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8 ENVIRONMENTAL RESEARCH CENTER

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16 Attorney for Defendants
17 TRUESTAR HEALTH INC., TRUESTAR
18 HEALTH (U.S.) HOLDINGS INC.

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

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

24 Plaintiff,

25 v.

26 TRUESTAR HEALTH INC., TRUESTAR
27 HEALTH (U.S.) HOLDINGS INC., and
28 DOES 1-25,

Defendants.

CASE NO. RG14736271

STIPULATED CONSENT JUDGMENT;
[PROPOSED] ORDER

Health & Safety Code § 25249.5 *et seq.*

ASSIGNED FOR ALL PURPOSES TO:

Judge: Robert B. Freedman

Dept.: 20

Reservation No:

Date:

Time:

Action Filed: August 11, 2014

Trial Date: None set

1. INTRODUCTION

1.1 On August 11, 2014, Plaintiff Environmental Research Center (“ERC”), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint for Injunctive Relief, Civil Penalties and Other Relief (the “Complaint”) pursuant

1 to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition
2 65”), against TRUESTAR HEALTH INC., TRUESTAR HEALTH (U.S.) HOLDINGS INC.
3 (collectively “TRUESTAR”), and DOES 1-25. For the purposes of this Consent Judgment,
4 ERC and TRUESTAR shall be referred to collectively as “Parties” or individually as “Party.
5 Both Parties have stipulated and consented to entry of this Consent Judgment prior to trial. In
6 this action, ERC alleges that a number of products manufactured, distributed or sold by
7 TRUESTAR contain lead, a chemical listed under Proposition 65 as a carcinogen and
8 reproductive toxin, and expose consumers to this chemical at a level(s) requiring a Proposition
9 65 warning. These products (referred to hereinafter individually as a “Covered Product” or
10 collectively as “Covered Products”) are:

- 11 1. Truestar Health (U.S.) Holdings Inc. TrueTHERMO
- 12 2. Truestar Health (U.S.) Holdings Inc. TrueENERGY
- 13 3. Truestar Health (U.S.) Holdings Inc. TrueDETOX
- 14 4. Truestar Health (U.S.) Holdings Inc. TruePOWER
- 15 5. Truestar Health (U.S.) Holdings Inc. TrueREPAIR

16 **1.2** ERC is a California non-profit corporation dedicated to, among other causes,
17 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
18 and toxic chemicals, facilitating a safe environment for consumers and employees, and
19 encouraging corporate responsibility.

20 **1.3** For purposes of this Consent Judgment, the Parties agree that TRUESTAR is a
21 business entity that has employed ten or more persons at all times relevant to this action, and
22 qualifies as a “person in the course of business” within the meaning of Proposition 65.
23 TRUESTAR manufactured, distributed and sold the Covered Products.

24 **1.4** The Complaint is based on allegations contained in ERC’s Notice of Violation
25 dated May 23, 2014, that was served on the California Attorney General, other public
26 enforcers, and TRUESTAR (“Notice”). A true and correct copy of the Notice is attached as
27 Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the
28 Notice was mailed and uploaded to the Attorney General’s website, and no designated

1 governmental entity has filed a complaint or otherwise diligently prosecuted a matter against
2 TRUESTAR with regard to the Covered Products or the alleged violations.

3 **1.5** ERC's Notice and Complaint allege that use of the Covered Products exposes
4 persons in California to lead, a known carcinogen and reproductive toxicant, without first
5 providing clear and reasonable warnings in violation of California Health and Safety Code
6 section 25249.6.

7 **1.6** The Parties have entered into this Consent Judgment in order to settle,
8 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
9 Nothing in this Consent Judgment shall constitute or be construed as an admission or denial by
10 any of the Parties, or by any of their respective officers, directors, shareholders, employees,
11 agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers,
12 suppliers, distributors, wholesalers, or retailers. Except as expressly set forth herein, nothing in
13 this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or
14 defense the Parties may have in any other or future legal proceeding unrelated to these
15 proceedings.

16 **1.7** The "Effective Date" of this Consent Judgment is the date on which it is entered
17 as a Judgment by this Court.

18 **2. JURISDICTION AND VENUE**

19 For purposes of this Consent Judgment and any further court action that may become
20 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
21 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
22 over TRUESTAR as to the acts alleged in the Complaint and requirements stated in this Consent
23 Judgment, that venue is proper in Alameda County, and that this Court has jurisdiction to enter
24 this Consent Judgment as a full and final resolution of all claims up through and including the
25 Effective Date which were or could have been asserted in this action based on the facts alleged in
26 the Notice and Complaint.

