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THORNE RESEARCH, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA

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

18 Plaintiff,

19 v.

20 THORNE RESEARCH, INC., an Idaho  
corporation

21 Defendant.

CASE NO. RG14717655

STIPULATED CONSENT JUDGMENT;  
[PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: March 17, 2014

Trial Date: None set

22  
23 **1. INTRODUCTION**

24 **1.1** On March 17, 2014, Plaintiff Environmental Research Center (“ERC”), as a  
25 private enforcer, and in the public interest, initiated this action by filing a Complaint for  
26 Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the  
27 provisions of California Health and Safety Code section 25249.5 et seq. (“Proposition 65”),  
28 against Thorne Research, Inc. (“THORNE”). In this action, ERC alleges that the products

1 manufactured and distributed by THORNE, as more fully described below, contain lead, a  
2 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and that such  
3 products expose consumers at a level requiring a Proposition 65 warning. These products  
4 (“Products”) are:

- 5 1. Thorne Research Inc. Thorne Performance Prevail Vegan Protein  
6 Chocolate
- 7 2. Thorne Research Inc. Thorne Performance Rebound
- 8 3. JJ Virgin and Associates Inc. The Virgin Diet Chocolate All-In-One  
9 Shake
- 10 4. JJ Virgin and Associates Inc. The Virgin Diet Vanilla All-In-One Shake
- 11 5. JJ Virgin and Associates Inc. The Virgin Diet All-In-One Shake Chai
- 12 6. Thorne Research Inc. Bio-PMT
- 13 7. Thorne Research Inc. Pepti-Guard
- 14 8. Thorne Research Inc. Medibulk
- 15 9. Thorne Research Inc. VegaLite Chocolate
- 16 10. Thorne Research Inc. VegaLite Vanilla
- 17 11. Thorne Research Inc. MediClear Plus
- 18 12. Thorne Research Inc. MediClear-SGS Chocolate
- 19 13. Thorne Research Inc. Artecina
- 20 14. Thorne Research Inc. Uristatin
- 21 15. Thorne Research Inc. Fractionated Pectin Powder
- 22 16. Thorne Research Inc. IM-Encap
- 23 17. Thorne Research Inc. MediPro Vegan All-In-One Shake Chocolate
- 24 18. Thorne Research Inc. MediPro Vegan All-In-One Shake Vanilla

25 1.2 The Complaint is based on allegations contained in ERC’s Notice of Violations,  
26 dated December 13, 2013, that was served on the California Attorney General, other public  
27 enforcers, and THORNE (“Notice I”). A true and correct copy of Notice I is attached as  
28 Exhibit A and is hereby incorporated by reference. More than sixty (60) days have passed

1 since Notice I was mailed and uploaded onto the California Attorney General’s website, and no  
2 designated governmental entity has filed a complaint against THORNE with regard to the  
3 Products or the allegations contained in Notice I.

4       **1.3**     On November 7, 2014, ERC issued an additional Proposition 65 60-Day Notice  
5 of Violations (“Notice II”) to THORNE that was served on the California Attorney General,  
6 other public enforcers, and THORNE regarding the lead and/or cadmium in the following  
7 additional products (“Additional Products”):

- 8                   19. Extra Nutrients – Lead
- 9                   20. Basic Nutrients V – Lead
- 10                  21. MediClear – Lead
- 11                  22. MediBolic – Lead
- 12                  23. Basic Nutrients IV – Lead
- 13                  24. Basic Detox Nutrients – Lead
- 14                  25. Cal-MagCitrate (Effervescent Powder) – Lead
- 15                  26. Phytogen – Lead
- 16                  27. Meta-Fem – Lead
- 17                  28. Nutri-Fem (240’s) – Lead
- 18                  29. MediPro Vegan Chai – Lead
- 19                  30. Vegalite Chocolate – Cadmium
- 20                  31. Mediclear SGS – Cadmium

21 A true and correct copy of Notice II is attached as Exhibit B and is hereby incorporated by  
22 reference.

23       **1.4**     All twenty-nine (29) products listed in Sections 1.1 and 1.3 shall be addressed by  
24 this Consent Judgment and shall hereinafter be referred to individually as “Covered Product” or  
25 collectively as “Covered Products.” Notice I and Notice II shall hereinafter collectively be  
26 referred to as “the Notices.”

27       **1.5**     The Parties hereby agree and stipulate that, upon Court approval, Plaintiff be given  
28 leave to amend the Complaint, attached hereto as Exhibit “C”, to include the Additional Products

1 and allegations listed in Notice II and that the Complaint be deemed filed and served on THORNE  
2 on the date of the Superior Court Judge's signature on the accompanying Order.

3       **1.6**     ERC is a California non-profit corporation dedicated to, among other causes,  
4 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
5 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
6 encouraging corporate responsibility.

7       **1.7**     THORNE is a business entity that employs ten or more persons. THORNE  
8 manufactures and distributes the Covered Products.

9       **1.8**     ERC and THORNE shall hereinafter be referred to collectively as "the Parties."

10       **1.9**     The Notices and the Complaint allege that use of the Covered Products exposes  
11 persons in California to lead or cadmium without first providing clear and reasonable warnings  
12 in violation of California Health and Safety Code section 25249.6. THORNE denies all  
13 material allegations contained in the Notices and the Complaint.

14       **1.10**    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 the  
17 Parties, or by their respective officers, directors, shareholders, employees, agents, parent  
18 companies, subsidiaries, divisions, affiliates, franchisees, 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 the Parties of any fact, issue of  
21 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
22 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
23 purpose.

24       **1.11**    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       **1.12**    The Effective Date of this Consent Judgment is the date on which it is entered as  
28 a Judgment by this Court.

1     **2. JURISDICTION AND VENUE**

2           For purposes of this Consent Judgment and for any further court action that may become  
3 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
4 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
5 over THORNE as to the acts alleged in the Complaint, that venue is proper in Alameda County,  
6 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of  
7 all claims up through and including the Effective Date which were or could have been asserted in  
8 this action based on the facts alleged in the Notices and the Complaint.

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

10        **3.1**     Beginning on the Effective Date, THORNE shall not manufacture for sale in the  
11 State of California, distribute into the State of California, or directly sell in the State of  
12 California, any Covered Product that exposes a person to a daily dose of lead more than 0.5  
13 micrograms per day when the maximum daily recommended serving(s) is(are) taken as directed  
14 on the Covered Product's label, unless it meets the warning requirements under Section 3.2,  
15 below. A warning shall not be required if THORNE elects to reformulate a Covered Product  
16 resulting in a Reformulated Covered Product as defined in Section 3.3, below.

