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2 WRAITH LAW  
24422 Avenida de la Carlota, Suite 400  
3 Laguna Hills, CA 92653  
(949) 452-1234  
(949) 452-1102

4 Attorney for Plaintiff  
5 Environmental Research Center, Inc.

6  
7 SUPERIOR COURT OF CALIFORNIA  
8 COUNTY OF ALAMEDA

9  
10 ENVIRONMENTAL RESEARCH CENTER,  
INC., a non-profit California corporation

11 Plaintiff,

12 v.

13 NAC MARKETING COMPANY, LLC, doing  
14 business as NEW VITALITY, and DOES 1-25  
Inclusive,

15 Defendants.  
16

Case No. **30-2013-00667639-CU-MC-CJC**

**NOTICE OF ENTRY OF JUDGMENT**

17  
18  
19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 NOTICE IS HEREBY GIVEN that the Court has entered Judgment in the above-entitled  
21 matter. A true and correct copy of the Judgment is attached hereto as Exhibit 1.

22 Dated: March 8, 2017

WRAITH LAW

*William F. Wraith*

23  
24  
25 WILLIAM F. WRAITH  
26 Attorney for Plaintiff Environmental  
27 Research Center  
28

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2 WRAITH LAW  
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6 (949) 452-1102

7 Attorney for Plaintiff  
8 Environmental Research Center, Inc.

RECEIVED  
CLERK OF SUPERIOR COURT  
MAR 03 2017  
DAVID H. YAMASAKI, Clerk of the Court  
DEPUTY

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF ALAMEDA

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

13 Plaintiff,

14 v.

15 NAC MARKETING COMPANY, LLC, doing  
16 business as NEW VITALITY, and DOES 1-25  
17 Inclusive,

18 Defendants.

Case No. 30-2013-00667639-CU-MC-CJC  
JUDGMENT

Dept. C23

19 PLEASE TAKE NOTICE that on January 24, 2017 at 8:30 a.m. in Department C23 of the  
20 above-entitled Court, located at 700 Civic Center Drive West, Santa Ana, CA 92701, this Court  
21 heard the Motion of Plaintiff Environmental Research Center, Inc. to make statutorily required  
22 findings and approve the settlement reached in the above-entitled case pursuant to California  
23 Health and Safety Code Section 25249.7(f)(4) (the "Motion").

24 By an Order of the Court, dated January 24, 2017, the Motion was granted. Attached  
25 hereto as Exhibit "A" is a true and correct copy of the Court's January 24, 2017 Order granting the  
26 Motion.

27 The Motion concerned Defendant NAC Marketing Company's March 21, 2016 Offer to  
28 Compromise pursuant to California Code of Civil Procedure Section 998, which was accepted by

1 Plaintiff Environmental Research Center, Inc. on March 23, 2016. Attached hereto as Exhibit "B"  
2 is a true and correct copy of the accepted Offer.

3  
4 THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that

5  
6 **1A.** Beginning on the Effective Date, NAC MARKETING COMPANY, LLC, doing  
7 business as NEW VITALITY ("NAC") shall be permanently enjoined from manufacturing for  
8 sale in the State of California, "Distributing into the State of California", or directly selling in the  
9 State of California, any New Vitality® ROYAL GREENS Ultra Blend ("Royal Greens"), New  
10 Vitality® RUBY REDS ("Ruby Reds") and/or New Vitality® Aloe Ease Colon and Body Cleanse  
11 ("Aloe Ease") products ("The Covered Products") which expose a person to a "Daily Lead  
12 Exposure Level" of more than 0.5 micrograms per day of lead when the maximum suggested dose  
13 is taken as directed on the Covered Product's label, unless it meets the warning requirements in  
14 Paragraph 1D.

15 **1.B** The term "Distributing into the State of California" shall mean to directly ship a  
16 Covered Product into California for sale in California or to sell a Covered Product to a distributor  
17 that NAC knows will sell the Covered Product in California.

18 **1.C** The "Daily Lead Exposure Level" shall be measured in micrograms, and shall be  
19 calculated using the following formula: micrograms of lead per gram of product, multiplied by  
20 grams of product per serving of the product (using the largest serving size appearing on the  
21 product label), multiplied by servings of the product per day (using the largest number of servings  
22 in a recommended dosage appearing on the product label), which equals micrograms of lead  
23 exposure per day.

24 **1.D** If NAC is required to provide a warning pursuant to Section 1A, the following  
25 warning must be utilized:

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

28 NAC shall use the phrase "cancer and" in the warning only if the maximum daily dose

1 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
2 the Daily Lead Exposure Level formula set forth in 1C.

