

1 Richard Drury (CA Bar No. 163559)
Michael R. Lozeau (CA Bar No. 142893)
2 Rebecca L. Davis (CA Bar No. 271662)
3 LOZEAU | DRURY LLP
410 12th Street, Suite 250
4 Oakland, CA 94607
Telephone: 510-836-4200
5 Facsimile: 510-836-4205
Email: michael@lozeaudrury.com
6 Email: rebecca@lozeaudrury.com

7 Attorneys for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 Anthony J. Cortez (SBN 251743)
Greg Sperla (SBN 278062)
10 GREENBERG TRAUERIG, LLP
1201 K Street, Suite 1100
11 Sacramento, California 95814
Telephone: 916-442-1111
12 Facsimile: 916-448-1709
13 Email: cortezan@gtlaw.com
Email: sperlag@gtlaw.com

14 Attorneys for Defendant
15 BLACKSTONE LABS, LLC

16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF ALAMEDA**

19 ENVIRONMENTAL RESEARCH CENTER,
20 INC., a non-profit California corporation,

21 Plaintiff,

22 v.

23 BLACKSTONE LABS, LLC, a Florida limited
24 liability company,

25 Defendant.

CASE NO. RG17850885

ASSIGNED FOR ALL PURPOSES TO:
JUDGE WINIFRED Y. SMITH
DEPARTMENT 21

26 **STIPULATED CONSENT**
27 **JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

28 Action Filed: February 27, 2017
Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On February 27, 2017, 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 BLACKSTONE LABS, LLC (“BLACKSTONE LABS”). In this action, ERC alleges
7 that a number of products manufactured, distributed, or sold by BLACKSTONE LABS contain
8 lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and reproductive
9 toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning.
10 These products (referred to hereinafter individually as a “Covered Product” or collectively as
11 “Covered Products”) are:

- 12 1) Blackstone Labs ResurGence FruitPunch - Lead
- 13 2) Blackstone Labs ResurGence Pina Colada - Lead
- 14 3) Blackstone Labs Hype Orange - Lead
- 15 4) Blackstone Labs Hype Fruit Punch - Lead
- 16 5) Blackstone Labs Isolation Vanilla - Lead
- 17 6) Blackstone Labs Formula 19 Orange - Lead
- 18 7) Blackstone Labs Formula 19 Fruit Punch - Lead
- 19 8) Blackstone Labs Formula 19 Black Currant - Lead
- 20 9) Blackstone Labs Juiced Up Bangin' Berries - Lead
- 21 10) Blackstone Labs EPI-TEST Tropical Breeze - Lead
- 22 11) Blackstone Labs EPI-TEST Blue Raspberry - Lead
- 23 12) Blackstone Labs Trojan Horse Black Currant – Cadmium, Lead
- 24 13) Blackstone Labs Trojan Horse Lemon Lime - Lead
- 25 14) Blackstone Labs 3-Whey Strawberry Cheesecake - Lead
- 26 15) Blackstone Labs Dust Extreme Sour Gummy Bear - Lead
- 27 16) Blackstone Labs Dust Extreme Pineapple Mango - Lead
- 28

1 17) Blackstone Labs Fast Food Meal Replacement/Mass Gainer Candied Yams
2 Lead

3 18) Blackstone Labs GlycoLog - Lead

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

6 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
7 causes, helping safeguard the public from health hazards by reducing the use and misuse of
8 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
9 and encouraging corporate responsibility.

10 **1.4** For purposes of this Consent Judgment, the Parties agree that BLACKSTONE
11 LABS is a business entity that has employed ten or more persons at all times relevant to this
12 action, and qualifies as a “person in the course of business” within the meaning of Proposition 65.
13 BLACKSTONE LABS manufactures, distributes, and/or sells the Covered Products.

