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9 ENVIRONMENTAL RESEARCH CENTER, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 ENVIRONMENTAL RESEARCH
13 CENTER, INC. a California non-profit
14 corporation,

15 Plaintiff,

16 v.

17 REDD REMEDIES, INC., an Illinois
18 Corporation, and DOES 1-25,

19 Defendants.

CASE NO.

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed:

Trial Date: None set

20
21 **1. INTRODUCTION**

22 **1.1** On [date], Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit
23 corporation, as a private enforcer, and in the public interest, initiated this action by filing a
24 Complaint for Injunctive, Civil Penalties, and Other Relief (the “Complaint”) pursuant to the
25 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
26 against Redd Remedies, Inc. (“Redd Remedies”) and Does 1-25. In this action, ERC alleges
27 that a number of products manufactured, distributed or sold by Redd Remedies contain lead, a
28 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose

1 consumers to this chemical at a level requiring a Proposition 65 warning. These products
2 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
3 Products”) are: Redd Remedies SinuZyme and Redd Remedies Brain Awakening.

4 **1.2** ERC and Redd Remedies are hereinafter referred to individually as a “Party” or
5 collectively as the “Parties.”

6 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,
7 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
8 and toxic chemicals, facilitating a safe environment for consumers and employees, and
9 encouraging corporate responsibility.

10 **1.4** ERC alleges that Redd Remedies is a business entity that has employed ten or
11 more persons at all times relevant to this action, and qualifies as a “person in the course of
12 business” within the meaning of Proposition 65. Redd Remedies disputes this contention. Redd
13 Remedies distributes and sells the Covered Products.

14 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
15 dated June 5, 2015 that was served on the California Attorney General, other public enforcers,
16 and Redd Remedies (“Notice”). A true and correct copy of the Notice is attached as Exhibit A
17 and is hereby incorporated by reference. More than 60 days have passed since the Notice was
18 mailed and uploaded to the Attorney General’s website, and no designated governmental entity
19 has filed a complaint against Redd Remedies with regard to the Covered Products or the alleged
20 violations.

21 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
22 persons in California to lead without first providing clear and reasonable warnings in violation
23 of California Health and Safety Code section 25249.6. Redd Remedies denies all material
24 allegations contained in the Notice and Complaint.

25 **1.7** The Parties have entered into this Consent Judgment in order to settle,
26 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
27 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
28 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,

1 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
2 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
3 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
4 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
5 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
6 purpose.

7 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
8 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
9 other or future legal proceeding unrelated to these proceedings.

10 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
11 a Judgment by this Court.

12 **2. JURISDICTION AND VENUE**

13 For purposes of this Consent Judgment and any further court action that may become
14 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
15 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
16 over Redd Remedies as to the acts alleged in the Complaint, that venue is proper in Alameda
17 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
18 resolution of all claims up through and including the Effective Date which were or could have
19 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

21 **3.1** Beginning on the Effective Date, at all times that Redd Remedies qualifies as a
22 “person in the course of business” within the meaning of Proposition 65, Redd Remedies shall
23 be permanently enjoined from manufacturing for sale in the State of California, “Distributing
24 into the State of California”, or directly selling in the State of California, any Covered Product
25 which exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms per
26 day of lead when the maximum suggested dose is taken as directed on the Covered Product’s
27 label, unless it meets the warning requirements under Section 3.2.

1 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
2 of California” shall mean to directly ship a Covered Product into California for sale in
3 California or to sell a Covered Product to a distributor that Redd Remedies knows will sell the
4 Covered Product in California.

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

11 **3.2 Clear and Reasonable Warnings**

12 If Redd Remedies is required to provide a warning pursuant to Section 3.1, the following
13 warning must be utilized:

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

16 Redd Remedies 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.

19 The warning shall be securely affixed to or printed upon the container or label of each
20 Covered Product. In addition, for Covered Products sold over Redd Remedies’ website, the
21 warning shall appear on Redd Remedies’ checkout page prior to completing checkout on Redd
22 Remedies’ website when a California delivery address is indicated for any purchase of any
23 Covered Product.

