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8 Environmental Research Center

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19 Attorneys for Defendant  
20 STARWEST BOTANICALS, INC.

21 SUPERIOR COURT OF CALIFORNIA  
22 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

23 ENVIRONMENTAL RESEARCH  
24 CENTER, a California non-profit  
25 corporation,  
26  
27 Plaintiffs,  
28  
29 vs.  
30 STARWEST BOTANICALS, INC., and  
31 DOES 1-50, Inclusive,  
32  
33 Defendants.

Case No.: 30-2012-00606439-CU-MC-CJC

Judge: Honorable Andrew P. Banks

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

[Health & Safety Code § 25249.5, et seq.]

Action Filed: October 19, 2012

34 1. INTRODUCTION

35 1.1 This Action arises out of the alleged violations of California's Safe Drinking

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

JAN 31 2014

ALAN CARLSON, Clerk of the Court

*S. Garcia*  
BY S GARCIA

1 Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5  
2 *et seq.* (also known as and herein after referred to as “Proposition 65”) regarding the following  
3 products (hereinafter collectively the “Covered Products” or “Covered Product” to refer to a  
4 single product):

- 5 1) Starwest Botanicals Inc. Detox
- 6 2) Starwest Botanicals Inc. Blood Cleanser
- 7 3) Starwest Botanicals Inc. GreenPower Alkalizing Superfood
- 8 4) Starwest Botanicals Inc. Burdock Root
- 9 5) Starwest Botanicals Inc. Relaxation
- 10 6) Starwest Botanicals Inc. Marshmallow Root
- 11 7) Starwest Botanicals Inc. Liver Cleanse
- 12 8) Starwest Botanicals Inc. Licorice Root
- 13 9) Starwest Botanicals Inc. Turmeric
- 14 10) Starwest Botanicals Inc. Fo-Ti Root
- 15 11) Starwest Botanicals Inc. Wheat Grass
- 16 12) Starwest Botanicals Inc. Valerian Root
- 17 13) Starwest Botanicals Inc. Gotu Kola Herb
- 18 14) Starwest Botanicals Inc. White Willow Bark
- 19 15) Starwest Botanicals Inc. Regularity
- 20 16) Starwest Botanicals Inc. Kidney Support

21 **1.2** Any other products are not subject to the injunctive provisions herein, and are not  
22 covered by the release of liability herein.

23 **1.3** Plaintiff Environmental Research Center, Inc. (“ERC”) is a California non-profit  
24 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other  
25 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
26 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
27 and encouraging corporate responsibility. ERC brings this Action in the public interest pursuant  
28 to California Health and Safety Code Section 25249.7.

1           **1.4** Defendant STARWEST BOTANICALS, INC. is a California Corporation and at  
2 all relevant times for purposes of this Consent Judgment, employed ten or more persons, and is a  
3 “person in the course of doing business” within the meaning of Proposition 65. STARWEST  
4 BOTANICALS, INC. manufactures, distributes and/or sells the Covered Products.

5           **1.5** ERC and STARWEST BOTANICALS, INC. are hereinafter sometimes referred  
6 to individually as a “Party” or collectively as the “Parties.”

7           **1.6** On January 6, 2012, pursuant to California Health and Safety Code Section  
8 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 (“Notice of Violations”) on  
9 the California Attorney General, other public enforcers, and STARWEST BOTANICALS, INC.  
10 A true and correct copy of the Notice of Violations is attached hereto as Exhibit A.

11           **1.7** After more than sixty (60) days passed since service of the Notice of Violations,  
12 and no designated governmental agency filed a complaint against STARWEST BOTANICALS,  
13 INC. with regard to the Covered Products or the alleged violations, ERC filed the Complaint in  
14 this Action (the “Complaint”) for injunctive relief and civil penalties. The Complaint is based on  
15 the allegations in the Notice of Violations.

