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19 OPTIMUM NUTRITION, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 COUNTY OF ALAMEDA

22 ENVIRONMENTAL RESEARCH CENTER,  
23 a California Non-Profit Corporation,

24 Plaintiff,

25 v.

26 OPTIMUM NUTRITION, INC. and DOES  
27 1-100,

28 Defendants.

Case No. RG11555006

~~PROPOSED~~ STIPULATED CONSENT  
JUDGMENT; ~~PROPOSED~~ ORDER

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: January 10, 2011

**FILED**  
ALAMEDA COUNTY

JUN 17 2013

CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

EXHIBIT A

1     **1. INTRODUCTION**

2             **1.1**         On January 10, 2011, Plaintiff Environmental Research Center (“ERC”), a non-  
3 profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a  
4 Complaint for Injunctive and Declaratory relief and Civil Penalties pursuant to the provisions of  
5 Cal. Health & Safety Code Section 25249.5 *et seq.* (“Proposition 65”), against Optimum Nutrition,  
6 Inc. (“Optimum ” or “ON”) and DOES 1-100. On September 19, 2012, ERC’s First Amended  
7 Complaint (“Amended Complaint”) for Injunctive and Declaratory Relief and Civil Penalties was  
8 filed. In this action, ERC alleges that the products manufactured, distributed or sold by Optimum,  
9 or its subsidiary American Body Building Products, LLC (“ABB”), as more fully described below,  
10 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and that  
11 such products expose consumers at a level requiring a Proposition 65 warning. These products are:  
12 ABB Speed Stack Pumped N.O. Grape Blast; ABB Speed Stack Grape; ON Glucosamine + CSA  
13 Super Strength; ON Opti-Men; ON Thermo Cuts; ON Mega Fat Burners; ON Chitosan Diet  
14 Formula; and ON Tribulus (collectively, the “Products”). ERC and Optimum shall sometimes be  
15 referred to individually as a “Party” or collectively as the “Parties.”

16             **1.2**         Based on additional information provided by Optimum to ERC, ERC agrees not  
17 to dispute that ABB Speed Stack Pumped N.O. Grape Blast; ABB Speed Stack Grape; and ON  
18 Tribulus are Proposition 65 compliant. Those products are not subject to the injunctive terms of  
19 Section 3. In addition, Optimum provided ERC recent testing results for ON Glucosamine + CSA  
20 Super Strength which indicated compliance with Proposition 65; however, ERC maintains that its  
21 earlier test results demonstrated non-compliance with Proposition 65 such that the product was  
22 properly put at issue by ERC in the action, which Optimum denies and disputes. The Products  
23 covered by the injunctive terms of Section 3 are the following: ON Opti-Men; ON Thermo Cuts;  
24 ON Mega Fat Burners; ON Chitosan Diet Formula; and ON Glucosamine + CSA Super Strength  
25 (collectively the “Covered Products”).

26             **1.3**         ERC is a California non-profit corporation dedicated to, among other causes,  
27 helping safeguard the public from health hazards by bringing about a reduction in the use and  
28 misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and

1 employees and encouraging corporate responsibility.

2           **1.4**       Optimum is a business entity that at all times relevant for purposes of this Consent  
3 Judgment employs ten or more persons.

4           **1.5**       The Amended Complaint is based on allegations contained in ERC's Notices of  
5 Violation dated September 4, 2010, October 8, 2010 and March 11, 2011 (collectively, "Notices of  
6 Violation") that were served on the California Attorney General, other public enforcers and  
7 Optimum. True and correct copies of the Notices of Violation are attached hereto as Exhibit A.  
8 More than 60 days have passed since the Notices of Violation were mailed and no designated  
9 governmental entity has filed a complaint against Optimum with regard to the Products or the  
10 alleged violations.

