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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF ALAMEDA**

13  
14 **ENVIRONMENTAL RESEARCH**  
15 **CENTER, INC., a California non-profit**  
16 **corporation**

17 **Plaintiff,**

18 **vs.**

19 **MTN OPS, LLC and DOES 1-100**

20 **Defendants.**

**CASE NO. RG19022841**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 13, 2019

Trial Date: None set

21  
22 **1. INTRODUCTION**

23 **1.1** On June 13, 2019, Plaintiff Environmental Research Center, Inc. ("ERC"), a  
24 non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
25 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")  
26 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
27 ("Proposition 65"), against MTN OPS, LLC ("MTN OPS") and Does 1-100. In this action,  
28 ERC alleges that a number of products manufactured, distributed, or sold by MTN OPS

1 contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and  
2 reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition  
3 65 warning. These products (referred to hereinafter individually as a “Covered Product” or  
4 collectively as “Covered Products”) are: (1) MTN OPS Ignite Supercharged Energy & Focus  
5 Drink Tigers Blood (lead), (2) MTN OPS Magnum 100% Whey Protein Isolate + BCAA's  
6 Banana Cream (lead), (3) MTN OPS Keep Hammering Ramp It Up Prework Daiquiri Ice  
7 (lead), (4) MTN OPS Magnum 100% Whey Protein Isolate + BCAA's White Chocolate Candy  
8 Cane (lead), (5) MTN OPS Yeti Monster Pre-Workout Blue Raspberry (lead), (6) MTN OPS  
9 Ignite Supercharged Energy & Focus Drink Green Apple (lead), (7) MTN OPS Ignite  
10 Supercharged Energy & Focus Drink Grape (lead), (8) MTN OPS Ignite Hot Energy & Focus  
11 Blend Mountain Mocha (lead), (9) MTN OPS Ignite Hot Energy & Focus Blend Apple Cider  
12 (lead), (10) MTN OPS Magnum 100% Whey Protein Isolate Chocolate Malt Flavor (lead), (11)  
13 MTN OPS Magnum 100% Whey Protein Isolate Vanilla Milkshake Flavor (lead), (12) MTN  
14 OPS Keep Hammering Whey Protein Ultimate Post-Workout Muscle Formula Chocolate  
15 Caramel (lead), (13) MTN OPS Yeti Monster Pre-Workout Green Apple Flavor (lead), (14)  
16 MTN OPS Magnum 100% Whey Protein Isolate Strawberries & Cream Flavor (lead), (15)  
17 MTN OPS Slumber Deep Sleep Recovery Hibern8 Formula Sleepy Chai (lead), (16) MTN  
18 OPS Enduro Cardio Enhancement Non-Caffeinated Raspberry (lead), (17) MTN OPS Enduro  
19 Cardio Enhancement Black Cherry Flavor (lead), (18) MTN OPS Magnum 100% Whey  
20 Protein Isolate + BCAA'S Lemon Poppyseed (lead), (19) MTN OPS Magnum 100% Whey  
21 Protein Isolate + BCAA'S Berries & Cream (lead), (20) MTN OPS Magnum 100% Whey  
22 Protein Isolate + BCAA'S Birthday Cake (lead), (21) MTN OPS Renu Body Cleanse (lead),  
23 (22) MTN OPS Ammo Whey Protein Meal Replacement Cookies & Cream (lead, cadmium),  
24 (23) MTN OPS Ammo Whey Protein Meal Replacement Berries & Cream (lead, cadmium),  
25 (24) MTN OPS Magnum 100% Whey Protein Isolate + BCAA'S Pumpkin Spice (lead), (25)  
26 MTN OPS Magnum 100% Whey Protein Isolate + BCAA'S Eggnog (lead), (26) MTN OPS  
27 Magnum 100% Whey Protein Isolate + BCAA'S Cookies & Cream (lead), (27) MTN OPS  
28 Ignite Supercharged Energy & Focus Drink Pink Lemonade (lead), (28) MTN OPS Ignite

