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

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

Plaintiff,

v.

1ST PHORM INTERNATIONAL, LLC; and
DOES 1 – 25,

Defendants.

CASE NO. RG20076932

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 15, 2020

Trial Date: None set

1. INTRODUCTION

1.1 On October 15, 2020, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
2 (“Proposition 65”), against 1ST PHORM INTERNATIONAL, LLC (“1ST PHORM”) and
3 DOES 1-25. In this action, ERC alleges that a number of products manufactured, distributed,
4 or sold by 1ST PHORM contain lead and/or cadmium, chemicals listed under Proposition 65
5 as carcinogens and reproductive toxins, and exposed consumers to these chemicals at a level
6 requiring a Proposition 65 warning. All sizes, and forms of packaging, of these products
7 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
8 Products”) are:

- 9 • **1st Phorm Vegan Power Pro All Natural Plant Protein With Superfoods**
10 **Vanilla - Lead**
- 11 • **1st Phorm Vegan Power Pro All Natural Plant Protein With Superfoods**
12 **Chocolate Peanut Butter Cup - Lead**
- 13 • **1st Phorm Opti-Greens 50 Natural Berry - Lead**
- 14 • **1st Phorm Level-1 Bar High Quality Protein Meal Replacement**
15 **Chocolate Mint Cookie - Lead**
- 16 • **1st Phorm Level-1 Bar High Quality Protein Meal Replacement**
17 **Chocolate Crunch - Lead**
- 18 • **1st Phorm Level-1 Strawberry Milkshake - Lead**
- 19 • **1st Phorm Level-1 Mint Ice Cream Sandwich - Lead**
- 20 • **1st Phorm Phormula-1 Natural Chocolate - Lead**
- 21 • **1st Phorm Vegan Power Pro Chocolate – Lead, Cadmium**
- 22 • **1st Phorm M-Factor Goddess Vital Micronutrient Support & Delivery**
23 **System - Lead**
- 24 • **1st Phorm Level-1 German Chocolate Cake - Lead**
- 25 • **1st Phorm M-Factor Hero Vital Micronutrient Support & Delivery**
26 **System - Lead**
- 27 • **1st Phorm Level-1 Ice Cream Sandwich - Lead**
- 28 • **1st Phorm Level-1 Cinnamon Cookie Batter - Lead**

- 1st Phorm Level-1 Vanilla Ice Cream - Lead
- 1st Phorm Project-1 Grape Popsicle – Lead
- 1st Phorm Project-1 Orange Soda - Lead
- 1st Phorm Project-1 Lemon Drop - Lead
- 1st Phorm Harmony Hormone Balance Support Formula – Lead
- 1st Phorm Level-1 Bar Salted Caramel – Lead
- 1st Phorm Glucose Disposal Agent – Lead
- 1st Phorm Level-1 Blueberry Muffin - Lead

1.2 ERC and 1ST PHORM are hereinafter referred to individually as a “Party” or collectively as the “Parties.”

1.3 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.

1.4 For purposes of this Consent Judgment, the Parties agree that 1ST PHORM is a business entity that has employed ten or more persons at all times relevant to this action, and qualifies as a “person in the course of doing business” within the meaning of Proposition 65. 1ST PHORM manufactures and/or distributes and/or sells the Covered Products or has done so at relevant times in the past.

1.5 The Complaint is based on allegations contained in ERC’s Notices of Violation dated February 18, 2020 June 18, 2020, and July 30, 2020 that were served on the California Attorney General, other public enforcers, and 1ST PHORM (“Notices”). True and correct copies of the 60-Day Notices dated February 18, 2020, June 18, 2020, and July 30, 2020 are attached hereto as **Exhibits A, B, and C** and each is incorporated herein by reference. More than 60 days have passed since the Notices were served on the Attorney General, public enforcers, and 1ST PHORM and no designated governmental entity has filed a Complaint against 1ST PHORM with regard to the Covered Products or the alleged violations.

1.6 ERC’s Notices and Complaint allege that use of the Covered Products by

1 California consumers exposes them to lead and/or cadmium without first receiving clear and
2 reasonable warnings from 1ST PHORM, which is in violation of California Health and Safety
3 Code section 25249.6. 1ST PHORM denies all material allegations contained in the Notices
4 and Complaint.