27 **3. INJUNCTIVE RELIEF AND WARNINGS**

28 **3.1** TRUESTAR represents that both defendants are currently out of the business of

1 selling dietary supplements. TRUESTAR acknowledges that it has voluntarily made the
2 decision not to produce, sell or offer to sell the Covered Products in California on and after the
3 Effective Date. Should TRUESTAR ever decide to produce, sell or offer to sell the Covered
4 Products in California, TRUESTAR will comply with applicable Proposition 65 requirements and
5 shall be enjoined from manufacturing for sale in the State of California, “Distributing into the
6 State of California”, or directly selling in the State of California, any product which exposes a
7 person to a “Daily Exposure Level” of more than 0.5 micrograms per day when the maximum
8 suggested dose is taken as directed on the Covered Product’s label, unless it meets the warning
9 requirements under Section 3.2.

10 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
11 of California” shall mean to directly ship or cause the direct shipment of a Covered Product
12 into California for sale in California or to sell a Covered Product to a distributor that
13 TRUESTAR knows or has reason to know will sell the Covered Product in California.

14 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
15 Level” shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of lead per gram of product, multiplied by grams of product per serving of the
17 product (using the largest serving size appearing on the product label), multiplied by servings
18 of the product per day (using the largest number of servings in a recommended dosage
19 appearing on the product label), which equals micrograms of lead exposure per day.

20 **3.2 Clear and Reasonable Warnings**

21 If TRUESTAR is required to provide a warning pursuant to Section 3.1, the following
22 “warning” must be utilized:

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

25 TRUESTAR shall use the phrase “cancer and” in the warning only if the maximum daily dose
26 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
27 the Daily Lead Exposure Level methodology set forth in Section 3.1.2.

28 TRUESTAR shall provide the warning on the following: 1) on TRUESTAR’s checkout

1 page on its website for California consumers identifying each Covered Product. A second
2 warning shall appear prior to completing checkout on the website when a California delivery
3 address is indicated. The purchaser shall be required to accept the warning prior to completing
4 checkout for any of the Covered Products being sold; and 2) on the label or container of
5 TRUESTAR's product packaging for each Covered Product distributed into the State of California
6 as defined in Section 3.1.1.

7 The warning shall be at least the same size as the largest of any other health or safety
8 warnings also appearing on its website or on the label or container of TRUESTAR's product
9 packaging and the word "WARNING" shall be in all capital letters and in bold print. No other
10 statements about Proposition 65 or lead may accompany the warning.

11 TRUESTAR must display the above warning(s) with such conspicuousness, as compared
12 with other words, statements, or design of the label or container, as applicable, to render the
13 warning likely to be read and understood by an ordinary individual under customary conditions of
14 purchase or use of the product.

15 **4. SETTLEMENT PAYMENT**

16 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
17 penalties, attorney's fees, and costs, TRUESTAR shall make two (2) evenly divided payments
18 of \$32,500.00 each, for a total of \$65,000.00 ("Total Settlement Amount") to ERC with the
19 first payment due and owing fifteen (15) days from the Notice of Entry of Judgment and the
20 second payment due and owing thirty (30) days thereafter. TRUESTAR shall make these
21 payments by wire transfer to ERC's escrow account, for which ERC will give TRUESTAR the
22 necessary account information. The Total Settlement Amount shall be apportioned as follows:

23 **4.2** \$17,700.00 shall be considered a civil penalty pursuant to California Health and
24 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$13,275.00) of the civil penalty to the
25 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
26 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
27 Code §25249.12(c). ERC will retain the remaining 25% (\$4,425.00) of the civil penalty.
28

1 **4.3** \$2,337.45 shall be distributed to Environmental Research Center as
2 reimbursement to ERC for reasonable costs incurred in bringing this action; and \$13,287.48
3 shall be distributed to Environmental Research Center in lieu of further civil penalties, for the
4 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
5 includes work, analyzing, researching and testing consumer products that may contain
6 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
7 the subject matter of the current action; (2) the continued monitoring of past consent judgments
8 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
9 donation of \$665.00 to the Environmental Working Group to address reducing toxic chemical
10 exposures in California.

11 **4.4** \$17,279.59 shall be distributed to Aqua Terra Aeris Law Group as
12 reimbursement of ERC’s attorney’s fees, pursuant to Code of Civil Procedure Section 1021.5,
13 while \$14,395.48 shall be distributed to ERC for its in-house legal fees under the same
14 statutory authorization.

15 **5. MODIFICATION OF CONSENT JUDGMENT**

16 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
17 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
18 judgment.

19 **5.2** If TRUESTAR seeks to modify this Consent Judgment under Section 5.1, then
20 TRUESTAR must provide written notice to ERC of its intent (“Notice of Intent”). If ERC
21 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
22 must provide written notice to TRUESTAR within thirty days of receiving the Notice of Intent.
23 If ERC notifies TRUESTAR in a timely manner of ERC’s intent to meet and confer, then the
24 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
25 person or via telephone within thirty (30) days of ERC’s notification of its intent to meet and
26 confer. Within thirty days of such meeting, if ERC disputes the proposed modification, ERC
27 shall provide to TRUESTAR a written basis for its position. The Parties shall continue to meet
28 and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.

