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12 THORNE RESEARCH, INC.

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

15 ENVIRONMENTAL RESEARCH  
16 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. Artecine
- 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-MagCitrates (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 or a daily dose of cadmium of more than 4.1 micrograms per day when the  
14 maximum daily recommended serving(s) is(are) taken as directed on the Covered Product's  
15 label, unless it meets the warning requirements under Section 3.2, below. A warning shall not  
16 be required if THORNE elects to reformulate a Covered Product resulting in a Reformulated  
17 Covered Product as defined in Section 3.3, below.

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

22          **3.2    Clear and Reasonable Warnings**

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

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

27           THORNE shall use the phrase "cancer and" in the warning only if the maximum daily  
28 recommended serving on the label contains more than fifteen (15) micrograms of lead as

1 determined pursuant to the quality control methodology set forth in Section 3.4. The phrase “a  
2 chemical” shall be utilized for Covered Products that THORNE has knowledge contain one  
3 Proposition 65 chemical above the Safe Harbor Level (as identified by the Office of Health  
4 Hazard Assessment’s (“OEHHA”)’s publication titled Proposition 65 No Significant Risk Levels  
5 (NSRLs) for Carcinogens and Maximum Allowable Dose Level for Chemicals Causing  
6 Reproductive Toxicity”), while the word “chemicals” shall be utilized for Covered Products that  
7 THORNE has knowledge contain more than one Proposition 65 chemical above the Safe Harbor  
8 Level.

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

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

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

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

- 24 a. JJ Virgin and Associates Inc. The Virgin Diet Chocolate All-In-One  
25 Shake
- 26 b. JJ Virgin and Associates Inc. The Virgin Diet Vanilla All-In-One Shake
- 27 c. JJ Virgin and Associates Inc. The Virgin Diet All-In-One Shake Chai

1 d. Thorne Research Inc. Thorne Performance Prevail Vegan Protein  
2 Chocolate

3 e. Thorne Research Inc. Thorne Performance Rebound

4 f. Thorne Research Inc. IM-Encap

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

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

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

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

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

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

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

15 g. MediClear (for lead)

16 h. MediBolic (for lead)

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

21 a. Thorne Research Inc. Uristatin

22 b. Thorne Research Inc. Artecina

23 c. Thorne Research Inc. Bio-PMT

24 d. Thorne Research Inc. Pepti-Guard

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

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

27 g. MediPro Vegan Chai

28 h. Basic Nutrients V

- 1 i. Basic Nutrients IV
- 2 j. Basic Detox Nutrients
- 3 k. Cal-MagCitrate (Effervescent Powder)
- 4 l. Phytogen
- 5 m. Meta-Fem
- 6 n. Nutri-Fem (240's)
- 7 o. Extra Nutrients

### 8 **3.3 Reformulated Covered Products; Calculation of Lead Levels**

9 A Reformulated Covered Product is one for which the maximum recommended daily  
10 serving on the label contains no more than 0.5 micrograms of lead per day and no more than  
11 4.1 micrograms of cadmium per day as determined by the testing and quality control  
12 methodology described in Section 3.4, below. As used in this Consent Judgment, "no more  
13 than 0.5 micrograms of lead per day and no more than 4.1 micrograms of cadmium per day"  
14 means that the samples of the testing performed by THORNE under Section 3.4 yield a daily  
15 exposure of no more than 0.5 micrograms of lead and no more than 4.1 micrograms of  
16 cadmium (with daily exposure calculated pursuant to Section 3.4 of this Consent Judgment).  
17 For a Covered Product that causes exposure in excess of 0.5 micrograms of lead per day and in  
18 excess of 4.1 micrograms of cadmium even after reformulation, THORNE shall provide the  
19 warning set forth in Section 3.2. For purposes of determining which warning, if any, is  
20 required pursuant to Section 3.2, the second highest lead and/or cadmium detection result of the  
21 five (5) randomly selected samples of the Covered Product will be controlling.

### 22 **3.4 Testing and Quality Control Methodology**

23 **3.4.1** For purposes of this Consent Judgment, a Covered Product's daily lead  
24 exposure level shall be measured in micrograms, and shall be calculated using the following  
25 formula: micrograms of lead per gram of product, multiplied by grams of product per serving  
26 of the product (using the largest serving size appearing on the product label), multiplied by  
27 servings of the product per day (using the largest number of servings in the suggested use  
28 appearing on the product label), which equals micrograms of lead exposure per day, excluding



1 the amounts that, for purposes of this Consent Judgment only, are deemed to have naturally  
2 occurring lead in the ingredients listed in the table below in the amounts contained in the table.

