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

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

18 Plaintiff,

19 v.

20 MAXIMUM HUMAN PERFORMANCE,  
21 LLC, a New Jersey Limited Liability  
22 Company,

23 Defendant.

CASE NO. RG15776150

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 30, 2015

Trial Date: TBD

1     **1. INTRODUCTION**

2           **1.1**         On June 30, 2015, Plaintiff Environmental Research Center, Inc. (“ERC”), a  
3 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by  
4 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the  
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),  
6 against Maximum Human Performance, LLC (“MHP”). Subsequently, on or about May 27,  
7 2016, an Amended Complaint (the “Amended Complaint”) was filed. In this action, ERC  
8 alleges that a number of products manufactured, distributed or sold by MHP contain lead, a  
9 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
10 consumers to this chemical at a level requiring a Proposition 65 warning. These products  
11 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered  
12 Products”) are: (1) Maximum Human Performance LLC MHP Up Your Mass Vanilla; (2)  
13 Maximum Human Performance LLC MHP A-Bomb; (3) Maximum Human Performance LLC  
14 MHP Dark Matter Fruit Punch; (4) Maximum Human Performance LLC MHP Up Your Mass  
15 Fudge Brownie; (5) Maximum Human Performance LLC MHP IsoFast Whey Milkshake  
16 Delicious Chocolate Milkshake; (6) Maximum Human Performance LLC MHP Dark Rage  
17 Grape; (7) Maximum Human Performance LLC MHP Probiotic-SR Triple Chocolate Cookie;  
18 (8) Maximum Human Performance LLC MHP 5D Tropin Orange, (9) Maximum Human  
19 Performance LLC MHP 5D Tropin Fruit Punch; and (10) Maximum Human Performance LLC  
20 MHP Dark Matter Blue Raspberry.

21           **1.2**         ERC and MHP are hereinafter referred to individually as a “Party” or  
22 collectively as the “Parties.”

23           **1.3**         ERC is a California non-profit corporation dedicated to, among other causes,  
24 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
25 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
26 encouraging corporate responsibility.

1           **1.4**     For purposes of this Consent Judgment, the Parties agree that MHP is a business  
2 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a  
3 “person in the course of business” within the meaning of Proposition 65. MHP manufactures,  
4 distributes and sells the Covered Products.

5           **1.5**     The Amended Complaint is based on allegations contained in ERC’s Notices of  
6 Violation dated February 13, 2015 and November 5, 2015, that were served on the California  
7 Attorney General, other public enforcers, and MHP (“Notices”). True and correct copies of the  
8 Notices are attached as Exhibit A and are hereby incorporated by reference. More than 60 days  
9 have passed since the Notices were mailed and uploaded to the Attorney General’s website, and  
10 no designated governmental entity has filed a complaint against MHP with regard to the  
11 Covered Products or the alleged violations.

12           **1.6**     ERC’s Notices and Amended Complaint allege that use of the Covered Products  
13 exposes persons in California to lead without first providing clear and reasonable warnings in  
14 violation of California Health and Safety Code section 25249.6. MHP denies all material  
15 allegations contained in the Notices and Amended Complaint.

16           **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
17 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
18 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
19 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
20 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,  
21 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
22 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
23 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
24 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
25 purpose.

1           **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
2 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
3 other or future legal proceeding unrelated to these proceedings.

4           **1.9**     The Effective Date of this Consent Judgment is the date on which ERC serves  
5 the Notice of Entry of Judgment by this Court on MHP.

6           **2.     JURISDICTION AND VENUE**

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

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

16           **3.1**     Any Covered Products that are manufactured six (6) months after the Effective  
17 Date (the "Compliance Date") that MHP thereafter distributes into the State of California,  
18 offers for sale to a third party for retail sale in California, or directly sells in the State of  
19 California, shall either (1) contain no more than 0.5 micrograms per day of lead per day as  
20 calculated pursuant to Section 3.1.2, excluding allowances pursuant to Section 3.3, and as  
21 validated by the quality control methodology described in Section 3.4; or (2) meet the warning  
22 requirements under Section 3.2.

23           **3.1.1**   As used in this Consent Judgment, the term "Distributing into the State  
24 of California" shall mean to directly ship a Covered Product into California for sale in  
25 California or to sell a Covered Product to a distributor that MHP knows will sell the Covered  
26 Product in California.

1           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
3 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
4 product (using the largest serving size appearing on the product label), multiplied by servings  
5 of the product per day (using the largest number of servings in a recommended dosage  
6 appearing on the product label), which equals micrograms of lead exposure per day.

7           **3.2 Clear and Reasonable Warnings**

8           If MHP<sup>1</sup> is required to provide a warning pursuant to Section 3.1, the following warning  
9 (the “Warning”) must be utilized:

10           “WARNING: This product contains a chemical known to the State of California to cause  
11 [cancer and] birth defects or other reproductive harm.”