1 Supercharged Energy & Focus Drink Piña Colada (lead), (29) MTN OPS Enduro Cardio  
2 Enhancement Peach Flavor (lead), (30) MTN OPS Enduro Cardio Enhancement Pink  
3 Lemonade (lead), (31) MTN OPS Yeti Monster Pre-Workout Watermelon, (32) MTN OPS  
4 Yeti Monster Pre-Workout Peach Flavor, (33) MTN OPS BCAA Optimum 2:1:1 Ratio  
5 Strawberry Dragon Fruit (lead), (34) MTN OPS Ammo Whey Protein Meal Replacement  
6 Vanilla Flavor (lead, cadmium), (35) MTN OPS Ammo Whey Protein Meal Replacement  
7 Chocolate Flavor (lead, cadmium), (36) MTN OPS Ignite Mystery Flavor B Bravo (lead), (37)  
8 MTN OPS Ammo Whey Protein Meal Replacement Strawberries & Cream (lead, cadmium),  
9 (38) MTN OPS Slumber Deep Sleep Recovery Hibern8 Formula Sleepy Cider (lead), and (39)  
10 MTN OPS Slumber Deep Sleep Recovery Hibern8 Formula Sleepy Cocoa (lead).

11 **1.2** ERC and MTN OPS 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 that asserts it is dedicated  
14 to, among other causes, helping safeguard the public from health hazards by reducing the use  
15 and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers  
16 and employees, and encouraging corporate responsibility.

17 **1.4** ERC contends that MTN OPS is a business entity that has employed ten or more  
18 persons at times relevant to this action, and qualifies as a “person in the course of doing business”  
19 within the meaning of Proposition 65, and for purposes of this Consent Judgment only MTN OPS  
20 does not dispute this contention. MTN OPS manufactures, distributes, and/or sells the Covered  
21 Products.

22 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation  
23 dated March 8, 2019, March 20, 2019 and April 2, 2019 that were served on the California  
24 Attorney General, other public enforcers, and MTN OPS (“Notices”). True and correct copies of  
25 the 60-Day Notices dated March 8, 2019, March 20, 2019, and April 2, 2019 are attached hereto  
26 as **Exhibits A, B, and C** and each is incorporated herein by reference. More than 60 days have  
27 passed since the Notices were served on the Attorney General, public enforcers, and MTN OPS,  
28 and no designated governmental entity has filed a Complaint against MTN OPS with regard to

1 the Covered Products or the alleged violations.

2       **1.6**     ERC's Notices and Complaint allege that use of the Covered Products exposes  
3 persons in California to lead and/or cadmium without first providing clear and reasonable  
4 warnings in violation of California Health and Safety Code section 25249.6. MTN OPS denies  
5 all material allegations contained in the Notices and Complaint.

6       **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
7 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
8 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
9 or be construed as an admission by any of the Parties or by any of their respective officers,  
10 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
11 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
12 issue of law, or violation of law.

13       **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
15 any current or future legal proceeding unrelated to these proceedings.

16       **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered  
17 as a Judgment by this Court.

18       **2.     JURISDICTION AND VENUE**

19       For purposes 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 MTN OPS 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 Effective Date which were or could have been asserted in  
25 this action based on the facts alleged in the Notices and Complaint.

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

27       **3.1**     Beginning on the Effective Date, and for all times that MTN OPS employs ten  
28 or more employees as defined by 27 California Code of Regulations section 25102(h), MTN



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

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

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

17 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure  
18 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
19 micrograms of cadmium per gram of product, multiplied by grams of product per serving of  
20 the product (using the largest serving size appearing on the product label), multiplied by  
21 servings of the product per day (using the largest number of recommended daily servings  
22 appearing on the label), which equals micrograms of cadmium exposure per day. If the label  
23 contains no recommended daily servings, then the number of recommended daily servings  
24 shall be one.

