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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.

STANDARD PROCESS INC., a Wisconsin
corporation; and DOES 1 – 25,

Defendants.

CASE NO. RG21086370

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 19, 2021
Trial Date: None set

1. INTRODUCTION

1.1 On January 19, 2021, 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 Permanent Injunction, Civil Penalties and Other Relief (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against STANDARD PROCESS INC. (“STANDARD PROCESS”) and
2 Does 1-25. In this action, ERC alleges that certain products manufactured, distributed, or sold
3 by STANDARD PROCESS contain lead and/or cadmium, chemicals listed under Proposition
4 65 as carcinogens and reproductive toxins, and expose consumers to these chemicals at a level
5 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a
6 “Covered Product” or collectively as “Covered Products”) are:

- 7 • **Standard Process Standard Bar High-Protein Cocoa Crisp - Lead**
- 8 • **Standard Process SP Cleanse - Lead**
- 9 • **Standard Process SP Complete Vanilla – Lead, Cadmium**
- 10 • **Standard Process Whole Food Fiber - Lead**
- 11 • **Standard Process SP Complete Chocolate – Lead, Cadmium**
- 12 • **Standard Process SP Complete - Lead**
- 13 • **Standard Process SP Complete Dairy Free – Lead, Cadmium**
- 14 • **Standard Process Veg-E Complete Pro Chocolate - Lead, Cadmium**
- 15 • **Standard Process Veg-E Complete Pro Vanilla - Lead**
- 16 • **Standard Process Standard Bar High-Protein Peanut Butter – Lead**
- 17 • **Standard Process E-Z Mg Plant-Based Magnesium Supplement**
18 **Mixed Berry Flavored - Lead**
- 19 • **Standard Process Gastro-Fiber - Lead**
- 20 • **Standard Process Prost-X - Lead**
- 21 • **Standard Process Calsol - Lead**
- 22 • **Standard Process Collinsonia Root - Lead**
- 23 • **Standard Process Bio-Dent - Lead**
- 24 • **Standard Process Cholacol - Lead**
- 25 • **Standard Process Nutrimere - Lead**
- 26 • **Standard Process SP Detox Balance Chai Flavored – Lead,**
27 **Cadmium**
- 28 • **Standard Process Calcifood – Lead**

1 **1.2** ERC and STANDARD PROCESS are hereinafter referred to individually as a
2 “Party” or collectively as the “Parties.”

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

7 **1.4** For purposes of this Consent Judgment, the Parties agree that STANDARD
8 PROCESS is a business entity that has employed ten or more persons at all times relevant to this
9 action, and qualifies as a “person in the course of doing business” within the meaning of
10 Proposition 65. STANDARD PROCESS manufactures, distributes, and/or sells the Covered
11 Products.

12 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
13 dated August 13, 2020, September 17, 2020, and October 8, 2020 that were served on the
14 California Attorney General, other public enforcers, and STANDARD PROCESS (“Notices”).
15 True and correct copies of the 60-Day Notices dated August 13, 2020, September 17, 2020,
16 and October 8, 2020 are attached hereto as **Exhibits A, B, and C** and each is incorporated
17 herein by reference. More than 60 days have passed since the Notices were served on the
18 Attorney General, public enforcers, and STANDARD PROCESS and no designated
19 governmental entity has filed a Complaint against STANDARD PROCESS with regard to the
20 Covered Products or the alleged violations.

21 **1.6** ERC’s Notices and Complaint allege that use of the Covered Products by
22 California consumers exposes them to lead and/or cadmium without first receiving clear and
23 reasonable warnings from STANDARD PROCESS in violation of California Health and
24 Safety Code section 25249.6. STANDARD PROCESS denies all material allegations contained
25 in the Notices and Complaint.

26 **1.7** The Parties have entered into this Consent Judgment in order to settle,
27 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
28 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute

1 or be construed as an admission by any of the Parties or by any of their respective officers,
2 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
3 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
4 issue of law, or violation of law.

5 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
6 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
7 any current or future legal proceeding unrelated to these proceedings.

8 **1.9** The Effective Date of this Consent Judgment is the date on which ERC serves
9 the Notice of Entry of the Consent Judgment.