1 Should it become necessary, the Parties may agree in writing to different deadlines for the
2 meet-and-confer period.

3 **5.3** In the event that TRUESTAR initiates or otherwise requests a modification
4 under Section 5.1, and the meet and confer process leads to a joint motion or application of the
5 Consent Judgment, TRUESTAR shall reimburse ERC its costs and reasonable attorney’s fees
6 for the time spent in the meet-and-confer process and filing and arguing the motion or
7 application.

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

15 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
16 **JUDGMENT**

17 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
18 this Consent Judgment.

19 **7. APPLICATION OF CONSENT JUDGMENT**

20 This Consent Judgment applies to, is binding upon, and benefits the Parties and their
21 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
22 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
23 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
24 application to Covered Products which are distributed or sold exclusively outside the State of
25 California and which are not used by California consumers, nor shall it have any preclusive effect
26 or be raised or used as *res judicata* to bar, prevent or preclude any future enforcement against any
27 private labelers or entity not directly under the control and management of TRUESTAR.
28

1 TRUESTAR acknowledge that the claims released in Sections 8.1 and 8.2 above may include
2 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
3 unknown claims. California Civil Code section 1542 reads as follows:

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

9 ERC on behalf of itself only, on the one hand, and TRUESTAR, on the other hand,
10 acknowledge and understand the significance and consequences of this specific waiver of
11 California Civil Code Section 1542.

12 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
13 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
14 in the Covered Products as set forth in the Notice and the Complaint.

15 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
16 environmental exposures arising under Proposition 65 nor shall it apply to any of
17 TRUESTAR's products other than the Covered Products.

18 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

21 **10. GOVERNING LAW**

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

24 **11. PROVISION OF NOTICE**

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

28 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

Chris Heptinstall, Executive Director
Environmental Research Center
3111 Camino Del Rio North, Suite 400

1 San Diego, CA 92108
2 Tel: (619) 500-3090
3 Email: chris_erc501c3@yahoo.com

4 With a copy to:

5 MATTHEW C. MACLEAR
6 AQUA TERRA AERIS LAW GROUP
7 7425 Fairmount Ave.
8 El Cerrito, CA 94530
9 Telephone: (415) 568-5200
10 Email: mcm@atalawgroup.com

11 TRUESTAR HEALTH INC.,
12 TRUESTAR HEALTH (U.S.) HOLDINGS INC.

13 C/O Tim Mulcahy
14 Canadian Energy Saving Corporation
15 2 Bloor Street West, Suite 717
16 Toronto, ON M4W 3R1
17 Canada

18 With a copy to:

19 BRUCE NYE
20 ADAMS | NYE | BECHT LLP
21 222 Kearny Street, 7th Floor
22 San Francisco, CA 94108-4521
23 Telephone: (415) 982-8955
24 Facsimile: (415) 982-2042
25 Email: byne@adamsnye.com

26 **12. COURT APPROVAL**

27 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
28 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
Consent Judgment.

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

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

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1 **13. EXECUTION AND COUNTERPARTS**

2 This Consent Judgment may be executed in counterparts, which taken together shall be
3 deemed to constitute one document. A facsimile, portable document format (.pdf) or digital
4 signature shall be construed as valid as the original signature.

5 **14. DRAFTING**

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

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

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

20 **16. ENTIRE AGREEMENT, AUTHORIZATION**

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

27 ///

28 ///

1 16.2 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
3 explicitly provided herein, each Party shall bear its own fees and costs.

4 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
5 **CONSENT JUDGMENT**

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

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

12 (2) Make the findings pursuant to California Health and Safety Code section
13 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

14 **IT IS SO STIPULATED:**

15 Dated: _____, 2015

ENVIRONMENTAL RESEARCH
CENTER

16 By: 
17 Chris Heptinstall, Executive Director

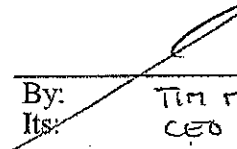
18 Dated: MARCH 23, 2015

TRUESTAR HEALTH INC.

19 By: 
20 Its: TIM MULCAHY
21 CEO

22 Dated: MARCH 23, 2015

TRUESTAR HEALTH (U.S.) HOLDINGS
INC.

23 By: 
24 Its: TIM MULCAHY
25 CEO
26
27
28

1 APPROVED AS TO FORM:

2 Dated: MARCH 19, 2015

AQUA TERRA AERIS LAW GROUP

3 By: [Signature]
4 Matthew C. Maclear
5 Attorney for Plaintiff
6 Environmental Research Center

7 Dated: 5/23, 2015

8 ADAMS | NYE | BECHT LLP
9 By: [Signature]
10 Bruce Nye
11 Attorney for Defendants Truostar
12 Health Inc., Truostar Health
13 (U.S.) Holdings Inc.,

14 **ORDER AND JUDGMENT**

15 Based upon the Parties' Stipulation, requisite findings been made and good cause
16 appearing therefor, this Consent Judgment is approved and Judgment is hereby entered according
17 to its terms.

18 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

19
20 Dated: _____, 2015
21 _____
22 Judge of the Superior Court

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