11           **1.6**       ERC's Notices of Violation and the Amended Complaint allege that use of the  
12 Products exposes persons in California to lead without first providing clear and reasonable warnings  
13 in violation of Cal. Health & Safety Code Section 25249.6. Optimum denies all material allegations  
14 contained in the Notices of Violation and Amended Complaint and specifically denies that any of  
15 the Products have required a Proposition 65 warning, or that they have caused harm to any person.  
16 Nothing in the Consent Judgment shall be construed as an admission by Optimum of any fact, issue  
17 of law or violation of law, nor shall compliance with the Consent Judgment constitute or be  
18 construed as an admission by Optimum of any fact, issue of law or violation of law, at any time, for  
19 any purpose. Nothing in the Consent Judgment shall prejudice, waive or impair any right, remedy  
20 or defense that Optimum may have in any other or further legal proceedings.

21           **1.7**       The Parties have entered into this Consent Judgment in order to settle,  
22 compromise and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in  
23 this Consent Judgment shall constitute or be construed as an admission by any of the Parties, or by  
24 any of their respective officers, directors, shareholders, employees, agents, parent companies,  
25 subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers, distributors,  
26 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,  
27 wrongdoing, or liability, including without limitation, any admission concerning any alleged  
28 violation of Proposition 65.

1           1.8       Except as expressly set forth herein, nothing in this Consent Judgment shall  
2 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any  
3 other or future legal proceeding unrelated to these proceedings.

4           1.9       The Effective Date of this Consent Judgment shall be the date on which it is  
5 entered as a Judgment by this Court. As used herein, the term "Compliance Deadline" is the date  
6 that is six (6) months after the Effective Date.

7           1.10      Since receiving ERC's Notices of Violation, Optimum has engaged in efforts to  
8 attempt to reformulate its products. Optimum has achieved a reformulation of ON Opti-Men that  
9 Optimum maintains will meet the standards set out in Section 3. In addition, ON discontinued  
10 Chitosan, and installed a water treatment system in a manufacturing facility to reduce the levels of  
11 lead in the municipal water supplied to it.

12       **2.       JURISDICTION AND VENUE**

13           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
14 jurisdiction over the allegations of violations contained in the Amended Complaint and personal  
15 jurisdiction over Optimum as to the acts alleged in the Amended Complaint, that venue is proper in  
16 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
17 final resolution of all claims which were or could have been asserted in his action based on the facts  
18 alleged in the Notices of Violation or the Amended Complaint.

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

20           3.1       Any Covered Products manufactured on or after the Compliance Deadline that  
21 Optimum thereafter sells in California, markets or distributes for sale into California, or offers for  
22 sale to a third party for retail sale to California must either: (1) qualify as a "Reformulated Covered  
23 Product" under Section 3.3 below, or (2) meet the warning requirements set out in Section 3.2.  
24 Products manufactured before the Compliance Deadline are therefore not subject to the obligations  
25 imposed by Section 3 irrespective of when they are distributed or sold. The final lot numbers of  
26 Covered Products manufactured before the Compliance Deadline will be provided to ERC no more  
27 than twenty (20) days after the Compliance Deadline.

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1           **3.2       Clear and Reasonable Warnings**

2           If Optimum provides a warning pursuant to Section 3.1, the warning shall comply with the  
3 requirements of either Section 3.2.1 or 3.2.2:

4                 **3.2.1** Optimum shall provide the following warning:

5                 **[California Proposition 65] WARNING: This product contains lead, a chemical known**  
6                 **to the State of California to cause [cancer and] birth defects or other reproductive**  
7                 **harm.**

8           The term "cancer and" shall be used in the warning only if the maximum daily dose recommended  
9 on the label contains more than 15 micrograms of lead as determined pursuant to Section 3.4. The  
10 words "California Proposition 65" may be included at Optimum's option.

11           The warning shall be securely affixed to or printed upon the container, cap, or label of the  
12 Covered Product. The warning shall be displayed with such conspicuousness, as compared with  
13 other words, statements, or design of the label, container or cap, as applicable, to render the warning  
14 likely to be read and understood by an ordinary individual under customary conditions of purchase  
15 or use of the product. The warning appearing on the label, container or cap shall be at least the  
16 same size as the largest of any other health or safety warnings correspondingly appearing on the  
17 label, container or cap, as applicable, of such product, and the word "warning" shall be in all capital  
18 letters and in bold print.