17           As used in this Consent Judgment, the terms "distribute into the State of California" and  
18 "distributed into California" shall mean to directly ship a Covered Product into California for  
19 sale in California or to sell a Covered Product to a distributor that THORNE knows will sell the  
20 Covered Product in California.

21        **3.2 Clear and Reasonable Warnings**

22           If THORNE elects to provide a warning for Covered Products pursuant to Section 3.1,  
23 above, the following warning (hereinafter referred to as "the warning") must be utilized:

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

26 THORNE shall use the phrase "cancer and" in the warning only if the maximum daily  
27 recommended serving on the label contains more than fifteen (15) micrograms of lead as  
28 determined pursuant to the quality control methodology set forth in Section 3.4. The phrase "a

1 chemical” shall be utilized for Covered Products that THORNE has knowledge contain one  
2 Proposition 65 chemical above the Safe Harbor Level (as identified by the Office of Health  
3 Hazard Assessment’s (“OEHHA”)’s publication titled Proposition 65 No Significant Risk Levels  
4 (NSRLs) for Carcinogens and Maximum Allowable Dose Level for Chemicals Causing  
5 Reproductive Toxicity”), while the word “chemicals” shall be utilized for Covered Products that  
6 THORNE has knowledge contain more than one Proposition 65 chemical above the Safe Harbor  
7 Level.

8 THORNE shall provide, or shall cause to be provided, the warning on the label of the  
9 Covered Products distributed into California. The warning shall be at least the same size as the  
10 largest of any other health or safety warnings correspondingly appearing on the label and the word  
11 “WARNING” shall be in all capital letters and in bold print. No other statements about  
12 Proposition 65 or lead or cadmium may accompany the warning.

13 THORNE must display the warning with such conspicuousness, as compared with other  
14 words, statements, or design of the label or container, as applicable, to render the warning likely to  
15 be read and understood by an ordinary individual under customary conditions of purchase or use  
16 of the Covered Product.

17 For each of the Covered Products, THORNE is required to discontinue, reformulate, or  
18 reduce the maximum daily recommended serving(s) of the Covered Product resulting in a  
19 Reformulated Covered Product as defined in Section 3.3, below, or display the warning on the  
20 Covered Product’s label.

21 THORNE represents that the following six (6) Covered Products have been  
22 discontinued and shall at all times hereafter remain discontinued:

- 23 a. JJ Virgin and Associates Inc. The Virgin Diet Chocolate All-In-One  
24 Shake
- 25 b. JJ Virgin and Associates Inc. The Virgin Diet Vanilla All-In-One Shake
- 26 c. JJ Virgin and Associates Inc. The Virgin Diet All-In-One Shake Chai
- 27 d. Thorne Research Inc. Thorne Performance Prevail Vegan Protein  
28 Chocolate

1 e. Thorne Research Inc. Thorne Performance Rebound

2 f. Thorne Research Inc. IM-Encap

3 THORNE represents that the following eight (8) Covered Products will include the  
4 warning if THORNE is unable to reformulate a Covered Product to reach the 0.5 micrograms  
5 per day threshold for lead and/or the 4.1 micrograms threshold per day for cadmium as  
6 calculated pursuant to Sections 3.3 and 3.4, below.

7 a. Thorne Research Inc. MediClear SGS (for lead and cadmium)

8 b. Thorne Research Inc. VegaLite Chocolate (for lead and cadmium)

9 c. Thorne Research Inc. VegaLite Vanilla (for lead)

10 d. Thorne Research Inc. MediClear Plus (for lead)

11 e. Thorne Research Inc. MediBulk (for lead)

12 f. Thorne Research Inc. Fractionated Pectin Powder (for lead)

13 g. MediClear (for lead)

14 h. MediBolic (for lead)

15 THORNE represents that the following fifteen (15) Covered Products will meet the 0.5  
16 micrograms per day threshold for lead after reducing the maximum daily recommended  
17 serving(s) and/or taking into account the naturally occurring allowances as calculated pursuant  
18 to Sections 3.3 and 3.4, below.

19 a. Thorne Research Inc. Uristatin

20 b. Thorne Research Inc. Artecín

21 c. Thorne Research Inc. Bio-PMT

22 d. Thorne Research Inc. Pepti-Guard

23 e. Thorne Research Inc. MediPro Vegan All-In-One Shake Vanilla

24 f. Thorne Research Inc. MediPro Vegan All-In-One Shake Chocolate

25 g. MediPro Vegan Chai

26 h. Basic Nutrients V

27 i. Basic Nutrients IV

28 j. Basic Detox Nutrients

1 k. Cal-MagCitate (Effervescent Powder)

2 l. Phytogen

3 m. Meta-Fem

4 n. Nutri-Fem (240's)

5 o. Extra Nutrients

6 **3.3 Reformulated Covered Products; Calculation of Lead Levels**

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 as determined by the  
9 testing and quality control methodology described in Section 3.4, below. As used in this  
10 Consent Judgment, "no more than 0.5 micrograms of lead per day" means that the samples of  
11 the testing performed by THORNE under Section 3.4 yield a daily exposure of no more than  
12 0.5 micrograms of lead (with daily exposure calculated pursuant to Section 3.4 of this Consent  
13 Judgment). For a Covered Product that causes exposure in excess of 0.5 micrograms of lead  
14 per day even after reformulation, THORNE shall provide the warning set forth in Section 3.2.  
15 For purposes of determining which warning, if any, is required pursuant to Section 3.2, the  
16 second highest lead detection result of the five (5) randomly selected samples of the Covered  
17 Product will be controlling.

18 **3.4 Testing and Quality Control Methodology**

19 **3.4.1** For purposes of this Consent Judgment, a Covered Product's daily lead  
20 exposure level shall be measured in micrograms, and shall be calculated using the following  
21 formula: micrograms of lead per gram of product, multiplied by grams of product per serving  
22 of the product (using the largest serving size appearing on the product label), multiplied by  
23 servings of the product per day (using the largest number of servings in the suggested use  
24 appearing on the product label), which equals micrograms of lead exposure per day, excluding  
25 the amounts that, for purposes of this Consent Judgment only, are deemed to have naturally  
26 occurring lead in the ingredients listed in the table below in the amounts contained in the table.  
27 If at any time after the Effective Date, ERC tests a Covered Product and the test results indicate  
28 that the daily exposure level is greater than 0.5 micrograms per day, then THORNE agrees to



1 confidentially supply ERC with a list of ingredients of that particular Covered Product so that  
 2 ERC may be able to calculate the daily exposure based on the allowances contained in the table  
 3 below. If at any time THORNE refuses to provide said list of ingredients to ERC following a  
 4 test result of greater than 0.5 micrograms per day, then THORNE shall not receive the  
 5 allowances for that particular Covered Product.

