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Limited; Cend Limited; THG International LLC,
formerly known as Cend International LLC;
THGPP LLC; The Hut.Com Limited; The Hut
IHC Limited; The Hut Group Limited; The Hut
Management Company Limited

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

v.

CEND INTERNATIONAL LIMITED
LIABILITY COMPANY, et al.,

CASE NO. RG19033459

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 3, 2019
Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On September 3, 2019, Plaintiff Environmental Research Center, Inc.
3 (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this
4 action by filing a Complaint for Permanent Injunction, Civil Penalties and Other Relief (the
5 “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5
6 *et seq.* (“Proposition 65”), against CEND INTERNATIONAL LIMITED LIABILITY
7 COMPANY; CEND INTERNATIONAL LIMITED; CEND LIMITED; THG
8 INTERNATIONAL LLC; THGPP LLC; THE HUT.COM LIMITED; THE HUT IHC
9 LIMITED; THE HUT GROUP LIMITED; THE HUT MANAGEMENT COMPANY
10 LIMITED (collectively “MYPROTEIN”) and DOES 1-25. In this action, ERC alleges that a
11 number of products manufactured, distributed, or sold by MYPROTEIN contain lead and/or
12 cadmium, chemicals listed under Proposition 65 as carcinogens and reproductive toxins, and
13 expose consumers in California to these chemicals at a level requiring a Proposition 65
14 warning under California law. These products (referred to hereinafter individually as a
15 “Covered Product” or collectively as “Covered Products”) and the listed chemical to which
16 each product allegedly exposed consumers are set forth in **Table 1** below:

17 **Table 1**

18 Product Name	19 Alternative Product Name(s)	20 Listed Chemical
21 Impact Whey Protein - Mocha	22 “MyProtein Impact Whey Protein Mocha”	23 Lead
24 Hard Gainer Extreme V2 – Unflavored	25 “MyProtein Fuel Your Ambition Hard Gainer Extreme Unflavored”	26 Lead
27 Vegan Superfood Blend – Chocolate Stevia	28 “MyProtein Fuel Your Ambition Vegan Superfood Blend Chocolate Naturally Flavored” “MyProtein Vegan Superfood Blend Chocolate”	Lead
29 Vegan Superfood Blend – Vanilla Stevia	30 “MyProtein Fuel Your Ambition Vegan Superfood Blend Vanilla Naturally Flavored”	Lead

1		"MyProtein Vegan Superfood Blend Vanilla"	
2	Pea Protein – Vanilla Stevia	"MyProtein Fuel Your Ambition Pea Protein Vanilla Naturally Flavored"	Lead
3			
4	Soy Protein – Vanilla Stevia	"MyProtein Fuel Your Ambition Soy Protein Vanilla Naturally Flavored"	Lead
5			
6	Soy Protein Isolate – Chocolate Smooth	"MyProtein Fuel Your Ambition Soy Protein Isolate Chocolate Naturally Flavored"	Lead
7	Total Oats and Whey, Vanilla, Pouch	"MyProtein Total Oats And Whey Vanilla"	Lead
8			
9	Total Oats and Whey, Unflavored, Pouch	"MyProtein Total Oats And Whey Unflavored"	Lead
10			
11	Protein Ice Cream Mix – Banana	"MyProtein Fuel Your Ambition Protein Ice Cream Mix Banana"	Lead
12			
13	Vegan Blend – Vanilla Stevia	"MyProtein Fuel Your Ambition Vegan Blend Vanilla Naturally Flavored"	Lead
14			
15	Impact Weight Gainer – Chocolate Smooth	"MyProtein Fuel Your Ambition Impact Weight Gainer Chocolate Smooth"	Lead
16			
17	Impact Weight Gainer V2 – Strawberry Cream	"MyProtein Weight Gainer Blend Strawberry Cream"	Lead, Cadmium
18			
19	Impact Weight Gainer V2 - Unflavored	"MyProtein Impact Weight Gainer Unflavored"	Lead
20			
21	Bedtime Extreme V2 – Strawberry Cream	"MyProtein Fuel Your Ambition Bedtime Extreme Strawberry Cream Naturally & Artificially Flavored"	Lead
22			
23	Bedtime Extreme V2 – Vanilla	"MyProtein Fuel Your Ambition Bedtime Extreme Vanilla Naturally & Artificially Flavored"	Lead
24			
25	Pea Protein – Chocolate Stevia	"MyProtein Pea Protein Chocolate Naturally Flavored"	Lead
26			
27	Impact Whey Protein – Chocolate Mint	"MyProtein Fuel Your Ambition Impact Whey Protein Chocolate Mint Naturally & Artificially Flavored"	Lead
28			
	Impact Whey Protein – Chocolate Smooth	"MyProtein Fuel Your Ambition Impact Whey Protein Chocolate Smooth Naturally & Artificially Flavored"	Lead
	Soy Protein, Isolate –	"MyVegan Soy Protein Isolate Unflavored"	Lead

