

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 08 2015

Sherri R. Carter, Executive Officer/Clerk
By Steve Temblador, Deputy

1 ROSE, KLEIN & MARIAS LLP
2 David A. Rosen (SBN 101287)
3 Kevin P. Smith (SBN 252580)
4 801 South Grand Avenue, 11th floor
5 Los Angeles, CA 90017
6 213.626.0571
7 FAX 213.623.7755
8 d.rosen@rkmlaw.net

Received
SEP 16 2014

9 Attorneys for Plaintiff
10 ENVIRONMENTAL RESEARCH CENTER **Filing Window**

11 Anthony J. Cortez (SBN 251743)
12 Greenberg Traurig, LLP
13 1201 K Street, Suite 1100
14 Sacramento, CA 95814-3938
15 T: (916) 442-1111
16 F: (916) 448-1709

17 Attorney for Defendant
18 ORTHO MOLECULAR PRODUCTS, INC.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

21 ENVIRONMENTAL RESEARCH
22 CENTER, a California non-profit
23 corporation,

24 Plaintiff,

25 v.

26 ORTHO MOLECULAR PRODUCTS,
27 INC.; and DOES 1-50, inclusive,

28 Defendants.

CASE NO. BC529077

STIPULATED CONSENT JUDGMENT;
[PROPOSED] ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: November 27, 2013
Trial Date: None set

1. INTRODUCTION

1.1 On November 27, 2013, Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 et seq. ("Proposition 65"), against Ortho Molecular Products, Inc. and Does 1-50 (collectively "OMP"). In this action, ERC alleges that the products manufactured, distributed or sold by

1 OMP, as more fully described below, contain lead, a chemical listed under Proposition 65 as a
2 carcinogen and reproductive toxin, and that such products expose consumers at a level
3 requiring a Proposition 65 warning. These products are: (1) Ortho Molecular Products, Inc.
4 Calmatrol; (2) Ortho Molecular Products, Inc. Paracid Forte; (3) Ortho Molecular Products,
5 Inc. Fiber Plus Powder; (4) Ortho Molecular Products, Inc. Core Restore BT Core Support; (5)
6 Ortho Molecular Products, Inc. Glycemic Foundation Smoothie Boost Vanilla; (6) Ortho
7 Molecular Products, Inc. Ultimate Pak Essential Vitamins Morning Packet; (7) Ortho
8 Molecular Products, Inc. Ultimate Pak Essential Vitamins Evening Packet (8) Ortho Molecular
9 Products, Inc. Temple Apple-Cinnamon Bar; (9) Ortho Molecular Products, Inc.
10 InflammACORRE Orange Splash; (10) Ortho Molecular Products Inc. InflammACORRE Banana
11 Crème; (11) Ortho Molecular Products Inc., K-Pax Fuel of Life Protein Blend Cherry –Vanilla
12 Flavor; (12) Ortho Molecular Products Inc., Glycemic Foundation Chocolate Drink Mix; (13)
13 Ortho Molecular Products Inc., LifeCORE Creamy Vanilla; (14) Ortho Molecular Products Inc.,
14 LifeCORE Rich Dark Chocolate; and (15) Ortho Molecular Products Inc., Tempe Chocolate-Mint
15 Bar (collectively “Covered Products”). ERC and OMP are referred to individually as a “Party”
16 or collectively as the “Parties.”

17 **1.2** ERC is a California non-profit corporation dedicated to, among other causes,
18 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
19 and toxic chemicals, facilitating a safe environment for consumers and employees, and
20 encouraging corporate responsibility.

21 **1.3** OMP is a business entity that employed ten or more persons. OMP arranges the
22 manufacture, distribution and sale of the Covered Products.

23 **1.4** The Complaint is based on allegations contained in ERC’s Notices of
24 Violations, dated January 6, 2012 and July 9, 2012, and November 30, 2012 (collectively
25 “Notices”) that were served on the California Attorney General, other public enforcers, and
26 OMP. True and correct copies of the Notices of Violations are attached as Exhibit A and are
27 hereby incorporated by reference. More than 60 days have passed since the Notices of
28 Violations were mailed and uploaded onto the Attorney General’s website, and no designated

1 governmental entity has filed a complaint against OMP with regard to the Covered Products or
2 the alleged violations.

