

1 Aqua Terra Aeris (ATA) Law Group
2 MATTHEW C. MACLEAR, SBN 209228
3 ANTHONY M. BARNES, SBN 199048
4 828 San Pablo Avenue, Suite 115B
5 Albany, CA 94706
6 Telephone: (415) 568 5200
7 E-mail: mcm@atalawgroup.com

Attorneys for Plaintiff

Center for Advanced Public Awareness, Inc. (“CAPA”)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

**CENTER FOR ADVANCED PUBLIC
AWARENESS, INC.**, a California
nonprofit corporation,

Plaintiff,

vs.

**MIRAMAR HEALTH SUPPLY
COOPERATIVE, INC.**, doing business
as **MANKIND COLLECTIVE**, a
California corporation; and **DOES 1-25**,
inclusive,

Defendants.

No. 37-2017-00029735-CU-MC-CTL

[STIPULATED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1. INTRODUCTION

1.1 On August 11, 2017, Plaintiff, Center for Advanced Public Awareness, Inc. (“CAPA”), a non-profit corporation, in the public interest as a private enforcer, commenced this action by filing a Complaint for Permanent Injunction, Civil Penalties and Other Relief (the “Complaint”) pursuant to the provisions of California Health and Safety Code, section 25249.5 *et seq.* (“Proposition 65”), against Miramar Health Supply Cooperative, Inc., dba Mankind Collective (“Defendant”) in San Diego County Superior Court Case No. 37-2017-00029735-CU-MC-CTL (“Action”). In this action, CAPA alleges that Defendant marketed, offered to sell, sold, and/or distributed for sale in the State of California marijuana intended for smoking, the

CASE NO. 37-2017-00029735-CU-MC-CTL

1 consumption and use of which may result in the generation of marijuana smoke, without first
2 providing the clear and reasonable exposure warning required by Proposition 65. Marijuana
3 smoke is listed pursuant to Proposition 65 as a chemical that is known to the State of California
4 to cause cancer. These products, including flowers, leaves, stems, and other organic parts of
5 marijuana plants (referred to hereinafter individually as a “Subject Product” or collectively as
6 “Subject Products”) are cannabis or marijuana some of which is intended for combustion via
7 smoking and inhalation. The intended and foreseeable consumption and use (inhalation) of the
8 Subject Products that are marketed, distributed, offered for sale and/or sold by Defendant in
9 California allegedly may result in exposures to marijuana smoke. Plaintiff alleges such exposures
10 require a clear and reasonable Proposition 65 warning, but no such warning was given. Defendant
11 disputes this and Plaintiff’s other allegations.

12 **1.2** CAPA and Defendant are hereinafter referred to individually as a “Party” or
13 collectively as the “Parties.”

14 **1.3** CAPA is a California non-profit corporation that, among other purposes and causes is
15 dedicated to, and provides information about the hazards of toxins in consumer products, protects the
16 public health by preventing pollution and toxics from being discharged, released or emitted into the
17 environment, and enforces state and federal laws in protection of consumers and the environment.

18 **1.4** Defendant is a California non-profit corporation that, among other purposes and causes
19 is dedicated to, providing medical cannabis to Californians with illnesses or other disabilities pursuant
20 to the laws of the State of California and the laws of the City of San Diego. For such dates as are
21 relevant to this action, Defendant is a collective and only provides products to its registered patient
22 members.

23 **1.5** For purposes of this Consent Judgment, the Parties agree that Defendant is a business
24 entity that has employed ten or more persons for the alleged violation period, and qualifies as a
25 “person in the course of doing business” within the meaning of Proposition 65. Defendant provides
26 the Subject Products to registered members.

1 **1.6** The Complaint is based on allegations contained in CAPA’s Notice of Violation, dated
2 April 11, 2017, that was served on the California Attorney General, other public enforcers, and
3 Defendant (“Notice of Violation” or “NOV”). On May 24, 2017, CAPA served the San Diego City
4 Attorney with the NOV. More than 60 days, plus five (5) days for mailing, passed since the NOV was
5 mailed and uploaded to the Attorney General’s website and all relevant public enforcers were served,
6 and no designated governmental entity diligently prosecuted this matter, as exemplified by the filing
7 of the Complaint against Defendant with regard to the Subject Products or the alleged violations.

