

1 each of four (4) consecutive years, then the testing requirements of this Section will no longer be
2 required as to that Covered Product.

3 (f) For purposes of this Consent Judgment, daily lead exposure levels shall be
4 measured in micrograms, and shall be calculated using the following formula: Micrograms of
5 lead per gram of product, multiplied by grams per serving of the product (using the largest
6 serving size appearing on the product label), multiplied by servings of the product per day (using
7 the largest number of servings in the recommended dosage appearing on the product label).

8 **4. SETTLEMENT PAYMENT**

9 **4.1** Arbonne shall make a total payment of \$86,500.00 within 10 business days of the
10 Effective Date, which shall be in full and final satisfaction of all potential civil penalties,
11 payment in lieu of civil penalties, and attorney's fees and costs. The payment will be made
12 payable to "The Wraith Law Client Trust Account" and sent to counsel for ERC at the following
13 address: William F. Wraith, Wraith Law, 16485 Laguna Canyon Road, Suite 250, Irvine,
14 California, 92618. The payment shall be apportioned as follows:

15 **4.2** \$14,388.00 as civil penalties pursuant to California Health and Safety Code
16 Section 25249.7(b)(1). Of this amount, \$10,791.00 shall be payable to the Office of
17 Environmental Health Hazard Assessment ("OEHHA"), and \$3,597.00 shall be payable to ERC.
18 (Cal. Health & Safety Code § 25249.12(c)(1) & (d)). ERC's counsel will forward the civil
19 penalty to OEHHA.

20 **4.3** 16,063.00 payable to ERC as reimbursement to ERC for costs associated with the
21 enforcement of Proposition 65 and other costs incurred as a result of work in bringing this
22 Action.

23 **4.4** \$43,169.00 payable to ERC in lieu of further civil penalties, for the day-to-day
24 business activities such as (1) continued enforcement of Proposition 65, which includes work,
25 analyzing, researching and testing consumer products that may contain Proposition 65 chemicals,
26 focusing on the same or similar type of ingestible products that are the subject matter of the
27 current action; (2) the continued monitoring of past consent judgments and settlements to ensure
28 companies are complying with Proposition 65; and (3) giving a donation of \$2,160.00 to the

1 Environmental Working Group (EWG) to address reducing toxic chemical exposures in
2 California.

3 **4.5** \$12,880.00 payable to William F. Wraith as reimbursement of ERC's attorney's
4 fees and attorney's costs.

5 **5. MODIFICATION OF CONSENT JUDGMENT**

6 This Consent Judgment may be modified only by: (i) Written agreement and stipulation
7 of the Parties or (ii) Upon entry of a modified Consent Judgment by the Court. ERC is entitled to
8 reimbursement all reasonable attorneys' fees and costs regarding any modification requested or
9 initiated by Arbonne.

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

11 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
12 this Consent Judgment.

13 **6.2** Any Party may, by motion or application for an order to show cause filed with
14 this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing
15 party in any such motion or application may request that the Court award its reasonable
16 attorneys' fees and costs associated with such motion or application.

17 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

23 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
24 behalf of itself and in the public interest, and Arbonne, of any alleged violation of Proposition 65
25 or its implementing regulations for failure to provide Proposition 65 warnings for exposure to
26 lead from the handling, use, or consumption of the Covered Products and fully resolves all
27 claims that have been or could have been asserted in this action up to and including the date of
28 entry of Judgment for failure to provide Proposition 65 warnings for the Covered Products. ERC,

1 on behalf of itself and in the public interest, hereby discharges Arbonne and its respective
2 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
3 affiliates, suppliers, franchisees, licensees, customers (not including private label customers of
4 Arbonne), distributors, independent consultants, wholesalers, retailers, and all other upstream
5 and downstream entities in the distribution chain of any Covered Product, and the predecessors,
6 successors and assigns of any of them (collectively, "Released Parties"), from all claims for
7 violations of Proposition 65 up through the Effective Date based on exposure to lead from the
8 Covered Products as set forth in the Notice of Violations and the Complaint.

9 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released Parties
10 from all known and unknown claims for alleged violations of Proposition 65, or for any other
11 statutory or common law claims arising from or relating to alleged exposures to lead in the
12 Covered Products as set forth in the Notice of Violations and the Complaint.

13 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
14 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to
15 lead in the Covered Products.

16 **8.4 Unknown Claims**

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

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

28 ERC, on behalf of itself only, acknowledges and understands the significance and consequences

1 of this specific waiver of California Civil Code section 1542.

2 **8.5** ERC, on one hand, and Arbonne, on the other hand, each release and waive all
3 claims they may have against each other for any statements or actions made or undertaken by
4 them in connection with the Notice of Violations or the Complaint. However, this shall not affect
5 or limit any Party's right to seek to enforce the terms of this Consent Judgment.

