

1 WILLIAM F. WRAITH, SBN 185927
WRAITH LAW
2 24422 Avenida de la Carlota, Suite 400
Laguna Hills, CA 92653
3 Tel: (949) 452-1234
Fax: (949) 452-1102

4 Attorney for Plaintiff
5 ENVIRONMENTAL RESEARCH CENTER, INC.

6 WHITNEY JONES ROY, SBN 211541
SHEPPARD MULLIN RICHTER &
7 HAMPTON LLP
333 South Hope Street, 43rd Floor
8 Los Angeles, CA 90071-1422
Tel: (213) 620-1780
9 Fax: (213) 620-1398

10 Attorney for Defendant
11 MUSCLEPHARM CORPORATION

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ALAMEDA**

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

17 Plaintiff,

18 v.

19 MUSCLEPHARM CORPORATION and
20 DOES 1-25, Inclusive,

21 Defendants.
22
23

CASE NO. RG16839532

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 21, 2016

Trial Date: None set

24 **1. INTRODUCTION**

25 **1.1** On November 21, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a
26 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
27 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the
28 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),

1 against MUSCLEPHARM CORPORATION (“MUSCLEPHARM”) and DOES 1-25. In this
2 action, ERC alleges that fourteen products manufactured, distributed, or sold by
3 MUSCLEPHARM contain lead, a chemical listed under Proposition 65 as a carcinogen and
4 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
5 warning. These products (referred to hereinafter individually as a “Covered Product” or
6 collectively as “Covered Products”) are:

- 7 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Mass Vanilla Malt
- 8 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Mass Chocolate Malt
- 9 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Pump Watermelon
- 10 • MusclePharm Corp. Arnold Schwarzenegger Series Arnold Iron Cuts
- 11 • MusclePharm Corp. Arnold Schwarzenegger Muscle Bar Chocolate Brownie
- 12 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Peanut Butter
13 Cup
- 14 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Cookies 'N'
15 Cream
- 16 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Strawberry
17 Banana
- 18 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Chocolate
- 19 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Vanilla
- 20 • MusclePharm Corp. Arnold Schwarzenegger Series Iron Pack
- 21 • MusclePharm Corp. FitMiss Ignite Orange
- 22 • MusclePharm Corp. FitMiss Ignite Grape
- 23 • MusclePharm Corp. FitMiss Delight Strawberries N' Cream

24 **1.2** ERC and MUSCLEPHARM are hereinafter referred to individually as a
25 “Party” or collectively as the “Parties.”

26 **1.3** ERC is a 501(c)(3) California non-profit corporation dedicated to, among other
27 causes, helping safeguard the public from health hazards by reducing the use and misuse of
28 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,

1 and encouraging corporate responsibility.

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

6 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
7 dated February 19, 2016, that was served on the California Attorney General, other public
8 enforcers, and MUSCLEPHARM (“Notice”). A true and correct copy of the 60-Day Notice
9 dated February 19, 2016 is attached hereto as **Exhibit A** and incorporated by reference. More
10 than 60 days have passed since the Notice was served on the Attorney General, public
11 enforcers, and MUSCLEPHARM and no designated governmental entity has filed a complaint
12 against MUSCLEPHARM with regard to the Covered Products or the alleged violations.

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

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

27 ///

28 ///

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 current or future legal proceeding unrelated to these proceedings.

4 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
5 a Judgment by this Court.

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 Complaint, personal jurisdiction
10 over MUSCLEPHARM as to the acts alleged in the Complaint that venue is proper in Alameda
11 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
12 resolution of all claims up through and including the Effective Date which were or could have
13 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

15 **3.1** Beginning on the Effective Date, MUSCLEPHARM shall be permanently
16 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
17 California”, or directly selling in the State of California, any Covered Products which exposes a
18 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it
19 meets the warning requirements under Section 3.2.

20 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
21 of California” shall mean to directly ship a Covered Product into California for sale in
22 California or to sell a Covered Product to a distributor that MUSCLEPHARM knows or has
23 reason to know will sell the Covered Product in California.