1	Unflavored		
2	Soy Protein Isolate –	“MyVegan Soy Protein Isolate Chocolate	Lead
3	Chocolate Smooth	Naturally Flavored”	
4	Brown Rice Protein –	“MyVegan Brown Rice Protein Chocolate	Lead
5	Chocolate Stevia	Naturally Flavored”	
6		“MyProtein Fuel Your Ambition Brown Rice	
7		Protein Chocolate Naturally Flavored”	
8	Vegan Blend – Chocolate	“MyProtein Vegan Protein Blend Chocolate	Lead
9	Stevia	Naturally Flavored”	
10	Impact Whey Protein –	“MyProtein Impact Whey Protein Vanilla	Lead
11	Vanilla	Naturally & Artificially Flavored”	
12		Impact Whey Protein – Vanilla Stevia	
13	Impact Whey Protein –	“MyProtein Fuel Your Ambition Impact Whey	Lead
14	Chocolate Stevia	Protein Chocolate Naturally Flavored”	
15	Brown Rice Protein – Vanilla	“MyProtein Fuel Your Ambition Brown Rice	Lead
16	Stevia	Protein Vanilla Naturally Flavored”	
17	Impact Protein Blend (USA)	“MyProtein Fuel Your Ambition Impact	Lead
18	– Salted Caramel	Protein Blend Salted Caramel”	
19	Impact Protein Blend (USA)	“MyProtein Impact Protein Blend Cookies &	Lead
20	– Cookies & Cream	Cream Naturally and Artificially Flavored”	

1.2 Any product identified by the Product Name or an Alternative Product Name appearing in **Table 1** above shall be considered a Covered Product.

1.3 ERC and MYPROTEIN are hereinafter referred to individually as a “Party” or collectively as the “Parties.”

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

1.5 For purposes of this Consent Judgment only, the Parties stipulate that MYPROTEIN is a “person in the course of doing business” within the meaning of Proposition 65. MYPROTEIN manufactures, distributes, and/or sells the Covered Products.

1 **1.6** The Complaint is based on allegations contained in ERC's Notices of Violation
2 dated May 13, 2019 and June 11, 2019 that were served on the California Attorney General,
3 other public enforcers, and MYPROTEIN ("Notices"). A true and correct copy of the 60-Day
4 Notices dated May 13, 2019 and June 11, 2019 are attached hereto as **Exhibits A and B**
5 respectively, and each is incorporated herein by reference. More than 60 days have passed
6 since the Notices were served on the Attorney General, public enforcers, and MYPROTEIN
7 and no designated governmental entity has filed a Complaint against MYPROTEIN with regard
8 to the Covered Products or the alleged violations.

9 **1.7** ERC's Notices and Complaint allege that use of the Covered Products exposes
10 persons in California to lead and/or cadmium without first providing clear and reasonable
11 warnings in violation of California Health and Safety Code section 25249.6. MYPROTEIN
12 denies all material allegations contained in the Notices and Complaint.