8 **1.7** CAPA’s NOV and Complaint allege that use of the Subject Products exposes persons
9 in California to marijuana smoke without first providing clear and reasonable warnings in violation
10 of California Health and Safety Code, section 25249.6. Defendant denies all material allegations
11 contained in the NOV and Complaint.

12 **1.8** The Parties have entered into this Consent Judgment in order to settle, compromise
13 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent
14 Judgment shall constitute or be construed as an admission by any of the Parties, or by any of their
15 respective officers, directors, members, shareholders, employees, agents, attorneys, parent
16 companies, or its subsidiaries or divisions. Except for the representations made above, nothing in this
17 Consent Judgment shall be construed as an admission by the Parties of any fact, issue of law, or
18 violation of law, nor shall compliance with this Consent Judgment be construed as an admission by
19 the Parties of any fact, issue of law, or violation of law, at any time, for any purpose.

20 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall prejudice,
21 waive, or impair any right, remedy, argument, or defense the Parties have in any other or future legal
22 proceeding unrelated to these proceedings.

23 **1.10** The “Effective Date” of this Consent Judgment is the date on which this Court
24 approves and enters the Judgment.

25 **2. JURISDICTION AND VENUE**

26 **2.1** The Parties stipulate and agree that the Superior Court of California, County of San
27 Diego, has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction
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1 over the Parties to this Final Judgment. The Parties further stipulate that venue is proper in San Diego
2 County, and that this Court has jurisdiction and authority to enter a full, final and binding resolution
3 of all claims, which were or could have been brought in this action based on the allegations contained
4 in the NOV and/or Complaint.

5 **3. INJUNCTIVE RELIEF AND WARNINGS TO BE PROVIDED**

6 **3.1** Commencing on the Effective Date, pursuant to the provisions of California Health &
7 Safety Code, section 25249.7, subdivision (a), Defendant is enjoined and prohibited from violating
8 or threatening to violate 24249.6 *et seq.*, and its implementing regulations, California Code of
9 Regulations, title 27, sections 25601 *et seq.* with respect to alleged exposures to marijuana smoke
10 from the Subject Products.


11 **3.2** Clear and Reasonable Warnings

12 **3.2.1 In-Store or Product Label Warnings.** Commencing on the Effective Date,
13 Defendant shall either 1) post in-store warning signs (“In-Store Warnings”) or 2) affix a warning label
14 to the packaging, labeling, or directly on each Subject Product (“Product Label Warning”) sold in its
15 dispensary or through a delivery service, if any, in California.


16 Commencing on the Effective Date, In-Store Warnings shall be provided at two or more of
17 the following locations: a) at or near each cash register in the store; b) at or near each display case in
18 the store; or c) at or near the entrance to the store. The warnings shall be at least 8 inches by 10
19 inches, and posted at a height and location that will make it conspicuous and easy to read for the
20 average person. The text of the warning shall be printed in black ink, in a font that is easy to read and
21 legible, but in no case shall be smaller than size 34 font.

22 Commencing on the Effective Date, the text of Product Label Warnings shall be printed in
23 black ink, in a font that is easy to read and legible, in the same type size or larger than the Subject
24 Product’s description text. The warning shall be securely affixed to (via a label) or printed upon the
25 container, label, or labeling of each Subject Product. Employees may not write over the text of the
26 warning for any reason.

1 Nothing in this Consent Judgment shall be interpreted to prohibit Defendant from modifying
2 the warning text to also reference reproductive harm in compliance with California Code of
3 Regulations, title 27, sections 25601 *et seq.*, as may be amended. If Defendant provides a warning
4 for reproductive harm, Defendant may use the bracketed language set forth below, without further
5 approval by the Court. The warning must be substantially similar to the following and may also
6 include a warning concerning birth defects or other reproductive harm (bracketed [] language below
7 may be added at the sole discretion of Defendant):

8  **WARNING:** These products contain chemicals, including Marijuana Smoke,
9 known to the State of California to cause cancer, birth defects, or
10 other reproductive harm.