5 **1.7** The Parties have entered into this Consent Judgment in order to settle,
6 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
7 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
8 or be construed as an admission against interest by any of the Parties or by any of their
9 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
10 divisions, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of
11 any fact, issue of law, or violation of law.

12 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
13 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
14 any current or future legal proceeding unrelated to these proceedings.

15 **1.9** The Effective Date of this Consent Judgment is the date on which ERC serves
16 notice on 1ST PHORM that it is entered as a Judgment by this Court.

17 **2. JURISDICTION AND VENUE**

18 For purposes of this Consent Judgment and any further court action that may become
19 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
20 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
21 over 1ST PHORM as to the acts alleged in the Complaint, that venue is proper in Alameda
22 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
23 resolution of all claims up through and including the Effective Date that were or could have
24 been asserted in this action based on the facts alleged in the Notices and Complaint.

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

26 **3.1** Beginning on the Effective Date or September 30, 2020, whichever date is later,
27 (the "Compliance Date") 1ST PHORM shall be permanently enjoined from manufacturing for
28 sale in the State of California, "Distributing into the State of California," or directly selling in

1 the State of California, any Covered Products that expose a person to a “Daily Lead Exposure
2 Level” of more than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level”
3 of more than 4.1 micrograms of cadmium per day unless it meets the warning requirements
4 under Section 3.2. As an exception, all Covered Products manufactured by or for 1ST
5 PHORM prior to the Compliance Date, and no longer in the possession or under the control of
6 1ST PHORM as of the Compliance Date, may be distributed or sold by any person, at any
7 time, without violation of this Consent Judgment. 1ST PHORM shall be responsible for
8 verifying the manufacture date and the date upon which 1ST PHORM no longer had
9 possession or control for any Covered Product subject to this exception outlined in this Section
10 of the Consent Judgment.

11 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
12 of California” shall mean to directly ship a Covered Product into California for sale in
13 California or to sell a Covered Product to a distributor that 1ST PHORM knows will sell the
14 Covered Product in California.

15 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
16 Level” shall be measured in micrograms, and shall be calculated using the following formula:
17 micrograms of lead per gram of product, multiplied by grams of product per serving of the
18 product (using the largest serving size recommended on the product label), multiplied by
19 servings of the product per day (using the largest number of recommended daily servings
20 appearing on the label), which equals micrograms of lead exposure per day, excluding,
21 pursuant to Section 3.1.3 the amount of lead in the ingredients in **Table 1** below, if applicable.
22 If the label contains no recommended daily servings, then the number of recommended daily
23 servings shall be one.

24 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product, 1ST
25 PHORM shall be allowed to deduct the amount of lead which is deemed “naturally occurring” in
26 the ingredients listed in **Table 1** that are contained in that Covered Product under the following
27 conditions: For each calendar year that 1ST PHORM claims entitlement to a “naturally
28 occurring” allowance, 1ST PHORM shall provide ERC, for three years after the Effective Date

and thereafter upon request, with the following information: (a) 1ST PHORM must produce to ERC a written list of each ingredient in the Covered Product for which a “naturally occurring” allowance is claimed; (b) 1ST PHORM must provide ERC with documentation of laboratory testing conducted during the year for which the “naturally occurring” allowance is claimed that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in each ingredient listed in **Table 1** that is contained in the Covered Product and for which 1ST PHORM intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in any ingredient listed in **Table 1** that is contained in the Covered Product, 1ST PHORM shall be entitled to deduct up to the full amount of the allowance for that ingredient, as listed in **Table 1**, but not to exceed the total amount of lead actually contained in that ingredient that is in the Covered Product; and (d) If the Covered Product does not contain an ingredient listed in **Table 1**, 1ST PHORM shall not be entitled to a deduction for “naturally occurring” lead in the Covered Product for that ingredient. The information required by Sections 3.1.3 (a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date, or anniversary thereof, for any year that 1ST PHORM shall claim entitlement to the “naturally occurring” allowance.