3 **1.5** ERC's Notices and Complaint allege that use of the Covered Products exposes
4 persons in California to lead without first providing clear and reasonable warnings in violation
5 of California Health and Safety Code section 25249.6. OMP denies all material allegations
6 contained in the Notices and Complaint.

7 **1.6** The Parties have entered into this Consent Judgment in order to settle,
8 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
9 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
10 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
11 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,
12 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
13 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
14 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
15 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
16 purpose.

17 **1.7** Except as expressly set forth herein, nothing in this Consent Judgment shall
18 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
19 other or future legal proceeding unrelated to these proceedings. This paragraph shall not
20 diminish or otherwise affect the obligations, responsibilities, and duties of any Party with
21 respect to this Consent Judgment.

22 **1.8** The Effective Date of this Consent Judgment is the date on which it is entered as
23 a Judgment by this Court.

24 **2. JURISDICTION AND VENUE**

25 For purposes of this Consent Judgment and for any further court action that may become
26 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
27 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
28 over OMP as to the acts alleged in the Complaint, that venue is proper in Los Angeles County,

1 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
2 all claims which were or could have been asserted in this action based on the facts alleged in the
3 Notices and Complaint.

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

5 **3.1** Beginning on the Effective Date, OMP shall not manufacture for sale in the
6 State of California, distribute into the State of California, or directly sell in the State of
7 California, any Covered Products which expose a person to a daily dose of lead more than 0.5
8 micrograms per day when the maximum suggested dose is taken as directed on the Covered
9 Product's label, unless it meets the warning requirements under Section 3.2. A warning shall
10 not be required if OMP elects to re-formulate a Covered Product resulting in a Reformulated
11 Covered Product as defined in Section 3.3 below.

12 As used in Consent Judgment, the term "distribute for sale into California" shall
13 mean to directly ship a Covered Product into California for sale in California or to sell a Covered
14 Product to a distributor that Defendant knows will sell the Covered Product in California.

15 **3.2 Clear and Reasonable Warnings**

16 If OMP elects to provide a warning for Covered Products pursuant to Section 3.1, the
17 following warning must be utilized:

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

20 OMP shall use the phrase "cancer and" in the warning only if the maximum daily dose
21 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
22 the quality control methodology set forth in Section 3.4.

23 OMP shall provide the warning on one of the following: 1) on OMP's checkout page on its
24 website for California consumers; 2) on OMP's insert in boxes of Covered Products shipped to
25 California; 3) on OMP's receipt/invoice in boxes of Covered Products shipped to California; and
26 4) on OMP's products in retail stores in California.

27 The warning shall be at least the same size as the largest of any other health or safety
28 warnings correspondingly appearing on the label, container, receipt, invoice, website, or insert,

1 and the word “**WARNING**” shall be in all capital letters. No other statements about Proposition
2 65 or lead may accompany the warning. OMP shall not provide any general or “blanket” warning
3 regarding Proposition 65 and the warning shall meet the following additional requirements:

4 1) In the website warning, OMP shall identify each Covered Product. The warning shall
5 appear prior to completing checkout on the website when a California delivery address is
6 indicated.

7 2) Regarding the insert warnings, OMP and/or its distributor shall provide one insert warning
8 for each individual shipment of product going to a California consumer. The insert warning shall
9 identify each Covered Product that requires a warning. For the receipt/invoice warnings, the
10 receipt/invoice shall identify each Covered Product and be present on the front of the
11 receipt/invoice. OMP must display the above warnings with such conspicuousness, as compared
12 with other words, statements, or design of the label or container, as applicable, to render the
13 warning likely to be read and understood by an ordinary individual under customary conditions of
14 purchase or use of the product.

15 **3.3 Calculation of Lead Levels; Reformulated Covered Products**

16 A Reformulated Covered Product is one for which the maximum recommended daily
17 serving on the label contains no more than 0.5 micrograms of lead per day as determined by the
18 quality control methodology described in Section 3.4. As used in this Consent Judgment, “no
19 more than 0.5 micrograms of lead per day” means that the samples of the testing performed by
20 OMP under Section 3.4 yield a daily exposure of no more than 0.5 micrograms of lead (with
21 daily exposure calculated pursuant to Section 3.4 of this Consent Judgment). For products that
22 cause exposures in excess of 0.5 micrograms of lead per day even after reformulation, OMP
23 shall provide the warning set forth in Section 3.2.