11 or

12  **WARNING:** Smoking [or consuming] marijuana products can expose you to
13 chemicals including marijuana smoke, which is known to the State
14 of California to cause cancer[, and _____, which is known to the
15 State of California to cause birth defects or other reproductive
16 harm]. For more information go to www.P65Warnings.ca.gov.

17 Or the following short form warning as follows:

18  **WARNING: Cancer [and Reproductive Harm]-** www.P65Warnings.ca.gov.

19 **3.2.2 Internet Website Warning.** Commencing on the Effective Date, for all
20 Subject Products that are advertised on a website as offered for sale at Defendant’s dispensary or
21 available for delivery directly to Defendant’s dispensary members, a warning that complies with the
22 content requirements of Section 25603(a) and Section 3.2.1 above must also be provided by including
23 either the warning or a clearly marked hyperlink using the word “WARNING” on the Subject Product
24 display page, or by otherwise prominently displaying the warning to the purchaser prior to completing
25 the purchase. If a short-form warning is provided as set forth above, the warning provided on the
26 website may use the same content as the on-product warning. Defendant may include supplemental
27 information only as set forth in California Code of Regulations, title 27, Section 25601(e).

1 will be provided by ATA, or other form of personal delivery if payment is made in cash. The Total
2 Settlement Amount shall be apportioned as follows:

3 **4.2 PENALTY AMOUNT \$27,734.00** shall be considered a civil penalty pursuant to
4 California Health and Safety Code section 25249.7, subdivision (B)(1). CAPA shall remit 75%
5 (**\$20,800.50**) of the total civil penalty to the Office of Environmental Health Hazard Assessment
6 (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with
7 California Health and Safety Code, section 25249.12, subdivision (c). CAPA will retain the
8 remaining 25% (**\$6,933.50**) of the civil penalty.

9 **4.3 COSTS \$1,955.71** shall be distributed to CAPA as reimbursement for reasonable costs
10 incurred in bringing this action.

11 **4.4 ATTORNEYS FEES AMOUNT. \$25,057.24** shall be distributed to Aqua Terra
12 Aeris Law Group (“ATA”) for legal fees and costs incurred as a result of this matter, including
13 investigating, bringing this matter to Defendant’s attention, litigating, and negotiating a settlement in
14 the public interest.

15 **4.5** In the event that Defendant fails to remit the Total Settlement Payment owed under
16 Section 4 of this Consent Judgment: Defendant shall be deemed to be in material breach of its
17 obligations under this Consent Judgment. CAPA shall provide written notice of the delinquency to
18 Defendant’s counsel via electronic mail. If Defendant fails to deliver the Total Settlement Payment
19 within five business (5) after the written notice, the Total Settlement Payment shall become
20 immediately due and payable and shall accrue interest at the statutory judgment interest rate provided
21 in the Code of Civil Procedure, section 685.010. Additionally, Defendant agrees to pay ATA’s
22 reasonable attorney fees and costs for reasonably necessary efforts to collect the payment due under
23 this Consent Judgment.

24 **4.6 ADDITIONAL SETTLEMENT PAYMENTS. \$20,253.05** shall be distributed to
25 CAPA as an Additional Settlement Payment (“ASP”), pursuant to California Code of Regulations,
26 title 27, sections 3203, subdivision (d), and 3204. CAPA will utilize the ASP for activities that
27 address the same public harm as allegedly caused by Defendant in this matter. These activities are
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1 detailed below and support CAPA's overarching goal of reducing use, misuse, and exposure to
2 hazardous and toxic chemicals, fostering and increasing the public awareness of chemicals inherent
3 in consumer products, facilitating a safe environment for consumers and employees, and encouraging
4 corporate responsibility. CAPA's activities have had, and will continue to have, a direct and primary
5 effect within the State of California because California consumers will be benefitted by the reduction
6 of exposure to marijuana smoke and increase informed choices made by patients and consumers
7 before exposure by providing clear and reasonable warnings to California consumers prior to
8 exposure resulting from purchase of the products.