13 **1.8** The Parties have entered into this Consent Judgment in order to settle,
14 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
15 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
16 or be construed as an admission by any of the Parties or by any of their respective officers,
17 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
18 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
19 issue of law, or violation of law.

20 **1.9** MYPROTEIN denies the material, factual, and legal allegations contained in
21 the Notices and the Complaint and maintains that all of their products sold and distributed for
22 sale in California, including the Covered Products, have been, and are, in compliance with all
23 applicable laws. This Section 1.9 shall not, however, diminish or otherwise affect
24 MYPROTEIN's obligations, responsibilities, and duties under this Consent Judgment.

25 **1.10** Except as expressly set forth herein, nothing in this Consent Judgment shall
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
27 any current or future legal proceeding unrelated to these proceedings.

28 **1.11** The Effective Date of this Consent Judgment is the date on which

1 MYPROTEIN receives notice that the Consent Judgment is entered as a Judgment by this
2 Court.

3 **2. JURISDICTION AND VENUE**

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

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

12 **3.1** Beginning thirty (30) days after the Effective Date (the "Compliance Date"),
13 MYPROTEIN shall be permanently enjoined from manufacturing for sale in the State of
14 California, "Distributing into the State of California," or directly selling in the State of
15 California, any Covered Products which expose a person to a "Daily Lead Exposure Level" of
16 more than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" of more
17 than 4.1 micrograms of cadmium per day unless it meets the warning requirements under
18 Section 3.2.

19 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
20 of California" or "Distributes into the State of California" shall mean to directly ship a
21 Covered Product into California for sale in California or to sell a Covered Product to a
22 distributor that MYPROTEIN knows or has reason to know will sell the Covered Product in
23 California.

24 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
25 Level" shall be measured in micrograms, and shall be calculated using the following formula:
26 micrograms of lead per gram of product, multiplied by grams of product per serving of the
27 product (using the largest serving size appearing on the product label), multiplied by servings
28 of the product per day (using the largest number of recommended daily servings appearing on

1 the label), which equals micrograms of lead exposure per day. If the label contains no
2 recommended daily servings, then the number of recommended daily servings shall be one. If
3 the label recommends one serving before “and/or” after a specific event, then the number of
4 recommended servings associated with that event shall be one and the number of
5 recommended daily servings shall be one.

6 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
7 MYPROTEIN shall be allowed to deduct the amount of lead which is deemed “naturally
8 occurring” in the ingredients listed in **Table 2** that are contained in that Covered Product under
9 the following conditions: If MYPROTEIN claims entitlement to a “naturally occurring”
10 allowance, then, for each year that MYPROTEIN claims such an entitlement, MYPROTEIN
11 shall provide ERC with the following information: (a) MYPROTEIN must produce to ERC a
12 written list of each ingredient in the Covered Product for which a “naturally occurring”
13 allowance is claimed; (b) MYPROTEIN must provide ERC with documentation of laboratory
14 testing, conducted during the year for which the “naturally occurring” allowance is claimed, that
15 complies with Sections 3.4.2 through 3.4.5 and that shows the amount of lead, if any, contained
16 in each ingredient listed in **Table 2** that is contained in the Covered Product and for which
17 MYPROTEIN intends to deduct “naturally occurring” lead; (c) if the laboratory testing reveals
18 the presence of lead in any of the ingredients listed in **Table 2** that are contained in the Covered
19 Product, MYPROTEIN shall be entitled to deduct the amount of lead contained in each
20 ingredient, up to the full amount of the allowance for each ingredient as shown in **Table 2**, for
21 those ingredients that are in the Covered Product; and (d) if the Covered Product does not
22 contain any of the ingredients listed in **Table 2**, MYPROTEIN shall not be entitled to a
23 deduction for “naturally occurring” lead in the Covered Product for those ingredients. The
24 information required by Sections 3.1.3(a) and (b) shall be provided to ERC within thirty (30)
25 days of the Effective Date, or anniversary thereof, for any year that MYPROTEIN shall claim
26 entitlement to the “naturally occurring” allowance.