12           Or

13           “WARNING: This product contains chemicals known to the State of California to cause  
14 [cancer and] birth defects or other reproductive harm.”

15  
16 MHP shall use the phrase “cancer and” in the Warning only if the maximum daily dose  
17 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
18 the quality control methodology set forth in Section 3.4 or otherwise exceeds any No Significant  
19 Risk Level (“NSRL”) set forth in California Code of Regulations section 25705.

20           MHP shall provide the Warning via at least one of the following methods: (1) the  
21 Warning shall be securely affixed to or printed upon the container or label of each Covered  
22 Product; (2) for Covered Products sold over MHP’s website, the Warning may appear on MHP’s

23 \_\_\_\_\_  
24           <sup>11</sup> As used in Section 3.2 of this Consent Judgment with respect to the Clear and  
25 Reasonable warnings obligations, the term “MHP” shall include MHP’s—past, present, and  
26 future—officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
27 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label  
customers of MHP), distributors, wholesalers, retailers, and all other upstream and downstream  
entities in the distribution chain of any Covered Product, and the predecessors, successors and  
assigns of any of them.

1 checkout page on its website for California consumers purchasing any Covered Product, or  
2 appear prior to completing checkout on MHP's website when a California delivery address is  
3 indicated for any purchase of any Covered Product ("Checkout Page Warning"); (3) the Warning  
4 may appear on MHP's insert in boxes of Covered Products shipped to California ("Shipping  
5 Insert Warning"); (4) the Warning may appear on MHP's packing list in boxes of Covered  
6 Products shipped to California ("Packing List Warning"); or (5) the Warning may appear on an  
7 insert in the individual packaging material (such as a bottle or a carton) containing the Covered  
8 Product itself ("Packaging Material Insert Warning").

9 For a Checkout Page Warning, a Shipping Insert Warning, or a Packing List Warning,  
10 whenever there are different products listed on the checkout page or contained in the boxes of  
11 Covered Products being shipped, MHP shall identify with an asterisk (or some other identifying  
12 method) each product to which the Warning applies and MHP shall not include a Warning that  
13 does not identify (with an asterisk or some other identifying method) the product to which the  
14 Warning applies.

15 The Warning shall be at least the same size as the largest of any other health or safety  
16 warnings also appearing on its website, on the label or container of MHP's product packaging, or  
17 on MHP's inserts and packing lists, and the word "**WARNING**" shall be in all capital letters. No  
18 other statements about Proposition 65 or lead may accompany the warning.

19 MHP must display the above warnings with such conspicuousness, as compared with other  
20 words, statements, or design of the label or container, website, or insert or packing list, as  
21 applicable, to render the warning likely to be read and understood by an ordinary individual under  
22 customary conditions of purchase or use of the product.

23 If MHP provides a Shipping Insert Warning, MHP shall provide one insert Warning for  
24 each Covered Product in a box or one insert warning that lists all of the Covered Products in the  
25 box. This insert Warning will be a minimum of 5 inches x 7 inches. If MHP provides a Packing  
26 List Warning, the packing list shall identify each Covered Product with an asterisk, and the  
27 Warning must be present on the front of the packing list. If MHP provides a Shipping Insert

1 Warning or a Packing List Warning, the Covered Products may be returned by the consumer for a  
2 refund within 30 days of the invoice date if the consumer references the Warning as a reason for  
3 the return. If MHP provides a Shipping Insert Warning, the Warning must be present on only one  
4 side of the insert.

### 5 3.3 Reformulated Covered Products

6 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when  
7 the maximum suggested dose is taken as directed on the Reformulated Covered Product's label,  
8 contains no more than 0.5 micrograms of lead per day as determined by the quality control  
9 methodology described in Section 3.4, excluding amounts of naturally occurring lead in the  
10 ingredients listed in the table below.

11 INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
12 Calcium	0.8 micrograms/gram
13 Ferrous Fumarate	0.4 micrograms/gram
14 Zinc Oxide	8.0 micrograms/gram
15 Magnesium Oxide	0.4 micrograms/gram
16 Magnesium Carbonate	0.332 micrograms/gram
17 Magnesium Hydroxide	0.4 micrograms/gram
18 Zinc Gluconate	0.8 micrograms/gram
19 Potassium Chloride	1.1 micrograms/gram
20 Chocolate	1.0 micrograms/gram

21  
22  
23  
24 If at any time after the Compliance Date, ERC tests a Covered Product and the test results  
25 indicate that the Daily Lead Exposure Level is greater than 0.5 micrograms per day, MHP  
26 agree to confidentially supply to ERC within 30 days a list of ingredients, including the  
27 percentage of each ingredient ("Ingredient List"), of that particular Covered Product so that

1 ERC may be able to calculate the daily exposure based on the allowances contained in the table  
2 above.

3 In the event that a dispute arises with respect to compliance with the terms of this  
4 Consent Judgment as to any contribution from naturally occurring lead levels under the  
5 Section, the Parties shall employ good faith efforts to seek entry of a protective order that limits  
6 public access to and disclosure of the Ingredient List provided. Should a dispute arise, the  
7 Parties shall first meet and confer in an effort to fully resolve any dispute.