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Elemental Calcium	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram
Cocoa-powder	1.0 micrograms/gram
Chocolate liquor	1.0 micrograms/gram
Cocoa butter	0.1 micrograms/gram

19 **3.4.2** All testing pursuant to this Consent Judgment shall be performed using a  
 20 laboratory method that complies with the performance and quality control factors appropriate  
 21 for the method used, including limit of detection, qualification, accuracy, and precision that  
 22 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)  
 23 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
 24 method subsequently agreed on in writing by the Parties.

25 **3.4.3** All testing pursuant to this Consent Judgment shall be performed by an  
 26 independent third-party laboratory certified by the California Environmental Laboratory  
 27 Accreditation Program, an independent third-party laboratory that is registered with the United  
 28 States Food & Drug Administration, or by THORNE'S in-house laboratory that meets the

1 qualifications required by Section 3.4.2. Nothing in this Consent Judgment shall limit  
2 THORNE's ability to conduct, or require that others conduct, additional testing of the Covered  
3 Products, including the raw materials used in their manufacture.

4           **3.4.4** THORNE shall perform lead testing, for at least five (5) consecutive  
5 years and at least once per year, on five (5) randomly selected samples of each Covered  
6 Product in the form intended for sale to the end user to be distributed into California. THORNE  
7 shall continue testing the raw materials in the Covered Products so long as the Covered  
8 Products are distributed into California. If the lead testing of a Covered Product in the form  
9 intended for sale to the end user to be distributed into California conducted pursuant to this  
10 Section 3.4.4 demonstrates that no warning is required for a Covered Product during each of  
11 five consecutive years, then the testing requirements of this Section 3.4.4 will no longer be  
12 required as to that Covered Product. If THORNE changes ingredient suppliers for any of the  
13 Covered Products and/or reformulates any of the Covered Products, then THORNE shall test  
14 that Covered Product in the form intended for sale to the end user to be distributed into  
15 California at least once after such change is made and send those test results to ERC within ten  
16 (10) working days of receiving the test results. The testing requirements discussed in this  
17 Section 3.4.4 are not applicable to any Covered Product for which THORNE has provided the  
18 warning as specified in Section 3.2.

19           **3.4.5** Beginning on the Effective Date and continuing for a period of five (5)  
20 years thereafter, THORNE shall send copies of all laboratory reports with results of testing for  
21 lead content under Section 3.4.4 for Covered Products in the form intended for sale to the end  
22 user to be distributed into California directly to ERC within ten (10) working days after  
23 reporting of that testing. These laboratory reports shall be deemed and treated by ERC as  
24 confidential information under the terms of the confidentiality agreement entered into by the  
25 Parties. THORNE shall retain all such laboratory reports for a period of five (5) years from the  
26 date of each test.

1     **4. SETTLEMENT PAYMENT**

2           **4.1**     In full satisfaction of all potential civil penalties, payment in lieu of civil  
3 penalties, attorney’s fees, and costs, THORNE shall make a total payment of \$250,000.00 (the  
4 “Total Settlement Amount”) to ERC according to the following schedule:

- 5           a. \$85,000 within 5 days of the Effective Date.
- 6           b. \$45,000 within 35 days of the Effective Date.
- 7           c. \$45,000 within 60 days of the Effective Date.
- 8           d. \$45,000 within 90 days of the Effective Date.
- 9           e. \$30,000 within 120 days of the Effective Date.

10 THORNE shall make these payments by wire transfer to ERC’s escrow account, for which  
11 ERC will give THORNE the necessary account information. Said payments shall be for the  
12 following:

13           **4.2**     As a portion of the Total Settlement Amount, \$93,420.00 shall be considered a  
14 civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit  
15 75% (70,065.00) of the civil penalty to the OEHHA for deposit in the Safe Drinking Water and  
16 Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c).  
17 ERC will retain the remaining 25% (23,355.00) of the civil penalty.

18           **4.3**     As a portion of the Total Settlement Amount, \$9,036.89 shall be distributed to  
19 ERC as reimbursement for reasonable costs incurred bringing this action; and \$70,471.75 shall  
20 be distributed to ERC in lieu of further civil penalties, for the day-to-day business activities  
21 such as (1) continued enforcement of Proposition 65, which includes work, analyzing,  
22 researching, and testing consumer products that may contain Proposition 65 chemicals,  
23 focusing on the same or similar types of ingestible products that are the subject matter of the  
24 current action; (2) the continued monitoring of past consent judgments and settlements to  
25 ensure companies are in compliance with Proposition 65; and (3) giving a donation of  
26 \$3,523.00 to As You Sow to address reducing toxic chemical exposures in California.

1           4.4    As a portion of the Total Settlement Amount, \$45,462.46 shall be distributed to  
2 Lozeau | Drury LLP as reimbursement of ERC’s attorney’s fees and \$31,608.90 shall be  
3 distributed to ERC as reimbursement for its in-house legal fees.

4           **5.    MODIFICATION OF CONSENT JUDGMENT**

5           5.1    This Consent Judgment may be modified only (i) by written stipulation of the  
6 Parties or pursuant to Section 5.4, below, and (ii) upon entry by the Court of a modified  
7 Consent Judgment.

8           5.2    If THORNE seeks to modify this Consent Judgment under Section 5.1, then  
9 THORNE must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks  
10 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must  
11 provide written notice to THORNE within thirty (30) days of receiving the Notice of Intent. If  
12 ERC notifies THORNE in a timely manner of ERC’s intent to meet and confer, then the Parties  
13 shall meet and confer in good faith as required in this Section 5. The Parties shall meet in  
14 person or via telephone within thirty (30) days of ERC’s notification of its intent to meet and  
15 confer. Within thirty (30) days of such meeting, if ERC disputes the proposed modification,  
16 ERC shall provide to THORNE a written basis for its position. The Parties shall continue to  
17 meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.  
18 Should it become necessary, the Parties may agree in writing to different deadlines for the  
19 meet-and-confer period.

20           5.3    In the event that THORNE initiates or otherwise requests a modification under  
21 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
22 Consent Judgment, then THORNE shall reimburse ERC its costs and reasonable attorney’s fees  
23 for the time spent in the meet-and-confer process and filing and arguing the motion or  
24 application.

25           5.4    In the event that the meet-and-confer process does not lead to a joint motion or  
26 application in support of a modification of the Consent Judgment, then either Party may seek  
27 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and  
28 reasonable attorney’s fees. As used in the preceding sentence, the term “prevailing party”

1 means a party who is successful in obtaining relief more favorable to it than the relief that the  
2 other party was amenable to providing during the Parties' good faith attempt to resolve the  
3 dispute that is the subject of the modification.

