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9 ENVIRONMENTAL RESEARCH CENTER

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16 Attorney for Defendant
17 INTEGRIS GLOBAL, L.P.

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF MARIN

20 ENVIRONMENTAL RESEARCH
21 CENTER, a California non-profit
22 corporation,

23 Plaintiff,

24 v.

25 INTEGRIS GLOBAL, L.P. and DOES 1-
26 100

27 Defendants.

28 CASE NO. CIV1305152

[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: December 17, 2013
Trial Date: None set

29 **1. INTRODUCTION**

30 **1.1** On December 17, 2013, Plaintiff Environmental Research Center (“ERC” or
31 “Plaintiff”), a non-profit corporation, as a private enforcer and in the public interest, initiated
32 this action by filing a Complaint for Injunctive and Declaratory relief and Civil Penalties (the
33 “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5

1 et seq. ("Proposition 65"), against Integris Global, L.P. and Does 1-100 (collectively "Integris"
2 or "Defendant"). In this action, ERC alleges that the products manufactured, distributed or
3 sold by Integris, as more fully described below, contain lead, a chemical listed under
4 Proposition 65 as a carcinogen and reproductive toxin, and that such products expose
5 consumers at a level requiring a Proposition 65 warning. These products are: E7 Essential
6 Seven Natural Berry Flavor Nutritional Beverage Mix, Cardio-Health, and Paragon
7 (collectively the "Covered Products"). ERC and Integris are referred to individually as a "Party"
8 and collectively as the "Parties."

9
10 **1.2** ERC is a California non-profit corporation dedicated to, among other causes,
11 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
12 and toxic chemicals, facilitating a safe environment for consumers and employees, and
13 encouraging corporate responsibility.

14 **1.3** Integris is a 17-year-old Texas-based nutritional products company with a
15 longstanding reputation of making products reflecting the highest quality standards in the
16 health and wellness industry. Integris arranges the manufacture, distribution and sale of the
17 Covered Products. Integris is a "person in the course of doing business" as that term is defined
18 in Health and Safety Code Section 25249.11(b) because it employed 10 or more employees
19 during periods when the Covered Products were in the stream of commerce. Integris contends
20 that at certain times during the relevant time period Integris was not "a person in the course of
21 doing business" by reason of having less than ten employees. Integris represents that it
22 understands that even if Integris is not a "person in the course of doing business" under
23 Proposition 65, other companies in its chain of distribution (such as manufacturers, retailers, or
24 distributors) that have 10 or more employees are not exempt from Proposition 65 and could
25 violate Proposition 65 by knowingly and intentionally exposing individuals to chemicals
26 contained in Defendant's products without first giving a clear and reasonable warning.

27 **1.4** The Complaint is based on allegations contained in ERC's Notice of Violations,
28 dated July 19, 2013, that was served on the California Attorney General, other public enforcers,

1 and Integris (the "Notice of Violations"). A true and correct copy of the Notice of Violations is
2 attached as Exhibit A. More than 60 days have passed since the Notice of Violations was
3 mailed, and no designated governmental entity has filed a complaint against Integris with
4 regard to the Covered Products or the alleged violations. These products were previously
5 named in the previous Notice of Violations of California Health & Safety Code §25249.5, et
6 seq that ERC served on Integris on August 5, 2011, and were the subject of the previous
7 settlement agreement and release between ERC and Integris that became effective on May 4,
8 2012 (the "Previous Agreement").

9
10 **1.5** ERC's Notice of Violations and the Complaint allege that use of the Covered
11 Products exposes persons in California to lead without first providing clear and reasonable
12 warnings in violation of California Health and Safety Code section 25249.6. Integris denies all
13 material allegations contained in the Notice of Violations and Complaint.

14 **1.6** The Parties have entered into this Consent Judgment in order to settle,
15 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
16 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
17 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
18 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,
19 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
20 this Consent Judgment shall be construed as an admission by Integris or ERC of any fact, issue
21 of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
22 admission by Integris or ERC of any fact, issue of law, or violation of law, at any time, for any
23 purpose.

24 **1.7** Except as expressly set forth herein, nothing in this Consent Judgment shall
25 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
26 other or future legal proceeding unrelated to these proceedings.