TABLE 1

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
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 micrograms/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
Cocoa-powder	Up to 1.0 micrograms/gram

1 **3.1.4** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:
3 micrograms of cadmium per gram of product, multiplied by grams of product per serving of
4 the product (using the largest serving size recommended on the product label), multiplied by
5 servings of the product per day (using the largest number of recommended daily servings
6 appearing on the label), which equals micrograms of cadmium exposure per day. If the label
7 contains no recommended daily servings, then the number of recommended daily servings
8 shall be one.

9 **3.2 Clear and Reasonable Warnings**

10 If 1ST PHORM is required to provide a warning pursuant to Section 3.1, the following
11 warning must be utilized (“Warning”):

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

16 1ST PHORM shall use the phrase “cancer and” in the Warning if 1ST PHORM knows
17 that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined
18 pursuant to the quality control methodology set forth in Section 3.4 or if 1ST PHORM knows that
19 another Proposition 65 chemical requires a cancer warning. As identified in the brackets, the
20 Warning for each Covered Product shall appropriately reflect whether the Warning is provided for
21 lead, cadmium, both or for another Proposition 65 chemical in the Covered Product. In all cases,
22 if a Warning for lead or cadmium is required hereunder, lead or cadmium shall be identified
23 expressly in the appropriate location(s) within the Warning. 1ST PHORM may, at its election,
24 identify other additional chemicals in Warning.

25 The Warning shall be securely affixed to, attached to, or printed upon the label
26 (as defined below) of each Covered Product and it must be set off from other surrounding
27 information and enclosed in a box. In addition, for any Covered Product that 1ST PHORM
28 sells over the internet, the Warning shall be prominently displayed to the purchaser prior to the
completion of the checkout process, when a California delivery address is indicated for any

1 purchase of any Covered Product. The Warning may be provided with a conspicuous
2 hyperlink, located either on the Covered Product's primary product display page or on the
3 checkout page, stating "**WARNING**" in all capital and bold letters so long as the hyperlink
4 goes directly to a page prominently displaying the Warning without content that detracts from
5 the Warning. A Warning on a website is not prominently displayed if the purchaser must
6 search for it in the general content of the website. An asterisk or other identifying method
7 must be utilized to identify which Covered Products are subject to the Warning when products
8 subject to the Warning appear near, or with, products that are not, so the purchaser clearly
9 understands which Covered Products are subject to the Warning.

10 The Warning shall be at least the same size as other health or safety warning text also
11 appearing on the 1ST PHORM website for a Covered Product or on the label of the Covered
12 Product and the word "**WARNING**" shall be in all capital letters and in bold print. The warning
13 content may contain information that is supplemental to the content required by this agreement
14 only to the extent that it identifies the source of the exposure or provides information on how to
15 avoid or reduce exposure to the identified chemical or chemicals.

16 1ST PHORM must display the above Warning with such conspicuousness, as compared
17 with other words, statements or designs on the Covered Product label, or on its website for the
18 Covered Product, if applicable, to render the Warning likely to be read and understood by an
19 ordinary individual under customary conditions of purchase or use of the Covered Product.

20 For purposes of this Consent Judgment, the term "label" means a display of written,
21 printed or graphic material that is printed directly on or affixed to a Covered Product or its
22 immediate container or wrapper or consumer packaging.

23 **3.3 Conforming Covered Products**

24 A "Conforming Covered Product" is a Covered Product for which the "Daily Lead
25 Exposure Level" is no greater than 0.5 micrograms of lead and/or "Daily Cadmium Exposure
26 Level" is no more than 4.1 micrograms of cadmium 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 (1) year of the Compliance Date, 1ST PHORM
3 shall arrange for lead and/or cadmium testing, as relevant, of the Covered Products at least
4 once a year for a minimum of three (3) consecutive years by testing or arranging for testing of
5 three (3) randomly selected samples of each of the Covered Products, in the form intended for
6 sale to the end-user, which 1ST PHORM intends to sell or is manufacturing for sale in
7 California, directly selling to a consumer in California or "Distributing into the State of
8 California." If tests conducted pursuant to this Section demonstrate that no Warning is required
9 for a Covered Product during each of three (3) consecutive years, then the testing requirements
10 of this Section will no longer be required as to that Covered Product. However, if during or
11 after the three -year testing period, 1ST PHORM changes ingredient suppliers for any of the
12 Covered Products and/or reformulates any of the Covered Products, 1ST PHORM shall test
13 that Covered Product two years after such change is made. In no event shall 1ST PHORM be
14 required under this Consent Judgment to test Covered Products under this Section for more
15 than five (5) years.