3 The warning shall be securely affixed to or printed upon the container or label of each  
4 Covered Product or included on the packing slip or invoice included with the shipped product.

5 The warning shall be at least the same size as the largest of any other health or safety  
6 warnings also appearing on its website or on the label, packing slip, invoice, or container of  
7 NAC's product packaging and the word "**WARNING**" shall be in all capital letters and in bold  
8 print.

9 NAC must display the above warnings with such conspicuousness, as compared with  
10 other words, statements, or design of the packing slip, invoice, label or container, as applicable,  
11 to render the warning likely to be read and understood by an ordinary individual under  
12 customary conditions of purchase or use of the product.

13 For a warning appearing on the packing slip or invoice, the warning shall identify with an  
14 asterisk (or some other identifying method) each product to which the warning applies and NAC  
15 shall not include a warning that does not identify (with an asterisk or some other identifying  
16 method) the product to which the warning applies.

17 **2.A.** By the terms of the California Code of Civil Procedure Section 998 Offer, NAC  
18 will pay the sum of forty thousand dollars (\$40,000) as a civil penalty pursuant to Proposition 65.  
19 According to California Health and Safety Code section 25249.7(b)(1), thirty thousand dollars  
20 (\$30,000), which is 75% of the civil penalty amount, is owed to the Office of Environmental  
21 Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic  
22 Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c).  
23 The remaining ten thousand dollars (\$10,000), which is 25% of the civil penalty, is owed to  
24 Plaintiff Environmental Research Center, Inc.

25 **2.B** Costs in the amount of \$2,498.84 are awarded, payable to Plaintiff Environmental  
26 Research Center.

27 **2.C** Attorney's fees are awarded, payable to Plaintiff Environmental Research Center,  
28 in the amount of \$33,000.

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**2.D** Attorney's fees are awarded, payable to William Wraith, Wraith Law in the amount of \$63,900.

Dated: 3/31/17

David T. McEachen  
SUPERIOR COURT JUDGE  
Hon. David T. McEachen (Ret.)

# **EXHIBIT “A”**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER  
JAN 24 2017  
DAVID H. YAMASAKI, Clerk of the Court  
BY: \_\_\_\_\_ DEPUTY

T 3488760

1 WILLIAM F. WRAITH, SBN 185927  
2 WRAITH LAW  
3 24422 Avenida de la Carlota, Suite 400  
4 Laguna Hills, CA 92653  
5 (949) 452-1234  
6 (949) 452-1102

Attorney for Plaintiff Environmental Research Center

7 SUPERIOR COURT OF CALIFORNIA  
8 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

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

11 Plaintiff,

12 v.

13 NAC MARKETING COMPANY, LLC, doing  
14 business as NEW VITALITY, and DOES 1-25  
15 Inclusive,

16 Defendants.

Case No. 30-2013-00667639-CU-MC-CJC

**[PROPOSED] ORDER REGARDING  
MOTION TO APPROVE  
PROPOSITION 65 SETTLEMENT**

Hearing Date: ~~December 13, 2016~~ 1/24/17  
Time: 8:30 a.m.  
Dept. No: C23  
Judge: Hon. Frederick P. Aguirre  
Motion Reservation Number: 72468538

17 PLEASE TAKE NOTICE that on ~~December 13, 2016~~ 1/24/17 at 8:30 a.m. in Department C23 of  
18 the Orange County Superior Court, Central Justice Center, located at 700 Civic Center Drive  
19 West, Santa Ana, California 92701, Plaintiff Environmental Research Center's Motion to  
20 Approve the Proposition 65 Settlement came on for hearing. After consideration of the papers  
21 filed and the Court's records, and good cause appearing therefore,

22 IT IS HEREBY ORDERED THAT:

23 Plaintiff Environmental Research Center's Motion to Approve Proposition 65 Settlement is  
24 GRANTED. The settlement arising from the March 21, 2016 Offer to Compromise Pursuant to  
25 Code of Civil Procedure Section 998, and accepted by Plaintiff on March 23, 2016, is  
26 APPROVED.

27 Attorney's fees and costs are awarded. Costs in the amount of \$ ~~2,478.87~~ are awarded,  
28 payable to Plaintiff Environmental Research Center.

1 Attorney's fees are awarded, payable to Plaintiff Environmental Research Center, in the  
2 amount of \$ 33,000. Attorney's fees are awarded, payable to William Wraith, Wraith Law in the  
3 amount of \$ 63,900.