16           **1.8** The Complaint and the Notice of Violations each allege that STARWEST  
17 BOTANICALS, INC. manufactured, distributed, and/or sold in California the Covered Products,  
18 which contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive  
19 toxin, and expose consumers at a level requiring a Proposition 65 warning. They further allege  
20 that use of the Covered Products exposes persons in California to lead without first providing  
21 clear and reasonable warnings, in violation of California Health and Safety Code Section  
22 25249.6. STARWEST BOTANICALS, INC. denies all material allegations of the Notice of  
23 Violation and the Complaint, asserts numerous affirmative defenses, and specifically denies that  
24 the Covered Products require a Proposition 65 warning or otherwise cause harm to any person.

25           **1.9** The Parties enter into this Consent Judgment in order to settle, compromise and  
26 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent  
27 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any  
28 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,

1 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,  
2 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,  
3 wrongdoing, or liability, including without limitation, any admission concerning any alleged  
4 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent  
5 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties  
6 may have in any other or future legal proceeding unrelated to these proceedings. However,  
7 nothing in this Section shall affect the enforceability of this Consent Judgment.

8 **1.10** The "Effective Date" of this Consent Judgment shall be the date this Consent  
9 Judgment is entered by the Court.

## 10 **2. JURISDICTION AND VENUE**

11 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
12 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that  
13 venue is proper in this Court, and that this Court has jurisdiction to enter this Consent Judgment  
14 pursuant to the terms set forth herein.

## 15 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING, AND WARNINGS**

16 **3.1** Beginning on the Effective Date, STARWEST BOTANICALS, INC. shall be  
17 permanently enjoined from manufacturing for sale in California, directly selling to a consumer in  
18 California or "Distributing into California" any of the Covered Products for which the maximum  
19 daily dose recommended on the label contains more than 0.5 micrograms of lead, unless such  
20 Covered Product complies with the warning requirements in Section 3.3 or qualifies a  
21 "Reformulated Covered Product" pursuant to Section 3.4. "Distributing into California" and  
22 "Distribute into California" mean to directly ship any of the Covered Products into California for  
23 sale or to sell any of the Covered Products to a distributor that STARWEST BOTANICALS,  
24 INC. knows will sell the Covered Product in California.

### 25 **3.2 Calculation of Lead Levels**

26 As used in this Consent Judgment, lead levels are calculated pursuant to the testing  
27 protocol described in Section 3.5. For purposes of this Consent Judgment, lead content shall be  
28 calculated by averaging the lead concentration in the two (2) samples from each lot of each

1 Covered Product.

2 **3.3 Clear and Reasonable Warnings.**

3 For those Covered Products that are subject to the warning requirement of Section 3.1,  
4 STARWEST BOTANICALS, INC. shall provide one of the following warnings:

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

7 **[California Residents Proposition 65] WARNING [(California Proposition**  
8 **65):** This product contains [lead,] [a] substance[s] known to the State of  
California to cause [cancer and] birth defects or other reproductive harm.

9  
10 The text in brackets in the warning above is optional, except that the term “cancer” must  
11 be included only if the maximum daily dose recommended on the label contains more than 15  
12 micrograms of lead.

13 The warning shall be prominently affixed to or printed upon the label of the Covered  
14 Product so as to be clearly conspicuous, as compared with other statements or designs on the  
15 label as to render it likely to be read and understood by an ordinary purchaser or user of the  
16 Covered Product. If the warning is displayed on the Covered Product’s label, it shall be at least  
17 the same size as the largest of any other health or safety warnings on the Covered Product and  
18 the word “WARNING” shall be in all capital letters and in bold print.

19 For any Covered Product sold via a website, the warning shall appear prior to the  
20 California customer completing the checkout process on the website for any of the Covered  
21 Products being shipped to California.

22 STARWEST BOTANICALS, INC. shall not provide any additional information,  
23 statements, or comments regarding Proposition 65 in addition to the Warning.

24 **3.4 Reformulated Covered Products.**

25 A Reformulated Covered Product is one for which the maximum recommended daily  
26 serving on the label contains no more than 0.5 micrograms of lead per day.