19                 **3.2.2** In the alternative to Section 3.2.1, Optimum shall provide the warning in  
20 accordance with Section 2.2 of the consent judgment attached as Exhibit B hereto, which was  
21 entered in *People v. 21<sup>st</sup> Century Healthcare, Inc., et al.*, Alameda County Superior Court No.  
22 RG08-426937.

23           **3.3       Reformulated Covered Products**

24           A Reformulated Covered Product is one for which the maximum recommended daily  
25 serving on the label contains no more than 0.5 micrograms of lead per day as determined by the  
26 quality control methodology described in Section 3.4.2 and with daily exposure calculated pursuant  
27 to Section 3.4.1, after subtracting the amount of lead pursuant to Section 3.3.1 and Table 1. As used  
28 in this Consent Judgment, "no more than 0.5 micrograms of lead per day" means that the samples  
tested by Optimum under Section 3.4 collectively yield an average daily exposure of no more than

1 0.5 micrograms of lead (with daily exposure calculated pursuant to Section 3.4.1), after excluding  
2 levels of lead pursuant to Section 3.3.1.

3 **3.3.1 Calculation of Lead Levels**

4 For purposes of calculating permissible lead content, Optimum may exclude the amount of  
5 lead in the mineral ingredients listed below in Table 1 in accordance with the Attorney General's  
6 Stipulation Modifying Consent Judgments in *People v. Warner Lambert et al.* (San Francisco  
7 Super. Ct. Case No. 984503). Should Optimum seek to exclude such lead levels in its calculation of  
8 overall lead content for any Covered Product, Optimum shall provide a separate document to ERC  
9 to include a complete list of the ingredients in the Covered Product and the corresponding  
10 percentages of each ingredient within such Covered Product to be held in confidence and kept  
11 confidential by ERC. Optimum shall additionally provide to ERC test results or other data that  
12 independently confirm the percentage of such ingredient(s) being used in each Covered Product(s).  
13 For purposes of this Section 3.3.1 and Section 5.5.1, "other data that independently confirm the  
14 percentage" includes (but is not limited to) a written certification signed by an officer of Optimum.  
15 In the event that a dispute arises with respect to compliance with the terms of this Consent  
16 Judgment as to any contribution from naturally occurring lead levels under this Section 3.3.1, ERC  
17 and Optimum shall employ good faith efforts to seek entry of a protective order that governs access  
18 to and disclosure of the information provided confidentially by Optimum to ERC in any litigation or  
19 proceeding, before any such information is disclosed by ERC in connection with that litigation or  
20 proceeding. Notwithstanding the foregoing, unless ERC obtains Optimum's prior written consent,  
21 ERC shall not be permitted to disclose under any circumstance any information provided by  
22 Optimum under this Section 3.3.1 regarding ingredients other than Table 1 ingredients or to use  
23 such information for any purpose other than to verify percentages of Table 1 ingredients contained  
24 within a Covered Product.

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1                   **TABLE 1**

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INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium (elemental)	0.8 mcg lead per gram of elemental calcium
Ferrous Fumarate	0.4 mcg lead per gram of ferrous fumarate
Zinc Oxide	8.0 mcg lead per gram of zinc oxide
Magnesium Oxide	0.4 mcg lead per gram of magnesium oxide
Magnesium Carbonate	0.332 mcg lead per gram of magnesium carbonate
Zinc Gluconate	0.8 mcg lead per gram of zinc gluconate
Potassium Chloride	1.0 mcg lead per gram of potassium chloride

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11                   **3.4           Testing and Quality Control Methodology**

12                   **3.4.1**           For purposes of this Consent Judgment, daily lead exposure levels  
13 shall be measured in micrograms, and shall be calculated using the following formula: micrograms  
14 of lead per gram of product, multiplied by grams of product per serving of the product (using the  
15 largest serving size appearing on the product label), multiplied by servings of the product per day  
16 (using the largest number of servings in a recommended dosage appearing on the product label),  
17 which equals micrograms of lead exposure per day, but excluding any naturally occurring levels of  
18 lead as set forth in Section 3.3.1.