4 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
5 **JUDGMENT**

6 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
7 this Consent Judgment.

8 **6.2** Only after it complies with Section 15 below may a Party, by motion or  
9 application for an order to show cause filed with this Court, enforce the terms and conditions  
10 contained in this Consent Judgment.

11 **6.3** If ERC alleges that a Covered Product fails to qualify as a Reformulated  
12 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
13 inform THORNE in a reasonably prompt manner of its test results, including information  
14 sufficient to permit THORNE to identify the Covered Product at issue. THORNE shall, within  
15 thirty (30) days following such notice, provide ERC with testing information, from an  
16 independent third-party laboratory meeting the requirements of Sections 3.4.2 and 3.4.3,  
17 demonstrating Defendant's compliance with the Consent Judgment, if warranted. The Parties  
18 shall first attempt to resolve the matter prior to ERC taking any further legal action.

19 **7. APPLICATION OF CONSENT JUDGMENT**

20 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their  
21 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
22 divisions, affiliates, franchisees, licensees, customers (excluding private labelers except for JJ  
23 Virgin), distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent  
24 Judgment shall have no application to Covered Products that are distributed or sold exclusively  
25 outside the State of California and that are not used by California consumers.

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

27 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
28 behalf of itself and in the public interest, and THORNE, of any alleged violation of Proposition

1 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to  
2 lead from the handling, use, or consumption of the Covered Products and fully resolves all  
3 claims that have been or could have been asserted in this action up to and including the  
4 Effective Date for failure to provide Proposition 65 warnings for the Covered Products. ERC,  
5 on behalf of itself and in the public interest, hereby discharges THORNE and its respective  
6 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
7 affiliates, suppliers, franchisees, licensees, customers (not including private label customers of  
8 THORNE, except JJ Virgin) distributors, wholesalers, retailers, and all other upstream and  
9 downstream entities in the distribution chain of any Covered Product, and the predecessors,  
10 successors, and assigns of any of them (collectively, "Released Parties"), from any and all  
11 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
12 expenses asserted, or that could have been asserted, as to any alleged violation of Proposition  
13 65 arising from the failure to provide Proposition 65 warnings on the Covered Products  
14 regarding lead.

15 **8.2** The Parties further waive and release any and all claims they may have against  
16 each other for all actions or statements made or undertaken in the course of seeking or opposing  
17 enforcement of Proposition 65 in connection with the Notices or the Complaint up through  
18 and including the Effective Date, provided, however, that nothing in this Section 8 shall affect  
19 or limit any Party's right to seek to enforce the terms of this Consent Judgment.

20 **8.3** It is possible that other claims not known to the Parties arising out of the facts  
21 alleged in the Notices or the Complaint and relating to the Covered Products will develop or be  
22 discovered. The Parties acknowledge that this Consent Judgment is expressly intended to cover  
23 and include all such claims up through the Effective Date, including all rights of action  
24 therefore. The Parties acknowledge that the claims released in Sections 8.1 and 8.2, above,  
25 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to  
26 any such unknown claims. California Civil Code section 1542 reads as follows:  
27  
28

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

6 The Parties acknowledge and understand the significance and consequences of this specific  
7 waiver of California Civil Code Section 1542.

8 8.4 Compliance with the terms of this Consent Judgment shall be deemed to  
9 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures  
10 to lead in the Covered Products as set forth in the Notices and the Complaint.

11 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or  
12 environmental exposures arising under Proposition 65, nor shall it apply to any of THORNE's  
13 products other than the Covered Products.

#### 14 9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

#### 17 10. GOVERNING LAW

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

#### 20 11. PROVISION OF NOTICE

21 All notices required to be given to either Party to this Consent Judgment by the other shall  
22 be in writing and sent to the following agents listed below by: (a) first-class, registered, or  
23 certified mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also  
24 be sent.

#### 25 FOR ENVIRONMENTAL RESEARCH CENTER:

26 Chris Heptinstall, Executive Director  
27 Environmental Research Center  
28 3111 Camino Del Rio North, Suite 400  
San Diego, California 92108  
Ph: 619-500-3090  
Fx: 706-858-0326  
email: chris\_erc501c3@yahoo.com

1 With a copy to:

2 Michael R. Lozeau (CBN 142893)  
3 Richard T. Drury (CBN 163559)  
4 LOZEAU | DRURY LLP  
5 410 12th Street, Suite 250  
6 Oakland, California 94607  
7 Ph: 510-836-4200  
8 Fax: 510-836-4205  
9 Email: michael@lozeaudrury.com  
10 Email: richard@lozeaudrury.com

11 **FOR THORNE RESEARCH, INC.**

12 Kim Randall Pearson  
13 General Counsel  
14 Thorne Research, Inc.  
15 25820 Highway 2 West  
16 P.O. Box 25  
17 Dover, Idaho 83825

18 With a copy to:

19 Jeffrey D. Polsky (SBN 120975)  
20 FOX ROTHSCHILD LLP  
21 345 California Street, Suite 2200  
22 San Francisco, California 94104  
23 Telephone: 415-364-5540  
24 Facsimile: 415-391-4436  
25 jpolksy@foxrothschild.com

26 **12. COURT APPROVAL**

27 **12.1** If this Consent Judgment is not approved by the Court, then it shall be void and  
28 have no force or effect.

**12.2** Following court approval of this Consent Judgment, ERC shall comply with  
California Health and Safety Code section 25249.7(f) and with Title II of the California Code  
of Regulations, Section 3003.

**13. EXECUTION AND COUNTERPARTS**

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



1     **14. DRAFTING**

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

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

8             If a dispute arises with respect to either Party's compliance with the terms and provisions  
9 of this Consent Judgment entered by the Court, the Parties shall meet in person or by telephone  
10 and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in  
11 the absence of such a good faith attempt to resolve the dispute beforehand. In the event an action  
12 or motion is filed, however, the prevailing party may seek to recover costs and reasonable  
13 attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who  
14 is successful in obtaining relief more favorable to it than the relief that the other party was  
15 amenable to providing during the Parties' good faith attempt to resolve the dispute that is the  
16 subject of such enforcement action.

17     **16. ENTIRE AGREEMENT, AUTHORIZATION**

18             **16.1** This Consent Judgment contains the sole and entire agreement and  
19 understanding of the Parties with respect to the entire subject matter herein, and any and all  
20 prior discussions, negotiations, commitments, and understandings related hereto. No  
21 representations, oral or otherwise, express or implied, other than those contained herein have  
22 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
23 herein, shall be deemed to exist or to bind any Party.