10 **2. JURISDICTION AND VENUE**

11 For purposes of this Consent Judgment and any further court action that may become
12 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
13 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
14 over STANDARD PROCESS as to the acts alleged in the Complaint, that venue is proper in
15 Alameda County Superior Court, and that this Court has jurisdiction to enter this Consent
16 Judgment as a full and final resolution of all claims up through and including the Effective Date
17 that were or could have been asserted in this action based on the facts alleged in the Notices and
18 Complaint.

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

20 **3.1** Beginning on the 45th dafter after the Effective Date (the “Compliance Date”),
21 STANDARD PROCESS shall be permanently enjoined from manufacturing for sale in the
22 State of California, “Distributing into the State of California” or directly selling in the State of
23 California any Covered Product that exposes a person to a “Daily Lead Exposure Level” of
24 more than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” of more
25 than 4.1 micrograms of cadmium per day unless it meets the warning requirements under
26 Section 3.2.

27 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
28 of California” shall mean to directly ship a Covered Product into California for sale in

1 California or to sell a Covered Product to a distributor that STANDARD PROCESS knows
2 will sell the Covered Product in California.

3 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
4 Level” shall be measured in micrograms, and shall be calculated using the following formula:
5 micrograms of lead per gram of product, multiplied by grams of product per serving of the
6 product (using the largest serving size appearing on the product label), multiplied by servings
7 of the product per day (using the largest number of recommended daily servings appearing on
8 the label), which equals micrograms of lead exposure per day. If the label contains no
9 recommended daily servings, then the number of recommended daily servings shall be one.

10 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
11 Level” shall be measured in micrograms, and shall be calculated using the following formula:
12 micrograms of cadmium per gram of product, multiplied by grams of product per serving of
13 the product (using the largest serving size appearing on the product label), multiplied by
14 servings of the product per day (using the largest number of recommended daily servings
15 appearing on the label), which equals micrograms of cadmium exposure per day. If the label
16 contains no recommended daily servings, then the number of recommended daily servings
17 shall be one.

18 **3.2 Clear and Reasonable Warnings**

19 If STANDARD PROCESS is required to provide a warning pursuant to Section 3.1, one of
20 the following warnings must be utilized (“Warning”):

21 **OPTION 1**


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

25 STANDARD PROCESS shall use the phrase “cancer and” in the Warning if
26 STANDARD PROCESS has reason to believe that the the “Daily Lead Exposure Level” is
27 greater than 15 micrograms of lead as determined pursuant to the testing methodology set forth in
28 Section 3.4 or if another Proposition 65 chemical is present which may require a cancer warning.

STANDARD PROCESS may replace the term “lead” in the Warning with “cadmium” for those products that are in violation of Proposition 65 for cadmium.

OPTION 2

STANDARD PROCESS may elect to use the following short-form Warning if the product label has, or is stickered with, a warning:

 **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov

For Option 2, STANDARD PROCESS shall use the phrase “cancer and” in the Warning if the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the testing methodology set forth in Section 3.4 or if another Proposition 65 chemical is present at a level requiring a cancer warning.

For Option 2, the entire Warning must be in a type size no smaller than the largest type size used for other consumer information on the product. “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional information. “Consumer information” does not include the brand name, product name, company name, location of manufacture, or product advertising. *See* Title 27, Cal. Code Regs., § 25600.1(c) (2021). In no case shall the Warning appear in a type size smaller than six (6) point type. In addition for Option 2, 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 text of the Warning, in a size no smaller than the height of the word “WARNING.” Where the label for the product is not printed using the color yellow, the symbol may be in black and white.

3.2.1 Internet Sales. For any Covered Product sold over the internet, the Warning shall be displayed as follows: (a) on the primary display page for the Covered Product; (b) as a clearly marked hyperlink using the word “**WARNING**” in all capital and bold letters on the Covered Product’s primary display page, so long as the hyperlink goes directly to a page prominently displaying the Warning without content that detracts from the Warning; (c) on the checkout page when a California delivery address is indicated for any purchase of any Covered Product and with an asterisk or other identifying method utilized to identify which products on the checkout page are subject to the Warning; or (d) by otherwise prominently displaying the

Warning to the purchaser prior to completing the purchase. The Warning is not prominently displayed if the purchaser must search for it in the general content of the website.