19                   **3.4.2**           All testing pursuant to this Consent Judgment shall be performed  
20 using a laboratory method that complies with the performance and quality control factors  
21 appropriate for the method used (including limit of detection, limit of quantification, accuracy, and  
22 precision) and meets the following criteria: Closed-vessel, microwave-assisted digestion employing  
23 high-purity reagents followed by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)  
24 achieving a limit of quantification of less than or equal to 0.010 mg/kg, or any other testing method  
25 subsequently agreed upon in writing by the Parties.

26                   **3.4.3**           All testing pursuant to this Consent Judgment shall be performed by a  
27 laboratory certified by the California Environmental Laboratory Accreditation Program for the  
28 analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the

1 United States Food & Drug Administration for the analysis of heavy metals. Optimum may test the  
2 Covered Products if Optimum is a qualified laboratory as described above. Nothing in this Consent  
3 Judgment shall limit Optimum's ability to conduct, or require that others conduct, additional testing  
4 of the Covered Products, including the raw materials used in their manufacture.

5           **3.4.4**       Before Optimum's first distribution or sale of a Covered Product in  
6 California manufactured after the Compliance Deadline, and at least once a year for three (3) years  
7 thereafter, Optimum shall arrange for the lead testing of five (5) randomly selected samples of each  
8 Covered Product (in the form intended for sale to the end-user) to be distributed or sold to  
9 California. The testing shall continue so long as the Covered Products are sold in California or sold  
10 to a third party for retail sale in California; provided however, if tests conducted pursuant to this  
11 Section 3.4 demonstrate that no warning is required for a Covered Product during each of three (3)  
12 consecutive years, then the testing requirements of this Section 3.4 are no longer required as to that  
13 Covered Product. However, if after the three-year period, Optimum changes ingredient suppliers  
14 for any of the Covered Products and/or reformulates any of the Covered Products, Optimum shall  
15 test that Covered Product at least once after such reformulation or change is made. The testing  
16 requirements of Section 3 do not apply to a Covered Product for which Optimum has provided the  
17 warning specified in Section 3.2 since the Compliance Deadline or during the preceding year.

18           **3.4.5**       Upon written request by ERC, Optimum shall provide to ERC any  
19 test results and documentation of testing undertaken by Optimum pursuant to this Section 3 within  
20 ten working days of receipt by Optimum of ERC's request. Optimum shall retain all test results and  
21 documentation for a period of three (3) years from the date of each test.

22 **4. SETTLEMENT PAYMENT**

23           **4.1**       In full satisfaction of all potential civil penalties, payment in lieu of civil  
24 penalties, attorney's fees and costs (which includes, but is not limited to, filing fees and costs of  
25 attorneys, experts and investigators and testing nutritional health supplements), Optimum shall  
26 make a total payment of \$170,000.00 within ten (10) business days of receiving the Notice of Entry  
27 of Judgment. Said payment shall be for the following:

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1                   4.1.1       \$22,500 shall be for civil penalties pursuant to Health & Safety Code  
2 Section 25249.7(b)(1). Of this amount, \$16,875 shall be payable to the Office of Environmental  
3 Health Hazard Assessment ("OEHHA") and \$5,625 shall be payable to Environmental Research  
4 Center. Cal. Health & Safety Code Section 25249.12(c)(1) & (d). Optimum shall send both civil  
5 penalty payments to ERC's counsel who shall be responsible to forward the civil penalty.

6                   4.1.2       \$95,024 shall be payable to ERC in one check. Of this amount,  
7 \$27,500 shall be for reimbursement to Environmental Research Center for reasonable costs  
8 associated with the enforcement of Proposition 65 and other costs incurred as a result of work in  
9 bringing this action, and \$67,524 shall be for the Environmental Research Center, in lieu of further  
10 civil penalties, to cover activities directed to California such as (1) continued enforcement of  
11 Proposition 65, which includes analysis, researching and testing consumer products that may  
12 contain Proposition 65 chemicals which addresses the same or similar type of ingestible products  
13 that are the subject matter of the current action; (2) the continued monitoring of past consent  
14 judgments and settlements to ensure companies are in compliance with Proposition 65; and (3) ERC  
15 awarding a grant in the amount of \$3,375 to Communities for a Better Environment to address  
16 reducing toxic air contaminants in California.

