

1 RICHARD M. FRANCO (CBN 170970)
2 LAW OFFICE OF RICHARD M. FRANCO
3 6500 Estates Drive
4 Oakland, CA 94611
5 Ph: 510-684-1022
6 Email: rick@rfrancolaw.com

7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 ANTHONY J. CORTEZ (SBN 251743)
10 GREGORY SPERLA (SBN 278062)
11 GREENBERG TRAUIG LLP
12 1201 K Street, Suite 1100
13 Sacramento, CA 95814-3938
14 Telephone: (916) 442-1111
15 Facsimile: (916) 448-1709
16 Email: cortezan@gtlaw.com
17 Email: sperlag@gtlaw.com

18 Attorneys for Defendant
19 MAXIMUM HUMAN PERFORMANCE, LLC dba MUSCLEMEDS,
20 MUSCLEMEDS PERFORMANCE TECHNOLOGIES, AND MUSCLEMEDS, INC.

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **COUNTY OF ALAMEDA**

23 ENVIRONMENTAL RESEARCH CENTER,
24 INC., a non-profit California corporation,

25 Plaintiff,

26 vs.

27 MAXIMUM HUMAN PERFORMANCE,
28 LLC dba MUSCLEMEDS, MUSCLEMEDS
PERFORMANCE TECHNOLOGIES, AND
MUSCLEMEDS, INC., a Delaware limited
liability company,

Defendant.

CASE NO. RG17884567

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: December 4, 2017

Trial Date: None set

1. INTRODUCTION

1.1 On December 4, 2017, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the
2 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
3 against MAXIMUM HUMAN PERFORMANCE, LLC dba MUSCLEMEDS, MUSCLEMEDS
4 PERFORMANCE TECHNOLOGIES, AND MUSCLEMEDS, INC. (“MUSCLEMEDS”). In
5 this action, ERC alleges that a number of products manufactured, distributed, or sold by
6 MUSCLEMEDS contain lead and/or cadmium, chemicals listed under Proposition 65 as
7 carcinogens and reproductive toxins, and expose consumers to these chemicals at a level
8 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a
9 “Covered Product” or collectively as “Covered Products”) are:

- 10 1) MuscleMeds Performance Technologies Carnivor Shred Hydrolyzed
11 Protein Chocolate (lead)
- 12 2) MuscleMeds Performance Technologies Methyl Arimatest (lead)
 - 13 a. MuscleMeds Performance Technologies Methyl Arimatest Formula 1
 - 14 b. MuscleMeds Performance Technologies Methyl Arimatest Formula 2
- 15 3) MuscleMeds Performance Technologies Anabolic Beef Protein
16 Gainer Carnivor Mass Chocolate Macaroon (lead)
- 17 4) MuscleMeds Performance Technologies Anabolic Beef Protein
18 Gainer Carnivor Mass Chocolate Peanut Butter (lead, cadmium)
- 19 5) MuscleMeds Performance Technologies Anabolic Beef Protein
20 Gainer Carnivor Mass Vanilla Caramel (lead)
- 21 6) MuscleMeds Performance Technologies Anabolic Beef Protein
22 Gainer Carnivor Mass Chocolate Fudge (lead)
- 23 7) MuscleMeds Performance Technologies Bioengineered Beef Protein
24 Isolate Carnivor Chocolate (lead)
- 25 8) MuscleMeds Performance Technologies Anabolic Beef Protein
26 Gainer Carnivor Mass Strawberry (lead)
- 27 9) MuscleMeds Performance Technologies Bioengineered Beef Protein
28 Isolate Carnivor Chocolate Mint (lead)

- 1 10) MuscleMeds Performance Technologies Bioengineered Beef Protein
2 Isolate Carnivor Chocolate Peanut Butter (lead)
3 11) MHP Maximum Human Performance Super Premium Whey
4 Protein+ Chocolate (lead)
5 12) MHP Maximum Human Performance Ultrabuild Chocolate (lead)
6 13) MHP Maximum Human Performance IsoPrime 100% Beef Pure
7 Beef Protein Isolate Chocolate (lead)
8 14) MHP Maximum Human Performance Power Pak Pudding Delicious
9 Natural Vanilla Creme Flavor (lead)
10 15) Fit&Lean Fat Burning Meal Replacement Vanilla Ice Cream (lead)
11 16) Fit&Lean Fat Burning Meal Replacement Chocolate Milkshake
12 (lead, cadmium)

13 **1.2** ERC and MUSCLEMEDS are hereinafter referred to individually as a “Party”
14 or collectively as the “Parties.”