27 **3.5 Testing and Quality Control Methodology**

1 (a) Beginning within one year of the Effective Date, STARWEST BOTANICALS,  
2 INC. shall test two (2) randomly selected samples of each lot of the Covered Products (in the  
3 form intended for sale to the end-user) for lead content. The testing requirement does not apply  
4 to any of the Covered Products for which STARWEST BOTANICALS, INC. has provided the  
5 warning specified in Section 3.3.

6 (b) Testing for lead shall be performed using Inductively Coupled Plasma-Mass  
7 Spectrometry ("ICP-MS") or any other testing method subsequently agreed to in writing by the  
8 Parties.

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

13 (d) STARWEST BOTANICALS, INC. shall retain all test results and documentation  
14 for a period of four (4) years from the date of the test.

15 (e) STARWEST BOTANICALS, INC. shall test each lot of the Covered Products  
16 once a year for a minimum of four (4) consecutive years by testing two randomly selected  
17 samples from each lot of the Covered Product which STARWEST BOTANICALS, INC. intends  
18 to sell in California or is manufacturing for sale in California, directly selling to a consumer in  
19 California, or "Distributing into California." If tests conducted pursuant to this Section  
20 demonstrate that no warning is required for a Covered Product during each of four (4)  
21 consecutive years, then the testing requirements of this Section will no longer be required as to  
22 that Covered Product.

23 (f) For purposes of this Consent Judgment, daily lead exposure levels shall be  
24 measured in micrograms, and shall be calculated using the following formula: Micrograms of  
25 lead per gram of Covered Product, multiplied by grams per serving of the Covered Product  
26 (using the largest serving size appearing on the Covered Product's label), multiplied by servings  
27 of the Covered Product per day (using the largest number of servings in the recommended  
28 dosage appearing on the Covered Product's label), which equals micrograms of lead exposure

1 per day.

2 **4. SETTLEMENT PAYMENT**

3 **4.1** STARWEST BOTANICALS, INC. shall make a total payment of \$60,000.00  
4 within 10 business days of the Effective Date, which shall be in full and final satisfaction of all  
5 potential civil penalties, payment in lieu of civil penalties, and attorney's fees and costs. The  
6 payment will be sent to counsel for ERC, William F. Wraith, Wraith Law, 16485 Laguna  
7 Canyon Road, Suite 250, Irvine, California, 92618. The payment shall be made by separate  
8 checks and apportioned as follows:

9 **4.2** \$5,780.00 as civil penalties pursuant to California Health and Safety Code Section  
10 25249.7(b)(1). Of this amount, \$4,335.00 shall be payable to the Office of Environmental Health  
11 Hazard Assessment ("OEHHA"), and \$1,445.00 shall be payable to ERC. (Cal. Health & Safety  
12 Code § 25249.12(c)(1) & (d)). ERC's counsel will forward the civil penalty to OEHHA.

13 **4.3** \$15,000.00 payable to ERC as reimbursement to ERC for reasonable costs  
14 associated with the enforcement of Proposition 65 and other costs incurred as a result of work in  
15 bringing this Action.

16 **4.4** \$17,348.60 payable to ERC in lieu of further civil penalties, for the day-to-day  
17 business activities such as (1) continued enforcement of Proposition 65, which includes work,  
18 analyzing, researching and testing consumer products that may contain Proposition 65 chemicals,  
19 focusing on the same or similar type of ingestible products that are the subject matter of the  
20 Action; (2) the continued monitoring of past consent judgments and settlements to ensure  
21 companies are complying with Proposition 65; and (3) giving a donation of \$870.00 to As You  
22 Sow to address reducing toxic chemical exposures in California.

23 **4.5** \$21,308.90 payable to William F. Wraith as reimbursement of ERC's attorney's  
24 fees and attorney's costs.

25 **4.6** \$562.50 payable to Karen A. Evans as reimbursement of ERC's attorney's fees  
26 and attorney's costs.

27 **5. MODIFICATION OF CONSENT JUDGMENT**

28 This Consent Judgment may be modified only by: (i) Written agreement and stipulation

1 of the Parties and (ii) upon entry of a modified Consent Judgment by the Court. ERC is entitled  
2 to reimbursement of all reasonable attorneys' fees and costs regarding any modification  
3 requested or initiated by STARWEST BOTANICALS, INC.