6 **9. CONSTRUCTION AND SEVERABILITY**

7 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the
8 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
9 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
10 construction of this Consent Judgment, the terms and conditions shall not be construed against
11 any Party.

12 **9.2** In the event that any of the provisions of this Consent Judgment is held by a court
13 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
14 affected.

15 **9.3** The terms and conditions of this Consent Judgment shall be governed by and
16 construed in accordance with the laws of the State of California.

17 **10. PROVISION OF NOTICE**

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

21 **For Environmental Research Center**

22 Chris Heptinstall, Executive Director
23 Environmental Research Center
24 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

25 William F. Wraith, Esq.
26 Wraith Law
27 16485 Laguna Canyon Road, Suite 250
Irvine, CA 92618

28

1 **For Arbonne International, LLC**

2 Elizabeth V. McNulty
3 Hewitt Wolensky LLP
4 4041 MacArthur Blvd., Suite 300
Newport Beach, CA 92660
Telephone: (949) 783-5050

5 **With a Copy To:**

6 Arbonne International, LLC
7 Attn: Legal Department
8 9400 Jeronimo Road
Irvine, CA 92618

9 **11. COURT APPROVAL**

10 **11.1** Upon execution of this Consent Judgment by the Parties, ERC shall file a Motion
11 for Court Approval. The Parties shall use their best efforts to support entry of this Consent
12 Judgment.

13 **11.2** If the California Attorney General objects to any term in this Consent Judgment,
14 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
15 prior to the hearing on the motion.

16 **11.3** If this Stipulated Consent Judgment is not approved by the Court despite the
17 Parties best efforts, it shall be null and void and have no force or effect.

18 **12. EXECUTION AND COUNTERPARTS**

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

22 **13. ENTIRE AGREEMENT, AUTHORIZATION**

23 **13.1** This Consent Judgment contains the sole and entire agreement and understanding
24 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
25 negotiations, commitments and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any Party.
27 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to
28 exist or to bind any Party.

13.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized

1 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
2 provided herein, each Party shall bear its own fees and costs.

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

4 **14.1** This Consent Judgment has come before the Court upon the request of the Parties.
5 The Parties request the Court to fully review this Consent Judgment and, being fully informed
6 regarding the matters which are the subject of this action, to:

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

10 (b) Make the findings pursuant to California Health and Safety Code section
11 25249.7(f)(4), and approve the settlement, and this Consent Judgment.

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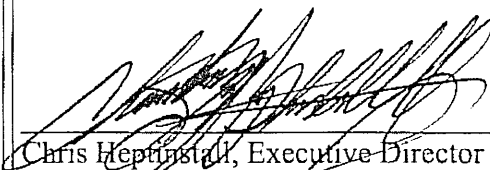
13 **IT IS SO STIPULATED:**

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15 **ENVIRONMENTAL RESEARCH CENTER**

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18 
Chris Heptinstall, Executive Director

Dated: 6/5/2013

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21 **ARBONNE INTERNATIONAL, LLC**

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23

Dated: _____

24

Name: _____

25

Title: _____

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1 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
2 provided herein, each Party shall bear its own fees and costs.

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

10 (b) Make the findings pursuant to California Health and Safety Code section
11 25249.7(f)(4), and approve the settlement, and this Consent Judgment.

12
13 **IT IS SO STIPULATED:**

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15 **ENVIRONMENTAL RESEARCH CENTER**

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18 _____
Chris Heptinstall, Executive Director

Dated: _____

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21 **ARBONNE INTERNATIONAL, LLC**

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23 _____
Name: Kay Napier

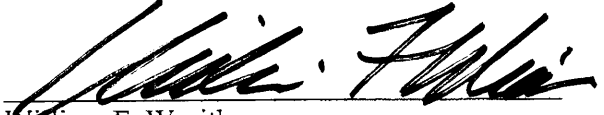
Dated: June 26, 2013

24
25 Title: CEO

1 APPROVED AS TO FORM:

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3 WRAITH LAW

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Dated: 6/7/2013

5 William F. Wraith
6 Counsel for Environmental Research Center

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9 HEWITT WOLENSKY LLP

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Dated: _____

12 Elizabeth V. McNulty
13 Counsel for Arbonne International, LLC

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APPROVED AS TO FORM:

WRAITH LAW

William F. Wraith
Counsel for Environmental Research Center

Dated: _____

HEWITT WOLENSKY LLP

Elizabeth V. McNulty

Elizabeth V. McNulty
Counsel for Arbonne International, LLC

Dated: 6/26/2013

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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