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

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

23 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
24 dated April 28, 2017, May 26, 2017, and October 20, 2017 that were served on the California
25 Attorney General, other public enforcers, and MUSCLEMEDS (“Notices”). True and correct
26 copies of the 60-Day Notices dated April 28, 2017, May 26, 2017, and October 20, 2017 are
27 attached hereto as **Exhibits A, B, and C** respectively and each is incorporated herein by
28 reference. More than 60 days have passed since the Notices were served on the Attorney

1 General, public enforcers, and MUSCLEMEDS and no designated governmental entity has
2 filed a complaint against MUSCLEMEDS with regard to the Covered Products or the alleged
3 violations.

4 **1.6** ERC's Notices and Complaint allege that use of the Covered Products exposes
5 persons in California to lead and/or cadmium without first providing clear and reasonable
6 warnings in violation of California Health and Safety Code section 25249.6. MUSCLEMEDS
7 denies all material allegations contained in the Notices and Complaint.

8 **1.7** The Parties have entered into this Consent Judgment in order to settle,
9 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
10 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
11 be construed as an admission by any of the Parties or by any of their respective officers,
12 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
13 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
14 violation of law.

15 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
16 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
17 current or future legal proceeding unrelated to these proceedings.

18 **1.9** The Effective Date of this Consent Judgment is the date on which Notice of
19 Entry of Judgment is served on MUSCLEMEDS. Service of Notice via email shall be deemed
20 effective service upon transmission.

21 **2. JURISDICTION AND VENUE**

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

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

2 **3.1** Beginning six months from the Effective Date (“Compliance Date”),
3 MUSCLEMEDS shall be permanently enjoined from manufacturing for sale in the State of
4 California, “Distributing into the State of California”, or directly selling in the State of
5 California, any Covered Products which expose a person to a “Daily Lead Exposure Level” of
6 more than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” of more
7 than 4.1 micrograms of cadmium per day unless it meets the warning requirements under
8 Section 3.2.

9 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
10 of California” shall mean to directly ship a Covered Product into California for sale in
11 California or to sell a Covered Product to a distributor that MUSCLEMEDS knows or has
12 reason to know will sell the Covered Product in California.

13 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure Level” shall
14 be measured in micrograms, and shall be calculated using the following formula: micrograms
15 of lead per gram of product, multiplied by grams of product per serving of the product (using
16 the largest serving size appearing on the product label), multiplied by servings of the product
17 per day (using the largest number of servings in a recommended dosage appearing on the
18 product label), which equals micrograms of lead exposure per day, excluding amounts of
19 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

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

3.2 Clear and Reasonable Warnings

If MUSCLEMEDS is required to provide a warning pursuant to Section 3.1, the following warning must be utilized ("Warning"):

WARNING: Consuming this product can expose you to chemicals including [lead] [and] [cadmium] 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/food.

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

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

The Warning shall be at least the same size as the largest of any other health or safety

1 warnings also appearing on its website or on the label or container of MUSCLEMEDS' product
2 packaging and the word "WARNING" shall be in all capital letters and, if feasible, in bold print.
3 No statements having the effect of materially diminishing the impact of the Warning on the
4 average lay person shall accompany the Warning.

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

9 **3.3 Reformulated Covered Products**

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

14 **3.4 Testing and Quality Control Methodology**

15 **3.4.1** Beginning within one year of the Effective Date, MUSCLEMEDS shall
16 arrange for lead and/or cadmium testing of the Covered Products at least once a year for a
17 minimum of three consecutive years by arranging for testing of five randomly selected samples
18 of each of the Covered Products, in the form intended for sale to the end-user, which
19 MUSCLEMEDS intends to sell or is manufacturing for sale in California, directly selling to a
20 consumer in California or "Distributing into the State of California." If tests conducted
21 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
22 each of five consecutive years, then the testing requirements of this Section will no longer be
23 required as to that Covered Product. However, if during or after the five-year testing period,
24 MUSCLEMEDS changes ingredient suppliers for any of the Covered Products and/or
25 reformulates any of the Covered Products, MUSCLEMEDS shall test that Covered Product
26 annually for at least four (4) consecutive years after such change is made.

1 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
2 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the five
3 (5) randomly selected samples of the Covered Products will be controlling.

4 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
5 laboratory method that complies with the performance and quality control factors appropriate
6 for the method used, including limit of detection, qualification, accuracy, and precision that
7 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
8 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
9 method subsequently agreed to in writing by the Parties and approved by the Court through
10 entry of a modified consent judgment.