24             **16.2** Each signatory to this Consent Judgment certifies that he is fully authorized by  
25 the Party he represents to stipulate to this Consent Judgment. Except as explicitly provided  
26 herein, each Party shall bear its own fees and costs.

1 17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT, AND ENTRY OF  
2 CONSENT JUDGMENT

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

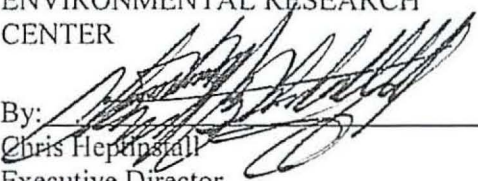
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
7 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has  
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section  
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11 IT IS SO STIPULATED:


12 Dated: November 20, 2014

ENVIRONMENTAL RESEARCH  
CENTER

13  
14 By:   
15 Chris Hepinstall  
16 Executive Director

17 Dated: November 20, 2014

THORNE RESEARCH, INC.

18  
19 By:   
20 Thomas P. McKenna  
21 Chief Operating Officer

22 APPROVED AS TO FORM:

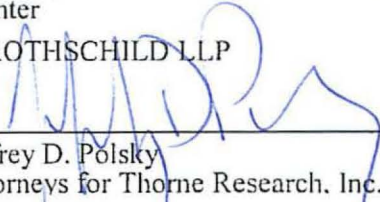
23 Dated: \_\_\_\_\_, 2014

LOZEAU | DRURY LLP

24 By: \_\_\_\_\_  
25 Michael R. Lozeau  
26 Richard T. Drury  
27 Attorneys for Environmental Research  
28 Center

Dated: November 20, 2014

FOX ROTHSCHILD LLP

By:   
Jeffrey D. Polsky  
Attorneys for Thorne Research, Inc.

1 17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT, AND ENTRY OF  
2 CONSENT JUDGMENT

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

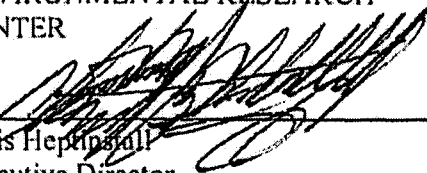
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
7 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has  
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section  
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11 IT IS SO STIPULATED:


12  
13 Dated: November 20, 2014

ENVIRONMENTAL RESEARCH  
CENTER

14 By:   
15 Chris Heptinstall  
16 Executive Director

17 Dated: November 20, 2014

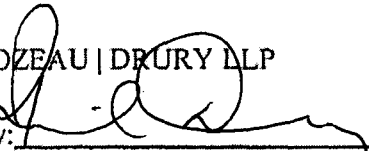
THORNE RESEARCH, INC.

18  
19 By:   
20 Thomas P. McKenna  
21 Chief Operating Officer

22 APPROVED AS TO FORM:

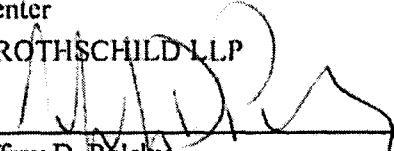
23 Dated: Nov. 20, 2014

LOZEAU | DRURY LLP

24 By:   
25 Michael R. Lozeau  
26 Richard T. Drury  
27 Attorneys for Environmental Research  
28 Center

Dated: November 20, 2014

FOX ROTHSCHILD LLP

By:   
Jeffrey D. Polsky  
Attorneys for Thorne Research, Inc.

**JUDGMENT**

Based on the Parties' Stipulation, and good cause appearing, the Complaint is deemed amended to include the Additional Products and allegations in Notice II, Plaintiff's First Amended Complaint, attached hereto as Exhibit "C", is deemed filed and served on Defendant THORNE as of the date of signature below, this Consent Judgment is approved, and Judgment is hereby entered according to its terms.

Dated: \_\_\_\_\_, 2014

\_\_\_\_\_  
Judge of the Superior Court

# EXHIBIT A



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
richard@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
Thorne Research, Inc.  
25820 Highway 2 West  
Sandpoint, ID 83864

Current CEO or President  
Thorne Research, Inc.  
PO Box 25  
Dover, ID 83825

Kim Randall Pearson  
(Thorne Research, Inc.'s  
Registered Agent for Service of Process)  
25820 Highway 2 West  
Sandpoint, ID 83864

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA PRIORITY MAIL**

District Attorneys of All California Counties  
and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The name of the Company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

**Thorne Research, Inc.**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Thorne Research Inc Thorne Performance Prevail Vegan Protein Chocolate - Lead**
2. **Thorne Research Inc Uristatin - Lead**
3. **JJ Virgin and Associates Inc The Virgin Diet All-In-One Shake Chai - Lead**
4. **Thorne Research Inc Artecina - Lead**
5. **Thorne Research Inc. IM-Encap - Lead**
6. **Thorne Research Inc. Bio-PMT - Lead**
7. **Thorne Research Inc. Pepti-Guard - Lead**
8. **Thorne Research Inc. Medibulk - Lead**
9. **Thorne Research Inc. VegaLite Chocolate - Lead**
10. **Thorne Research Inc. VegaLite Vanilla - Lead**
11. **Thorne Research Inc. MediClear Plus - Lead**
12. **Thorne Research Inc. MediClear-SGS Chocolate - Lead**
13. **JJ Virgin and Associates Inc. The Virgin Diet Vanilla All-In-One Shake - Lead**
14. **Thorne Research Inc. Thorne Performance Rebound - Lead**
15. **Thorne Research Inc. Fractionated Pectin Powder - Lead**
16. **JJ Virgin and Associates Inc. The Virgin Diet Chocolate All-In-One Shake - Lead**
17. **Thorne Research Inc. MediPro Vegan All-In-One Shake Vanilla – Lead**
18. **Thorne Research Inc. MediPro Vegan All-In-One Shake Chocolate - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since December 13, 2010, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



---

Cathy D. Lee

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Thorne Research, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by  
Thorne Research, Inc.**

I, Cathy D. Lee, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: December 13, 2013



---

Cathy D. Lee

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On December 13, 2013, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Thorne Research, Inc.  
25820 Highway 2 West  
Sandpoint, ID 83864

Kim Randall Pearson  
(Thorne Research, Inc.'s  
Registered Agent for Service of Process)  
25820 Highway 2 West  
Sandpoint, ID 83864

Current CEO or President  
Thorne Research, Inc.  
PO Box 25  
Dover, ID 83825

On December 13, 2013, I electronically served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On December 13, 2013, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on December 13, 2013, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Tiffany Capehart

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

December 13, 2013

Page 6

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 1800 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 110 Union Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