24 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
25 Level” and “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be
26 calculated using the following formula: micrograms of lead per gram of product, multiplied by
27 grams of product per serving of the product (using the largest serving size appearing on the
28 product label), multiplied by servings of the product per day (using the largest number of

1 servings in a recommended dosage appearing on the product label), which equals micrograms
2 of lead exposure per day.

3 **3.2 Clear and Reasonable Warnings**

4 If MUSCLEPHARM is required to provide a warning pursuant to Section 3.1, the
5 following warning must be utilized (“Warning”):

6 **WARNING: This product can expose you to chemicals including [lead] which is**
7 **known to the State of California to cause [cancer and] birth defects or other**
8 **reproductive harm. For more information go to www.P65Warnings.ca.gov.**

9 MUSCLEPHARM shall use the phrase “cancer and” in the Warning only if the “Daily Lead
10 Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality
11 control methodology set forth in Section 3.4.

12 The Warning shall be securely affixed to or printed upon the container or label of each
13 Covered Product. In addition, for any Covered Product sold over the internet, the Warning shall
14 appear on the checkout page when a California delivery address is indicated for any purchase of
15 any Covered Product. An asterisk or other identifying method must be utilized to identify which
16 products on the checkout page are subject to the Warning.

17 The Warning shall be at least the same size as the largest of any other health or safety
18 warnings also appearing on its website or on the label or container of MUSCLEPHARM’s product
19 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No
20 statements contradicting or conflicting with the Warning shall accompany the Warning.

21 MUSCLEPHARM must display the above Warning with such conspicuousness, as
22 compared with other words, statements, design of the label, container, or on its website, as
23 applicable, to render the Warning likely to be read and understood by an ordinary individual under
24 customary conditions of purchase or use of the product.

25 **3.3 Reformulated Covered Products**

26 A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” is no
27 greater than 0.5 micrograms of lead per day as determined by the quality control methodology
28 described in Section 3.4.

1 **3.4 Testing and Quality Control Methodology**

2 **3.4.1** Beginning within one year of the Effective Date, MUSCLEPHARM
3 shall arrange for lead testing of the Covered Products at least once a year for a minimum of five
4 consecutive years by arranging for testing of five randomly selected samples of each of the
5 Covered Products, in the form intended for sale to the end-user, which MUSCLEPHARM
6 intends to sell or is manufacturing for sale in California, directly selling to a consumer in
7 California or “Distributing into the State of California.” If tests conducted pursuant to this
8 Section demonstrate that no Warning is required for a Covered Product during each of five
9 consecutive years, then the testing requirements of this Section will no longer be required as to
10 that Covered Product. However, if during or after the five-year testing period,
11 MUSCLEPHARM changes ingredient suppliers for any of the Covered Products and/or
12 reformulates any of the Covered Products, MUSCLEPHARM shall test that Covered Product
13 annually for at least four (4) consecutive years after such change is made.

14 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
15 lead detection result of the five (5) 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 and approved by the Court through
23 entry of a modified consent judgment.

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

28 **3.4.5** Nothing in this Consent Judgment shall limit MUSCLEPHARM’s ability

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

3 **3.4.6** Within thirty (30) days of ERC's written request, MUSCLEPHARM
4 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. MUSCLEPHARM shall
5 retain all test results and documentation for a period of five years from the date of each test.

6 **4. SETTLEMENT PAYMENT**

7 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
8 attorney's fees, and costs, MUSCLEPHARM shall make a total payment of \$205,000.00
9 ("Total Settlement Amount") according to the following payment schedule:

- 10 • Payment 1 -- \$65,000.00 on or before January 30, 2017
- 11 • Payment 2 -- \$70,000.00 on or before March 30, 2017
- 12 • Payment 3 -- \$70,000 on or before May 30, 2017

13 **4.2** MUSCLEPHARM shall make these payments by wire transfer to ERC's escrow
14 account, for which ERC will give MUSCLEPHARM the necessary account information. If the
15 above payments are received by ERC prior to the Court's entry of judgment in this matter, ERC
16 will hold the funds in its trust account until the judgment is entered. The Total Settlement
17 Amount shall be apportioned as follows:

18 **4.3** \$95,693.45 shall be considered a civil penalty pursuant to California Health and
19 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$71,770.09) of the civil penalty to
20 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
21 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
22 Code section 25249.12(c). ERC will retain the remaining 25% (\$23,923.36) of the civil
23 penalty.