### 8 **3.4 Testing and Quality Control Methodology**

9 **3.4.1** MHP shall not “Distribute into California or sell to consumers in  
10 California any Covered Product without complying with the warning requirements specified in  
11 Section 3.2 unless test results from three randomly selected samples of the Covered Product, in  
12 the form intended for sale to the end-user, demonstrate that no warning is required for the  
13 Covered Product.

14 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level”, the highest  
15 lead detection result of the three (3) randomly selected samples of the Covered Products will be  
16 controlling.

17 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
18 laboratory method that complies with the performance and quality control factors appropriate  
19 for the method used, including limit of detection, qualification, accuracy, and precision that  
20 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)  
21 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
22 method subsequently agreed to in writing by the Parties.

23 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
24 independent third party laboratory certified by the California Environmental Laboratory  
25 Accreditation Program or an independent third-party laboratory that is registered with the  
26 United States Food & Drug Administration.

27 **3.4.5** Nothing in this Consent Judgment shall limit MHP’s ability to conduct,



1 or require that others conduct, additional testing of the Covered Products, including the raw  
2 materials used in their manufacture.

3           **3.4.6** MHP shall retain all test results and related documentation for a period  
4 of five years from the date of each test.

5           **3.5 Name Changes.** If MHP changes only the name of a Covered Product, MHP  
6 shall notify ERC in writing of the name change, and the product with a new name will still  
7 qualify as a Covered Product, subject to the Consent Judgment.

8           **4. SETTLEMENT PAYMENT**

9           **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
10 penalties, attorney's fees, and costs, MHP shall make a total payment of \$157,500 ("Total  
11 Settlement Amount") to ERC within 5 days of the Effective Date. MHP shall make this  
12 payment by wire transfer to ERC's escrow account, for which ERC will give MHP the  
13 necessary account information. The Total Settlement Amount shall be apportioned as follows:

14           **4.2** \$63,000.00 shall be considered a civil penalty pursuant to California Health and  
15 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$47,250.00) of the civil penalty to the  
16 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
17 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
18 Code §25249.12(c). ERC will retain the remaining 25% (\$15,750.00) of the civil penalty.

19           **4.3** \$7,027.43 shall be distributed to ERC as reimbursement to ERC for reasonable  
20 costs incurred in bringing this action.

21           **4.4** \$47,622.74 shall be distributed to ERC in lieu of further civil penalties, for the  
22 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
23 includes work, analyzing, researching and testing consumer products that may contain  
24 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
25 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
26 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
27

1 donation of \$2,350.00 to the Natural Resource Defense Council to address reducing toxic  
2 chemical exposures in California.

3       **4.5**     \$19,106.91 shall be distributed to Richard M. Franco as reimbursement of  
4 ERC's attorney's fees, while \$20,742.92 shall be distributed to ERC for its in-house legal fees.

5       **5.     MODIFICATION OF CONSENT JUDGMENT**

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

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

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

25       **5.4**     Where 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

1 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
2 means a party who is successful in obtaining relief more favorable to it than the relief that the  
3 other party was amenable to providing during the Parties' good faith attempt to resolve the  
4 dispute that is the subject of the modification.

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

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

9 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
10 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
11 inform MHP in a reasonably prompt manner of its test results, including information sufficient  
12 to permit MHP to identify the Covered Products at issue. MHP shall, within thirty days  
13 following such notice, provide ERC with testing information, from an independent third-party  
14 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating MHP's  
15 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve  
16 the matter prior to ERC taking any further legal action.

17 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

25 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
26 behalf of itself and in the public interest, and MHP and its respective officers, directors,  
27 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,

1 franchisees, licensees, customers (not including private label customers of MHP), distributors,  
2 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain  
3 of any Covered Product, and the predecessors, successors and assigns of any of them  
4 (collectively, "Released Parties"). ERC hereby fully releases and discharges the Released  
5 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
6 penalties, fees, costs and expenses asserted, or that could have been asserted from the handling,  
7 use, or consumption of the Covered Products, as to any alleged violation of Proposition 65 or  
8 its implementing regulations arising from the failure to provide Proposition 65 warnings on the  
9 Covered Products regarding lead up to and including the Effective Date.