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28 ///

TABLE 2

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Cocoa Powder	Up to 1.0 microgram/gram
Chocolate Liquor	Up to 1.0 microgram/gram
Cocoa Butter	Up to 0.1 micrograms/gram
Calcium (elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 microgram/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram

3.1.4 For purposes of this Consent Judgment, the “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of cadmium per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one. If the label recommends one serving before “and/or” after a specific event, then the number of recommended servings associated with that event shall be one and the number of recommended daily servings shall be one.

3.2 Clear and Reasonable Warnings

3.2.1 If MYPROTEIN is required to provide a warning pursuant to Section 3.1

for a Covered Product containing lead and not cadmium as indicated in **Table 1**, one of the following warnings must be utilized (“Warning”):

Option 1A:

WARNING: Consuming this product can expose you to lead, which is 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.

Option 2A:

 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov/food.

If MYPROTEIN is required to provide a Warning pursuant to Section 3.1 for a Covered Product containing both lead and cadmium as indicated in **Table 1**, one of the following Warnings must be utilized:

Option 1B:

WARNING: Consuming this product can expose you to chemicals including lead, which is 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.

Option 2B:

 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov/food.

MYPROTEIN shall use the phrase “cancer and” in the Option 1A and Option 2A Warnings or replace the phrase “Reproductive Harm” with the phrase “Cancer and Reproductive Harm” in the Option 2A and Option 2B Warnings if MYPROTEIN 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 MYPROTEIN has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

The word “**WARNING**” shall be in all capital letters and in bold print. For the Option 2A and Option 2B Warnings, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the word “**WARNING**” in a size no smaller than the height of the word “**WARNING.**” Where the label for the product is not

1 printed using the color yellow, the symbol may be printed in black and white.

2 **3.2.2** The Warning provided pursuant to Section 3.2.1 shall be securely affixed
3 to or printed upon the container or label of each Covered Product or provided as a product-
4 specific warning via any electronic device or process (not including internet sales) that
5 automatically provides the Warning to the purchaser prior to or during the purchase of the
6 Covered Product, without requiring the purchaser to seek out the Warning. If the Warning is
7 provided on the label, it must be set off from other surrounding information and enclosed in a box.
8 In addition, for any Covered Product sold over the internet, the Warning shall be provided by at
9 least one of the following methods: (a) including the text of the Warning on the Covered
10 Product's primary display page, (b) including a clearly marked hyperlink using the word
11 "WARNING" in all capital and bold letters on the Covered Product's primary display page, so
12 long as the hyperlink goes directly to a page prominently displaying the Option 1A or Option 1B
13 Warning without content that detracts from the Warning, (c) providing the Warning as a pop-up
14 when the purchaser enters a California delivery address or zip code, so long as the pop-up requires
15 the purchaser to take some action to remove the pop-up from being displayed before being able to
16 proceed with the purchase, or (d) otherwise prominently displaying the Warning to the purchaser
17 prior to completing the purchase. For purposes of Section 3.2.2, a warning is not prominently
18 displayed if the purchaser must search for the Warning in the general content of the website.

19 **3.2.3** MYPROTEIN must display the Warning required by Section 3.2.1 with
20 such conspicuousness, as compared with other words, statements or designs on the label or
21 container, or on its website, if applicable, to render the Warning likely to be read and understood
22 by an ordinary individual under customary conditions of purchase or use of the product.