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 three (3) randomly selected samples of the Covered Products 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 and limit of quantification, sensitivity,
22 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
23 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010
24 mg/kg.

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 1ST PHORM'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, which shall not be
5 made more frequently than once every twelve (12) months for a given Covered Product, absent
6 good cause shown by ERC, 1ST PHORM shall deliver lab reports obtained pursuant to Section
7 3.4 to ERC. 1ST PHORM shall retain all test results and documentation for a period of three
8 (3) years from the date of each test.

9 **3.4.7** The testing requirements of Section 3.4 do not apply to any Covered
10 Product for which 1ST PHORM has provided the Warning specified in Section 3.2 continuously
11 and uninterrupted after the Compliance Date; however, in the event 1ST PHORM ceases to
12 provide the Warning specified in Section 3.2, 1ST PHORM shall be required to comply with the
13 testing requirements of this section beginning within sixty (60) days after the date the Warning
14 ceases to be provided or one year after the Compliance Date, whichever date is later.

15 **4. SETTLEMENT PAYMENT**

16 **4.1** In full satisfaction of all potential civil penalties, additional settlement
17 payments, attorney's fees, and costs, 1ST PHORM shall make a total payment of \$185,500.00
18 ("Total Settlement Amount") to ERC as follows: 1) \$70,000 within three (3) business days of
19 execution of this Consent Judgment by the Parties; 2) \$57,750 within forty-five (45) days of
20 the date of execution of the Consent Judgment; and 3) \$57,750 within ninety (90) days of the
21 date of execution of the Consent Judgment. 1ST PHORM shall make the above payments by
22 wire transfer to ERC's account, for which ERC will give 1ST PHORM the necessary account
23 and taxpayer identification information at least three (3) business days before the payment is
24 due. The Total Settlement Amount shall be apportioned as follows by ERC:

25 **4.2** \$73,000.00 shall be considered a civil penalty pursuant to California Health and
26 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$54,750.00) of the civil penalty to
27 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
28 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety

1 Code section 25249.12(c). ERC will retain the remaining 25% (\$18,250.00) of the civil
2 penalty.

3 **4.3** \$12,408.80 shall be distributed to ERC as reimbursement to ERC for costs
4 incurred in bringing this action.

5 **4.4** \$54,331.49 shall be distributed to ERC as an Additional Settlement Payment
6 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
7 and 3204. ERC will utilize the ASP for activities that address the same public harm as
8 allegedly caused by Defendant in this matter. These activities are detailed
9 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic
10 chemicals in dietary supplement products in California. ERC’s activities have had, and will
11 continue to have, a direct and primary effect within the State of California because California
12 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or
13 cadmium in dietary supplements and/or by providing clear and reasonable warnings to
14 California consumers prior to ingestion of the products.

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

1 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got
2 Lead?" Program which reduces the numbers of contaminated products that reach California
3 consumers by providing access to free testing for lead in dietary supplement products (Products
4 submitted to the program are screened for ingredients which are suspected to be contaminated,
5 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and
6 the results shared with the consumer that submitted the product).

7 ERC shall be fully accountable in that it will maintain adequate records to document
8 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
9 are being spent only for the proper, designated purposes described in this Consent Judgment.
10 ERC shall provide the Attorney General, within thirty (30) days of any request, copies of
11 documentation demonstrating how such funds have been spent.

12 **4.5** \$24,191.00 shall be distributed to Aqua Terra Aeris Law Group as
13 reimbursement of ERC's attorney's fees, while \$21,568.71 shall be distributed to ERC for its
14 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
15 costs.