24 **4.4** \$5,848.28 shall be distributed to ERC as reimbursement to ERC for reasonable
25 costs incurred in bringing this action.

26 **4.5** \$71,769.96 shall be distributed to ERC as an Additional Settlement Payment
27 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
28 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
caused by Defendant in this matter. These activities are detailed below and support ERC's

1 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
2 supplement products in California. ERC's activities have had, and will continue to have, a direct
3 and primary effect within the State of California because California consumers will be benefitted
4 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements
5 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
6 the products.

7 Based on a review of past years' actual budgets, ERC is providing the following list of activities
8 ERC engages in to protect California consumers through Proposition 65 citizen enforcement,
9 along with a breakdown of how ASP funds will be utilized to facilitate those activities: (1)
10 ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary supplement
11 products that may contain lead and/or cadmium and are sold to California consumers. This work
12 includes continued monitoring and enforcement of past consent judgments and settlements to
13 ensure companies are in compliance with their obligations thereunder, with a specific focus on
14 those judgments and settlements concerning lead and/or cadmium. This work also includes
15 investigation of new companies that ERC does not obtain any recovery through settlement or
16 judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-25%): maintaining ERC's
17 Voluntary Compliance Program by acquiring products from companies, developing and
18 maintaining a case file, testing products from these companies, providing the test results and
19 supporting documentation to the companies, and offering guidance in warning or implementing a
20 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT
21 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the
22 numbers of contaminated products that reach California consumers by providing access to free
23 testing for lead in dietary supplement products (Products submitted to the program are screened
24 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,
25 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
26 that submitted the product).

27 ERC shall be fully accountable in that it will maintain adequate records to document and will be
28 able to demonstrate how the ASP funds will be spent and can assure that the funds are being

1 spent only for the proper, designated purposes described in this Consent Judgment. ERC shall
2 provide the Attorney General, within thirty days of any request, copies of documentation
3 demonstrating how such funds have been spent.

4 **4.6** \$13,230.00 shall be distributed to William F. Wraith as reimbursement of ERC's
5 attorney's fees, while \$18,458.31 shall be distributed to ERC for its in-house legal fees. Except
6 as explicitly provided herein, each Party shall bear its own fees and costs.

7 **4.7** In the event that MUSCLEPHARM fails to remit the settlement payments owed
8 under Section 4 of this Consent Judgment on or before the dates defined in the above payment
9 schedule, MUSCLEPHARM shall be deemed to be in material breach of its obligations under
10 this Consent Judgment. ERC shall provide written notice of the delinquency to
11 MUSCLEPHARM via electronic mail. If MUSCLEPHARM fails to deliver the scheduled
12 payment within five (5) days from the written notice, the remaining unpaid amounts owed shall
13 accrue interest at the statutory judgment interest rate provided in the Code of Civil Procedure
14 section 685.010. Additionally, MUSCLEPHARM agrees to pay ERC's reasonable attorney's
15 fees and costs for any efforts to collect the payment due under this Consent Judgment.

16 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

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

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

12 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
13 **JUDGMENT**

14 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
15 this Consent Judgment.

16 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
17 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
18 inform MUSCLEPHARM in a reasonably prompt manner of its test results, including
19 information sufficient to permit MUSCLEPHARM to identify the Covered Products at issue.
20 MUSCLEPHARM shall, within thirty (30) days following such notice, provide ERC with
21 testing information, from an independent third-party laboratory meeting the requirements of
22 Sections 3.4.3 and 3.4.4, demonstrating MUSCLEPHARM's compliance with the Consent
23 Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to ERC taking
24 any further legal action.