14 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
15 dated August 16, 2016, October 14, 2016, November 14, 2016 and December 16, 2016 that
16 were served on the California Attorney General, other public enforcers, and BLACKSTONE
17 LABS (“Notices”). True and correct copies of the 60-Day Notices dated August 16, 2016,
18 October 14, 2016, November 14, 2016 and December 16, 2016 are attached hereto as **Exhibits**
19 **A, B, C, and D** respectively, and each is incorporated herein by reference. More than 60 days
20 have passed since the Notices were served on the Attorney General, public enforcers, and
21 BLACKSTONE LABS and no designated governmental entity has filed a complaint against
22 BLACKSTONE LABS with regard to the Covered Products or the alleged violations.

23 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products exposes
24 persons in California to lead and/or cadmium without first providing clear and reasonable
25 warnings in violation of California Health and Safety Code section 25249.6. BLACKSTONE
26 LABS denies all material allegations contained in the Notices and Complaint.

27 **1.7** The Parties have entered into this Consent Judgment in order to settle,
28 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.

1 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
2 be construed as an admission by any of the Parties or by any of their respective officers,
3 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
4 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
5 violation of law.

6 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
7 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
8 current or future legal proceeding unrelated to these proceedings.

9 **1.9** The Effective Date of this Consent Judgment is the date on which Notice of
10 Entry of Judgment is served by ERC. Email service of the Notice shall be deemed effective
11 upon transmission.

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 BLACKSTONE LABS as to the acts alleged in the Complaint, that venue is proper in
17 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
18 final resolution of all claims up through and including the Effective Date which were or could
19 have been asserted in this action based on the facts alleged in the Notices and Complaint.

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

21 **3.1** Beginning six months from the Effective Date (“Compliance Date”),
22 BLACKSTONE LABS shall be enjoined from manufacturing for sale in the State of California,
23 “Distributing into the State of California”, or directly selling in the State of California, any
24 Covered Products which exposes a person to a “Daily Lead Exposure Level” of more than 0.5
25 micrograms of lead per day and/or “Daily Cadmium Exposure Level” of more than 4.10
26 micrograms of cadmium per day unless it meets the warning requirements under Section 3.2.

27 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
28 of California” shall mean to directly ship a Covered Product into California for sale in

1 California or to sell a Covered Product to a distributor that BLACKSTONE LABS knows or
2 has reason to know will sell the Covered Product in California.

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

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (Elemental)	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram
Cocoa-powder	1.0 micrograms/gram

21 If, at any time after the Compliance Date, ERC tests a Covered Product that does not
22 contain a warning described in Section 3.2, and the test results indicate that the Daily Lead
23 Exposure Level is greater than 0.5 micrograms per day, BLACKSTONE LABS agrees to
24 confidentially supply to ERC, within 30 days of ERC’s written request, a list of ingredients,
25 including the percentage of each ingredient (“Ingredient List”), of that particular covered
26 product so that ERC may be able to calculate the daily exposure based on the allowances in the
27 table above.

1 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:
3 micrograms of cadmium 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 of
5 the product per day (using the largest number of servings in a recommended dosage appearing on
6 the product label), which equals micrograms of cadmium exposure per day.

7 **3.2 Clear and Reasonable Warnings**

8 If BLACKSTONE LABS is required to provide a warning pursuant to Section 3.1, the
9 following warning must be utilized (“Warning”):

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

12 BLACKSTONE LABS shall use the phrase “cancer and” in the Warning only if the
13 “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to
14 the quality control methodology set forth in Section 3.4. As identified in the brackets, the
15 warning shall appropriately reflect whether there is lead, cadmium, or both chemicals present in
16 each of the Covered Products.

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

22 The Warning shall be at least the same size as the largest of any other health or safety
23 warnings also appearing on its website or on the label or container of BLACKSTONE LABS’
24 product packaging and the word “**WARNING**” shall be in all capital letters and, if feasible, in
25 bold print. No statements intended to or likely to have the effect of diminishing the impact of the
26 Warning on the average lay person shall accompany the Warning.