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1           **3.2 Clear and Reasonable Warnings**

2           If MTN OPS is required to provide a warning pursuant to Section 3.1, the following  
3 warning must be utilized (“Warning”):

4           FOR PRODUCTS CONTAINING LEAD:

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

8           FOR PRODUCTS CONTAINING LEAD AND CADMIUM:

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

12           MTN OPS shall use the phrase “cancer and” in the Warning only if the “Daily Lead  
13 Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality  
14 control methodology set forth in Section 3.4 or if MTN OPS knows that another Proposition 65  
15 chemical is present which requires a cancer warning. As identified in the brackets, the warning  
16 shall appropriately reflect whether there is lead, cadmium, or both chemicals present in each of the  
17 Covered Products.

18           The Warning shall be provided using one or more of the following methods: (a) a  
19 product-specific Warning securely affixed to or printed upon the container or label of each  
20 Covered Product, (b) a product-specific Warning provided on a posted sign, shelf tag, or shelf  
21 sign, for the Covered Product at each point of display of the product, or (c) a product-specific  
22 Warning provided via any electronic device or process that automatically provides the Warning  
23 to the purchaser prior to or during the purchase of the Covered Product, without requiring the  
24 purchaser to seek out the Warning. If the Warning is provided on the label, it must be set off  
25 from other surrounding information and enclosed in a box. In addition, for any Covered  
26 Product sold over the internet, the Warning shall appear on the checkout page when a  
27 California delivery address is indicated for any purchase of any Covered Product. An asterisk  
28 or other identifying method must be utilized to identify which products on the checkout page  
are subject to the Warning. In no event shall any internet or website Warning be contained in

1 or made through a link.

2 The Warning shall be at least the same size as the largest of any other health or safety  
3 warnings also appearing on its website or on the label or container of MTN OPS' product  
4 packaging and the word "WARNING" shall be in all capital letters and in bold print. No other  
5 statements about Proposition 65, lead or cadmium may accompany the warning.

6 MTN OPS must display the above Warning with such conspicuousness, as compared with  
7 other words, statements or designs on the label or container, or on its website, if applicable, to  
8 render the Warning likely to be read and understood by an ordinary individual under customary  
9 conditions of purchase or use of the product. Nothing herein is intended to require MTN OPS to  
10 provide warnings beyond those required by Proposition 65.

### 11 **3.3 Conforming Covered Products**

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

### 16 **3.4 Testing and Quality Control Methodology**

17 **3.4.1** Beginning within one year of the Effective Date, MTN OPS shall  
18 arrange for lead and cadmium testing of the Covered Products at least once a year for a  
19 minimum of five consecutive years by arranging for testing of five randomly selected samples  
20 of each of the Covered Products, in the form intended for sale to the end-user, which MTN  
21 OPS intends to sell or is manufacturing for sale in California, directly selling to a consumer in  
22 California or "Distributing into the State of California." If tests conducted pursuant to this  
23 Section demonstrate that no Warning is required for a Covered Product during each of five  
24 consecutive years, then the testing requirements of this Section will no longer be required as to  
25 that Covered Product. However, if during or after the five-year testing period, MTN OPS  
26 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the  
27 Covered Products, MTN OPS shall test that Covered Product annually for at least three (3)  
28 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.

9           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
10 independent third party laboratory certified by the California Environmental Laboratory  
11 Accreditation Program or an independent third-party laboratory that is registered with the  
12 United States Food & Drug Administration.

13           **3.4.5** Nothing in this Consent Judgment shall limit MTN OPS’ ability to  
14 conduct, or require that others conduct, additional testing of the Covered Products, including  
15 the raw materials used in their manufacture.

16           **3.4.6** Within thirty (30) days of ERC’s written request, MTN OPS shall  
17 deliver lab reports obtained pursuant to Section 3.4 to ERC. MTN OPS shall retain all test  
18 results and documentation for a period of five years from the date of each test.