16 **4.6** In the event that 1ST PHORM fails to remit the Total Settlement Amount owed
17 under Section 4 of this Consent Judgment on the schedule above in Section 4.1, 1ST PHORM
18 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
19 shall provide written notice of the delinquency to 1ST PHORM via electronic mail. If 1ST
20 PHORM fails to deliver the Total Settlement Amount within five (5) days from the written
21 notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate
22 provided in the California Code of Civil Procedure section 685.010. Additionally, 1ST
23 PHORM agrees to pay ERC's reasonable attorney's fees and costs incurred to collect the
24 payment due under this Consent Judgment.

25 **5. MODIFICATION OF CONSENT JUDGMENT**

26 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
27 Parties and upon entry by the Court of a modified consent judgment or (ii) by motion of either
28 Party and upon entry by the Court of a modified consent judgment. Paragraph 4.1 may not be

1 modified.

2 **5.2** If a Party seeks to modify this Consent Judgment under Section 5.1, then that
3 Party must provide written notice to the other Party of its intent ("Notice of Intent"). If the non-
4 moving Party seeks to meet and confer regarding the proposed modification in the Notice of
5 Intent, then the non-moving Party must provide written notice within thirty (30) days of
6 receiving the Notice of Intent. If no such notification of a meet and confer process is delivered
7 within such thirty (30) days, then the moving Party may assume the proposed motion is
8 unopposed. If the non-moving Party notifies the moving Party in a timely manner of an intent to
9 meet and confer, then the Parties shall meet and confer in good faith as required in this Section.
10 The Parties shall meet in person or via telephone within thirty (30) days of the non-moving
11 Party's notification of its intent to meet and confer. Within thirty (30) days of such meeting, if
12 the non-moving Party disputes the proposed modification, the non-moving Party shall provide a
13 written basis for its position. The Parties shall continue to meet and confer for an additional
14 thirty (30) days in an effort to resolve any remaining disputes. Should it become necessary, the
15 Parties may agree in writing to different deadlines for the meet-and-confer period.

16 **5.3** In the event that a party initiates or otherwise requests a modification under
17 Section 5.1, and the meet and confer process leads to an unopposed or joint motion or application
18 for a modification of the Consent Judgment, the party requesting the modification shall prepare,
19 file and argue the motion or application.

20 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
21 **JUDGMENT**

22 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
23 terminate this Consent Judgment. This Consent Judgment is enforceable solely by the Parties
24 hereto.

25 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
26 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
27 inform IST PHORM in a reasonably prompt manner of all test results and other supporting
28 information in its possession for that Covered Product, including information sufficient to

1 permit 1ST PHORM to identify the Covered Product at issue. 1ST PHORM shall, within thirty
2 (30) days following such notice, provide ERC with testing information, from an independent
3 third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating 1ST
4 PHORM's compliance with the Consent Judgment. The Parties shall first attempt to resolve the
5 matter prior to ERC taking any further legal action. Nothing in this paragraph shall limit or
6 restrict 1ST PHORM's obligations with respect to testing and reporting as outlined in Section
7 3.4.

8 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

16 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
17 behalf of itself and in the public interest, and 1ST PHORM and its respective officers,
18 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
19 franchisees, licensees, customers (not including private label customers of 1ST PHORM),
20 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
21 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
22 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
23 hereby fully releases and discharges the Released Parties from any and all claims, actions,
24 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
25 asserted, or that could have been asserted from the handling, use, or consumption of the
26 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
27 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
28 lead and/or cadmium up to and including the Effective Date.

1 **8.2** ERC on its own behalf only, and 1ST PHORM on its own behalf only, further
2 waive and release any and all claims they may have against each other for all actions or
3 statements made or undertaken in the course of seeking or opposing enforcement of
4 Proposition 65 in connection with the Notices and Complaint up through and including the
5 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
6 right to seek to enforce the terms of this Consent Judgment.

7 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
8 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
9 discovered. ERC on behalf of itself only, and 1ST PHORM on behalf of itself only,
10 acknowledge that this Consent Judgment is expressly intended to cover and include all such
11 claims up through and including the Effective Date, including all rights of action therefore.
12 ERC and 1ST PHORM acknowledge that the claims released in Sections 8.1 and 8.2 above
13 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
14 any such unknown claims. California Civil Code section 1542 reads as follows:

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

19 ERC on behalf of itself only, and 1ST PHORM on behalf of itself only, acknowledge and
20 understand the significance and consequences of this specific waiver of California Civil Code
21 section 1542.

