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10 Attorney for Defendant
11 Munchkin, Inc., individually and doing business as Milkmakers

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

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

18 **Plaintiff,**

19 **vs.**

20 **MUNCHKIN, INC., individually and doing**
21 **business as MILKMAKERS, a Delaware**
corporation, and DOES 1-100

22 **Defendants.**

CASE NO. RG17877285

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 28, 2017

Trial Date: None set

23
24 **1. INTRODUCTION**

25 **1.1** On September 28, 2017, Plaintiff Environmental Research Center, Inc. (“ERC”),
26 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by
27 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
28 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against Munchkin, Inc., individually and doing business as Milkmakers
2 (“Munchkin”) and Does 1-100. In this action, ERC alleges that a number of products
3 manufactured, distributed, or sold by Munchkin contain lead and/or cadmium, chemicals listed
4 under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these
5 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter
6 individually as a “Covered Product” or collectively as “Covered Products”) are:

- 7 • Bumpboosters Pregnancy Cookie Oatmeal Chocolate Chip (lead, cadmium)
- 8 • MilkMakers Lactation Cookies Lemon (lead)
- 9 • MilkMakers Lactation Cookies Oatmeal Chocolate Chip (lead, cadmium)
- 10 • MilkMakers Lactation Cookies Oatmeal Raisin (lead)

11 **1.2** ERC and Munchkin are hereinafter referred to individually as a “Party” or
12 collectively as the “Parties.”

13 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
14 causes, helping safeguard the public from health hazards by reducing the use and misuse of
15 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
16 and encouraging corporate responsibility.

17 **1.4** For purposes of this Consent Judgment, the Parties agree that Munchkin is a
18 business entity that has employed ten or more persons at all times relevant to this action, and
19 qualifies as a “person in the course of business” within the meaning of Proposition 65. Munchkin
20 manufactures, distributes, and/or sells the Covered Products.

21 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
22 dated April 28, 2017 that was served on the California Attorney General, other public
23 enforcers, and Munchkin (“Notice”). A true and correct copy of the 60-Day Notice dated April
24 28, 2017 is attached hereto as **Exhibit A** and incorporated herein by reference. More than 60
25 days have passed since the Notice was served on the Attorney General, public enforcers, and
26 Munchkin and no designated governmental entity has filed a complaint against Munchkin with
27 regard to the Covered Products or the alleged violations.

28 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes

1 persons in California to lead and/or cadmium without first providing clear and reasonable
2 warnings in violation of California Health and Safety Code section 25249.6.

3 **1.7** Munchkin denies all material allegations contained in the Notice and Complaint.

4 **1.8** The Parties have entered into this Consent Judgment solely to settle, compromise,
5 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this
6 Consent Judgment nor compliance with this Consent Judgment shall constitute or be construed
7 as an admission by any of the Parties or by any of their respective officers, directors,
8 shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
9 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
10 violation of law.

11 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
12 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
13 current or future legal proceeding unrelated to these proceedings.

14 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered as
15 a Judgment by this Court. The date by which Munchkin must comply with the injunctive relief
16 set for in Section 3 of this consent Judgment is three (3) months from the Effective Date
17 (“Compliance Date”).

18 **2. JURISDICTION AND VENUE**

19 For purposes only of this Consent Judgment and any further court action that may become
20 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
21 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
22 over Munchkin as to the acts alleged in the Complaint, that venue is proper in Alameda County,
23 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
24 all claims up through and including the Compliance Date which were or could have been asserted
25 in this action based on the facts alleged in the Notice and Complaint.

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

27 **3.1** Beginning on the Compliance Date, Munchkin shall be permanently enjoined
28 from manufacturing for sale in the State of California, “Distributing into the State of

1 California”, or directly selling in the State of California, any Covered Products which expose a
2 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or
3 “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day unless it
4 meets the warning requirements under Section 3.2.

5 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
6 of California” shall mean to directly ship a Covered Product into California for sale in
7 California or to sell a Covered Product to a distributor that Munchkin knows or has reason to
8 know will sell the Covered Product in California.

9 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
10 Level” and “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be
11 calculated using the following formula: micrograms of lead or cadmium per gram of product,
12 multiplied by grams of product per serving of the product (using the largest serving size
13 appearing on the product label), multiplied by servings of the product per day (using the largest
14 number of servings in a recommended dosage appearing on the product label), which equals
15 micrograms of lead or cadmium exposure per day. If no recommended daily serving size is
16 provided on the label, then the daily serving size shall equal one.