27 BLACKSTONE LABS must display the above Warning with such conspicuousness, as
28 compared with other words, statements, design of the label, container, or on its website, as

1 applicable, to render the Warning likely to be read and understood by an ordinary individual under
2 customary conditions of purchase or use of the product.

3 **3.3 Reformulated Covered Products**

4 A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” is no
5 greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” is no more
6 than 4.10 micrograms of cadmium per day as determined by the quality control methodology
7 described in Section 3.4.

8 **3.4 Testing and Quality Control Methodology**

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

22 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
23 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the
24 three (3) randomly selected samples of the Covered Products will be controlling.

25 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
26 laboratory method that complies with the performance and quality control factors appropriate
27 for the method used, including limit of detection, qualification, accuracy, and precision that
28 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)

1 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
2 method subsequently agreed to in writing by the Parties and approved by the Court through
3 entry of a modified consent judgment.

4 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
5 independent third party laboratory certified by the California Environmental Laboratory
6 Accreditation Program or an independent third-party laboratory that is registered with the
7 United States Food & Drug Administration.

8 **3.4.5** Nothing in this Consent Judgment shall limit BLACKSTONE LABS’
9 ability to conduct, or require that others conduct, additional testing of the Covered Products,
10 including the raw materials used in their manufacture.

11 **3.4.6** Within thirty (30) days of receiving evidence of a further violation from
12 ERC, BLACKSTONE LABS shall deliver lab reports obtained pursuant to Section 3.4 to ERC.
13 BLACKSTONE LABS shall retain all test results and documentation for a period of three years
14 from the date of each test. ERC shall treat all documents provided as confidential.

15 **3.4.7.** The requirements of subsection 3.4 of this Consent Judgment shall not
16 apply to any products which qualify as Reformulated Covered Products or for which a warning is
17 provided pursuant to Section 3.

18 **4. SETTLEMENT PAYMENT**

19 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
20 attorney’s fees, and costs, BLACKSTONE LABS shall make a total payment of \$115,000.00
21 (“Total Settlement Amount”) to ERC via four consecutive equal monthly payments of
22 \$28,750.00. The first monthly payment shall be made on February 15, 2018. Each remaining
23 payment of \$28,750.00 shall be made in 30 day increments from the first monthly payment, to
24 be due on the 15th of each month (“Due Dates”). Payments made prior to Entry of the Consent
25 Judgment shall be held by ERC and not distributed until after Entry of the Consent Judgment.
26 BLACKSTONE LABS shall make these payments by wire transfer to ERC for which ERC will
27 give BLACKSTONE LABS the necessary account information. The Total Settlement Amount
28 shall be apportioned as follows:

1 **4.2** \$6,925.00 shall be considered a civil penalty pursuant to California Health and
2 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$5,193.75) of the civil penalty to the
3 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
4 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
5 Code section 25249.12(c). ERC will retain the remaining 25% (\$1,731.25) of the civil penalty.

6 **4.3** \$5,008.37 shall be distributed to ERC as reimbursement to ERC for reasonable
7 costs incurred in bringing this action.

8 **4.4** \$45,076.00 shall be distributed to Lozeau Drury LLP as reimbursement of
9 ERC’s attorney’s fees, while \$57,990.63 shall be distributed to ERC for its in-house legal fees.
10 Except as explicitly provided herein, each Party shall bear its own fees and costs.

11 **4.5** In the event that BLACKSTONE LABS fails to remit any payment owed under
12 Section 4 of this Consent Judgment on or before their respective Due Dates, BLACKSTONE
13 LABS shall be deemed to be in material breach of its obligations under this Consent Judgment.
14 ERC shall provide written notice of the delinquency to BLACKSTONE LABS via electronic
15 mail. If BLACKSTONE LABS fails to deliver the delinquent payment within five (5) days
16 from the written notice, any portion of the Total Settlement Amount that is unpaid shall be
17 immediately due and owing and shall accrue interest at the statutory judgment interest rate
18 provided in the California Code of Civil Procedure section 685.010. Additionally,
19 BLACKSTONE LABS agrees to pay ERC’s reasonable attorney’s fees and costs for any
20 efforts to collect the payment(s) due under this Consent Judgment.