23 **3.3 Conforming Covered Products**

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

28 ///

1 **3.4 Testing and Quality Control Methodology**

2 **3.4.1** Beginning within one year of the Effective Date, MYPROTEIN shall
3 arrange for each Covered Product to be tested for the chemical(s) listed in **Table 1** for that
4 Covered Product (lead and/or cadmium) at least once a year for a minimum of three (3)
5 consecutive years by arranging for testing of at least one (1) randomly selected sample of the
6 Covered Product, in the form of the product that is intended for sale to the end-user, which
7 MYPROTEIN intends to sell in the State of California, manufactures for sale in the State of
8 California, "Distributes into the State of California," or directly sells in the State of California.
9 If tests conducted pursuant to this Section demonstrate that no Warning is required for a
10 Covered Product during each of three (3) consecutive years, then the testing requirements of
11 this Section will no longer be required as to that Covered Product. However, if during or after
12 the three-year testing period, MYPROTEIN changes ingredient suppliers for and/or
13 reformulates any Covered Product subject to these testing requirements, MYPROTEIN shall
14 test that Covered Product annually for at least two (2) consecutive years after such change is
15 made.

16 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or
17 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the
18 randomly selected sample(s) of the Covered Product will be controlling.

19 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
20 laboratory method that complies with the performance and quality control factors appropriate
21 for the method used, including limit of detection, qualification, accuracy, and precision that
22 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
23 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
24 method subsequently agreed upon in writing by the Parties.

25 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
26 independent third party laboratory certified by the California Environmental Laboratory
27 Accreditation Program or an independent third-party laboratory that is registered with the
28 United States Food & Drug Administration.

1 **3.4.5** Nothing in this Consent Judgment shall limit MYPROTEIN's ability to
2 conduct, or require that others conduct, additional testing of the Covered Products, including
3 the raw materials used in their manufacture.

4 **3.4.6** Within thirty (30) days of ERC's written request, MYPROTEIN shall
5 deliver lab reports obtained pursuant to Section 3.4 to ERC. MYPROTEIN shall retain all test
6 results and documentation for a period of five years from the date of each test.

7 **3.4.7** The testing and reporting requirements of Section 3.4 do not apply to
8 any Covered Product for which MYPROTEIN is providing a Warning, continuously and
9 without interruption after the Compliance Date, pursuant to Section 3.2 of this Consent
10 Judgment. In the event a Warning is provided after the Compliance Date but MYPROTEIN
11 thereafter ceases to provide the Warning, the testing and reporting requirements of Section 3.4
12 of this Consent Judgment shall apply beginning within one year after the date the Warning
13 ceases to be provided, unless MYPROTEIN can show to the satisfaction of ERC that the
14 cessation in providing the Warning was a temporary error that was resolved when discovered.

15 **4. SETTLEMENT PAYMENT**

16 **4.1** In full satisfaction of all potential civil penalties, additional settlement
17 payments, attorney's fees, and costs, MYPROTEIN shall make a total payment of \$198,000.00
18 ("Total Settlement Amount") to ERC within fourteen (14) days of the Effective Date ("Due
19 Date"). MYPROTEIN shall make this payment by wire transfer to ERC's account, for which
20 ERC will give MYPROTEIN the necessary account information. The Total Settlement Amount
21 shall be apportioned as follows:

22 **4.2** \$80,500.00 shall be considered a civil penalty pursuant to California Health
23 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$60,375.00) of the civil penalty
24 to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
25 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
26 Code section 25249.12(c). ERC will retain the remaining 25% (\$20,125.00) of the civil
27 penalty.

28 **4.3** \$6,781.51 shall be distributed to ERC as reimbursement to ERC for

1 reasonable costs incurred in bringing this action.

2 **4.4** \$60,329.18 shall be distributed to ERC as an Additional Settlement Payment
3 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
4 and 3204. ERC will utilize the ASP for activities that address the same public harm as
5 allegedly caused by defendants in this matter. These activities are detailed
6 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic
7 chemicals in dietary supplement products in California. ERC’s activities have had, and will
8 continue to have, a direct and primary effect within the State of California because California
9 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or
10 cadmium in dietary supplements and/or by providing clear and reasonable warnings to
11 California consumers prior to ingestion of the products.