27 **1.8** The Effective Date of this Consent Judgment is the date on which it is entered as
28 a judgment 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 allegations of violations contained in the Complaint and personal jurisdiction
4 over Integris as to the acts alleged in the Complaint, that venue is proper in Marin County, and
5 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
6 claims which were or could have been asserted in this action based on the facts alleged in the
7 Notice of Violations and the Complaint.
8

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

10 **3.1** Beginning on the Effective Date, Integris shall not manufacture for sale in the
11 State of California, distribute for sale into California¹, directly sell in the State of California, or
12 supply its Independent Business Owners (“IBOs”), wherever located, for sale to California
13 consumers any Covered Products for which the maximum dose recommended on the label
14 contains more than 0.5 micrograms of lead per day (mcg), unless each individual unit of the
15 Covered Product (in the form intended for sale to the end user) bears one of the warning
16 statements specified in Section 3.2 below on its individual unit label or unit packaging, or by
17 sticker securely affixed on the container or bottle cap.
18

19 **3.2 Clear and Reasonable Warnings**

20 If the daily lead exposure level is more than 0.5 micrograms (mcg) for any lot of the Covered
21 Products, the following warning shall be provided on the labels of the Covered Products from that
22 lot distributed in California, sold in California, or supplied to IBOs, wherever located, for sale to
23 California consumers:
24

25 **WARNING: This product contains lead, a chemical known to the State of California to**
26 **cause birth defects or other reproductive harm.**

27 ¹ As used in Consent Judgment, the term “distribute for sale into California” shall mean
28 to directly ship a Covered Product into California for sale in California or to sell a Covered
Product to a distributor that Defendant knows will sell the Covered Product in California.

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2 If the daily lead exposure level is more than 15 micrograms (mcg) for any lot of the Covered
3 Products, the following warning shall be provided on the labels of the Covered Products from
4 that lot distributed in California, sold in California, or supplied to IBOs, wherever located, for
5 sale to California consumers:
6

7 **WARNING: This product contains a chemical known to the State of California**
8 **to cause cancer and birth defects or other reproductive harm.**
9

10 **3.3** The applicable warning required by Section 3.2 shall be securely affixed to or
11 prominently printed on the Covered Product's label so as to be clearly conspicuous, as compared
12 with other words, statements, or designs on the label so as to render it likely to be read and
13 understood by an ordinary purchaser or user of the Covered Product prior to use. The warning
14 shall be at least the same size as the largest of any other health or safety warnings on the Covered
15 Product and the word "**WARNING**" shall be in all capital letters and in bold print. No other
16 words or statements shall accompany the warning required by Section 3.2 except that Integris
17 may refer consumers to a single website or provide a separate brochure or flyer for further
18 information.

19 **4. SETTLEMENT PAYMENT**

20 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
21 penalties, attorney's fees, and costs, Integris shall make payments totaling \$26,100.00 (the
22 "Total Settlement Amount") to be paid as outlined in Section 4.6. Said payment shall be for the
23 following:

24 **4.2** As a portion of the Total Settlement Amount, \$5,364.00 shall be considered a
25 civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit
26 75% or \$4,023.00 of the civil penalty to the Office of Environmental Health Hazard
27 Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund
28

1 in accordance with California Health and Safety Code §25249.12(c). ERC will retain the
2 remaining 25% or \$1,341.00 of the civil penalty.

3 **4.3** \$16,091.00 shall be payable to Environmental Research Center as
4 reimbursement to ERC for reasonable costs associated with the enforcement of Proposition 65
5 and other costs incurred as a result of work in preparing and bringing this action.

6 **4.4** \$585.00 shall be payable to Michael Freund as reimbursement of ERC's
7 attorney's fees and \$4,060.00 shall be payable to Ryan Hoffman as reimbursement of ERC's
8 attorney's fees.

9 **4.5** Integris shall mail or deliver the payments in this Section by check to
10

11 Environmental Research Center, 3111 Camino Del Rio North, Suite 400, San Diego, CA,
12 92108. Integris will be provided with taxpayer identification information to enable Integris to
13 process the payments.