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

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

7       **6.2** Any Party may, by motion or application for an order to show cause filed with  
8 this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing  
9 party in any such motion or application may request that the Court award its reasonable  
10 attorneys' fees and costs associated with such motion or application.

11 **7. APPLICATION OF CONSENT JUDGMENT**

12 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their  
13 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
14 divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers,  
15 predecessors, successors, and assigns.

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

17       **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
18 behalf of itself and in the public interest, and STARWEST BOTANICALS, INC., of any alleged  
19 violations of Proposition 65 or its implementing regulations, and fully and finally resolves all  
20 claims that have been or could have been asserted in this action against STARWEST  
21 BOTANICALS, INC. for failure to provide Proposition 65 warnings for the Covered Products  
22 regarding lead. ERC acting on its own behalf and in the public interest hereby releases and  
23 discharges STARWEST BOTANICALS, INC. and its respective officers, directors,  
24 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,  
25 franchisees, licensees, distributors, wholesalers, retailers, and all other entities in the distribution  
26 chain of any Covered Product, and the predecessors, successors and assigns of any of them  
27 (collectively, "Released Parties"), from all claims for violations of Proposition 65 up through the  
28 Effective Date based on exposure to lead from the Covered Products as set forth in the Notice of



1 Violation and the Complaint.

2       **8.2**     ERC, on behalf of itself only, hereby releases and discharges the Released Parties  
3 from any and all known and unknown past, present, and future rights, claims, causes of action,  
4 suits, damages, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees,  
5 costs, and expenses arising from or related to the claims asserted, or that could have been  
6 asserted, under state or federal law, regarding the presence of lead in the Covered Products or the  
7 facts alleged in the Notice of Violation or the Complaint, including without limitation any and all  
8 claims concerning exposure of any person to lead in the Covered Products.

9       **8.3**     Compliance with the terms of this Consent Judgment shall constitute compliance  
10 by the Released Parties with Proposition 65 with respect to alleged exposures to lead contained  
11 in the Covered Products.

12       **8.4**     **Unknown Claims.** It is possible that other injuries, damages, liability, or claims  
13 not now known to the Parties arising out of the facts alleged in the Notice of Violation or the  
14 Complaint and relating to the Covered Products will develop or be discovered. ERC, on behalf of  
15 itself only, acknowledges that this Consent Judgment is expressly intended to cover and include  
16 all such injuries, damages, liability, and claims, including all rights of action therefor. ERC has  
17 full knowledge of the contents of California Civil Code section 1542. ERC, on behalf of itself  
18 only, acknowledges that the claims released in Sections 8.1 and 8.2 above may include unknown  
19 claims, and nevertheless waives California Civil Code section 1542 as to any such unknown  
20 claims. California Civil Code section 1542 reads as follows:

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

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

28       **8.5**     It is the intention of the Parties to this release that, upon entry of this Consent

1 Judgment by the Court, this Consent Judgment shall be effective as a full and final accord and  
2 satisfaction and release of every released claim up to and including the date of entry of the  
3 Consent Judgment.

4 **8.6** ERC, on the one hand, and STARWEST BOTANICALS, INC., on the other  
5 hand, release and waive all claims they may have against each other for any statements or actions  
6 made or undertaken by them in connection with the Notice of Violation or this Action.

7 **9. CONSTRUCTION AND SEVERABILITY**

8 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the  
9 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to  
10 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or  
11 construction of this Consent Judgment, the terms and conditions shall not be construed against  
12 any Party.

13 **9.2** In the event that any of the provisions of this Consent Judgment is held by a court  
14 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely  
15 affected.

16 **9.3** The terms and conditions of this Consent Judgment shall be governed by and  
17 construed in accordance with the laws of the State of California.

18 **9.4** Should there be an amendment to Proposition 65 or should OEHHA promulgate  
19 regulations that establish a Maximum Allowable Dose Level that is more or less stringent than  
20 the current 0.5 micrograms per day, this Agreement shall be deemed modified on the date the  
21 amendment becomes final or the regulations become effective to incorporate that new standard  
22 into Section 3.