19       **4. ORDERED PAYMENT**

20           **4.1** In full satisfaction of all potential civil penalties, additional settlement  
21 payments, attorney’s fees, and costs, ordered, decreed, and adjudged by the Superior Court,  
22 MTN OPS shall make a total payment of \$187,500.00 (“Total Payment Amount”) to ERC in  
23 two periodic payments (the “Periodic Payments”) according to the following payment schedule  
24 (“Due Dates”):

- 25           • Payment 1 -- \$100,000.00 within 5 days of the Effective Date
- 26           • Payment 2 -- \$87,500.00 within 35 days of the Effective Date

27           MTN OPS shall make these payments by wire transfer to ERC’s account, for which  
28 ERC will give MTN OPS the necessary account information. ERC shall also provide its W-9

1 form to MTN OPS prior to payment. The Total Payment Amount shall be apportioned as  
2 follows:

3 **4.2** \$100,000.00 shall be considered a civil penalty pursuant to California Health  
4 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$75,000.00) of the civil penalty  
5 to the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
6 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
7 Code section 25249.12(c). ERC will retain the remaining 25% (\$25,000.00) of the civil  
8 penalty.

9 **4.3** \$7,751.47 shall be distributed to ERC as reimbursement to ERC for reasonable  
10 costs incurred in bringing this action.

11 **4.4** \$43,200.68 shall be distributed to ERC as an Additional Settlement Payment  
12 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)  
13 and 3204. ERC will utilize the ASP for activities that address the same public harm as  
14 allegedly caused by Defendant in this matter. These activities are detailed  
15 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic  
16 chemicals in dietary supplement products in California. ERC’s activities have had, and will  
17 continue to have, a direct and primary effect within the State of California because California  
18 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or  
19 cadmium in dietary supplements and/or by providing clear and reasonable warnings to  
20 California consumers prior to ingestion of the products.

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

1 cadmium. This work also includes investigation of new companies that ERC does not obtain  
2 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM  
3 (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products from  
4 companies, developing and maintaining a case file, testing products from these companies,  
5 providing the test results and supporting documentation to the companies, and offering  
6 guidance in warning or implementing a self-testing program for lead and/or cadmium in dietary  
7 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got  
8 Lead?" Program which reduces the numbers of contaminated products that reach California  
9 consumers by providing access to free testing for lead in dietary supplement products (Products  
10 submitted to the program are screened for ingredients which are suspected to be contaminated,  
11 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and  
12 the results shared with the consumer that submitted the product). MTN OPS has no information  
13 regarding ERC's budget and activities and, accordingly, MTN OPS takes no position with  
14 respect to the contents of this paragraph.

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

20 **4.5** \$36,547.85 shall be distributed to ERC for its in-house legal fees. Except as  
21 explicitly provided herein, each Party shall bear its own fees and costs.

22 **4.6** In the event that MTN OPS fails to remit the Periodic Payments owed under  
23 Section 4.1 of this Consent Judgment on or before the applicable Due Date, MTN OPS 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 MTN OPS via electronic mail. If MTN OPS fails  
26 to deliver the delinquent payment within five (5) days from the written notice, the entire unpaid  
27 balance of the Total Payment Amount shall immediately become due and payable. Interest on  
28 the unpaid amount shall accrue at the statutory judgment interest rate provided in the California

1 Code of Civil Procedure section 685.010. Additionally, MTN OPS agrees to pay ERC's  
2 reasonable attorney's fees and costs for any efforts to collect the payment due under this  
3 Consent 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  
7 or (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 MTN OPS seeks to modify this Consent Judgment under Section 5.1, then  
10 MTN OPS 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 MTN OPS within thirty (30) days of receiving the Notice of Intent. If  
13 ERC notifies MTN OPS in a timely manner of ERC's intent to meet and confer, then the  
14 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in  
15 person or via telephone within thirty (30) days of ERC's notification of its intent  
16 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed  
17 modification, ERC shall provide to MTN OPS a written basis for its position. The Parties shall  
18 continue to meet and confer for an additional thirty (30) days in an effort to resolve any  
19 remaining disputes. Should it become necessary, the Parties may agree in writing to different  
20 deadlines for the meet-and-confer period.

21 **5.3** In the event that MTN OPS initiates or otherwise requests a modification under  
22 Section 5.1, and the meet and confer process leads to a joint motion or application for a  
23 modification of the Consent Judgment, MTN OPS shall reimburse ERC its costs and  
24 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
25 arguing the motion or application.