17 **3.2 Clear and Reasonable Warnings**

18 If Munchkin is required to provide a warning pursuant to Section 3.1, the following
19 warning must be utilized (“Warning”):

20 **WARNING:** Consuming this product can expose you to chemicals including [lead] [and]
21 [cadmium] which is [are] known to the State of California to cause [cancer and] birth
22 defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov/food.

23 Munchkin shall use the phrase “cancer and” in the Warning if Munchkin has reason to
24 believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
25 determined pursuant to the quality control methodology set forth in Section 3.4 or if Munchkin has
26 reason to believe that another Proposition 65 chemical is present which may require a cancer
27 warning. As identified in the brackets, the warning shall appropriately reflect whether there is
28 lead, cadmium, or both chemicals present in each of the Covered Products.

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

6 The Warning shall be at least the same size as the largest of any other health or safety
7 warnings also appearing on its website or on the label or container of Munchkin' product
8 packaging and the word "WARNING" shall be in all capital letters and in bold print. No
9 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
10 average lay person shall accompany the Warning. Further no statements may accompany the
11 Warning that state or imply that the source of the listed chemical has an impact on or results in a
12 less harmful effect of the listed chemical.

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

17 **3.3 Reformulated Covered Products**

18 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no
19 greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" is no more
20 than 4.1 micrograms of cadmium per day as determined by the quality control methodology
21 described in Section 3.4.

22 **3.4 Testing and Quality Control Methodology**

23 **3.4.1** Beginning within one year of the Compliance Date, Munchkin shall
24 arrange for lead and/or cadmium testing of the Covered Products at least once a year for a
25 minimum of five consecutive years by arranging for testing of three randomly selected samples
26 of each of the Covered Products, in the form intended for sale to the end-user, which Munchkin
27 intends to sell or is manufacturing for sale in California, directly selling to a consumer in
28 California or "Distributing into the State of California." If tests conducted pursuant to this

1 Section demonstrate that no Warning is required for a Covered Product during each of five
2 consecutive years, then the testing requirements of this Section will no longer be required as to
3 that Covered Product. However, if during or after the five-year testing period, Munchkin
4 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the
5 Covered Products, Munchkin shall test that Covered Product annually for at least four (4)
6 consecutive years after such change is made.

7 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
8 “Daily Cadmium Exposure Level,” the arithmetic mean lead and/or cadmium detection result
9 of the three (3) randomly selected samples of the Covered Products will be controlling.

10 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
11 laboratory method that complies with the performance and quality control factors appropriate
12 for the method used, including limit of detection, qualification, accuracy, and precision that
13 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
14 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
15 method subsequently agreed to in writing by the Parties and approved by the Court through
16 entry of a modified consent judgment.

17 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
18 independent third party laboratory certified by the California Environmental Laboratory
19 Accreditation Program or an independent third-party laboratory that is registered with the
20 United States Food & Drug Administration.

21 **3.4.5** Nothing in this Consent Judgment shall limit Munchkin’ ability to
22 conduct, or require that others conduct, additional testing of the Covered Products, including
23 the raw materials used in their manufacture.

24 **3.4.6** Within thirty (30) days of ERC’s written request, Munchkin shall deliver
25 lab reports obtained pursuant to Section 3.4 to ERC. Munchkin shall retain all test results and
26 documentation for a period of five years from the date of each test.

27 **4. SETTLEMENT PAYMENT**

28 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,

1 attorney's fees, and costs, Munchkin shall make a total payment of \$67,500.00 ("Total
2 Settlement Amount") to ERC within 5 days of the Effective Date ("Due Date"). Munchkin
3 shall make this payment by wire transfer to ERC's escrow account, for which ERC will give
4 Munchkin the necessary account information. The Total Settlement Amount shall be
5 apportioned as follows:

6 **4.2** \$27,745.42 shall be considered a civil penalty pursuant to California Health and
7 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$20,809.06) of the civil penalty to
8 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
9 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
10 Code section 25249.12(c). ERC will retain the remaining 25% (\$6,936.36) of the civil penalty.

11 **4.3** \$1,177.46 shall be distributed to ERC as reimbursement to ERC for reasonable
12 costs incurred in bringing this action.

13 **4.4** \$20,809.03 shall be distributed to ERC as an Additional Settlement Payment
14 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
15 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
16 caused by Munchkin in this matter. These activities are detailed below and support ERC's
17 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
18 supplement products in California. ERC's activities have had, and will continue to have, a direct
19 and primary effect within the State of California because California consumers will be benefitted
20 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements
21 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
22 the products.