14 **4.6** Within 5 days of the Effective Date, Integris shall pay ERC \$2,900.00; within
15 35 days of the Effective Date, Integris shall pay ERC \$2,900.00; and once per month for the
16 next 7 months, due on the 1st day of each month, Integris shall pay ERC \$2,900.00 each month
17 by checks made payable to "Environmental Research Center" and sent by first-class registered
18 or certified mail, or overnight delivery, to Environmental Research Center, 3111 Camino Del
19 Rio North, Suite 400, San Diego, CA, 92108. In the event that any payment owed under this
20 Consent Judgment is not remitted on or before its due date, or within a 10-day grace period
21 following the payment due date, Integris shall be deemed to be in default of its obligations
22 under this Consent Judgment and all future payments shall become immediately due and
23 payable with the California statutory interest rate applying to all interest accruing on unpaid
24 balances due hereunder, beginning on the due date of the funds in default.
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1 4.7 Integris shall bear all of its own costs, expenses, and attorney fees related to
2 this matter.

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4 **5. MODIFICATION OF CONSENT JUDGMENT**

5 5.1 This Consent Judgment may be modified only (i) by written stipulation of the
6 Parties and (ii) upon entry by the Court of a modified consent judgment.

7
8 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
9 **JUDGMENT**

10 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or
11 terminate this Consent Judgment.

12 6.2 Only after it complies with Section 15 may any Party, by motion or
13 application for an order to show cause filed with this Court, enforce the terms and conditions
14 contained in this Consent Judgment.

15 6.3 If ERC alleges that any Covered Product fails to qualify as a Reformulated
16 Covered Product (and for which ERC alleges that no warning has been provided), then ERC
17 shall inform Integris in a reasonably prompt manner of its test results, including information
18 sufficient to permit Integris to identify the Covered Products at issue. Integris shall, within
19 thirty days following Defendant's receipt of such notice, demonstrate Defendant's compliance
20 with this Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter
21 pursuant to Section 15 prior to ERC taking any further legal action.

22 **7. APPLICATION OF CONSENT JUDGMENT**

23 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
24 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
25 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
26 wholesalers, retailers, predecessors, successors, and assigns. The only products covered by this
27 Consent Judgment are the Covered Products, and the only chemical covered by this Consent
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1 Judgment is the chemical lead as related to the Covered Products. This Consent Judgment shall
2 have no application to Covered Products which are distributed or sold exclusively outside the State
3 of California. This Consent Judgment shall have no application to Defendant's operations outside
4 of the State of California unless, and only to the extent that, such operations result in shipment or
5 sale of Covered Products into California. This Consent Judgment shall terminate without further
6 action by any Party when Integris no longer manufactures, distributes or sells all of the Covered
7 Products and all of such Covered Products previously distributed for sale into California have
8 reached their expiration dates and are no longer sold.
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11 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

12 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
13 on behalf of itself and in the public interest, and Integris, of any alleged violation of Proposition

14 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to
15 lead from the handling, use, or consumption of the Covered Products and fully resolves all
16 claims that have been or could have been asserted in this action up to and including the
17 Effective Date for failure to provide Proposition 65 warnings for the Covered Products. ERC,
18 on behalf of itself and in the public interest, hereby releases and discharges Integris and its
19 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
20 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label
21 customers of Integris), distributors, wholesalers, retailers, and all other upstream and
22 downstream entities in the distribution chain of any Covered Product, and the predecessors,
23 successors and assigns of any of them (collectively, "Released Parties"), from any and all
24 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and
25 expenses asserted, or that could have been asserted, as to any alleged violation of Proposition
26 65 arising from the failure to provide Proposition 65 warnings regarding lead in the Covered
27 Products as set forth in the Notice of Violations and the Complaint.
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1 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released
2 Parties from all known and unknown claims for alleged violations of Proposition 65 arising
3 from or relating to alleged exposures to lead in the Covered Products as set forth in the Notice
4 of Violations. It is possible that other claims not known to the Parties arising out of the facts
5 alleged in the Notice of Violations or the Complaint and relating to the Covered Products will
6 develop or be discovered. ERC, on behalf of itself only, acknowledges that this Consent
7 Judgment is expressly intended to cover and include all such claims, including all rights of
8 action therefore. ERC has full knowledge of the contents of California Civil Code section
9 1542. ERC, on behalf of itself only, acknowledges that the claims released in Sections 8.1 and

10
11 8.2 may include unknown claims, and nevertheless waives California Civil Code section 1542
12 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

17 ERC, on behalf of itself only, acknowledges and understands the significance and
18 consequences of this specific waiver of California Civil Code Section 1542.