25 **7. APPLICATION OF CONSENT JUDGMENT**

26 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
27 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
28 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,

1 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
2 application to Covered Products which is distributed or sold exclusively outside the State of
3 California and which is 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 MUSCLEPHARM and its respective officers,
7 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
8 franchisees, licensees, customers (not including private label customers of MUSCLEPHARM),
9 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
10 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
11 of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the
12 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
13 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from
14 the handling, use, or consumption of the Covered Products, as to any alleged violation of
15 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
16 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

17 **8.2** ERC on its own behalf only, and MUSCLEPHARM on its own behalf only,
18 further waive and release any and all claims they may have against each other for all actions or
19 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
20 65 in connection with the Notice and Complaint up through and including the Effective Date,
21 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
22 enforce the terms of this Consent Judgment.

23 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
24 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
25 discovered. ERC on behalf of itself only, and MUSCLEPHARM on behalf of itself only,
26 acknowledge that this Consent Judgment is expressly intended to cover and include all such
27 claims up through and including the Effective Date, including all rights of action therefore.
28 ERC and MUSCLEPHARM acknowledge that the claims released in Sections 8.1 and 8.2

1 above may include unknown claims, and nevertheless waive California Civil Code section
2 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

8 ERC on behalf of itself only, and MUSCLEPHARM on behalf of itself only, acknowledge and
9 understand the significance and consequences of this specific waiver of California Civil Code
10 section 1542.

11 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
12 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
13 in the Covered Products as set forth in the Notice and Complaint.

14 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
15 environmental exposures arising under Proposition 65, nor shall it apply to any of
16 MUSCLEPHARM's products other than the Covered Products.

17 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

20 **10. GOVERNING LAW**

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

23 **11. PROVISION OF NOTICE**

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

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

28 Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Tel: (619) 500-3090

1 Email: chris_erc501c3@yahoo.com

2
3 With a copy to:

4 WILLIAM F. WRAITH
5 WRAITH LAW
6 24422 Avenida de la Carlota, Suite 400
7 Laguna Hills, CA 92653
8 Tel: (949) 452-1234
9 Fax: (949) 452-1102

10
11
12 **MUSCLEPHARM CORPORATION**

13 Maria Gorecki
14 General Counsel, MusclePharm Corporation
15 4721 Ironton St. Bldg. A
16 Denver, CO 80239
17 Tel: 303-396-6108
18 Email: maria.gorecki@musclepharm.com

19 With a copy to:

20 WHITNEY JONES ROY
21 SHEPPARD MULLIN RICHTER & HAMPTON LLP
22 333 South Hope Street, 43rd Floor
23 Los Angeles, CA 90071-1422
24 Tel: (213) 620-1780
25 Fax: (213) 620-1398

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.

29 **13. EXECUTION AND COUNTERPARTS**

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

1 as the original signature.

2 **14. DRAFTING**

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

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

12 If a dispute arises with respect to either Party's compliance with the terms of this Consent
13 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
14 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
15 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

16 **16. ENFORCEMENT**

17 ERC may, by motion or order to show cause before the Superior Court of Alameda
18 County, enforce the terms and conditions contained in this Consent Judgment. In any action
19 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
20 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
21 To the extent the failure to comply with the Consent Judgment constitutes a violation of
22 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
23 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
24 law for failure to comply with Proposition 65 or other laws.

25 **17. ENTIRE AGREEMENT, AUTHORIZATION**

26 **17.1** This Consent Judgment contains the sole and entire agreement and
27 understanding of the Parties with respect to the entire subject matter herein, and any and all
28 prior discussions, negotiations, commitments, and understandings related hereto. No

1 representations, oral or otherwise, express or implied, other than those contained herein have
2 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
3 herein, shall be deemed to exist or to bind any Party.

4 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
5 authorized by the Party he or she represents to stipulate to this Consent Judgment.