3.2.2 Warning Prominence. The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all capital letters and in bold print. STANDARD PROCESS must display the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, or on its website, if applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product. The Warning may contain supplemental information only to the extent that it identifies the source of the exposure or provides information on how to avoid or reduce exposure to the identified chemical or chemicals. For purposes of this Consent Judgment, the term “label” means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper.

3.2.3 Alternative Warning Content and Methods. The Parties acknowledge that the Option 1 Warning is the Safe Harbor Warning Language for foods and dietary supplements currently set forth in Title 27, California Code of Regulations, section 25607.2. In the event that the warning language in section 25607.2 is amended or modified in the future, STANDARD PROCESS may use the Safe Harbor Warning Language in section 25607.2 as amended or modified so long as it remains applicable to the Covered Products.

3.2.3 Stream of Commerce. The requirements of Sections 3.1 and 3.2 do not apply to Covered Products that “enter the stream of commerce” prior to the Compliance Date. For purposes of this Consent Judgment, the term “enter the stream of commerce” means that manufactured Covered Products are put into final packaging for consumer sale and (1) have been Distributed into the State of California or sold in the State of California by STANDARD PROCESS or (2) are no longer in the possession of or under the control of STANDARD PROCESS.

3.3 Conforming Covered Products

A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure

Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” is no more than 4.1 micrograms of cadmium per day as determined by the exposure methodology set forth in Section 3.1.2 or Section 3.1.3, as applicable, and the testing methodology described in Section 3.4.

3.4 Testing Methodology

3.4.1 Beginning within one year of the Effective Date, STANDARD PROCESS shall arrange for lead and cadmium testing of the Covered Products at least once a year for a minimum of three (3) consecutive years by arranging for testing of one (1) randomly selected sample of each of the Covered Products, in the form intended for sale to the end-user, which STANDARD PROCESS intends to sell, is manufacturing for sale in California, is directly selling to a consumer in California, or is “Distributing into the State of California.” If tests conducted pursuant to this Section 3.4 demonstrate that no Warning is required for a Covered Product during each of three (3) consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the three-year testing period, STANDARD PROCESS changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, STANDARD PROCESS shall test that Covered Product annually for at least two (2) consecutive years after such change is made.

3.4.2 For purposes of measuring the “Daily Lead Exposure Level” and/or “Daily Cadmium Exposure Level,” the lead and/or cadmium testing results of the one (1) randomly selected sample of each of the Covered Products will be controlling.

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

3.4.4 All testing pursuant to this Consent Judgment shall be performed by an

independent third party laboratory certified by the California Environmental Laboratory Accreditation Program or an independent third-party laboratory that is registered with the United States Food & Drug Administration.

3.4.5 Nothing in this Consent Judgment shall limit STANDARD PROCESS' ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

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

3.4.7 The testing requirements of this Section 3.4 do not apply to any Covered Product for which STANDARD PROCESS has provided a Warning in compliance with Section 3.2 continuously and uninterrupted after the Compliance Date; however, in the event STANDARD PROCESS ceases to provide the Warning in compliance with Section 3.2, STANDARD PROCESS shall be required to comply with the testing requirements of this Section beginning immediately after the date the Warning ceases to be provided or one year after the Effective Date, whichever date is later, unless STANDARD PROCESS can show to the satisfaction of ERC that the cessation in providing the Warning was a temporary error that was resolved when discovered.

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, additional settlement payments, attorney's fees, and costs, STANDARD PROCESS shall make a total payment of \$300,000.00 ("Total Settlement Amount") to ERC within five (5) business days of the Effective Date ("Due Date"). STANDARD PROCESS shall make this payment by wire transfer to ERC's account, for which ERC will give STANDARD PROCESS the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.2 \$128,750.00 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$96,562.50) of the civil penalty

1 to the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
2 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
3 Code section 25249.12(c). ERC will retain the remaining 25% (\$32,187.50) of the civil
4 penalty.

5 **4.3** \$20,669.59 shall be distributed to ERC as reimbursement to ERC for reasonable
6 costs incurred in bringing this action.