26 **5.4** Where the meet-and-confer process does not lead to a joint motion or  
27 application in support of a modification of the Consent Judgment, then either Party may seek  
28 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any



1 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure  
2 section 1021.5.

3 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
4 **JUDGMENT**

5 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
6 terminate this Consent Judgment.

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

15 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

23 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
24 on behalf of itself and in the public interest, and MTN OPS and its respective officers,  
25 directors, members, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
26 suppliers, franchisees, licensees, customers (not including private label customers of MTN  
27 OPS), distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
28 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any

1 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,  
2 hereby fully releases and discharges the Released Parties from any and all claims, actions,  
3 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses  
4 asserted, or that could have been asserted from the handling, use, or consumption of the  
5 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations  
6 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding  
7 lead and/or cadmium up to and including the Effective Date.

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

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

22 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
23 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
24 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
25 AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
PARTY.

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

1           **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
3 and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

4           **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
5 environmental exposures arising under Proposition 65, nor shall it apply to any of MTN OPS'  
6 products other than the Covered Products.

7           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

11           **10. GOVERNING LAW**

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

14           **11. PROVISION OF NOTICE**

15           All notices required to be given to either Party to this Consent Judgment by the other shall  
16 be in writing and sent to the following agents listed below via first-class mail or via electronic  
17 mail where required. Courtesy copies via email may also be sent.

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

19 Chris Heptinstall, Executive Director, Environmental Research Center  
20 3111 Camino Del Rio North, Suite 400  
21 San Diego, CA 92108  
22 Ph: (619) 500-3090  
23 Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

24           With a copy to:

25 Charles W. Poss  
26 Environmental Research Center  
27 3111 Camino Del Rio North, Suite 400  
28 San Diego, CA 92108  
Ph: (619) 500-3090  
Email: [charles.poss@erc501c3.org](mailto:charles.poss@erc501c3.org)

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1 **MTN OPS, LLC**  
2 Nick Hanks, COO  
3 251 S. Mountain Road  
4 Fruit Heights, UT 84037  
5 Ph: (801) 554-5050  
6 Email: nick@mntnops.com

7 With a copy to:

8 Brett N. Anderson  
9 Blackburn & Stoll, LC  
10 257 East 200 South, Suite 800  
11 Salt Lake City, UT 84111-2048  
12 Ph: (801) 521-7900  
13 Fax: (801) 521-7965  
14 Email: bretta@blackburn-stoll.com

## 15 **12. COURT APPROVAL**

16 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
17 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
18 Consent Judgment.

19 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
20 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
21 prior to the hearing on the motion.

22 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
23 void and have no force or effect.

## 24 **13. EXECUTION AND COUNTERPARTS**

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

## 28 **14. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for  
each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms  
and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and

1 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
2 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
3 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
4 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
5 equally in the preparation and drafting of this Consent Judgment.

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

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

11 **16. ENTIRE AGREEMENT, AUTHORIZATION**

12 **16.1** 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 **16.2** 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 **17. 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.

2 **IT IS SO STIPULATED:**

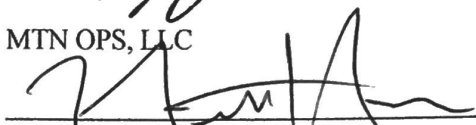
3 Dated: 7/21, 2019

ENVIRONMENTAL RESEARCH  
CENTER, INC

By:   
Chris Heppelstall, Executive Director

7 Dated: 7/31, 2019


MTN OPS, LLC

By:   
Its: NICK HAWKS  
COO

11 **APPROVED AS TO FORM:**


12 Dated: July 2, 2019

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Charles W. Poss  
Attorney for Plaintiff Environmental  
Research Center, Inc.

17 Dated: July 8, 2019, 2019

BLACKBURN & STOLL, LC

By:   
Brett N. Anderson  
Attorney for Defendant MTN OPS, LLC

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**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: \_\_\_\_\_, 2019

\_\_\_\_\_  
Judge of the Superior Court