3 For purposes of this Consent Judgment, a Covered Product's daily cadmium  
4 exposure level shall be measured in micrograms, and shall be calculated using the following  
5 formula: micrograms of cadmium per gram of product, multiplied by grams of product per  
6 serving of the product (using the largest serving size appearing on the product label), multiplied  
7 by servings of the product per day (using the largest number of servings in the suggested use  
8 appearing on the product label), which equals micrograms of cadmium exposure per day.

9 If at any time after the Effective Date, ERC tests a Covered Product and the test  
10 results indicate that the daily exposure level is greater than 0.5 micrograms per gram for lead,  
11 then THORNE agrees to confidentially supply ERC with a list of ingredients of that particular  
12 Covered Product so that ERC may be able to calculate the daily exposure of lead based on the  
13 allowances contained in the table below. If at any time THORNE refuses to provide said list of  
14 ingredients to ERC following a test result of greater than 0.5 micrograms per gram for lead,  
15 then THORNE shall not receive the 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

1           3.4.2 All testing pursuant to this Consent Judgment shall be performed using a  
2 laboratory method that complies with the performance and quality control factors appropriate  
3 for the method used, including limit of detection, qualification, accuracy, and precision that  
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)  
5 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
6 method subsequently agreed on in writing by the Parties.

7           3.4.3 All testing pursuant to this Consent Judgment shall be performed by an  
8 independent third-party laboratory certified by the California Environmental Laboratory  
9 Accreditation Program, an independent third-party laboratory that is registered with the United  
10 States Food & Drug Administration, or by THORNE'S in-house laboratory that meets the  
11 qualifications required by Section 3.4.2. Nothing in this Consent Judgment shall limit  
12 THORNE's ability to conduct, or require that others conduct, additional testing of the Covered  
13 Products, including the raw materials used in their manufacture.

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

1           **3.4.5** Beginning on the Effective Date and continuing for a period of five (5)  
2 years thereafter, THORNE shall send copies of all laboratory reports with results of testing for  
3 lead and cadmium content under Section 3.4.4 for Covered Products in the form intended for  
4 sale to the end user to be distributed into California directly to ERC within ten (10) working  
5 days after reporting of that testing. These laboratory reports shall be deemed and treated by  
6 ERC as confidential information under the terms of the confidentiality agreement entered into  
7 by the Parties. THORNE shall retain all such laboratory reports for a period of five (5) years  
8 from the date of each test.

9           **4. SETTLEMENT PAYMENT**

10           **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
11 penalties, attorney's fees, and costs, THORNE shall make a total payment of \$250,000.00 (the  
12 "Total Settlement Amount") to ERC according to the following schedule:

- 13           a. \$85,000 within 5 days of the Effective Date.
- 14           b. \$45,000 within 35 days of the Effective Date.
- 15           c. \$45,000 within 60 days of the Effective Date.
- 16           d. \$45,000 within 90 days of the Effective Date.
- 17           e. \$30,000 within 120 days of the Effective Date.

18 THORNE shall make these payments by wire transfer to ERC's escrow account, for which  
19 ERC will give THORNE the necessary account information. Said payments shall be for the  
20 following:

21           **4.2** As a portion of the Total Settlement Amount, \$93,420.00 shall be considered a  
22 civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit  
23 75% (70,065.00) of the civil penalty to the OEHHA for deposit in the Safe Drinking Water and  
24 Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c).  
25 ERC will retain the remaining 25% (23,355.00) of the civil penalty.

26           **4.3** As a portion of the Total Settlement Amount, \$9,036.89 shall be distributed to  
27 ERC as reimbursement for reasonable costs incurred bringing this action; and \$70,471.75 shall  
28 be distributed to ERC in lieu of further civil penalties, for the day-to-day business activities

1 such as (1) continued enforcement of Proposition 65, which includes work, analyzing,  
2 researching, and testing consumer products that may contain Proposition 65 chemicals,  
3 focusing on the same or similar types of ingestible products that are the subject matter of the  
4 current action; (2) the continued monitoring of past consent judgments and settlements to  
5 ensure companies are in compliance with Proposition 65; and (3) giving a donation of  
6 \$3,523.00 to As You Sow to address reducing toxic chemical exposures in California.