4 It is FURTHER ORDERED that:

5 1A. Beginning on the Effective Date, NAC MARKETING COMPANY, LLC, doing  
6 business as NEW VITALITY ("NAC") shall be permanently enjoined from manufacturing for sale  
7 in the State of California, "Distributing into the State of California", or directly selling in the State  
8 of California, any New Vitality® ROYAL GREENS Ultra Blend ("Royal Greens"), New  
9 Vitality® RUBY REDS ("Ruby Reds") and/or New Vitality® Aloe Ease Colon and Body Cleanse  
10 ("Aloe Ease") products ("The Covered Products") which expose a person to a "Daily Lead  
11 Exposure Level" of more than 0.5 micrograms per day of lead when the maximum suggested dose  
12 is taken as directed on the Covered Product's label, unless it meets the warning requirements in  
13 Paragraph 1D.

14 1B The term "Distributing into the State of California" shall mean to directly ship a  
15 Covered Product into California for sale in California or to sell a Covered Product to a distributor  
16 that NAC knows will sell the Covered Product in California.

17 1C The "Daily Lead Exposure Level" shall be measured in micrograms, and shall be  
18 calculated using the following formula: micrograms of lead per gram of product, multiplied by  
19 grams of product per serving of the product (using the largest serving size appearing on the  
20 product label), multiplied by servings of the product per day (using the largest number of servings  
21 in a recommended dosage appearing on the product label), which equals micrograms of lead  
22 exposure per day.

23 1D If NAC is required to provide a warning pursuant to Section 1A, the following  
24 warning must be utilized:

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

27 NAC shall use the phrase "cancer and" in the warning only if the maximum daily dose  
28 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
the Daily Lead Exposure Level formula set forth in 1C.



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The warning shall be securely affixed to or printed upon the container or label of each Covered Product or included on the packing slip or invoice included with the shipped product.

The warning shall be at least the same size as the largest of any other health or safety warnings also appearing on its website or on the label, packing slip, invoice, or container of NAC's product packaging and the word "WARNING" shall be in all capital letters and in bold print.

NAC must display the above warnings with such conspicuousness, as compared with other words, statements, or design of the packing slip, invoice, label or container, as 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.

For a warning appearing on the packing slip or invoice, the warning shall identify with an asterisk (or some other identifying method) each product to which the warning applies and NAC shall not include a warning that does not identify (with an asterisk or some other identifying method) the product to which the warning applies.

THEREFORE, pursuant to Health & Safety Code §25249.7(f)(4), the court makes all of the following findings: (A) the warning that is required by the settlement complies with PROPOSITION 65; (B) the awards of attorney's fees are reasonable under California law; and (C) the penalty amount is reasonable based on the criteria set forth in Health & Safety Code Section 25249.7(b)(2) and 11 CCR 3203.

**IT IS SO ORDERED**

Dated: 1/24/17

David T. McEachern  
SUPERIOR COURT JUDGE  
Hon. David McEachern (Ret.)

**EXHIBIT “B”**

TUCKER ELLIS LLP  
Columbus ♦ Denver ♦ Los Angeles ♦ San Francisco  
Cleveland ♦

1 TUCKER ELLIS LLP  
DANIEL J. KELLY SBN 145088  
2 [daniel.kelly@tuckerellis.com](mailto:daniel.kelly@tuckerellis.com)  
One Market Plaza  
3 Steuart Tower, Suite 700  
San Francisco, CA 94105  
4 Telephone: 415.617.2400  
Facsimile: 415.617.2409

5 TUCKER ELLIS LLP  
6 MATTHEW I. KAPLAN SBN 177242  
[matthew.kaplan@tuckerellis.com](mailto:matthew.kaplan@tuckerellis.com)  
7 RONIE M. SCHMELZ SBN 130798  
[ronie.schmelz@tuckerellis.com](mailto:ronie.schmelz@tuckerellis.com)  
8 515 South Flower Street  
Forty-Second Floor  
9 Los Angeles, CA 90071-2223  
Telephone: 213.430.3400  
10 Facsimile: 213.430.3409

11 Attorneys for Defendant  
NAC MARKETING COMPANY, LLC

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

15 ENVIRONMENTAL RESEARCH CENTER,  
a California non-profit corporation,

Case No. 30-2013-00667639-CU-MC-CJC

16 Plaintiff,

OFFER TO COMPROMISE  
[C.C.P. § 998]

17 v.