24 **3.4 Testing and Quality Control Methodology**

25 **3.4.1** For purposes of this Consent Judgment, daily lead exposure levels shall be
26 measured in micrograms, and shall be calculated using the following formula: micrograms of
27 lead per gram of product, multiplied by grams of product per serving of the product (using the
28 largest serving size appearing on the product label), multiplied by servings of the product per

1 day (using the largest number of servings in a recommended dosage appearing on the product
 2 label), which equals micrograms of lead exposure per day, excluding amounts of naturally
 3 occurring lead in the ingredients listed in the table below in accordance with the Attorney
 4 General's Stipulation Modifying Consent Judgments in *People v Warner Lambert, et al* San
 5 Fran. Sup. Ct. Case no 984503 as well as the Cocoa powder allowance listed in the table below.
 6 In the event that a dispute arises with respect to compliance with the terms of this Consent
 7 Judgment as to any contribution from naturally occurring lead levels under the Section, the
 8 Parties shall employ good faith efforts to seek entry of a protective order that governs access to
 9 and disclosure of the Confidential Information Provided. Should a dispute arise, this Section is
 10 subject to the meet and confer requirements and attorney's fees provisions set forth in Section
 11 15 below.

INGREDIENT	NATURALLY OCCURING AMOUNT OF LEAD
Calcium	0.8 micrograms/1000 milligrams
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram
Cocoa-powder	1.0 micrograms/gram

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

1 **3.4.3** The testing requirements discussed in Section 3.4 are not applicable to any
2 Covered Product for which OMP has provided the warning as specified in Section
3 3.2. Beginning on the Effective Date and continuing for a period of five years thereafter, OMP
4 shall retain all test results and documentation for a period of three years from the date of each
5 test.

6 **3.4.4** The injunctive relief set forth in Section 3 shall not apply to any of the Covered
7 Products that are put into the stream of commerce prior to the Effective Date. No later than 60
8 days after the Effective Date, OMP shall provide ERC with the last lot number for each of the
9 Covered Products in the stream of commerce as of the Effective Date.

10 **4. SETTLEMENT PAYMENT**

11 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
12 penalties, attorney's fees, and costs, OMP shall make a total payment of \$130,000, which
13 \$97,500 is to be sent to ERC within 10 days of the Effective Date. The remaining amount,
14 \$32,500, shall be payable within 70 days of the Effective Date. OMP shall make these
15 payments by wire transfer to ERC's escrow account, for which ERC will give OMP the
16 necessary account information. Said payment shall be allocated as follows:

17 **4.2** As a portion of the Total Settlement Amount, \$29,384.00 shall be considered
18 civil penalties pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall
19 remit 75% (\$22,038.00) of the civil penalty to the Office of Environmental Health Hazard
20 Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund
21 in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the
22 remaining 25% (\$7,346.00) of the civil penalty.

23 **4.3** \$22,707.00 shall be payable to Environmental Research Center as
24 reimbursement to ERC for (A) reasonable costs associated with the enforcement of Proposition
25 65 and other costs incurred as a result of work in bringing this action; and (B) \$35,909.00
26 shall be payable to Environmental Research Center in lieu of further civil penalties, for the day-
27 to-day business activities such as (1) continued enforcement of Proposition 65, which includes
28 work, analyzing, researching and testing consumer products that may contain Proposition 65

1 chemicals, focusing on the same or similar type of ingestible products that are the subject
2 matter of the current action; (2) the continued monitoring of past consent judgments and
3 settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
4 donation of \$1,795.00 to the Center For Environmental Health to address reducing toxic
5 chemical exposures in California.

6 **4.4** \$39,000.00 shall be payable to Rose, Klein & Marias LLP as reimbursement of
7 ERC's attorney's fees, and \$3,000.00 shall be payable to Karen Evans as reimbursement of
8 ERC's attorney's fees.

9 **5. MODIFICATION OF CONSENT JUDGMENT**

10 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
11 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
12 judgment.