23 **10. PROVISION OF NOTICE**

24 All notices required to be given to either Party to this Consent Judgment by the other  
25 shall be in writing and sent to the following agents listed below by: (a) first-class, registered, (b)  
26 certified mail, (b) overnight courier, or (c) personal delivery to the following

27 **For Environmental Research Center**  
28 Chris Heptinstall, Executive Director  
Environmental Research Center

1 3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108

2 With a copy to:

3 William F. Wraith, Esq.  
4 Wraith Law  
16485 Laguna Canyon Road, Suite 250  
5 Irvine, CA 92618

6 **For STARWEST BOTANICALS, INC.**

7 Margaret Carew Toledo, Esq.  
8 TOLEDO DON LLP  
3001 Douglas Blvd., Suite 340  
9 Roseville, CA 95661

10 With a copy to:

11 Van Joerger, President  
12 Starwest Botanicals, Inc.  
11253 Trade Center Drive  
13 Rancho Cordova, CA 95742

14 **11. COURT APPROVAL**

15 **11.1** 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 **11.2** 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 **11.3** If this Consent Judgment is not approved by the Court despite the Parties' best  
22 efforts, it shall be null and void and have no force or effect.

23 **12. EXECUTION AND COUNTERPARTS**

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

27 **13. ENTIRE AGREEMENT, AUTHORIZATION**

1           **13.1** This Consent Judgment contains the sole and entire agreement and understanding  
2 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,  
3 negotiations, commitments and understandings related hereto. No representations, oral or  
4 otherwise, express or implied, other than those contained herein have been made by any Party.  
5 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to  
6 exist or to bind any Party.

7           **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
8 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly  
9 provided herein, each Party shall bear its own fees and costs.

10 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

11           (a) This Consent Judgment has come before the Court upon the request of the Parties.  
12 The Parties request the Court to fully review this Consent Judgment and, being fully informed  
13 regarding the matters which are the subject of this action, make the requisite findings pursuant to  
14 California Health and Safety Code section 25249.7(f)(4), and approve this Consent Judgment.

15 **IT IS SO STIPULATED:**

16  
17 **ENVIRONMENTAL RESEARCH CENTER**

18   
19 \_\_\_\_\_  
20 Chris Heptinstall, Executive Director

Dated: 9/16/2013

21  
22 **STARWEST BOTANICALS, INC.**

23  
24 \_\_\_\_\_ Dated: \_\_\_\_\_  
25  
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27  
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2 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,  
3 negotiations, commitments and understandings related hereto. No representations, oral or  
4 otherwise, express or implied, other than those contained herein have been made by any Party.  
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17 **ENVIRONMENTAL RESEARCH CENTER**

18  
19 \_\_\_\_\_ Dated: \_\_\_\_\_  
20 Chris Heptinstall, Executive Director

21  
22 **STARWEST BOTANICALS, INC.**

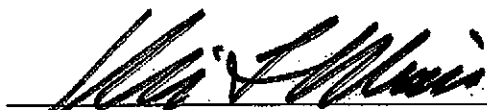
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25 *VAN DENDER, PRESIDENT*

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**APPROVED AS TO FORM:**

**WRAITH LAW**

  
\_\_\_\_\_  
William F. Wraith  
Counsel for Environmental Research Center

Dated: 9/19/2013

**TOLEDO DON LLP**

\_\_\_\_\_  
Margaret Carew Toledo  
Counsel for Starwest Botanicals, Inc.

Dated: \_\_\_\_\_

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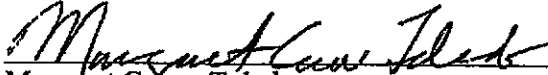
**APPROVED AS TO FORM:**

**WRAITH LAW**

\_\_\_\_\_  
William F. Wraith  
Counsel for Environmental Research Center

Dated: \_\_\_\_\_

**TOLEDO DON LLP**

  
Margaret Caw Toledo  
Counsel for Starwest Botanicals, Inc.

Dated: 9-18-13

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**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_

*1-31-14*



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

**ANDREW P. BANKS**