17                   4.1.3       \$48,283 payable to Michael Freund as reimbursement of ERC's  
18 attorney's fees for Michael Freund and Ryan Hoffman, \$3,713 payable to Karen Evans as  
19 reimbursement ERC's attorney's fees, and \$480 payable to Andrew Packard as reimbursement  
20 ERC's attorney's fees.

21                   4.2       Optimum's payments shall be mailed or delivered to the Law Office of Michael  
22 Freund. Optimum shall be provided with a completed W-9 for each payee in order to enable  
23 Optimum to process the payment.

## 24 5.       **MODIFICATION OF CONSENT JUDGMENT**

25                   5.1       This Consent Judgment may be modified only upon written agreement and  
26 stipulation of the Parties and upon entry of a modified Consent Judgment by the Court, or as  
27 otherwise provided in this Section 5.

28 ///

1           **5.2**       If Optimum seeks to modify this Consent Judgment under Section 5.1, then  
2 Optimum shall provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to  
3 meet and confer regarding the proposed modification in the Notice of Intent, then ERC shall  
4 provide written notice to Optimum within thirty (30) days of receiving the Notice of Intent. If ERC  
5 notifies Optimum in a timely manner of ERC's intent to meet and confer, then the Parties shall meet  
6 and confer in good faith as required in this Section 5.2. The Parties shall meet in person within  
7 thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty (30) days of  
8 such meeting, if ERC disputes the proposed modification, ERC shall provide to Optimum a written  
9 factual basis for its position. The Parties shall continue to meet and confer for an additional thirty  
10 (30) days in an effort to resolve any remaining disputes. The Parties may agree in writing to  
11 different deadlines for the meet and confer period.

12           **5.3**       In the event of a modification under Section 5.1 that is initiated or otherwise  
13 requested by Optimum, Optimum shall reimburse ERC its reasonable attorneys' fees for the time  
14 spent in the meet and confer process and filing and arguing a joint motion or application in support  
15 of a modification of the Consent judgment as well as ERC's reasonable costs; provided however,  
16 that these fees and costs shall not exceed \$5,000 (five thousand dollars) total without the prior  
17 written consent of Optimum.

18           **5.4**       Where the meet and confer process does not lead to a joint motion or application  
19 in support of a modification of the Consent Judgment, then either Party may seek judicial relief on  
20 its own. In such a situation, the prevailing party may seek to recover costs and reasonable  
21 attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is  
22 successful in obtaining relief more favorable to it than the relief that the other party was amenable  
23 to providing during the parties' good faith attempt to resolve the dispute that is the subject of the  
24 modification.

25           **5.5**       Should ERC or the California Attorney General reach a settlement of a Proposition  
26 65 claim regarding the same ingredient(s) as contained in a Covered Product that establishes  
27 allowances for naturally occurring lead that results in less stringent lead standards ("Alternative  
28 Lead Standard") than those specified in Section 3.3, then Optimum shall be entitled to seek to

1 modify the Consent Judgment to adopt such Alternative Lead Standard as to such product, subject  
2 to the meet and confer procedures of Section 5, and as set forth in Section 5.5.1, below.

3           **5.5.1**           If such a settlement referenced in Section 5.5 takes place, Optimum  
4 may elect to exclude such naturally occurring lead in its calculation of overall lead content for any  
5 of the Covered Products. During the meet and confer process, Optimum shall provide to ERC a  
6 complete list of all ingredients for which such a naturally occurring exclusion is sought and the  
7 corresponding percentage of each ingredient within each product, including test results or other data  
8 that independently confirm the percentage of the ingredients being used in each Covered Product.  
9 In addition, during the meet and confer process, Optimum shall provide ERC any other information  
10 that independently supports Optimum's contention that such lead that it seeks to exclude is naturally  
11 occurring. Optimum is entitled to submit to ERC documentation pursuant to this Section 5.5 which  
12 shall be held in confidence by ERC and kept confidential by ERC. Unless ERC obtains Optimum's  
13 prior written consent, ERC shall not be permitted to disclose under any circumstance any  
14 information provided by Optimum under this Section 5.5 regarding ingredients other than those  
15 ingredients for which a naturally occurring exclusion is sought or to use such information for any  
16 purpose other than to verify percentages of ingredients for which a naturally occurring exclusion is  
17 sought which are contained within a Covered Product.