9 CAPA hereby provides the following list of activities CAPA engages in to protect California
10 consumers through Proposition 65 citizen enforcement, along with a breakdown of how ASP funds
11 will be utilized to facilitate those activities: (1) ENFORCEMENT (70%-80%): investigating,
12 obtaining, shipping, analyzing, and/or testing dispensaries or for products that may contain
13 carcinogenic chemicals contained in marijuana smoke and are sold to and expose California
14 consumers to chemicals listed under Proposition 65; continued monitoring and enforcement of past
15 consent judgments and settlements to ensure companies are in compliance with their obligations
16 thereunder, with a specific focus on those judgments and settlements concerning chemicals of concern
17 (which necessarily includes additional work, investigating, purchasing, processing, analyzing and/or
18 testing consumer products; litigating matters that result in settlements, judgments, defaults,
19 bankruptcies, or dismissals); (2) PUBLIC OUTREACH (up to 5%): public outreach through CAPA's
20 continuing advocacy in regulatory proceedings and rulemakings related to sales and use of cannabis
21 in California; ensuring the public receives information about the carcinogens contained in marijuana
22 smoke; and public service announcements about the risks associated with exposure to marijuana
23 smoke; (3) SPECIAL PROJECTS (up to 5-10%): projects involving expert, non-legal opinions not
24 specific to any one marijuana smoke case that are necessary to the continued private enforcement of
25 Proposition 65 concerning exposure to marijuana smoke and its related constituent chemicals;
26 assessing exposure scenarios and types of products associated with marijuana smoke and related
27 chemical exposures; and/or (4) PRODUCT DATABASE (up to 5%): maintaining a database with all

1 **5.2 CAPA’s Individual Release of Claims.** CAPA, on its own behalf, also provides a
2 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions,
3 causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and
4 demands of CAPA of any nature, character or kind, whether known or unknown, suspected or
5 unsuspected, arising out of alleged or actual exposures to marijuana smoke, and claims that were or
6 could have been asserted based on the NOV and/or Complaint relating to the Subject Products grown,
7 cultivated, processed, sold or distributed for sale by Defendant in California before the Effective Date.
8 CAPA agrees it will not encourage, entice, or otherwise support any third-party claim against
9 Defendant relating to the Subject Products.

10 **5.3 Defendant’s Release of CAPA.** Defendant, on its own behalf and on behalf of its
11 past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and
12 all claims that it may have against CAPA and its attorneys and other representatives, for any and all
13 actions taken or statements made (or those that could have been taken or made) by CAPA and its
14 attorneys and other representatives, whether in the course of investigating claims, otherwise seeking
15 to enforce Proposition 65 against it in this matter.

16 **5.4 California Civil Code, Section 1542.** It is possible that other claims not known to
17 the Parties arising out of the facts alleged in the Notice and relating to the Subject Products will
18 develop or be discovered. CAPA on its behalf only, on one hand, and Defendant, on the other hand,
19 acknowledge that this Consent Judgment is expressly intended to cover and include all such claims
20 up through the Effective Date, including all rights of action therefor. CAPA and Defendant
21 acknowledge that the claims released in Sections 5.2 and 5.3 above may include unknown claims,
22 and nevertheless waive California Civil Code, section 1542 as to any such unknown claims.
23 California Civil Code, section 1542 reads as follows:

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

1 CAPA and Defendant each acknowledge and understand the significance and consequences
2 of this specific waiver of California Civil Code, section 1542.

3 **6. COURT APPROVAL**

4 This Consent Judgment has no force or effect until it is approved and entered by the Court
5 and shall be null and void if, for any reason, it is not approved and entered by the Court within one
6 (1) year after it has been fully executed by all Parties.

7 **7. SEVERABILITY**

8 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
9 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be
10 adversely affected.