7       4.4     As a portion of the Total Settlement Amount, \$45,462.46 shall be distributed to  
8 Lozeau | Drury LLP as reimbursement of ERC's attorney's fees and \$31,608.90 shall be  
9 distributed to ERC as reimbursement for its in-house legal fees.

## 10     **5.    MODIFICATION OF CONSENT JUDGMENT**

11       5.1     This Consent Judgment may be modified only (i) by written stipulation of the  
12 Parties or pursuant to Section 5.4, below, and (ii) upon entry by the Court of a modified  
13 Consent Judgment.

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

26       5.3     In the event that THORNE initiates or otherwise requests a modification under  
27 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
28 Consent Judgment, then THORNE shall reimburse ERC its costs and reasonable attorney's fees

1 for the time spent in the meet-and-confer process and filing and arguing the motion or  
2 application.

3       **5.4** In the event that the meet-and-confer process does not lead to a joint motion or  
4 application in support of a modification of the Consent Judgment, then either Party may seek  
5 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and  
6 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
7 means a party who is successful in obtaining relief more favorable to it than the relief that the  
8 other party was amenable to providing during the Parties' good faith attempt to resolve the  
9 dispute that is the subject of the modification.

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

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

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

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

25       **7. APPLICATION OF CONSENT JUDGMENT**

26       This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their  
27 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
28 divisions, affiliates, franchisees, licensees, customers (excluding private labelers except for JJ

1 Virgin), distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent  
2 Judgment shall have no application to Covered Products that are distributed or sold exclusively  
3 outside the State of California and that are not used by California consumers.

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

5 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
6 behalf of itself and in the public interest, and THORNE, of any alleged violation of Proposition  
7 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to  
8 lead and/or cadmium from the handling, use, or consumption of the Covered Products as set  
9 forth in the Notices and Complaint and fully resolves all claims that have been or could have  
10 been asserted in this action up to and including the Effective Date for failure to provide  
11 Proposition 65 warnings for lead and/or cadmium in the Covered Products as set forth in the  
12 Notices and Complaint. ERC, on behalf of itself and in the public interest, hereby discharges  
13 THORNE and its respective officers, directors, shareholders, employees, agents, parent  
14 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not  
15 including private label customers of THORNE, except JJ Virgin) distributors, wholesalers,  
16 retailers, and all other upstream and downstream entities in the distribution chain of any  
17 Covered Product, and the predecessors, successors, and assigns of any of them (collectively,  
18 "Released Parties"), from any and all claims, actions, causes of action, suits, demands,  
19 liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been  
20 asserted, as to any alleged violation of Proposition 65 arising from the failure to provide  
21 Proposition 65 warnings on the Covered Products regarding lead or cadmium as set forth in the  
22 Notices and Complaint.

23 **8.2** The Parties further waive and release any and all claims they may have against  
24 each other for all actions or statements made or undertaken in the course of seeking or opposing  
25 enforcement of Proposition 65 in connection with the Notices or the Complaint up through  
26 and including the Effective Date, provided, however, that nothing in this Section 8 shall affect  
27 or limit any Party's right to seek to enforce the terms of this Consent Judgment.

28 **8.3** It is possible that other claims not known to the Parties arising out of the facts

1 alleged in the Notices or the Complaint and relating to the Covered Products will develop or be  
2 discovered. The Parties acknowledge that this Consent Judgment is expressly intended to cover  
3 and include all such claims up through the Effective Date, including all rights of action  
4 therefore. The Parties acknowledge that the claims released in Sections 8.1 and 8.2, above,  
5 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to  
6 any such unknown claims. California Civil Code section 1542 reads as follows:

7  
8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
9 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
10 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
11 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
12 OR HER SETTLEMENT WITH THE DEBTOR.

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

13 8.4 Compliance with the terms of this Consent Judgment shall be deemed to  
14 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures  
15 to lead and/or cadmium in the Covered Products as set forth in the Notices and the Complaint.

16 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or  
17 environmental exposures arising under Proposition 65, nor shall it apply to any of THORNE's  
18 products other than the Covered Products.

## 19 9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

## 22 10. GOVERNING LAW

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

## 25 11. PROVISION OF NOTICE

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

1 be sent.