23 Based on a review of past years' actual budgets, ERC is providing the following list of
24 activities ERC engages in to protect California consumers through Proposition 65 citizen
25 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
26 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
27 supplement products that may contain lead and/or cadmium and are sold to California
28 consumers. This work includes continued monitoring and enforcement of past consent judgments

1 and settlements to ensure companies are in compliance with their obligations thereunder, with a
2 specific focus on those judgments and settlements concerning lead and/or cadmium. This work
3 also includes investigation of new companies that ERC does not obtain any recovery through
4 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining
5 ERC's Voluntary Compliance Program by acquiring products from companies, developing and
6 maintaining a case file, testing products from these companies, providing the test results and
7 supporting documentation to the companies, and offering guidance in warning or implementing a
8 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT
9 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the
10 numbers of contaminated products that reach California consumers by providing access to free
11 testing for lead in dietary supplement products (Products submitted to the program are screened
12 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,
13 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
14 that submitted the product).

15 ERC shall be fully accountable in that it will maintain adequate records to document and
16 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
17 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
18 shall provide the Attorney General, within thirty days of any request, copies of documentation
19 demonstrating how such funds have been spent.

20 **4.5** \$17,768.09 shall be distributed to ERC for its in-house legal fees. Except as
21 explicitly provided herein, each Party shall bear its own attorneys' fees and costs.

22 **4.6** In the event that Munchkin fails to remit the Total Settlement Amount owed
23 under Section 4 of this Consent Judgment on or before the Due Date, Munchkin shall be
24 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
25 provide written notice of the delinquency to Munchkin via electronic mail to Munchkin's
26 General Counsel at petty.rader@munchkin.com. If Munchkin fails to deliver the Total
27 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
28 shall accrue interest at the statutory judgment interest rate provided in the California Code of

1 Civil Procedure section 685.010. Additionally, Munchkin agrees to pay ERC's reasonable
2 attorney's fees and costs for any efforts to collect the payment due under this Consent
3 Judgment.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

5 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
6 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
7 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
8 modified consent judgment.

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

19 **5.3** Where the meet-and-confer process does not lead to a joint motion or
20 application in support of a modification of the Consent Judgment, then either Party may seek
21 judicial relief on its own.

22 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
23 **JUDGMENT**

24 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
25 this Consent Judgment.

26 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
27 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
28 inform Munchkin in a reasonably prompt manner of its test results, including information

1 sufficient to permit Munchkin to identify the Covered Products at issue. Munchkin shall, within
2 thirty (30) days following such notice, provide ERC with testing information, from an
3 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
4 demonstrating Munchkin' compliance with the Consent Judgment, if warranted. The Parties
5 shall first attempt to resolve the matter prior to ERC taking any further legal action.

6 **7. APPLICATION OF CONSENT JUDGMENT**

7 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
8 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
9 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
10 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
11 application to any Covered Product which is distributed or sold exclusively outside the State of
12 California and which is not used by California consumers. Further, this Consent Judgment shall
13 not apply to any Covered Product that Munchkin, after the Effective Date, ceases manufacturing
14 for sale in California, directly sells to consumers in California, or "Distribut[es] into the State of
15 California."

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

17 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
18 on behalf of itself and in the public interest, and Munchkin and its respective officers, directors,
19 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
20 franchisees, licensees, customers (not including private label customers of Munchkin),
21 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
22 distribution chain of each and every Covered Product, and the predecessors, successors, and
23 assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the
24 public interest, hereby fully releases and discharges the Released Parties from any and all
25 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
26 expenses asserted, or that could have been asserted from the handling, use, or consumption of
27 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
28

1 regulations arising from the failure to provide Proposition 65 warnings on any of the Covered
2 Products regarding lead and/or cadmium up to and including the Compliance Date.

3 **8.2** ERC on its own behalf only, and Munchkin on its own behalf only, further
4 waive and release any and all claims they may have against each other for all actions or
5 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
6 65 in connection with the Notice and Complaint up through and including the Compliance
7 Date, provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek
8 to enforce the terms of this Consent Judgment.

9 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
10 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
11 discovered. ERC on behalf of itself only, and Munchkin on behalf of itself only, acknowledge
12 that this Consent Judgment is expressly intended to cover and include all such claims up
13 through and including the Effective Date, including all rights of action therefore. ERC and
14 Munchkin acknowledge that the claims released in Sections 8.1 and 8.2 above may include
15 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
16 unknown claims. California Civil Code section 1542 reads as follows:

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

22 ERC on behalf of itself only, and Munchkin on behalf of itself only, acknowledge and
23 understand the significance and consequences of this specific waiver of California Civil Code
24 section 1542.