# EXHIBIT B



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
michael@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
Thorne Research, Inc.  
25820 Highway 2 West  
Sandpoint, ID 83864

Current CEO or President  
Thorne Research, Inc.  
PO Box 25  
Dover, ID 83825

Kim Randall Pearson  
(Thorne Research, Inc.'s  
Registered Agent for Service of Process)  
25820 Highway 2 West  
Sandpoint, ID 83864

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA PRIORITY MAIL**

District Attorneys of All California Counties  
and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent the Environmental Research Center, Inc. ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

The name of the Company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

**Thorne Research, Inc.**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- **Extra Nutrients - Lead**
- **Basic Nutrients V - Lead**
- **Mediclear - Lead**
- **Medibolic - Lead**
- **Basic Nutrients IV – Lead**
- **Basic Detox Nutrients – Lead**
- **Cal-MagCitrates (Effervescent Powder)- Lead**
- **Phytogen – Lead**
- **Meta-Fem - Lead**
- **Nutri-Fem (240's) – Lead**
- **MediPro Vegan Chai – Lead**
- **Vegalite Chocolate – Cadmium**
- **Mediclear SGS - Cadmium**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer. Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while Cadmium and Cadmium Compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and cadmium. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to these chemicals. The method of warning should be a warning that appears on the product’s label. The Violator violated

November 7, 2014

Page 3

Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead and cadmium. Each of these ongoing violations has occurred on every day since November 7, 2011, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and 3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,

  
Michael Lozeau

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Thorne Research, Inc. and its Registered Agent for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations  
by Thorne Research, Inc.**

I, Michael Lozeau, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: November 7, 2014

  
Michael Lozeau



**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On November 7, 2014, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Thorne Research, Inc.  
25820 Highway 2 West  
Sandpoint, ID 83864

Kim Randall Pearson  
(Thorne Research, Inc.’s Registered Agent  
for Service of Process)  
25820 Highway 2 West  
Sandpoint, ID 83864

Current CEO or President  
Thorne Research, Inc.  
PO Box 25  
Dover, ID 83825

On November 7, 2014, I electronically served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following party by uploading a true and correct copy thereof on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On November 7, 2014, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on November 7, 2014, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Tiffany Capehart

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

November 7, 2014

Page 6

**Service List**

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County Post Office Box 720 Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	

# EXHIBIT C

1 Michael R. Lozeau (CBN 142893)  
2 Richard T. Drury (CBN 163559)  
3 LOZEAU | DRURY LLP  
4 410 12th Street, Suite 250  
5 Oakland, CA 94607  
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9 richard@lozeaudrury.com

6 Attorneys for Plaintiff  
7 ENVIRONMENTAL RESEARCH CENTER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 ENVIRONMENTAL RESEARCH CENTER,  
11 a non-profit California corporation,

12 Plaintiff,

13 v.

14 THORNE RESEARCH, INC., an Idaho  
15 corporation

16 Defendant.

Case No. RG14717655

**FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF AND CIVIL  
PENALTIES**

Health & Safety Code §25249.5, *et seq.*

17  
18 Plaintiff Environmental Research Center (“PLAINTIFF” OR “ERC”) brings this action  
19 in the interests of the general public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy the continuing failure of Defendant Thorne  
22 Research, Inc. (“DEFENDANT” or “THORNE RESEARCH”) to warn consumers in  
23 California that they are being exposed to lead and cadmium (hereinafter, the “LISTED  
24 CHEMICALS”), substances known to the State of California to cause cancer, birth defects, and  
25 other reproductive harm. DEFENDANT manufactures, packages, distributes, markets, and/or  
26 sells in California certain products containing the LISTED CHEMICALS, including each of

1 the following products (collectively the “PRODUCTS”):

- 2 • Thorne Research Inc. Thorne Performance Prevail Vegan Protein Chocolate-Lead
- 3 • Thorne Research Inc. Uristatin-Lead
- 4 • JJ Virgin and Associates Inc. The Virgin Diet All-In-One Shake Chai-Lead
- 5 • Thorne Research Inc. ArtecIn-Lead
- 6 • Thorne Research Inc. IM-Encap-Lead
- 7 • Thorne Research Inc. Bio-PMT-Lead
- 8 • Thorne Research Inc. Pepti-Guard-Lead
- 9 • Thorne Research Inc. Medibulk-Lead
- 10 • Thorne Research Inc. VegaLite Chocolate-Lead
- 11 • Thorne Research Inc. VegaLite Vanilla-Lead
- 12 • Thorne Research Inc. MediClear Plus-Lead
- 13 • Thorne Research Inc. MediClear-SGS Chocolate-Lead
- 14 • JJ Virgin and Associates Inc. The Virgin Diet Vanilla All-In-One Shake-Lead
- 15 • Thorne Research Inc. Thorne Performance Rebound-Lead
- 16 • Thorne Research Inc. Fractionated Pectin Powder-Lead
- 17 • JJ Virgin and Associates Inc. The Virgin Diet Chocolate All-In-One Shake-Lead
- 18 • Thorne Research Inc. MediPro Vegan All-In-One Shake Vanilla-Lead
- 19 • Thorne Research Inc. MediPro Vegan All-In-One Shake Chocolate-Lead
- 20 • Extra Nutrients-Lead
- 21 • Basic Nutrients V -Lead
- 22 • Mediclear-Lead
- 23 • Medibolic-Lead
- 24 • Basic Nutrients IV-Lead
- 25 • Basic Detox Nutrients-Lead
- 26 • Cal-MagCitrate (Effervescent Powder) -Lead
- Phytogen-Lead
- Meta-Fem-Lead
- Nutri-Fem (240's)
- MediPro Vegan Chai-Lead
- Vegalite Chocolate-Cadmium
- Mediclear SGS-Cadmium

21 2. The LISTED CHEMICALS are substances known to the State<sup>1</sup> of California to  
22 cause cancer, birth defects, and other reproductive harm.

23 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED  
24 CHEMICALS at levels requiring a “clear and reasonable warning” under California's Safe  
25 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”)  
26 §25249.5, *et seq.* (also known as "Proposition 65"). DEFENDANT has failed to provide the

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<sup>1</sup> All statutory and regulatory references herein are to California law, unless otherwise specified.

1 health hazard warnings required by Proposition 65.

2 4. DEFENDANT's continued manufacturing, packaging, distributing, marketing  
3 and/or sales of the PRODUCTS without the required health hazard warnings, causes  
4 individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS  
5 that violate Proposition 65.