21 **5. MODIFICATION OF CONSENT JUDGMENT**

22 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
23 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a
24 modified consent judgment.

25 **5.2** If BLACKSTONE LABS seeks to modify this Consent Judgment under Section
26 5.1, then BLACKSTONE LABS must provide written notice to ERC of its intent (“Notice of
27 Intent”). If ERC seeks to meet and confer regarding the proposed modification in the Notice of
28 Intent, then ERC must provide written notice to BLACKSTONE LABS within thirty (30) days

1 of receiving the Notice of Intent. If ERC notifies BLACKSTONE LABS in a timely manner of
2 ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as
3 required in this Section. The Parties shall meet in person or via telephone within thirty (30)
4 days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such
5 meeting, if ERC disputes the proposed modification, ERC shall provide to BLACKSTONE
6 LABS a written basis for its position. The Parties shall continue to meet and confer for an
7 additional thirty (30) days in an effort to resolve any remaining disputes. Should it become
8 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer
9 period.

10 **5.3** Where the meet-and-confer process does not lead to a joint motion or
11 application in support of a modification of the Consent Judgment, then either Party may seek
12 judicial relief on its own and the prevailing party may recover reasonable costs and fees.

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

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

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

26 **7. APPLICATION OF CONSENT JUDGMENT**

27 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
28 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,

1 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
2 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
3 application to any Covered Product which is distributed or sold exclusively outside the State of
4 California and which is not used by California consumers.

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

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

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

25 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
26 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
27 discovered. ERC on behalf of itself only, and BLACKSTONE LABS on behalf of itself only,
28 acknowledge that this Consent Judgment is expressly intended to cover and include all such

1 claims up through and including the Effective Date, including all rights of action therefore.

2 ERC and BLACKSTONE LABS acknowledge that the claims released in Sections 8.1 and 8.2

3 above may include unknown claims, and nevertheless waive California Civil Code section

4 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

8 ERC on behalf of itself only, and BLACKSTONE LABS on behalf of itself only, acknowledge

9 and understand the significance and consequences of this specific waiver of California Civil

10 Code 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 and/or cadmium in the Covered Products as set forth in the Notices 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 BLACKSTONE LABS' 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

1 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
2 Tel: (619) 500-3090
3 Email: chris_erc501c3@yahoo.com

4 With a copy to:
MICHAEL R. LOZEAU
5 RICHARD T. DRURY
REBECCA DAVIS
6 LOZEAU | DRURY LLP
410 12th Street, Suite 250
7 Oakland, CA 94607
8 Ph: 510-836-4200
9 Fax: 510-836-4205
Email: richard@lozeaudrury.com

10
11 **BLACKSTONE LABS, LLC:**
Phillip Braun
12 Blackstone Labs, LLC
1090 Holland Drive, Suite 1
13 Boca Raton, FL 33487
14 Email: pj@blackstonelabs.com

15 With a copy to:
Anthony J. Cortez
16 Greg Sperla
GREENBERG TRAUIG, LLP
17 1201 K Street, Suite 1100
Sacramento, California 95814
18 Telephone: 916-442-1111
19 Facsimile: 916-448-1709
20 Email: cortezan@gtlaw.com
Email: sperlag@gtlaw.com

21 12. COURT APPROVAL

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

25 12.2 If the California Attorney General objects to any term in this Consent Judgment,
26 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
27 prior to the hearing on the motion.
28

1 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
2 void and have no force or effect.

3 **13. EXECUTION AND COUNTERPARTS**

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

7 **14. DRAFTING**

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

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

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

21 **16. ENFORCEMENT**

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

1 law for failure to comply with Proposition 65 or other laws.