19 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to
20 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures
21 to lead in the Covered Products as set forth in the Notice of Violations and the Complaint.

22 **8.4** Nothing in this Consent Judgment is intended to apply to any occupational or
23 environmental exposures arising under Proposition 65, nor shall it apply to any of Defendant's
24 products other than the Covered Products.

25 **8.5** ERC and Integris each release and waive all claims they may have against
26 each other for any statements or actions made or undertaken by them in connection with the
27 Notice of Violations or the Complaint; provided, however, that nothing in Section 8 shall affect
28 or limit any Party's right to seek to enforce the terms of this Consent Judgment.

1 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

2 In the event that any of the provisions of this Consent Judgment is held by a court to be
3 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

4 **10. GOVERNING LAW**

5 The terms and conditions of this Consent Judgment shall be governed by and construed in
6 accordance with the laws of the State of California.

7 **11. PROVISION OF NOTICE**

8 All notices required to be given to either Party to this Consent Judgment by the other shall be in
9 writing and sent to the following agents listed below by: (a) first-class, registered, or certified mail;
10 (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.
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14 **FOR ENVIRONMENTAL RESEARCH CENTER:**

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

19 With a copy to:

20 Michael Freund SBN 99687
21 Ryan Hoffman SBN 283297
22 Michael Freund & Associates
23 1919 Addison Street, Suite 105
24 Berkeley, CA 94704
25 Telephone: (510) 540-1992
26 Facsimile: (510) 540-5543

27 **FOR INTEGRIS GLOBAL, L.P.:**

28 Integris Global L.P.
6101 West Courtyard Drive
Building 5 Suite 100
Austin, TX. 78730
(512) 809-1900

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2 **12. COURT APPROVAL**

3 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be
4 void and have no force or effect.

5 **12.2** ERC shall comply with California Health and Safety Code section 25249.7(f)
6 and with Title II of the California Code Regulations, Section 3003.

7 **13. EXECUTION AND COUNTERPARTS**

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

11 **14. DRAFTING**

12 The terms of this Consent Judgment have been reviewed by the respective counsel for each Party
13 to this Consent Judgment prior to its signing, and each Party has had an opportunity to fully
14 discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and
15 construction of this Consent Judgment entered thereon, the terms and provisions shall not be
16 construed against any Party.
17

18 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

19 If a dispute arises with respect to either Party's compliance with the terms of this Consent
20 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
21 resolve the dispute in an amicable manner. No action or motion may be filed unless the Parties
22 have exhausted good faith attempts or efforts to resolve the dispute beforehand. In the event an
23 action or motion is filed, however, the prevailing party may seek to recover costs and reasonable
24 attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who
25 is successful in obtaining relief more favorable to it than the relief that the other party was
26 amenable to providing during the Parties' good faith attempt to resolve the dispute that is the
27
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1 subject of such enforcement action.

2 **16. ENTIRE AGREEMENT, AUTHORIZATION**

3 **16.1** This Consent Judgment contains the sole and entire agreement and
4 understanding of the Parties with respect to the entire subject matter herein, and any and all
5 prior discussions, negotiations, commitments and understandings related hereto. No
6 representations, oral or otherwise, express or implied, other than those contained herein have
7 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
8 herein, shall be deemed to exist or to bind any Party.

9 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
11 explicitly provided in Section 4, each Party shall bear its own fees and costs.