6 5. PLAINTIFF seeks injunctive relief enjoining DEFENDANT from the  
7 continued manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS  
8 in California without provision of clear and reasonable warnings regarding the risks of cancer,  
9 birth defects, and other reproductive harm posed by exposure to the LISTED CHEMICALS  
10 through the use and/or handling of the PRODUCTS. PLAINTIFF seeks an injunctive order  
11 compelling DEFENDANT to bring its business practices into compliance with Proposition 65  
12 by providing a clear and reasonable warning to each individual who has been and who in the  
13 future may be exposed to the LISTED CHEMICALS from the use of the PRODUCTS.

14 PLAINTIFF also seeks an order compelling DEFENDANT to identify and locate each  
15 individual person who in the past has purchased the PRODUCTS, and to provide to each such  
16 purchaser a clear and reasonable warning that the use of the PRODUCTS will cause exposures  
17 to the LISTED CHEMICALS.

18 6. In addition to injunctive relief, PLAINTIFF seeks an assessment of civil  
19 penalties in excess of \$15 million to remedy DEFENDANT's failure to provide clear and  
20 reasonable warnings regarding exposures to the LISTED CHEMICALS.

21 **JURISDICTION AND VENUE**

22 7. This Court has jurisdiction over this action pursuant to California Constitution  
23 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes  
24 except those given by statute to other trial courts." The statute under which this action is  
25 brought does not specify any other basis for jurisdiction.

26 8. This Court has jurisdiction over DEFENDANT because, based on information

1 and belief, DEFENDANT is a business having sufficient minimum contacts with California, or  
2 otherwise intentionally availing itself of the California market through the distribution and sale  
3 of the PRODUCTS in the State of California to render the exercise of jurisdiction over it by the  
4 California courts consistent with traditional notions of fair play and substantial justice.

5 9. Venue in this action is proper in the Alameda Superior Court because the  
6 DEFENDANT has violated California law in the County of Alameda.

7 10. On December 13, 2013 and November 7, 2014, PLAINTIFF sent 60-Day  
8 Notices of Proposition 65 violations (“Notices”) to the requisite public enforcement agencies,  
9 and to DEFENDANT. The Notices were issued pursuant to, and in compliance with, the  
10 requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding  
11 the notice of the violations to be given to certain public enforcement agencies and to the  
12 violator. The Notices included, *inter alia*, the following information: the name, address, and  
13 telephone number of the noticing individual; the name of the alleged violator; the statute  
14 violated; the approximate time period during which violations occurred; and descriptions of the  
15 violations, including the chemicals involved, the routes of toxic exposure, and the specific  
16 product or type of product causing the violations, and was issued as follows:

- 17 a. DEFENDANT was provided a copy of the Notices by Certified Mail.
- 18 b. DEFENDANT was provided a copy with each Notice of a document entitled  
19 "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition  
20 65): A Summary," which is also known as Appendix A to Title 27 of CCR  
21 §25903.
- 22 c. The California Attorney General was provided a copy of the Notices via  
23 online submission.
- 24 d. The California Attorney General was provided with a Certificate of Merit  
25 with each Notice by the attorney for the noticing party, stating that there is a  
26 reasonable and meritorious case for this action, and attaching factual  
information sufficient to establish a basis for the certificate, including the  
identity of the persons consulted with and relied on by the certifier, and the

1 facts, studies, or other data reviewed by those persons, pursuant to H&S  
2 Code §25249.7(h) (2).

3 11. At least 60-days have elapsed since PLAINTIFF sent the Notices to  
4 DEFENDANT. The appropriate public enforcement agencies have failed to commence and  
5 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against  
6 DEFENDANT based on the allegations herein.

7 **PARTIES**

8 12. PLAINTIFF is a non-profit corporation organized under California's  
9 Corporation Law. ERC is dedicated to, among other causes, reducing the use and misuse of  
10 hazardous and toxic substances, consumer protection, worker safety, and corporate  
11 responsibility.

12 13. ERC is a person within the meaning of H&S Code §25118 and brings this  
13 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

14 14. DEFENDANT is a corporation organized under the State of Idaho's  
15 Corporation Law and is a person doing business within the meaning of H&S Code §25249.11.

16 15. DEFENDANT manufactures, packages, distributes, markets and/or sells the  
17 PRODUCTS for sale or use in California and in Alameda County.

18 **STATUTORY BACKGROUND**

19 16. The People of the State of California have declared in Proposition 65 their right  
20 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other  
21 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

22 17. To effect this goal, Proposition 65 requires that individuals be provided with a  
23 "clear and reasonable warning" before being exposed to substances listed by the State of  
24 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent  
25 part:

26 No person in the course of doing business shall knowingly and intentionally  
expose any individual to a chemical known to the state to cause cancer or  
reproductive toxicity without first giving clear and reasonable warning to such  
individual....



1 18. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release  
2 of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No  
3 knowledge that the discharge, release or exposure is unlawful is required.” 27 California Code  
4 of Regulations (“CCR”) §25102(n).

5 19. Proposition 65 provides that any person “violating or threatening to violate” the  
6 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7). The  
7 phrase “threatening to violate” is defined to mean creating “a condition in which there is a  
8 substantial likelihood that a violation will occur.” (H&S Code §25249.11(e)). Violators are  
9 liable for civil penalties of up to \$2,500 per day for each violation of the Act. (H&S Code  
10 §25249.7.)

### 11 **FACTUAL BACKGROUND**

12 20. On February 27, 1987, the State of California officially listed lead as a chemical  
13 known to cause reproductive toxicity. Lead became subject to the warning requirement one  
14 year later and was therefore subject to the "clear and reasonable" warning requirements of  
15 Proposition 65 beginning on February 27, 1988. (27 California Code of Regulations (“CCR”)  
16 §25000, *et seq.*; H&S Code §25249.5, *et seq.*). Due to the high toxicity of lead, the maximum  
17 allowable dose level for lead is 0.5 ug/day (micrograms a day) for reproductive toxicity. 27  
18 CCR § 25805(b).

19 21. On October 1, 1992, the State of California officially listed lead and lead  
20 compounds as chemicals known to cause cancer. Lead and lead compounds became subject to  
21 the warning requirement one year later and were therefore subject to the "clear and reasonable"  
22 warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR § 25000, *et*  
23 *seq.*; H&S Code §25249.6, *et seq.*). Due to the carcinogenicity of lead, the no significant risk  
24 level for lead is 15 ug/day (micrograms a day) 27 CCR § 25705(b)(1).

25 22. On May 1, 1997, the State of California officially listed Cadmium and Cadmium  
26 Compounds as chemicals known to cause developmental toxicity and male reproductive  
toxicity. Cadmium and Cadmium Compounds became subject to the warning requirement one  
year later and were therefore subject to the “clear and reasonable” warning requirements of

1 Proposition 65 beginning on May 1, 1998. Due to the high toxicity of Cadmium and Cadmium  
2 Compounds, the maximum allowable dose level for these chemicals is 4.1 ug/day (micrograms  
3 a day) for reproductive toxicity. 27 CCR § 25805(b).