2 **17. ENTIRE AGREEMENT, AUTHORIZATION**

3 **17.1** This Consent Judgment contains the sole and entire agreement and
4 understanding of the Parties with respect to the entire subject matter herein, and any and all
5 prior discussions, negotiations, commitments, and understandings related hereto. No
6 representations, oral or otherwise, express or implied, other than those contained herein have
7 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
8 herein, shall be deemed to exist or to bind any Party.

9 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment.

11 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
12 **CONSENT JUDGMENT**

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

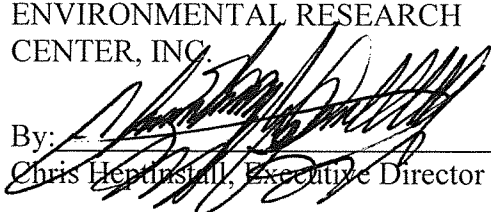
16 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
17 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
18 been diligently prosecuted, and that the public interest is served by such settlement; and

19 (2) Make the findings pursuant to California Health and Safety Code section
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

21 **IT IS SO STIPULATED:**

22 Dated: 1/26/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

23
24 By: 
Chris Heptinstall, Executive Director

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____, 2018

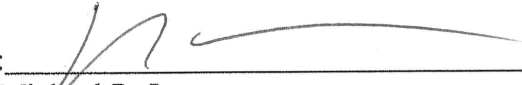
BLACKSTONE LABS, LLC

By:
Its:

APPROVED AS TO FORM:


Dated: 1/26, 2018

LOZEAU | DRURY LLP

By: 
Michael R. Lozeau
Richard T. Drury
Rebecca Davis
Attorneys for Plaintiff Environmental
Research Center, Inc.

Dated: February 5,, 2018

GREENBERG TRAUIG, LLP

By: 
Anthony J. Cortez
Greg Sperla
Attorneys for Defendant Blackstone Labs,
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: _____, 2018

Judge of the Superior Court

1 Dated: 2/2, 2018

BLACKSTONE LABS, LLC

By: [Signature]
Its:

5 **APPROVED AS TO FORM:**

6 Dated: 1/26, 2018

LOZEAU | DRURY LLP

By: [Signature]
Michael R. Lozeau
Richard T. Drury
Rebecca Davis
Attorneys for Plaintiff Environmental
Research Center, Inc.

12 Dated: February 5, 2018

GREENBERG TRAUERIG, LLP

By: [Signature]
Anthony J. Cortez
Greg Sperla
Attorneys for Defendant Blackstone Labs,
LLC

17 **ORDER AND JUDGMENT**

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

20 IT IS SO ORDERED, ADJUDGED AND DECREED.

21 Dated: _____, 2018

Judge of the Superior Court

1 law for failure to comply with Proposition 65 or other laws.

2 **17. ENTIRE AGREEMENT, AUTHORIZATION**

3 **17.1** This Consent Judgment contains the sole and entire agreement and
4 understanding of the Parties with respect to the entire subject matter herein, and any and all
5 prior discussions, negotiations, commitments, and understandings related hereto. No
6 representations, oral or otherwise, express or implied, other than those contained herein have
7 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
8 herein, shall be deemed to exist or to bind any Party.

9 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the Party he or she represents to stipulate to this Consent Judgment.

11 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
12 **CONSENT JUDGMENT**

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

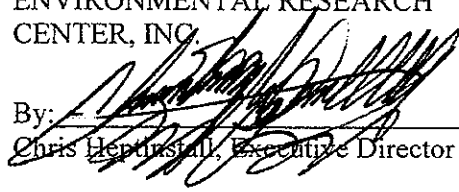
16 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
17 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
18 been diligently prosecuted, and that the public interest is served by such settlement; and

19 (2) Make the findings pursuant to California Health and Safety Code section
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

21 **IT IS SO STIPULATED:**

22 Dated: 1/26/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

23 By: 
24 Chris Hepinstall, Executive Director

25
26
27
28