12 Based on a review of past years’ actual budgets, ERC is providing the following list of
13 activities ERC engages in to protect California consumers through Proposition 65 citizen
14 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
15 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
16 supplement products that may contain lead and/or cadmium and are sold to California
17 consumers. This work includes continued monitoring and enforcement of past consent
18 judgments and settlements to ensure companies are in compliance with their obligations
19 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
20 cadmium. This work also includes investigation of new companies that ERC does not obtain
21 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
22 (10-20%): maintaining ERC’s Voluntary Compliance Program by acquiring products from
23 companies, developing and maintaining a case file, testing products from these companies,
24 providing the test results and supporting documentation to the companies, and offering
25 guidance in warning or implementing a self-testing program for lead and/or cadmium in dietary
26 supplement products; and (3) “GOT LEAD” PROGRAM (up to 5%): maintaining ERC’s “Got
27 Lead?” Program which reduces the numbers of contaminated products that reach California
28 consumers by providing access to free testing for lead in dietary supplement products (Products

submitted to the program are screened for ingredients which are suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer that submitted the product).

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

4.5 \$32,586.80 shall be distributed to Aqua Terra Aeris Law Group as reimbursement of ERC's attorney's fees, while \$17,802.51 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

4.6 In the event that MYPROTEIN fails to remit the Total Settlement Amount owed under Section 4 of this Consent Judgment on or before the Due Date, MYPROTEIN shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC shall provide written notice of the delinquency to MYPROTEIN via electronic mail. If MYPROTEIN fails to deliver the Total Settlement Amount within five (5) days from the written notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the California Code of Civil Procedure section 685.010. Additionally, MYPROTEIN agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under this Consent Judgment.

5. MODIFICATION OF CONSENT JUDGMENT

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

5.2 If MYPROTEIN seeks to modify this Consent Judgment under Section 5.1, then MYPROTEIN must provide written notice to ERC of its intent ("Notice of Intent"). If

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

11 **5.3** In the event that MYPROTEIN initiates or otherwise requests a modification
12 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
13 modification of the Consent Judgment, MYPROTEIN shall reimburse ERC its costs and
14 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
15 arguing the motion or application.

16 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
17 **JUDGMENT**

18 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
19 terminate this Consent Judgment.

20 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
21 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
22 inform MYPROTEIN in a reasonably prompt manner of its test results, including the test
23 results and information sufficient to permit MYPROTEIN to identify the Covered Products at
24 issue. MYPROTEIN shall, within sixty (60) days following such notice, provide ERC with
25 testing information, from an independent third-party laboratory meeting the requirements of
26 Sections 3.4.3 and 3.4.4, demonstrating MYPROTEIN's compliance with the Consent
27 Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further
28 legal action.

1 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

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

28 **8.3** It is possible that other claims not known to the Parties, arising out of the facts

alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be discovered. ERC on behalf of itself only, and MYPROTEIN on behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. ERC and MYPROTEIN acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

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

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.

8.5 Nothing in this Consent Judgment is intended to apply to any of MYPROTEIN's products other than the Covered Products.

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

All notices required to be given to either Party to this Consent Judgment by the other shall

be in writing and sent to the following agents listed below via first-class mail or via electronic mail where required. Courtesy copies via email may also be sent.

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

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

With a copy to:

MATTHEW C. MACLEAR
ANTHONY M. BARNES
AQUA TERRA AERIS LAW GROUP
490 43rd Street, Suite 108
Oakland, CA 94609
Telephone: (415) 568-5200
Email: mcm@atalawgroup.com

FOR CEND INTERNATIONAL LIMITED; CEND LIMITED; THG INTERNATIONAL LLC, formerly known as CEND INTERNATIONAL LLC; THGPP LLC; THE HUT.COM LIMITED; THE HUT IHC LIMITED; THE HUT GROUP LIMITED; THE HUT MANAGEMENT COMPANY LIMITED:

Legal Director
5th Floor, Voyager House
Manchester Airport
Manchester
United Kingdom
M90 3DQ

With a copy to:

THOMAS A. MANAKIDES
GIBSON DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, CA 92612
Telephone: (949) 451-4060
Email: tmanakides@gibsondunn.com

12. COURT APPROVAL

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

1 **12.2** If the California Attorney General objects to any term in this Consent
2 Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and
3 if possible prior to the hearing on the motion.