4 23. To test Defendant's PRODUCTS for lead and cadmium, PLAINTIFF hired a well-  
5 respected and accredited testing laboratory that designed the testing protocol used and  
6 approved by the California Attorney General years ago for testing heavy metals. The results of  
7 testing undertaken by PLAINTIFF of DEFENDANT's PRODUCTS show that the  
8 PRODUCTS tested were in violation of the 0.5 ug/day "safe harbor" daily dose limit set forth  
9 in Proposition 65's regulations for lead or the 4.1 ug/day "safe harbor" daily dose limit set  
10 forth in Proposition 65's regulations for Cadmium or Cadmium Compounds. The results of  
11 testing undertaken by PLAINTIFF of DEFENDANT's MediClear Plus product show that  
12 product was in violation of the 15 ug/day "safe harbor" no significant risk level for lead set  
13 forth in Proposition 65's regulations for chemicals listed as carcinogens. Very significant is the  
14 fact that people are being exposed to lead or cadmium through ingestion as opposed to other  
15 not as harmful methods of exposure such as dermal exposure. Ingestion of lead or cadmium  
16 produces much higher exposure levels and health risks than does dermal exposure to this  
17 chemical.

18 24. At all times relevant to this action, DEFENDANT, therefore, has knowingly and  
19 intentionally exposed the users and/or handlers of the PRODUCTS to the LISTED  
20 CHEMICALS without first giving a clear and reasonable warning to such individuals.

21 25. The PRODUCTS have allegedly been sold by DEFENDANT for use in  
22 California since at least December 13, 2010. The PRODUCTS continue to be distributed and  
23 sold in California without the requisite warning information.

24 26. As a proximate result of acts by DEFENDANT, as a person in the course of  
25 doing business within the meaning of Health & Safety Code §25249.11, individuals throughout  
26 the State of California, including in the County of Alameda, have been exposed to the LISTED  
CHEMICALS without a clear and reasonable warning. The individuals subject to the illegal  
exposures include normal and foreseeable users of the PRODUCTS, as well as all other

1 persons exposed to the PRODUCTS.

2 **FIRST CAUSE OF ACTION**

3 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, et seq.**  
4 **concerning the PRODUCTS described in the December 13, 2013 and November 7,**  
5 **2014 Prop. 65 Notices) Against THORNE RESEARCH**

6 27. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 26,  
7 inclusive, as if specifically set forth herein.

8 28. By committing the acts alleged in this Complaint, DEFENDANT at all times  
9 relevant to this action, and continuing through the present, has violated H&S Code §25249.6  
10 by, in the course of doing business, knowingly and intentionally exposing individuals who use  
11 or handle the PRODUCTS set forth in the Notices to the LISTED CHEMICALS, without first  
12 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§  
13 25249.6 and 25249.11(f).

14 29. By the above-described acts, DEFENDANT has violated H&S Code § 25249.6  
15 and are therefore subject to an injunction ordering DEFENDANT to stop violating Proposition  
16 65, to provide warnings to all present and future customers, and to provide warnings to  
17 DEFENDANT's past customers who purchased or used the PRODUCTS without receiving a  
18 clear and reasonable warning.

19 30. An action for injunctive relief under Proposition 65 is specifically authorized by  
20 Health & Safety Code §25249.7(a).

21 31. Continuing commission by DEFENDANT of the acts alleged above will  
22 irreparably harm the citizens of the State of California, for which harm they have no plain,  
23 speedy, or adequate remedy at law.

24 Wherefore, PLAINTIFF prays judgment against DEFENDANT, as set forth hereafter.

25 **SECOND CAUSE OF ACTION**

26 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, et seq. concerning the**  
**PRODUCTS described in PLAINTIFF's NOTICES)**  
**Against THORNE RESEARCH**

32. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 31  
inclusive, as if specifically set forth herein.

1 33. By committing the acts alleged in this Complaint, DEFENDANT at all times  
2 relevant to this action, and continuing through the present, has violated H&S Code §25249.6  
3 by, in the course of doing business, knowingly and intentionally exposing individuals who use  
4 or handle the PRODUCTS set forth in the Notices to the LISTED CHEMICALS, without first  
5 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§  
6 25249.6 and 25249.11(f).

7 34. By the above-described acts, DEFENDANT is liable, pursuant to H&S Code  
8 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to  
9 the LISTED CHEMICALS from the PRODUCTS, in an amount in excess of \$15 million.

10 Wherefore, PLAINTIFF prays judgment against DEFENDANT, as set forth hereafter.

11 **THE NEED FOR INJUNCTIVE RELIEF**

12 35. PLAINTIFF realleges and incorporates by this reference Paragraphs 1 through  
13 34, as if set forth below.

14 36. By committing the acts alleged in this Complaint, DEFENDANT has caused  
15 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence  
16 of equitable relief, DEFENDANT will continue to create a substantial risk of irreparable injury  
17 by continuing to cause consumers to be involuntarily and unwittingly exposed to the LISTED  
18 CHEMICALS through the use and/or handling of the PRODUCTS.

19 **PRAYER FOR RELIEF**

20 Wherefore, PLAINTIFF accordingly prays for the following relief:

21 A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),  
22 enjoining DEFENDANT, its agents, employees, assigns and all persons acting in concert or  
23 participating with DEFENDANT, from distributing or selling the PRODUCTS in California  
24 without first providing a clear and reasonable warning, within the meaning of Proposition 65,  
25 that the users and/or handlers of the PRODUCTS are exposed to the LISTED CHEMICALS.

26 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling  
DEFENDANT to identify and locate each individual who has purchased the PRODUCTS since  
December 13, 2010, and to provide a warning to such person that the use of the PRODUCTS

1 will expose the user to chemicals known to cause cancer, birth defects, and other reproductive  
2 harm.

3 C. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),  
4 against DEFENDANT in the amount of \$2,500 per day for each violation of Proposition 65, in  
5 an amount in excess of \$15 million;

6 D. an award to PLAINTIFF of its reasonable attorney's fees and costs of suit  
7 pursuant to California Code of Civil Procedure §1021.5, as PLAINTIFF shall specify in further  
8 application to the Court; and,

9 E. such other and further relief as may be just and proper.

10  
11 DATED: \_\_\_\_\_

LOZEAU | DRURY LLP

12  
13 \_\_\_\_\_  
14 Michael R. Lozeau  
15 Attorneys for Plaintiff  
16 Environmental Research Center  
17  
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