6 **18. 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: 12/22, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

18
19 By: 
Chris Hepinstall, Executive Director

20
21 Dated: 12/27, 2016

MUSCLEPHARM CORPORATION

22
23 
24 By: Maria Gorecki
25 Its: General Counsel
26
27
28

1 APPROVED AS TO FORM:

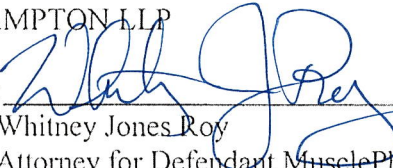
2 Dated: December 22, 2016

WRAITH LAW

3 By: 
4 William F. Wraith
5 Attorney for Plaintiff Environmental
6 Research Center, Inc.

7 Dated: December 27, 2016

SHEPPARD MULLIN RICHTER &
HAMPTON LLP

8 By: 
9 Whitney Jones Roy
10 Attorney for Defendant MuscelPharm
11 Corporation

12
13 **ORDER AND JUDGMENT**

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

16 IT IS SO ORDERED, ADJUDGED AND DECREED.

17
18 Dated: _____, 2016

19 Judge of the Superior Court

EXHIBIT “A”

WRAITH LAW
24422 AVENIDA DE LA CARLOTA
SUITE 400
LAGUNA HILLS, CA 92653
Tel (949) 452-1234
Fax (949) 452-1102

February 19, 2016

**NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator") is:

MusclePharm Corporation

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- 1) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Mass Vanilla Malt - Lead**
- 2) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Mass Chocolate Malt - Lead**

- 3) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Pump Watermelon - Lead**
- 4) **MusclePharm Corp. Arnold Schwarzenegger Series Arnold Iron Cuts - Lead**
- 5) **MusclePharm Corp. Arnold Schwarzenegger Muscle Bar Chocolate Brownie - Lead**
- 6) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Peanut Butter Cup - Lead**
- 7) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Cookies 'N' Cream - Lead**
- 8) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Strawberry Banana - Lead**
- 9) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Chocolate - Lead**
- 10) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Whey Vanilla - Lead**
- 11) **MusclePharm Corp. Arnold Schwarzenegger Series Iron Pack - Lead**
- 12) **MusclePharm Corp. FitMiss Ignite Orange - Lead**
- 13) **MusclePharm Corp. FitMiss Ignite Grape - Lead**
- 14) **MusclePharm Corp. FitMiss Delight Strawberries N' Cream - Lead**

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

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least February 19, 2013, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an

February 19, 2016

Page 3

appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to MusclePharm Corporation and its Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

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

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: February 19, 2016



William F. Wraith

CERTIFICATE OF SERVICE

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

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

On February 19, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
MusclePharm Corporation
4721 Ironton Street, Unit A
Denver, CO 80239

VCorp Services, LLC
(MusclePharm Corporation’s Registered
Agent for Service of Process)
1645 Village Center Circle, Suite 170
Las Vegas, NV 89134

Current President or CEO
MusclePharm Corporation
701 Willow Pass Road, Suite 8
Pittsburg, CA 94565

VCorp Services CA, Inc.
(MusclePharm Corporation’s Registered
Agent for Service of Process)
5670 Wilshire Boulevard, Suite 1530
Los Angeles, CA 90036

Current President or CEO
MusclePharm Corporation
200 Beasley Drive
Franklin, TN 37064

On February 19, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On February 19, 2016, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to the party listed below:

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mлатimer@co.lassen.ca.us

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

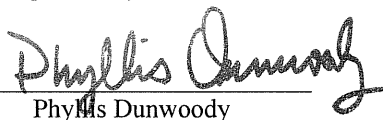
Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

On February 19, 2016, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on February 19, 2016, in Fort Oglethorpe, Georgia.


Phyllis Dunwoody

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

February 19, 2016

Page 7

Service List

District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
708 Court Street
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive,
Suite 245
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Los Angeles County
210 West Temple Street,
Suite 18000
Los Angeles, CA 90012

District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin County
3501 Civic Center Drive,
Room 130
San Rafael, CA 94903

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95959

District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer County
10810 Justice Center Drive,
Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113