24 The warning shall be at least the same size as the largest of any other health or safety
25 warnings also appearing on its website or on the label or container of Redd Remedies’ product
26 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No other
27 statements about Proposition 65 or lead may accompany the warning.

28 Redd Remedies must display the above warnings with such conspicuousness, as compared

1 with other words, statements, or design of the label or container, as applicable, to render the
2 warning likely to be read and understood by an ordinary individual under customary conditions of
3 purchase or use of the product.

4 **3.3 Reformulated Covered Products**

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

9 **3.4 Testing and Quality Control Methodology**

10 **3.4.1** Beginning within one year of the Effective Date, at all times that Redd
11 Remedies qualifies as a "person in the course of business" within the meaning of Proposition 65,
12 Redd Remedies shall arrange for lead testing of the Covered Products at least once a year for a
13 minimum of three consecutive years by arranging for testing of five randomly selected samples
14 of each of the Covered Products, in the form intended for sale to the end-user, which Redd
15 Remedies intends to sell or is manufacturing for sale in California, directly selling to a
16 consumer in California or "Distributing into California." The testing requirement does not
17 apply to any of the Covered Products for which Redd Remedies has provided the warning
18 specified in Section 3.2. If tests conducted pursuant to this Section demonstrate that no warning
19 is required for a Covered Product during each of three consecutive years, then the testing
20 requirements of this Section will no longer be required as to that Covered Product. However, if
21 during or after the three-year testing period, Redd Remedies changes ingredient suppliers for
22 any of the Covered Products and/or reformulates any of the Covered Products, Redd Remedies
23 shall test that Covered Product annually for at least three (3) consecutive years after such
24 change is made.

25 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level", the highest
26 lead detection result of the five (5) randomly selected samples of the Covered Products will be
27 controlling.
28

1 **3.4.3** 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 to in writing by the Parties.

7 **3.4.4** 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 or an independent third-party laboratory that is registered with the
10 United States Food & Drug Administration.

11 **3.4.5** Nothing in this Consent Judgment shall limit Redd Remedies’ ability to
12 conduct, or require that others conduct, additional testing of the Covered Products, including
13 the raw materials used in their manufacture.

14 **3.4.6** Beginning on the Effective Date and continuing for a period of three
15 years, Redd Remedies shall arrange for copies of all laboratory reports with results of testing
16 for lead content under Section 3.4.1 to be automatically sent by the testing laboratory directly
17 to ERC within ten days after completion of the testing. Redd Remedies shall retain all test
18 results and documentation for a period of five years from the date of each test.

19 **4. SETTLEMENT PAYMENT**

20 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
21 penalties, attorney’s fees, and costs, Redd Remedies shall make a total payment of \$50,000.00
22 (“Total Settlement Amount”) to ERC within 5 business days of the Effective Date. Redd
23 Remedies shall make this payment by wire transfer to ERC’s escrow account, for which ERC
24 will give Redd Remedies the necessary account information. The Total Settlement Amount
25 shall be apportioned as follows:

26 **4.2** \$17,040.00 shall be considered a civil penalty pursuant to California Health and
27 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$12,780.00) of the civil penalty to the
28 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe

1 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
2 Code §25249.12(c). ERC will retain the remaining 25% (\$4,260.00) of the civil penalty.

3 **4.3** \$1,424.01 shall be distributed to ERC as reimbursement to ERC for reasonable
4 costs incurred in bringing this action.

5 **4.4** \$12,855.07 shall be distributed to ERC in lieu of further civil penalties, for the
6 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
7 includes work, analyzing, researching and testing consumer products that may contain
8 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
9 the subject matter of the current action; (2) the continued monitoring of past consent judgments
10 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
11 donation of \$643.00 to the Global Community Monitor to address reducing toxic chemical
12 exposures in California.

13 **4.5** \$10,342.50 shall be distributed to Aqua Terra Aeris Law Group as
14 reimbursement of ERC's attorney's fees, while \$8,338.42 shall be distributed to ERC for its in-
15 house legal fees.