22 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
23 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures
24 to lead and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

25 **8.5** Nothing in this Consent Judgment is intended to apply to any of 1ST PHORM's
26 products other than the Covered Products.

27 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

28 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
4030 Martin Luther King Jr. Way
Oakland, CA 94609
Telephone: (415) 568-5200
Email: mcm@atalawgroup.com

1ST PHORM INTERNATIONAL, LLC

Chris Klein,
Chief Operating Officer, Member
1st PHORM
2091 Fenton Logistics Park Boulevard
Fenton, MO 63026
CKlein@1stPhorm.com

12. COURT APPROVAL

12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a Motion for Court Approval. Upon ERC's request, 1ST PHORM shall file a Notice of Non-Opposition to ERC's Motion for Court Approval.

1 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
2 the Parties shall use their reasonable efforts to resolve the concern in a timely manner, and if
3 possible prior to the hearing on ERC's Motion for Court Approval. If any objection by the
4 Attorney General cannot be resolved to either Party's satisfaction, then the disapproving Party
5 may withdraw from this agreement and it shall become void and have no force or effect.

6 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
7 void and have no force or effect.

8 **13. EXECUTION AND COUNTERPARTS**

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

12 **14. DRAFTING**

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

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

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

26 **16. ENFORCEMENT**

27 A Party may, by motion or order to show cause before the Superior Court of Alameda
28 County, enforce the terms and conditions contained in this Consent Judgment. In any action

1 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
2 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

3 **17. ENTIRE AGREEMENT, AUTHORIZATION**

4 **17.1** This Consent Judgment contains the sole and entire agreement and
5 understanding of the Parties with respect to the entire subject matter herein, including any and
6 all prior discussions, negotiations, commitments, and understandings related thereto. No
7 representations, oral or otherwise, express or implied, other than those contained herein have
8 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
9 herein, shall be deemed to exist or to bind any Party.

10 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
11 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

14 This Consent Judgment has come before the Court upon the Motion to Approve Consent
15 Judgment of ERC. The Motion requests the Court to fully review this Consent Judgment and,
16 being fully informed regarding the matters which are the subject of this action, to:

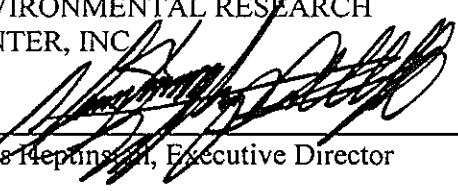
17 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
18 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
19 been diligently prosecuted, and that the public interest is served by such settlement; and

20 (2) Make the findings pursuant to California Health and Safety Code section
21 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

22 **IT IS SO STIPULATED:**

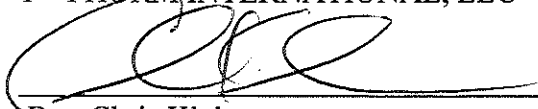
23 Dated: 3/21, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC.

24 By: 
25 Chris Heptinstall, Executive Director
26
27
28

1 Dated: March 8, 2021

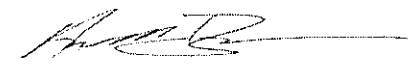
1ST PHORM INTERNATIONAL, LLC

2
3 
4 By: Chris Klein
Its: President and Chief Operating Officer

5 **APPROVED AS TO FORM:**

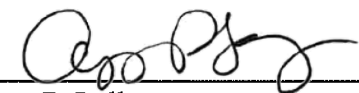
6 Dated: March 1, 2021

AQUA TERRA AERIS LAW GROUP

7
8 By: 
9 Matthew C. Maclear
10 Anthony M. Barnes
11 Attorneys for Plaintiff Environmental
Research Center, Inc.

12 Dated: March 8, 2021

SIDLEY AUSTIN LLP

13
14 By: 
15 Amy P. Lally
16 Attorney for Defendant 1st Phorm
International, LLC

17
18
19
20 **ORDER AND JUDGMENT**

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

23 IT IS SO ORDERED, ADJUDGED AND DECREED.

24
25 Dated: _____, 2021

Judge of the Superior Court