10 **8.2** ERC on its own behalf only, on one hand, and MHP on its own behalf only, on  
11 the other, further waive and release any and all claims they may have against each other for all  
12 actions or statements made or undertaken in the course of seeking or opposing enforcement of  
13 Proposition 65 in connection with the Notices or Amended Complaint up through and including  
14 the Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
15 right to seek to enforce the terms of this Consent Judgment.

16 **8.3** It is possible that other claims not known to the Parties arising out of the facts  
17 alleged in the Notices or the Amended Complaint and relating to the Covered Products will  
18 develop or be discovered. ERC on behalf of itself only, on one hand, and MHP, on the other  
19 hand, acknowledge that this Consent Judgment is expressly intended to cover and include all  
20 such claims up through the Effective Date, including all rights of action therefore. ERC and  
21 MHP acknowledge that the claims released in Sections 8.1 and 8.2 above may include  
22 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
23 unknown claims. California Civil Code section 1542 reads as follows:

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

1 ERC on behalf of itself only, on the one hand, and MHP, on the other hand, acknowledge and  
2 understand the significance and consequences of this specific waiver of California Civil Code  
3 section 1542.

4 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
5 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
6 in the Covered Products as set forth in the Notices and the Amended Complaint.

7 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
8 environmental exposures arising under Proposition 65, nor shall it apply to any of MHP's  
9 products other than the Covered Products.

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13 **10. GOVERNING LAW**

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

16 **11. PROVISION OF NOTICE**

17 All notices required to be given to either Party to this Consent Judgment by the other shall  
18 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via  
19 email may also be sent.

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

21 Chris Heptinstall, Executive Director, Environmental Research Center  
22 3111 Camino Del Rio North, Suite 400  
23 San Diego, CA 92108  
24 Tel: (619) 500-3090  
25 Email: chris\_erc501c3@yahoo.com

26 With a copy to:

27 Richard M. Franco  
28 Law Office of Richard M. Franco  
29 6500 Estates Drive  
30 Oakland, CA 94611  
31 Telephone: (510) 684-1022  
32 Email: rick@rfrancolaw.com

1  
2 **MAXIMUM HUMAN PERFORMANCE, LLC**

3 Daniel B. Chammas, Esq.  
4 VENABLE LLP  
5 2049 Century Park East, Suite 2100  
6 Los Angeles, CA 90067

7 With a copy to:  
8 Anthony J. Cortez  
9 Greg Sperla  
10 Greenberg Traurig, LLP  
11 1201 K Street, Suite 1100  
12 Sacramento, CA 94814  
13 Telephone: (916) 442-1111  
14 Email: cortezan@gtlaw.com  
15 sperlag@gtlaw.com

16  
17 **12. COURT APPROVAL**

18 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
19 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
20 Consent Judgment.

21 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
22 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
23 prior to the hearing on the motion.

24 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
25 void and have no force or effect.

26 **13. EXECUTION AND COUNTERPARTS**

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

30 **14. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for each

1 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
2 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
3 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
4 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
5 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
6 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
7 equally in the preparation and drafting of this Consent Judgment.

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

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

18 **16. ENTIRE AGREEMENT, AUTHORIZATION**

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

25 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
26 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
27 explicitly provided 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 Amended Complaint, that the  
8 matter has 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.

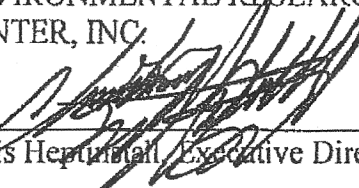
11 ///

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13 **IT IS SO STIPULATED:**

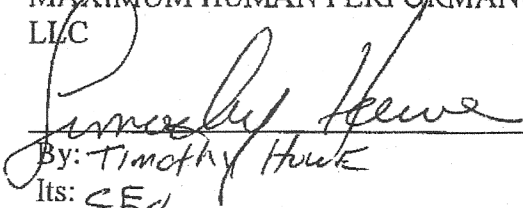
14 Dated: 5/27/, 2016

ENVIRONMENTAL RESEARCH  
CENTER, INC.

15 By:   
Chris Hepburn, Executive Director

16 Dated: 6/1/, 2016

17 MAXIMUM HUMAN PERFORMANCE,  
L/C

18   
19 By: Timothy Hume  
20 Its: CEO

21 **APPROVED AS TO FORM:**  
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Dated: May 27, 2016

LAW OFFICE OF RICHARD M. FRANCO

By: [Signature]  
Richard M. Franco  
Attorney for Plaintiff Environmental  
Research Center, Inc.

Dated: May 27, 2016

GREENBERG TRAURIG, LLLP  
By: [Signature]  
~~James R. Prochnow~~ Anthony J. Cortez  
Attorneys for Defendant Maximum  
Human Performance, LLC

**ORDER AND JUDGMENT**

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2016

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