25 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
26 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
27 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

28 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
environmental exposures arising under Proposition 65, nor shall it apply to any of Munchkin's
products other than the Covered Products.

1 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

4 **10. GOVERNING LAW**

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

7 **11. PROVISION OF NOTICE**

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

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

12 Chris Heptinstall, Executive Director, Environmental Research Center
13 3111 Camino Del Rio North, Suite 400
14 San Diego, CA 92108
15 Tel: (619) 500-3090
16 Email: chris_erc501c3@yahoo.com

17 With a copy to:
18 Anne Barker
19 Environmental Research Center, Inc.
20 3111 Camino Del Rio North, Suite 400
21 San Diego, CA 92108
22 Telephone: 619-500-3090
23 Facsimile: 706-858-0326

24 **MUNCHKIN, INC., individually and doing business as MILKMAKERS**

25 Janusse Lagman
26 Munchkin, Inc.
27 7835 Gloria Avenue
28 Van Nuys, CA 91406
Telephone: 818-221-4236
Facsimile: 818-893-6343
Email: janusse.lagman@munchkin.com

With a copy to:
Petty Rader
Munchkin, Inc.
7835 Gloria Avenue
Van Nuys, CA 91406

1 Telephone: 818-221-4542
2 Facsimile: 818-893-6343
3 Email: petty.rader@munchkin.com

4 **12. COURT APPROVAL**

5 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
6 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
7 Consent Judgment.

8 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
9 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
10 prior to the hearing on the motion.

11 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
12 void and have no force or effect.

13 **13. EXECUTION AND COUNTERPARTS**

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

17 **14. DRAFTING**

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

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

27 If a dispute arises with respect to either Party's compliance with the terms of this Consent
28 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be

1 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

2 **16. ENFORCEMENT**

3 ERC may, by motion or order to show cause before the Superior Court of Alameda
4 County, enforce the terms and conditions contained in this Consent Judgment after complying
5 with all pre-filing resolution requirements, including those set forth in Section 15 of this Consent
6 Judgment. In any action brought by any Party to enforce this Consent Judgment, such enforcing
7 Party may seek whatever fines, costs, penalties, or remedies as are provided by law for failure to
8 comply with the Consent Judgment.

9 **17. ENTIRE AGREEMENT, AUTHORIZATION**

10 **17.1** This Consent Judgment contains the sole and entire agreement and
11 understanding of the Parties with respect to the entire subject matter herein, and any and all
12 prior discussions, negotiations, commitments, and understandings related hereto. No
13 representations, oral or otherwise, express or implied, other than those contained herein have
14 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
15 herein, shall be deemed to exist or to bind any Party.

16 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
17 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

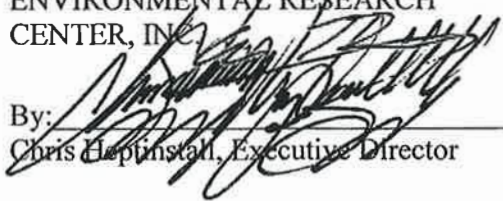
23 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
24 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
25 been diligently prosecuted, and that the public interest is served by such settlement; and

26 (2) Make the findings pursuant to California Health and Safety Code section
27 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

28 **IT IS SO STIPULATED:**

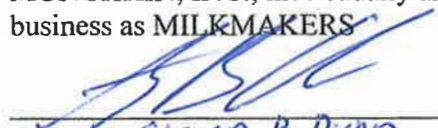
1 Dated: 9/28/, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hapinstall, Executive Director

2
3
4 Dated: 10/3, 2017

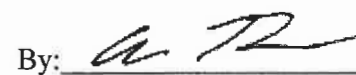
MUNCHKIN, INC., individually and doing
business as MILKMAKERS

By: 
Its: CEO

5
6
7
8
9 **APPROVED AS TO FORM:**

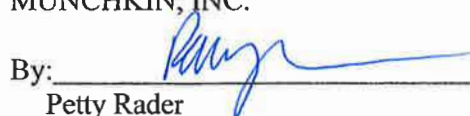
10 Dated: September 28, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Anne Barker
In-House Counsel

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14 Dated: Sept 28, 2017

MUNCHKIN, INC.

By: 
Petty Rader
General Counsel

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18 **ORDER AND JUDGMENT**

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

22 IT IS SO ORDERED, ADJUDGED AND DECREED.

23 Dated: _____, 2017

Judge of the Superior Court