11 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
12 independent third party laboratory certified by the California Environmental Laboratory
13 Accreditation Program or an independent third-party laboratory that is registered with the
14 United States Food & Drug Administration.

15 **3.4.5** Nothing in this Consent Judgment shall limit MUSCLEMEDS’ ability to
16 conduct, or require that others conduct, additional testing of the Covered Products, including
17 the raw materials used in their manufacture.

18 **3.4.6** Within thirty (30) days of ERC’s written request demonstrating a
19 potential violation of this Consent Judgment, MUSCLEMEDS shall deliver lab reports
20 obtained pursuant to Section 3.4 to ERC, which ERC shall keep confidential to the extent
21 permitted by law. MUSCLEMEDS shall retain all test results and documentation for a period
22 of three years from the date of each test.

23 **3.4.7** Exclusion where warning provided

24 The provisions of Section 3.4 of this Consent Judgment shall not apply to any product for
25 which a warning is provided pursuant to Section 3.2.

26 **4. SETTLEMENT PAYMENT**

27 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
28 attorney’s fees, and costs, MUSCLEMEDS shall make payments totaling \$150,000.00 (“Total

1 Settlement Amount”) to ERC, the first \$75,000 of which shall be paid within 5 business days of
2 the Effective Date and the second \$75,000 paid within 60 calendar days of the first payment
3 (referred to hereinafter as “Due Date” individually or “Due Dates” collectively).

4 MUSCLEMEDS shall make the payments by wire transfer to ERC’s escrow account, for which
5 ERC will give MUSCLEMEDS the necessary account information. The Total Settlement
6 Amount shall be apportioned as follows:

7 **4.2** \$55,580.88 shall be considered a civil penalty pursuant to California Health and
8 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$41,685.66) of the civil penalty to
9 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
10 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
11 Code section 25249.12(c). ERC will retain the remaining 25% (\$13,895.22) of the civil
12 penalty.

13 **4.3** \$7,343.15 shall be distributed to ERC as reimbursement to ERC for reasonable
14 costs incurred in bringing this action.

15 **4.4** \$41,685.62 shall be distributed to ERC as an Additional Settlement Payment
16 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
17 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
18 caused by Defendant in this matter. These activities are detailed below and support ERC’s
19 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
20 supplement products in California. ERC’s activities have had, and will continue to have, a direct
21 and primary effect within the State of California because California consumers will be benefitted
22 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements
23 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
24 the products.

25 Based on a review of past years’ actual budgets, ERC is providing the following list of
26 activities ERC engages in to protect California consumers through Proposition 65 citizen
27 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
28 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary

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

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

22 **4.5** \$14,625.00 shall be distributed to the Law Office of Richard M. Franco as
23 reimbursement of ERC's attorney's fees, while \$30,765.35 shall be distributed to ERC for its
24 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
25 costs.

26 **4.6** In the event that MUSCLEMEDS fails to remit any payment owed under Section
27 4 of this Consent Judgment on or before its respective Due Date, MUSCLEMEDS shall be
28 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall

1 provide written notice of the delinquency to MUSCLEMEDS via electronic mail. If
2 MUSCLEMEDS fails to deliver the delinquent payment within five (5) days from the written
3 notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate
4 provided in the California Code of Civil Procedure section 685.010. Additionally,
5 MUSCLEMEDS agrees to pay ERC's reasonable attorney's fees and costs for any efforts to
6 collect the payment due under this Consent Judgment.

7 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

24 **5.3** Where the meet-and-confer process does not lead to a joint motion or
25 application in support of a modification of the Consent Judgment, then either Party may seek
26 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
27 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure
28 section 1021.5.

1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
2 **JUDGMENT**

3 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
4 this Consent Judgment.

5 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
7 inform MUSCLEMEDS in a reasonably prompt manner of its test results, including information
8 sufficient to permit MUSCLEMEDS to identify the Covered Products at issue. MUSCLEMEDS
9 shall, within thirty (30) days following such notice, provide ERC with testing information, from
10 an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
11 demonstrating MUSCLEMEDS' compliance with the Consent Judgment, if warranted. The
12 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

13 **7. APPLICATION OF CONSENT JUDGMENT**

14 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
15 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
16 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
17 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
18 application to any Covered Product which is distributed or sold exclusively outside the State of
19 California and which is not used by California consumers.