11 **8. GOVERNING LAW AND CONTINUING JURISDICTION**

12 The terms of this Consent Judgment shall be governed by the laws of the state of California
13 and apply within the state of California. Pursuant to Code of Civil Procedure section 664.6, the Court
14 retains jurisdiction over this matter and terms of the Judgment contained herein. In the event
15 Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to
16 the Subject Products, then Defendant may provide written notice to CAPA of any asserted change in
17 the law, and have no further obligations pursuant to this Consent Judgment, with respect to, and to
18 the extent that, the Subject Products are so affected. Nothing in this Consent Judgment shall be
19 interpreted to relieve Defendant from any obligation to comply with any pertinent state laws
20 concerning labeling, warning or toxics in consumer products. If OEHHA or other governmental body
21 with authority promulgates regulations setting forth warning text and/or methods of transmission
22 required or permitted to be used under Proposition 65 for exposures to marijuana smoke in the Subject
23 Products as defined herein, then at its sole discretion Defendant may use such other warning text
24 and/or method of transmission, without being in breach of this Consent Judgment, provided that
25 Defendant sends written notice of this decision and includes the content and means of transmission
26 of the warning to CAPA thirty (30) days in advance of implementing any such changes. CAPA shall
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1 have an opportunity to provide comments and to meet and confer regarding the proposed changes
2 before they are fully implemented.

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4 **9. NOTICES**

5 Unless specified herein, all correspondence and notices required to be provided pursuant to
6 this Consent Judgment shall be in writing and sent by the following methods, with additional copy to
7 counsel via electronic mail: (i) personal delivery; (ii) first-class mail, registered or certified, with
8 return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the
9 following addresses:

10
11 **For Defendant:**

12 Miramar Health Supply Cooperative, Inc.
13 ATTN: Current President or CEO
14 Miramar Health Supply Cooperative, Inc., doing business as Mankind Collective
15 7128 Miramar Road, # 10
16 San Diego, CA 92121

17 With a copy to:
18 Kathleen E. Finnerty
19 FINNERTY LAW OFFICES, INC.
20 1430 Blue Oaks Blvd., Suite 200
21 Roseville, CA 95747
22 kfinn@kfinnertylaw.com

23
24 **For CAPA:**

25 Executive Director
26 Center for Advanced Public Awareness, Inc.
27 180 Promenade Cir.
28 Sacramento, CA 95834

With a copy to:
Aqua Terra Aeris Law Group
c/o Matthew Maclear
828 San Pablo Avenue, Suite 115B
Albany, CA 94706
mcm@atalawgroup.com

1 Any Party may change its notice name and address by informing the other party in writing,
2 with proof of receipt. All notices and other communications required or permitted under this Final
3 Judgment that are properly addressed as provided in this paragraph are effective upon delivery if
4 delivered personally or by overnight mail, or are effective five (5) days following deposit in the United
5 States mail, postage prepaid, if delivered by First Class mail.

6 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

7 This Consent Judgment may be executed in counterparts, and by facsimile or portable
8 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
9 taken together, shall constitute one and the same document.

10 **11. POST EXECUTION ACTIVITIES**

11 CAPA agrees to comply with the reporting form requirements referenced in Health & Safety
12 Code, section 25249.7, subdivision (f). The Parties further acknowledge that, pursuant to Health &
13 Safety Code, section 25249.7, subdivision (f), a noticed motion is required to obtain judicial approval
14 of the settlement. In furtherance of obtaining such approval, CAPA and Defendant agree to mutually
15 employ their best efforts, and that of their counsel, to support the entry of this agreement as a Consent
16 Judgment, and to obtain judicial approval of the settlement in a timely manner. If the Attorney
17 General objects to any term in this Consent Judgment, the Parties shall use their best individual and
18 collective efforts to resolve the concern in a timely manner, and if possible in advance of the hearing
19 on the motion to approve settlement. If the Court does not approve of the Stipulated Consent
20 Judgment, it shall be void or voided and have no force or effect.

21 **12. MODIFICATION**

22 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
23 upon entry of a modified consent judgment by the Court thereon; or (ii) upon successful motion or
24 application of any Party and the entry of a modified consent judgment by the Court.

25 **13. AUTHORIZATION**

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1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
2 Parties and have read, understood and agree to all of the terms and conditions of this Consent
3 Judgment.