2 **FOR ENVIRONMENTAL RESEARCH CENTER:**

3 Chris Heptinstall, Executive Director  
4 Environmental Research Center  
5 3111 Camino Del Rio North, Suite 400  
6 San Diego, CA 92108  
7 Ph: 619-500-3090  
8 Fx: 706-858-0326  
9 email: chris\_erc501c3@yahoo.com

10 With a copy to:

11 Michael R. Lozeau (CBN 142893)  
12 Richard T. Drury (CBN 163559)  
13 LOZEAU | DRURY LLP  
14 410 12th Street, Suite 250  
15 Oakland, CA 94607  
16 Ph: 510-836-4200  
17 Fax: 510-836-4205  
18 Email: michael@lozeaudrury.com  
19 Email: richard@lozeaudrury.com

20 **FOR THORNE RESEARCH, INC.**

21 Kim Randall Pearson  
22 General Counsel  
23 Thorne Research, Inc.  
24 25820 Highway 2 West  
25 P.O. Box 25  
26 Dover, ID 83825

27 With a copy to:

28 Jeffrey D. Polsky (SBN 120975)  
FOX ROTHSCHILD LLP  
345 California Street, Suite 2200  
San Francisco, California 94104  
Telephone: 415-364-5540  
Facsimile: 415-391-4436  
jpolsky@foxrothschild.com

**12. COURT APPROVAL**

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



1           **12.2** Following court approval of this Consent Judgment, ERC shall comply with  
2 California Health and Safety Code section 25249.7(f) and with Title II of the California Code  
3 of Regulations, Section 3003.

4           **13. EXECUTION AND COUNTERPARTS**

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

8           **14. DRAFTING**

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

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

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

24           **16. ENTIRE AGREEMENT, AUTHORIZATION**

25           **16.1** This Consent Judgment contains the sole and entire agreement and  
26 understanding of the Parties with respect to the entire subject matter herein, and any and all  
27 prior discussions, negotiations, commitments, and understandings related hereto. No  
28 representations, oral or otherwise, express or implied, other than those contained herein have

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
2 herein, shall be deemed to exist or to bind any Party.

3 16.2 Each signatory to this Consent Judgment certifies that he is fully authorized by  
4 the Party he represents to stipulate to this Consent Judgment. Except as explicitly provided  
5 herein, each Party shall bear its own fees and costs.

6 17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF  
7 CONSENT JUDGMENT

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

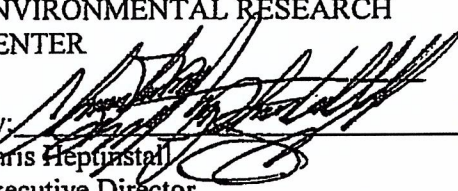
11 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
12 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has  
13 been diligently prosecuted, and that the public interest is served by such settlement; and

14 (2) Make the findings pursuant to California Health and Safety Code section  
15 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

16  
17 IT IS SO STIPULATED:

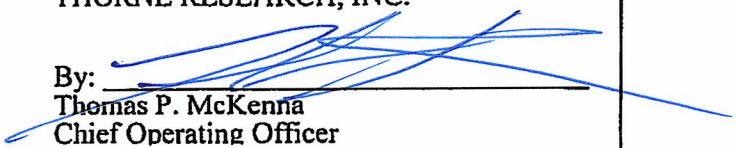
18  
19 Dated: 1/16/, 2015

ENVIRONMENTAL RESEARCH  
CENTER

20 By:   
21 Chris Heptinstall  
Executive Director

22  
23 Dated: 1/21, 2015

THORNE RESEARCH, INC.

24 By:   
25 Thomas P. McKenna  
Chief Operating Officer

1 APPROVED AS TO FORM:

2 Dated: Jan 21, 2015

LOZEAU | DRURY LLP

3 By: [Signature]  
4 Michael R. Lozeau  
5 Richard T. Drury  
6 Attorneys for Environmental Research  
7 Center

8 Dated: January 20, 2015

9 FOX ROTHSCHILD LLP  
10 By: [Signature]  
11 Jeffrey D. Polsky  
12 Attorneys for Thorne Research, Inc.

13 JUDGMENT

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

19 Dated: \_\_\_\_\_, 2015

20 \_\_\_\_\_  
21 Judge of the Superior Court