4 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
5 void and have no force or effect.

6 **13. EXECUTION AND COUNTERPARTS**

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

10 **14. DRAFTING**

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

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

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

24 **16. ENFORCEMENT**

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

1 To the extent the failure to comply with the Consent Judgment constitutes a violation of
2 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
3 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
4 provided by law for failure to comply with Proposition 65 or other laws.

5 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

13 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
14 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

23 (2) Make the findings pursuant to California Health and Safety Code section
24 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

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1 IT IS SO STIPULATED:

2
3 Dated: 6/4/, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.

4
5 By: 
6 Chris Heptinstall, Executive Director

7
8 Dated: _____, 2020

CEND INTERNATIONAL LIMITED

9
10 By: James Pochin, Director

11
12
13 Dated: _____, 2020

CEND LIMITED

14
15 By: James Pochin, Director

16
17
18 Dated: _____, 2020

THG INTERNATIONAL LLC, formerly
known as Cend International LLC

19
20
21 By: James Pochin, Director

22
23 Dated: _____, 2020

THGPP LLC

24
25 By: James Pochin, Director

1 **IT IS SO STIPULATED:**

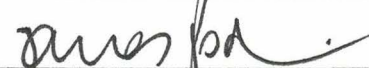
2
3 Dated: _____, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.

5 By: _____
6 Chris Heptinstall, Executive Director

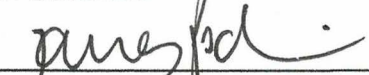
7
8 Dated: JUNE 9, 2020

CEND INTERNATIONAL LIMITED

9 
10 By: James Pochin, Director

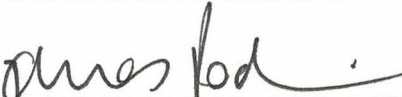
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12
13 Dated: JUNE 9, 2020

CEND LIMITED

14 
15 By: James Pochin, Director

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18 Dated: JUNE 9, 2020

THG INTERNATIONAL LLC, formerly
known as Cend International LLC

19 
20 By: James Pochin, Director

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23 Dated: JUNE 9, 2020

THGPP LLC

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25 By: James Pochin, Director
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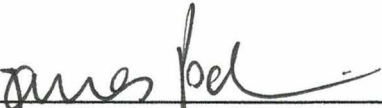
1 Dated: JUNE 9, 2020

THE HUT.COM LIMITED

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3 
4 By: James Pochin, Director

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6 Dated: JUNE 9, 2020

THE HUT IHC LIMITED

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8 
9 By: James Pochin, Director

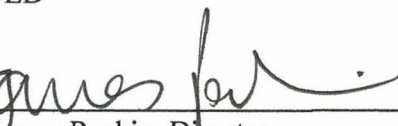
10
11 Dated: JUNE 9, 2020

THE HUT GROUP LIMITED

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13 
14 By: James Pochin, Director

15
16 Dated: JUNE 9, 2020

THE HUT MANAGEMENT COMPANY
LIMITED

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19 By: James Pochin, Director
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1 **APPROVED AS TO FORM:**

2
3 Dated: June 3, 2020

AQUA TERRA AERIS LAW GROUP

4
5 By: 

6 Matthew C. Maclear
7 Anthony M. Barnes
8 Attorneys for Plaintiff Environmental
9 Research Center, Inc.

10
11 Dated: June 9, 2020

GIBSON DUNN & CRUTCHER LLP

12
13 By: 

14 Thomas A. Manakides
15 Attorney for Defendants; Cend
16 International Limited; Cend Limited; THG
17 International LLC, formerly known as
18 Cend International LLC; THGPP LLC;
19 The Hut.Com Limited; The Hut IHC
20 Limited; The Hut Group Limited; The Hut
21 Management Company Limited
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IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court