18 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

19           **6.1**           This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
20 this Consent Judgment pursuant to Section 664.6 of the California Code of Civil Procedure.

21           **6.2**           Only after it complies with Section 15 below, any Party may, by motion or  
22 application for an order to show cause filed with this Court, enforce the terms and conditions  
23 contained in this Consent Judgment.

24           **6.3**           In the event that ERC alleges that any Covered Product fails to qualify as a  
25 Reformulated Covered Product (and for which ERC alleges that no warning has been provided),  
26 then ERC shall inform Optimum in a reasonably prompt manner of its test results, including  
27 information sufficient to permit Optimum to identify the Covered Products at issue. Optimum shall,  
28 within thirty (30) days following such notice, provide ERC with testing information demonstrating

1 Optimum's compliance with the Consent Judgment, if warranted. The Parties shall first attempt to  
2 resolve the matter prior to ERC taking any further legal action pursuant to Section 15.

3 **7. APPLICATION OF CONSENT JUDGMENT**

4 This Consent Judgment may apply to, be binding upon and benefit the Parties, and their  
5 respective officers, directors, shareholders, employees, agents, parent companies (including but not  
6 limited to holding companies related to Optimum), subsidiaries, divisions, affiliates, franchisees,  
7 licensees, customers, distributors, wholesalers, retailers, and all predecessors, successors and  
8 assigns of any of them and ERC on its own behalf and in the public interest as set forth in Section 8.  
9 This Consent Judgment shall have no application to Covered Products which are manufactured,  
10 distributed or sold outside the State of California and which are not used by California consumers.  
11 In addition, this Consent Judgment shall not apply to private label versions, if any, of the Products,  
12 that are labeled and sold under brands or trademarks other than ON and its subsidiaries and  
13 affiliates.

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

15 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
16 behalf of itself and in the public interest, and Optimum, of any alleged violation of Proposition 65  
17 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to lead  
18 from the handling, use or consumption of the Products. ERC, on behalf of itself, its agents, officers,  
19 representatives, attorneys, successors and/or assignees, and on behalf of the general public in the  
20 public interest, hereby waives all rights to institute or participate in (directly or indirectly) any form  
21 of legal action and releases and discharges: (a) Optimum and its past, present and future direct and  
22 indirect parent companies, subsidiaries, affiliates, and divisions; (b) each of their respective  
23 licensors, licensees, franchisors, franchisees, joint venturers, partners, vendors, manufacturers,  
24 packagers, contractors, and finished product and ingredient suppliers; (c) each of their respective  
25 distributors, wholesalers, retailers, users, packagers, customers (but excluding any private label  
26 customers that label and sell versions, if any, of the Products under brands or trademarks other than  
27 ON and its subsidiaries and affiliates), and all other entities in the distribution chain down to the  
28 consumer of any of the Products of the persons and entities described in (a) and (b), above; and (d)

1 each of the respective officers, directors, shareholders, employees, and agents of the persons and  
2 entities described in (a) through (c), above (the persons and entities identified in (a), (b), (c), and  
3 (d), above, including the predecessors, successors and assigns of any of them, are collectively  
4 referred to as the "Released Parties") from any and all claims, actions, causes of action, suits,  
5 demands, liabilities, damages, penalties, fees (including but not limited to investigation fees,  
6 attorneys' fees, and expert fees), costs, and expenses (collectively, "Claims") as to any alleged  
7 violation of Proposition 65 arising from or related to the alleged failure to provide Proposition 65  
8 warnings regarding lead for the Products and Covered Products, except as to any of the Covered  
9 Products manufactured after the Compliance Deadline that are not in compliance with Section 3 of  
10 this Consent Judgment.