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5 **14. DRAFTING**

6 It shall be conclusively presumed that the Parties participated equally in the drafting of this
7 Consent Judgment. The Parties discussed each and every term and provision, and the meaning thereof,
8 in advance of executing this stipulation. Each Party has had an opportunity to fully discuss the terms
9 and conditions with legal counsel.

10 **15. ENFORCEMENT**

11 If a dispute arises with respect to either Party's compliance with the terms of this Consent
12 Judgment entered by the Court, the Parties shall meet and confer in person, in writing or via telephone
13 to attempt to resolve the dispute in an amicable and amenable fashion. No action or motion may be
14 filed unless such a good faith attempt to resolve the dispute occurs before such a filing.

15 CAPA may, by motion or order to show cause before this Court, seek to enforce the terms and
16 conditions contained in this Consent Judgment. CAPA may seek whatever penalties/fines, costs, fees
17 or other remedies are provided for in the Consent Judgment or allowed by law for failure to comply
18 with the Consent Judgment, pursuant to Code of Civil Procedure 664.6. To the extent that the alleged
19 failure to comply with the Consent Judgment constitutes a violation of Proposition 65 or other laws,
20 CAPA shall not be limited to enforcement of this Consent Judgment and may seek, in a separately
21 filed action, whatever penalties/fines, costs, fees or other remedies as provided for by law for failure
22 to comply with Proposition 65 or other law(s).

23 **16. ENTIRE AGREEMENT**

24 This Consent Judgment contains the sole and entire agreement and understanding of the
25 Parties with regard to this matter, including any and all prior discussions, negotiations, commitments
26 or understanding related thereto. No representations, oral, written or otherwise, express or implied,
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1 unless specifically referred to herein shall be deemed to exist or to bind any Party as it relates to the
2 allegations made in this action.

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

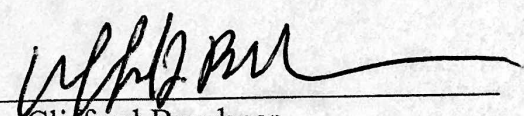
7 This Consent Judgment has come before the Court upon request of the Parties for the Court
8 to fully review its terms and to be fully informed regarding the matters which are the subject of this
9 action, and to:

- 10 (1) Find the terms and provisions of this Consent Judgment represent a fair and equitable
- 11 settlement of all matters raised by the allegations of the Complaint, that the matter has
- 12 been diligently prosecuted and that the public interest is served by such settlement;
- 13 and
- 14 (2) Make the statutory findings required pursuant to Health and Safety Code section
- 15 25249.7, subdivision (f)(4), approve the settlement and approve this Consent
- 16 Judgment.

17 **IT IS SO STIPULATED.**

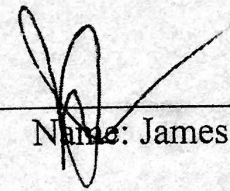
18 CENTER FOR ADVANCED PUBLIC
19 AWARENESS, INC.

20 DATED: 3/26/18

21 BY: 
22 Clifford Brechner
23 Executive Director

24 MIRAMAR HEALTH SUPPLY
25 COOPERATIVE, INC., d.b.a MANKIND
26 COLLECTIVE

26 DATED: 3/23/18

27 BY: 
28 Name: James Schmachtenberger

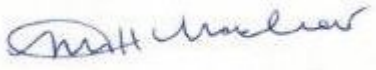
Title: Chief Executive Officer

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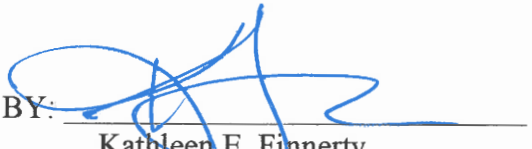
APPROVED AS TO FORM:

AQUA TERRA AERIS LAW GROUP, LLP

DATED: March 29, 2018

BY: 
Matthew Maclear
Attorney for Plaintiff, Center for
Advanced Public Awareness, Inc.

DATED: 3.29.18

BY: 
Kathleen E. Finnerty
Attorney for Defendant, Miramar
Health Supply Cooperative, Inc., d.b.a.
Mankind Collective

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Date: _____

Judge of the Superior Court