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

21 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
22 on behalf of itself and in the public interest, and MUSCLEMEDS and its respective officers,
23 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
24 franchisees, licensees, customers (not including private label customers of MUSCLEMEDS),
25 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
26 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
27 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
28 hereby fully releases and discharges the Released Parties from any and all claims, actions,

1 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
2 asserted, or that could have been asserted from the handling, use, or consumption of the
3 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
4 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
5 lead and/or cadmium up to and including the Effective Date.

6 **8.2** ERC on its own behalf only, and MUSCLEMEDS on its own behalf only,
7 further waive and release any and all claims they may have against each other for all actions or
8 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
9 65 in connection with the Notices and Complaint up through and including the Effective Date,
10 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
11 enforce the terms of this Consent Judgment.

12 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
13 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
14 discovered. ERC on behalf of itself only, and MUSCLEMEDS on behalf of itself only,
15 acknowledge that this Consent Judgment is expressly intended to cover and include all such
16 claims up through and including the Effective Date, including all rights of action therefore.

17 ERC and MUSCLEMEDS acknowledge that the claims released in Sections 8.1 and 8.2 above
18 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
19 any such unknown claims. California Civil Code section 1542 reads as follows:

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

25 ERC on behalf of itself only, and MUSCLEMEDS on behalf of itself only, acknowledge and
26 understand the significance and consequences of this specific waiver of California Civil Code
27 section 1542.

28 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

1 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
2 environmental exposures arising under Proposition 65, nor shall it apply to any of
3 MUSCLEMEDS' products other than the Covered Products.

4 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7 **10. GOVERNING LAW**

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

10 **11. PROVISION OF NOTICE**

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

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

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

20 With a copy to:

21 RICHARD M. FRANCO
22 LAW OFFICE OF RICHARD M. FRANCO
23 6500 Estates Drive
24 Oakland, CA 94611
25 Ph: 510-684-1022
26 Email: rick@rfrancolaw.com

27 Attorney for Plaintiff
28 ENVIRONMENTAL RESEARCH CENTER, INC.

**MAXIMUM HUMAN PERFORMANCE, LLC dba MUSCLEMEDS, MUSCLEMEDS
PERFORMANCE TECHNOLOGIES, AND MUSCLEMEDS, INC.**

Legal Department
Maximum Human Performance
165 Clinton Road
West Caldwell, NJ 07006
Email: tim.howe@reachyourmhp.com

1 With a copy to:
2 ANTHONY J. CORTEZ
3 GREGORY SPERLA
4 GREENBERG TRAUIG LLP
5 1201 K Street, Suite 1100
6 Sacramento, CA 95814-3938
7 Telephone: (916) 442-1111
8 Facsimile: (916) 448-1709

9
10
11 **12. COURT APPROVAL**

12 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
13 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
14 Consent Judgment.

15 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
16 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
17 prior to the hearing on the motion.

18 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
19 void and have no force or effect.

20 **13. EXECUTION AND COUNTERPARTS**

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

24 **14. DRAFTING**

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

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

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

6 **16. ENFORCEMENT**

7 ERC may, by motion or order to show cause before the Superior Court of Alameda
8 County, enforce the terms and conditions contained in this Consent Judgment. In any action
9 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
10 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

11 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

18 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
19 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

28 (2) Make the findings pursuant to California Health and Safety Code section

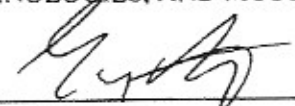
1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

3 **IT IS SO STIPULATED:**

4 Dated: 12/29/, 2017


ENVIRONMENTAL RESEARCH
CENTER, INC.
By: 
Chris Heppner, Executive Director

9 Dated: December 29, 2017

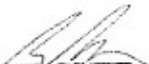
MAXIMUM HUMAN PERFORMANCE,
LLC DBA MUSCLEMEDS,
MUSCLEMEDS PERFORMANCE
TECHNOLOGIES, AND MUSCLEMEDS,
INC.

By: Gerard Dente
Its: CEO

15 **APPROVED AS TO FORM:**

16 Dated: December²⁹, 2017

LAW OFFICE OF RICHARD M. FRANCO
By: 
Richard M. Franco
Attorney for Plaintiff Environmental
Research Center, Inc.

21 Dated: December 29, 2017

GREENBERG TRAURIG LLP
By: 
Anthony J. Cortez
Gregory Sperla
Attorneys for Defendant Maximum
Human Performance, LLC dba
MuscleMeds, MuscleMeds Performance
Technologies, and MuscleMeds, Inc.

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

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