11           8.2       ERC, on behalf of itself, its agents, representatives, attorneys, successors and/or  
12 assignees, and not on behalf of the general public, hereby releases and discharges the Released  
13 Parties from any and all known and unknown Claims for alleged violations of Proposition 65, or for  
14 any other statutory or common law, arising from or relating to alleged exposures to lead and lead  
15 compounds in the Products. It is possible that other Claims not known to the Parties arising out of  
16 the facts alleged in the Notices of Violation or the Amended Complaint and relating to the Products  
17 will develop or be discovered. ERC, on behalf of itself only, acknowledges that this Consent  
18 Judgment is expressly intended to cover and include all such Claims, including all rights of action  
19 therefor. ERC has full knowledge of the contents of California Civil Code section 1542. ERC, on  
20 behalf of itself only, acknowledges that the Claims released in Sections 8.1 and 8.2 may include  
21 unknown Claims, and nevertheless waives California Civil Code section 1542 as to any such  
22 unknown Claims. California Civil Code section 1542 reads as follows:

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

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

1           8.3       Compliance with the terms of this Consent Judgment shall be deemed to  
2 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to  
3 lead in the Products.

4           8.4       ERC, on one hand, and Optimum, on the other hand, release and waive all claims  
5 they may have against each other for any statements or actions made or undertaken by them in  
6 connection with the Notices of Violation or the Amended Complaint. Provided however, nothing in  
7 this Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent  
8 Judgment.

9       **9.       SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

12       **10.       GOVERNING LAW**

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

15       **11.       PROVISION OF NOTICE**

16           All notices required to be given to either Party to this Consent Judgment by the other shall  
17 be in writing and sent to the following agents listed below by (a) first-class, registered, or certified  
18 mail, (b) overnight courier, or (c) personal delivery. Courtesy copies via email may also be sent.

19           **FOR ENVIRONMENTAL RESEARCH CENTER:**

20           Chris Heptinstall, Executive Director  
21           Environmental Research Center  
22           3111 Camino del Rio North, Suite 400  
23           San Diego, CA 92108

24           Michael Bruce Freund  
25           Law Offices of Michael Freund  
26           1919 Addison Street, Suite 105  
27           Berkeley, CA 94704  
28           Telephone: (510) 540-1992  
            Facsimile: (510) 540-5543

            Karen Evans  
            Coordinating Counsel  
            Environmental Research Center  
            4218 Biona Place  
            San Diego, CA 92116  
            Telephone: (619) 640-8100

1           **FOR OPTIMUM NUTRITION, INC.**

2           General Counsel  
3           Optimum Nutrition, Inc.  
4           975 Meridian Lake Drive  
5           Aurora, IL 60504  
6           Telephone: (630) 236-0097  
7           Email: legal@optimumnutrition.com

8           With a copy to:

9           **ARNOLD & PORTER LLP**  
10          Trenton H. Norris  
11          Sarah Esmaili  
12          One Embarcadero Center, 7th Floor  
13          San Francisco, CA 94111  
14          Telephone: (415) 471-3100  
15          Facsimile: (415) 471-3400

16           **12. COURT APPROVAL**

17           **12.1**       If this Consent Judgment is not approved by the Court, it shall be void and have  
18           no force or effect.

19           **12.2**       If this Consent Judgment is approved by the Court, ERC shall comply with  
20           California Health & Safety Code Section 25249.7(f) and with California Code Regulations, Title  
21           11, Section 3003.

22           **13. EXECUTION AND COUNTERPARTS**

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

26           **14. DRAFTING**

27           The terms of this Consent Judgment have been reviewed by the respective counsel for the  
28           Parties to this Settlement prior to its signing, and each Party has had an opportunity to fully discuss  
29           the terms with counsel. The Parties agree that, in any subsequent interpretation and construction of  
30           this Consent Judgment entered thereon, the terms and provisions shall not be construed against any  
31           Party.