7 **4.4** \$96,373.33 shall be distributed to ERC as an Additional Settlement Payment
8 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
9 and 3204. ERC will utilize the ASP for activities that address the same public harm as
10 allegedly caused by Defendant in this matter. These activities are detailed
11 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic
12 chemicals in dietary supplement products in California. ERC’s activities have had, and will
13 continue to have, a direct and primary effect within the State of California because California
14 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or
15 cadmium in dietary supplements and/or by providing clear and reasonable warnings to
16 California consumers prior to ingestion of the products.

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

1 providing the test results and supporting documentation to the companies, and offering
2 guidance in warning or implementing a self-testing program for lead and/or cadmium in dietary
3 supplement products; and (3) “GOT LEAD” PROGRAM (up to 5%): maintaining ERC’s “Got
4 Lead?” Program which reduces the numbers of contaminated products that reach California
5 consumers by providing access to free testing for lead in dietary supplement products (Products
6 submitted to the program are screened for ingredients which are suspected to be contaminated,
7 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and
8 the results shared with the consumer that submitted the product).

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

14 **4.5** \$24,795.00 shall be distributed to Aqua Terra Aeris Law Group, while
15 \$29,412.08 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided
16 herein, each Party shall bear its own fees and costs.

17 **4.6** In the event that STANDARD PROCESS fails to remit the Total Settlement
18 Amount owed under Section 4 of this Consent Judgment on or before the Due Date,
19 STANDARD PROCESS shall be deemed to be in material breach of its obligations under this
20 Consent Judgment. ERC shall provide written notice of the delinquency to STANDARD
21 PROCESS via electronic mail. If STANDARD PROCESS fails to deliver the Total Settlement
22 Amount within five (5) days from the written notice, the Total Settlement Amount shall accrue
23 interest at the statutory judgment interest rate provided in the California Code of Civil
24 Procedure section 685.010. Additionally, STANDARD PROCESS agrees to pay ERC’s
25 reasonable attorney’s fees and costs for any efforts to collect the payment due under this
26 Consent Judgment.

27 **5. MODIFICATION OF CONSENT JUDGMENT**

28 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by

1 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
2 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
3 modified consent judgment.

4 **5.2** If STANDARD PROCESS seeks to modify this Consent Judgment under
5 Section 5.1, then STANDARD PROCESS must provide written notice to ERC of its intent
6 (“Notice of Intent”). If ERC seeks to meet and confer regarding the proposed modification in
7 the Notice of Intent, then ERC must provide written notice to STANDARD PROCESS within
8 thirty (30) days of receiving the Notice of Intent. If ERC notifies STANDARD PROCESS in a
9 timely manner of ERC’s intent to meet and confer, then the Parties shall meet and confer in
10 good faith as required in this Section. The Parties shall meet in person or via telephone within
11 thirty (30) days of ERC’s notification of its intent to meet and confer. Within thirty (30) days
12 of such meeting, if ERC disputes the proposed modification, ERC shall provide to
13 STANDARD PROCESS a written basis for its position. The Parties shall continue to meet and
14 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
15 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
16 confer period.

17 **5.3** In the event that STANDARD PROCESS initiates or otherwise requests a
18 modification under Section 5.1, and the meet and confer process leads to a joint motion or
19 application for a modification of the Consent Judgment, STANDARD PROCESS shall
20 reimburse ERC its costs and reasonable attorney’s fees for the time spent in the meet-and-
21 confer process and filing and arguing the motion or application.

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

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

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

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

7 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

28 **8.2** ERC on its own behalf only, and STANDARD PROCESS on its own behalf

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

6 **8.3** It is possible that other claims not known to the Parties and that one Party may
7 have against the other, arising out of the facts alleged in the Notices and Complaint or relating
8 to the Covered Products, not including claims or actions relating to enforcement of this
9 Consent Judgment, will develop or be discovered. ERC on behalf of itself only, and
10 STANDARD PROCESS on behalf of itself only, acknowledge that this Consent Judgment is
11 expressly intended to cover and include all such claims up through and including the
12 Compliance Date, including all rights of action therefore. ERC and STANDARD PROCESS
13 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown
14 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown
15 claims. California Civil Code section 1542 reads as follows:

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

20 ERC on behalf of itself only, and STANDARD PROCESS on behalf of itself only,
21 acknowledge and understand the significance and consequences of this specific waiver of
22 California Civil Code section 1542.