12 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
13 **CONSENT JUDGMENT**

14 This Consent Judgment has come before the Court upon the request of the Parties. The Parties
15 request the Court to fully review this Consent Judgment and, being fully informed regarding the
16 matters which are the subject of this action, to:
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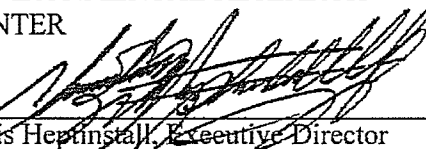
18 (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable
19 settlement of all matters raised by the allegations of the Complaint, that the matter has been
20 diligently prosecuted, and that the public interest is served by such settlement; and
21

22 (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4),
23 approve this settlement, and approve this Consent Judgment.
24

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26 **IT IS SO STIPULATED:**
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1 Dated: 3/13/, 2014

ENVIRONMENTAL RESEARCH
CENTER

By: 
Chris Heptinstall, Executive Director

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5 Dated: 3/19, 2014

INTEGRIS GLOBAL, L.P.

By: 

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10 **APPROVED AS TO FORM:**

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12 Dated: _____, 2014

ENVIRONMENTAL RESEARCH
CENTER

13
14 By: _____
15 Michael Freund SBN 99687
16 Ryan Hoffman SBN 283297
17 Michael Freund & Associates

18 Dated: _____, 2014

INTEGRIS GLOBAL, L.P.

19 By: _____
20 G. Michael Jackson (SBN #####)
21 Jones, Davis & Jackson, PC

22
23 **JUDGMENT**

24 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved
25 and Judgment is hereby entered according to its terms.
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28 Dated: _____, 2014

Judge of the Superior Court

Michael Freund SBN 99687
Ryan Hoffman SBN 283297

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1 Dated: 3/13/, 2014

ENVIRONMENTAL RESEARCH
CENTER

2
3 By: 
4 Chris Hepinstall, Executive Director

5
6 Dated: _____, 2014


INTEGRIS GLOBAL, L.P.

7 By: _____

8
9
10 **APPROVED AS TO FORM:**

11
12 Dated: March 24, 2014

ENVIRONMENTAL RESEARCH
CENTER

13
14 By: 
15 Michael Freund SBN 99687
16 Ryan Hoffman SBN 283297
17 Michael Freund & Associates

18 Dated: _____, 2014

INTEGRIS GLOBAL, L.P.

19 By: _____
20 G. Michael Jackson (SBN #####)
21 Jones, Davis & Jackson, PC

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25 and Judgment is hereby entered according to its terms.

26
27
28 Dated: _____, 2014

1 Michael Freund SBN 99687
2 Ryan Hoffinan SBN 283297
3 Michael Freund & Associates
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7 Facsimile: (510) 540-5543
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9 Attorneys for Plaintiff
10 ENVIRONMENTAL RESEARCH CENTER

11 G. Michael Jackson SBN 139384
12 Jones, Davis & Jackson, PC
13 16133 Ventura Blvd., Suite 880
14 Encino, CA 91436
15 Telephone: (818) 815-2180
16 Facsimile: (818) 646-2881

17 Attorney for Defendant
18 INTEGRIS GLOBAL, L.P.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF MARIN

21 ENVIRONMENTAL RESEARCH
22 CENTER, a California non-profit
23 corporation,
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26 INTEGRIS GLOBAL, L.P. and DOES 1-
27 100
28 Defendants.

CASE NO. CIV1305152
[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER
Health & Safety Code § 25249.5 et seq.
Action Filed: December 17, 2013
Trial Date: None set

1. INTRODUCTION

1.1 On December 17, 2013, Plaintiff Environmental Research Center (“ERC” or “Plaintiff”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5

1 Dated: _____, 2014

ENVIRONMENTAL RESEARCH
CENTER

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By: _____
Chris Heptinstall, Executive Director

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6 Dated: _____, 2014

INTEGRIS GLOBAL, L.P.

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By: _____

8

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10 **APPROVED AS TO FORM:**

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12 Dated: _____, 2014

ENVIRONMENTAL RESEARCH
CENTER

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By: _____
Michael Freund SBN 99687
Ryan Hoffman SBN 283297
Michael Freund & Associates

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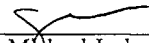
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18 Dated: March 11, 2014

INTEGRIS GLOBAL, L.P.

19

By:  _____
G. Michael Jackson SBN 139384
Jones, Davis & Jackson, PC

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JUDGMENT

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Dated: _____, 2014