16 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

1 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
2 remaining disputes. Should it become necessary, the Parties may agree in writing to different
3 deadlines for the meet-and-confer period.

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

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

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

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

20 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
21 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
22 inform Redd Remedies in a reasonably prompt manner of its test results, including information
23 sufficient to permit Redd Remedies to identify the Covered Products at issue. Redd Remedies
24 shall, within thirty days following such notice, provide ERC with testing information, from an
25 independent third-party laboratory meeting the requirements of Sections 3.4.1 and 3.4.2,
26 demonstrating Redd Remedies' compliance with the Consent Judgment, if warranted. The
27 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.
28

1 **7. APPLICATION OF CONSENT JUDGMENT**

2 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
3 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
4 divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers,
5 predecessors, successors, and assigns. This Consent Judgment shall have no
6 application to Covered Products which are distributed or sold exclusively outside the State of
7 California and which are not used by California consumers.

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

9 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
10 behalf of itself and in the public interest, and Redd Remedies and its respective officers,
11 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
12 suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all other
13 upstream and downstream entities in the distribution chain of any Covered Product, and the
14 predecessors, successors and assigns of any of them (collectively, "Released Parties"), fully and
15 finally releasing Redd Remedies and the Released Parties from any and all claims, actions,
16 causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses
17 asserted, or that could have been asserted from the handling, use, or consumption of the
18 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
19 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
20 lead up to and including the Effective Date.

21 **8.2** ERC on its own behalf only, on one hand, and Redd Remedies on its own behalf
22 only, on the other hand, further waive and release any and all claims they may have against
23 each other and against the Released Parties for all actions or statements of any nature up
24 through and including the Effective Date, provided, however, that nothing in Section 8 shall
25 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

26 **8.3** It is possible that other claims not known to the Parties arising out of the facts
27 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
28 discovered. ERC on behalf of itself only, on one hand, and Redd Remedies, on the other hand,

1 acknowledge that this Consent Judgment is expressly intended to cover and include all such
2 claims up through the Effective Date, including all rights of action therefore. ERC and Redd
3 Remedies acknowledge that the claims released in Sections 8.1 and 8.2 above may include
4 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
5 unknown claims. California Civil Code section 1542 reads as follows:

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

11 ERC on behalf of itself only, on the one hand, and Redd Remedies, on the other hand,
12 acknowledge and understand the significance and consequences of this specific waiver of
13 California Civil Code section 1542.

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

17 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
18 environmental exposures arising under Proposition 65, nor shall it apply to any of Redd
19 Remedies' 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 via first-class mail. Courtesy copies via
27 email may also be sent.

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

1 Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
2 San Diego, CA 92108
3 Tel: (619) 500-3090
4 Email: chris_erc501c3@yahoo.com

5 With a copy to:

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

11 **REDD REMEDIES, INC.**
12 **211 S. Quincy Ave**
13 **Bradley, IL 60915**
14 **1.888.453.5058**
dchapman@reddremedies.com

15 With a copy to:

16 Rakesh Amin
17 Amin Talati Upadhye LLC.
100 S. Wacker Drive Ste 2000
18 Chicago IL 60606
rakesh@amintalati.com

19
20 **12. COURT APPROVAL**

21 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
22 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
23 Consent Judgment.

24 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
25 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
26 prior to the hearing on the motion.

27 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
28 void and have no force or effect.

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 or .pdf signature shall be construed as valid as
4 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 and
8 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
9 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
10 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
11 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
12 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
13 equally in the preparation and drafting of this Consent Judgment.

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

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


17 Dated: 12/17, 2015

ENVIRONMENTAL RESEARCH
CENTER, INC.

18 By: 
19 Chris Hepinstall, Executive Director

20 Dated: 12/23, 2015

REDD REMEDIES, INC.

21 
22 By: Daniel A. Chapman
23 Its: President
24
25
26
27
28

1 **ORDER AND JUDGMENT**

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

4 IT IS SO ORDERED, ADJUDGED AND DECREED.

5 Dated: _____, 2015

6 _____
7 Judge of the Superior Court