Judge: Hon. Frederick P. Aquirre

18 NAC MARKETING COMPANY, LLC,  
19 doing business as NEW VITALITY, and  
DOES 1-25, inclusive,

Complaint Filed: August 7, 2013  
Trial Date: May 16, 2016

20 Defendants.

22 TO PLAINTIFF ENVIRONMENTAL RESEARCH CENTER AND ITS ATTORNEYS OF  
23 RECORD:

24 PLEASE TAKE NOTICE that defendant NAC Marketing Company, LLC dba New Vitality  
25 ("NAC") hereby offers to allow a consent judgment to be taken against it in this Safe Drinking Water  
26 and Toxic Enforcement Act of 1986, Health and Safety Code § 25249.5 *et seq.* ("Proposition 65") action  
27 brought by plaintiff Environmental Research Center ("ERC") in accordance with Health & Safety Code  
28 § 25249.6 *et seq.* under the following terms and conditions and subject to Court approval:

NAC OFFER TO COMPROMISE

014265\000001\400802.1

TUCKER ELLIS LLP  
Cleveland ♦ Columbus ♦ Denver ♦ Los Angeles ♦ San Francisco

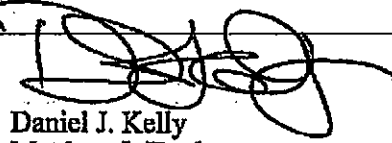
- 1 1. NAC will agree to a permanent injunction providing that all New Vitality® ROYAL
- 2 GREENS Ultra Blend ("Royal Greens"), New Vitality® RUBY REDS ("Ruby Reds") and/or
- 3 ~~New Vitality® Aloe Ease Colon and Body Cleanse ("Aloe Ease")~~ manufactured for NAC
- 4 and offered for sale in California shall comply with California law, including Proposition 65;
- 5 2. NAC will pay the sum of forty thousand dollars (\$40,000) as a civil penalty pursuant to
- 6 Proposition 65; and
- 7 3. NAC will pay allowed costs and reasonable attorney fees to ERC as awarded by the Court
- 8 under Proposition 65 and pursuant to Code of Civil Procedure § 1021.5.

9 This offer to compromise is made pursuant to Code of Civil Procedure § 998 and may be  
10 accepted in writing by ERC or its counsel signing the below statement of acceptance or a statement of  
11 acceptance on a separate document. Pursuant to Code of Civil Procedure § 998, you are hereby notified  
12 that if the offer is not accepted and ERC fails to obtain a more favorable judgments upon trial of the  
13 case, you may not recover costs but must pay defendant NAC's costs pursuant to statute. If the offer is  
14 not accepted within thirty (30) days after it is made, it shall be deemed withdrawn and cannot be given  
15 in evidence.

16 DATED: March 21, 2016

TUCKER ELLIS LLP

17  
18 By:



Daniel J. Kelly  
Matthew I. Kaplan  
Ronie M. Schmelz  
Attorneys for Defendant NAC MARKETING  
COMPANY, LLC dba New Vitality

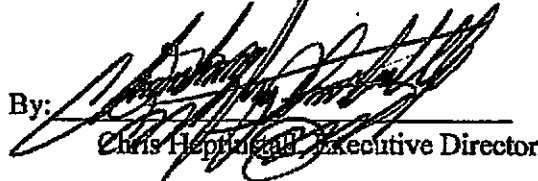
21 Statement of Acceptance

22 Plaintiff Environmental Research Center accepts the above Offer to Compromise under Code of  
23 Civil Procedure § 998 and agrees to its terms.

24 Dated: 3/23/2016

ENVIRONMENTAL RESEARCH CENTER

25  
26  
27 By:

  
Chris Heptinstall, Executive Director

**PROOF OF SERVICE**

I, William F. Wraith, am an active member of the State Bar of California and not a party to this action. I am a resident or employed in the county where the mailing took place. My business address is 24422 Avenida de la Carlota, Suite 400, Laguna Hills, CA 92653.

On March 8, 2017, I served the foregoing documents described as: **NOTICE OF ENTRY OF JUDGMENT**

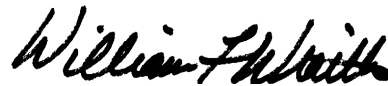
on the following interested parties in this action in the manner identified below:

Daniel J. Kelly, Esq. Tucker Ellis LLP One Market Plaza Steuart Tower Suite 700 San Francisco, CA 94105 Tel: (415) 617-2400 Fax: (415) 617-2409  Attorneys for Defendant NAC Marketing Company, LLC	Matthew I. Kaplan, Esq. Ronie M. Schmelz, Esq. Tucker Ellis LLP 515 South Flower Street Forty-Second Floor Los Angeles, CA 90071-2223 Tel: (213) 430-3400 Fax: (213) 430-3409  Attorneys for Defendant NAC Marketing Company, LLC
---	--

California Dept. of Justice, Office of the Attorney General  
Proposition 65 Enforcement Reporting  
Attention: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, California 94612-0550

[X] **BY MAIL – COLLECTION:** I placed the envelope for collection and mailing following this business’s ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 8, 2017 at Laguna Hills, California.



\_\_\_\_\_  
William F. Wraith