32           ///

33           ///

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

2             In the event a dispute arises with respect to either Party's compliance with the terms of this  
3     Consent Judgment entered by the Court, the Parties shall meet either in person or by telephone and  
4     endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the  
5     absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or  
6     motion is filed, however, the prevailing party may seek to recover costs and reasonable attorney's  
7     fees. As used in the preceding sentence, the term "prevailing party" means a party who is  
8     successful in obtaining relief more favorable to it than the relief that the other party was amenable  
9     to providing during the parties' good faith attempt to resolve the dispute that is the subject of such  
10    enforcement action.

11    **16.     ENTIRE AGREEMENT, AUTHORIZATION**

12            **16.1**     This Consent Judgment contains the sole and entire agreement and understanding  
13    of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
14    negotiations, commitments and understandings related hereto. No representations, oral or  
15    otherwise, express or implied, other than those contained herein have been made by any Party. No  
16    other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to  
17    bind any of the Parties.

18            **16.2**     Each signatory to this Consent Judgment certifies that he or she is fully authorized  
19    by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly  
20    provided herein, each Party shall bear its own fees and costs.

21    **17:     REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
22    **CONSENT JUDGMENT**

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

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

1 (2) Make the findings pursuant to Health & Safety Code Section 25249.7(f)(4), approve  
2 the Settlement and approve this Consent Judgment.

3 **IT IS SO STIPULATED:**

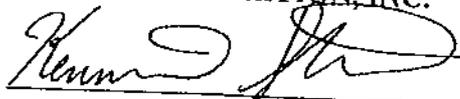
4 Dated: \_\_\_\_\_, 2013

**ENVIRONMENTAL RESEARCH CENTER**

\_\_\_\_\_  
Chris Hepstinstall, Executive Director

8 Dated: March 25, 2013

**OPTIMUM NUTRITION, INC.**

\_\_\_\_\_  


Print Name: Kenneth Strick

12 **APPROVED AS TO FORM:**

14 Dated: \_\_\_\_\_, 2013

**LAW OFFICE OF MICHAEL FREUND**

\_\_\_\_\_  
Michael Freund  
Attorney for Environmental Research Center

18 Dated: March 26, 2013

**ARNOLD & PORTER LLP**

\_\_\_\_\_  
  
Trenton H. Norris  
Sarah Esmaili  
Attorneys for Defendant Optimum Nutrition, Inc.

23 **ORDER AND JUDGMENT**

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

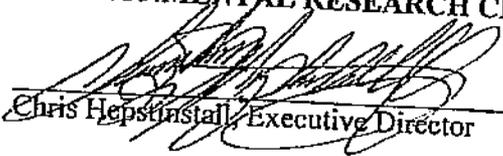
26 Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Judge, Superior Court of the State of California

1 (2) Make the findings pursuant to Health & Safety Code Section 25249.7(f)(4), approve  
2 the Settlement and approve this Consent Judgment.

3 **IT IS SO STIPULATED:**

4 Dated: 3/21, 2013

**ENVIRONMENTAL RESEARCH CENTER**  
  
Chris Hepstinstall, Executive Director

8 Dated: \_\_\_\_\_, 2013

**OPTIMUM NUTRITION, INC.**  
\_\_\_\_\_  
Print Name: \_\_\_\_\_

13 **APPROVED AS TO FORM:**

14 Dated: 3/27/, 2013

**LAW OFFICE OF MICHAEL FREUND**  
  
Michael Freund  
Attorney for Environmental Research Center

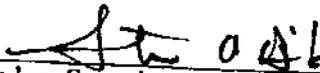
18 Dated: \_\_\_\_\_, 2013

**ARNOLD & PORTER LLP**  
\_\_\_\_\_  
Trenton H. Norris  
Sarah Esmail  
Attorneys for Defendant Optimum Nutrition, Inc.

23 **ORDER AND JUDGMENT**

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

26 Dated: June 17, 2013

  
\_\_\_\_\_  
Judge, Superior Court of the State of California  
**STEVEN A. BRICK**