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

27 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
28 environmental exposures arising under Proposition 65, nor shall it apply to any of

STANDARD PROCESS' 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. In the event that Proposition 65 is repealed or is otherwise rendered completely inapplicable by the California Office of Environmental Health Hazard Assessment (OEHHA), the California Supreme Court, or the United States Supreme Court as to the Covered Products and lead and/or cadmium exposures, then STANDARD PROCESS may provide written notice to ERC of any such change in the law and shall have no further injunctive obligations pursuant to this Consent Judgment with respect to the unjunctive terms, but only to the extent that the Covered Products are so affected by such change in the law.

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.

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

1 **FOR STANDARD PROCESS INC.:**

2 Charlie DuBois, President & CEO
3 Standard Process, Inc.
4 1200 W. Royal Lee Dr.
5 Palmyra, WI 53156
6 Email: cdubois@standardprocess.com

7 With a copy to:
8 PEG CAREW TOLEDO
9 ARNOLD & PORTER KAYE SCHOLER LLP
10 Three Embarcadero Center, 10th Floor
11 San Francisco, CA 94111
12 Telephone: (415) 471-3110
13 Email: peg.toledo@arnoldporter.com

14 **12. COURT APPROVAL**

15 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
16 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
17 Consent Judgment.

18 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
19 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
20 prior to the hearing on the motion.

21 **12.3** If this Consent Judgment is not approved by the Court, it shall be void and have
22 no force or effect.

23 **13. EXECUTION AND COUNTERPARTS**

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

27 **14. DRAFTING**

28 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
construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,

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

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

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

10 **16. ENFORCEMENT**

11 ERC may, by motion or order to show cause before the Superior Court of Alameda
12 County, enforce the terms and conditions contained in this Consent Judgment. In any action
13 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
14 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment
15 and Proposition 65.

16 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

23 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

27 This Consent Judgment has come before the Court upon the request of the Parties. The
28 Parties request the Court to fully review this Consent Judgment and, being fully informed

1 regarding the matters which are the subject of this action, to make the findings pursuant to
2 California Health and Safety Code section 25249.7(f)(4), and approve this Consent Judgment.

3 **IT IS SO STIPULATED:**

4
5 Dated: 6/11, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC.

6
7 By: 
8 Chris Heptinstall, Executive Director

9 Dated: _____, 2021

STANDARD PROCESS INC.

10
11 _____
12 Charlie DuBois, President & CEO

13
14 **APPROVED AS TO FORM:**

15 Dated: June 1, 2021

16 AQUA TERRA AERIS LAW GROUP

17 By: 

18 Matthew C. Maclear
19 Anthony M. Barnes
20 Attorneys for Plaintiff Environmental
21 Research Center, Inc.

22 Dated: _____, 2021

ARNOLD & PORTER KAY SCHOLER
LLP

23 By: _____
24 Peg Carew Toledo
25 Attorney for Defendant Standard Process
26 Inc.
27
28

1 regarding the matters which are the subject of this action, to make the findings pursuant to
2 California Health and Safety Code section 25249.7(f)(4), and approve this Consent Judgment.

3 IT IS SO STIPULATED:

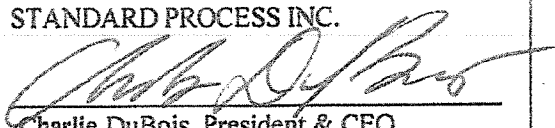
4
5 Dated: 6/11, 2021

ENVIRONMENTAL RESEARCH
CENTER, INC.

6
7 By: 
Chris Hepburn, Executive Director

8
9 Dated: 6/3, 2021

STANDARD PROCESS INC.

10 
11 Charlie DuBois, President & CEO

12
13
14 APPROVED AS TO FORM:


15 Dated: June 1, 2021

AQUA TERRA AERIS LAW GROUP

16
17 By: _____
18 Matthew C. Maclear
19 Anthony M. Barnes
Attorneys for Plaintiff Environmental
Research Center, Inc.

20 Dated: 10/3, 2021

ARNOLD & PORTER KAYE SCHOLER
LLP

21
22 By: 
23 Peg Carew Toledo
24 Attorney for Defendant Standard Process
25 Inc.

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IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court