13 **5.2** If OMP seeks to modify this Consent Judgment under Section 5.1, then OMP
14 must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to meet and
15 confer regarding the proposed modification in the Notice of Intent, then ERC must provide
16 written notice to OMP within thirty days of receiving the Notice of Intent. If ERC notifies
17 OMP in a timely manner of ERC's intent to meet and confer, then the Parties shall meet and
18 confer in good faith as required in this Section. The Parties shall meet in person or via
19 telephone within thirty (30) days of ERC's notification of its intent to meet and confer. Within
20 thirty days of such meeting, if ERC disputes the proposed modification, ERC shall provide to
21 OMP a written basis for its position. The Parties shall continue to meet and confer for an
22 additional thirty (30) days in an effort to resolve any remaining disputes. Should it become
23 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer
24 period.

25 **5.3** Where the meet-and-confer process does not lead to a joint motion or
26 application in support of a modification of the Consent Judgment, then either Party may seek
27 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and
28 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"

1 means a party who is successful in obtaining relief more favorable to it than the relief that the
2 other party was amenable to providing during the Parties' good faith attempt to resolve the
3 dispute that is the subject of the modification.

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

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

8 **6.2** Only after it complies with Section 15 below may any Party, by motion or
9 application for an order to show cause filed with this Court, enforce the terms and conditions
10 contained in this Consent Judgment.

11 **6.3** If ERC alleges that any Covered Product fails to qualify as a Reformulated
12 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
13 inform OMP in a reasonably prompt manner of its test results, including information sufficient
14 to permit OMP to identify the Covered Products at issue. OMP shall, within thirty days
15 following such notice, provide ERC with testing information, from an independent third-party
16 laboratory meeting the requirements of Sections 3.4.2 and 3.4.3, demonstrating Defendant's
17 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve
18 the matter prior to ERC taking any further legal action.

19 **7. APPLICATION OF CONSENT JUDGMENT**

20 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
21 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
22 divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers,
23 predecessors, successors, and assigns. This Consent Judgment shall have no application to
24 Covered Products which are distributed or sold exclusively outside the State of California and
25 which are not used by California consumers.
26

27 ///

28 ///

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

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
3 behalf of itself and in the public interest, and OMP, of any alleged violation of Proposition 65
4 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to
5 lead from the handling, use, or consumption of the Covered Products and fully resolves all
6 claims that have been or could have been asserted in this action up to and including the
7 Effective Date for failure to provide Proposition 65 warnings for the Covered Products. ERC,
8 on behalf of itself and in the public interest, hereby discharges OMP and its respective officers,
9 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
10 suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all other
11 upstream and downstream entities in the distribution chain of any Covered Product, and the
12 predecessors, successors and assigns of any of them (collectively, "Released Parties"), from
13 any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,
14 fees, costs and expenses asserted, or that could have been asserted, as to any alleged violation
15 of Proposition 65 arising from the failure to provide Proposition 65 warnings on the Covered
16 Products regarding lead.

17 **8.2** The Parties further waive and release any and all claims they may have against
18 each other for all actions or statements made or undertaken in the course of seeking or opposing
19 enforcement of Proposition 65 in connection with the Notices or Complaint up through and
20 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit
21 any Party's right to seek to enforce the terms of this Consent Judgment.

22 **8.3** It is possible that other claims not known to the Parties arising out of the facts
23 alleged in the Notices or the Complaint and relating to the Covered Products will develop or be
24 discovered. The Parties acknowledge that this Consent Judgment is expressly intended to cover
25 and include all such claims up through and including the Effective Date, including all rights of
26 action therefore. The Parties further acknowledge that the claims released in Sections 8.1 and
27 8.2 above may include unknown claims, and nevertheless waive California Civil Code section
28 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.

4 The Parties acknowledge and understand the significance and consequences of this specific
5 waiver of California Civil Code Section 1542.

6 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
7 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures
8 to lead in the Covered Products as set forth in the Notices and Complaint.

9 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
10 environmental exposures arising under Proposition 65, nor shall it apply to any of OMP's
11 products other than the Covered Products.

12 **8.6** ERC and OMP each release and waive all claims they may have against each
13 other for any statements or actions made or undertaken by them in connection with the Notices
14 of Violation or the Complaint; provided, however, that nothing in Section 8 shall affect or limit
15 any Party's right to seek to enforce the terms of this Consent Judgment.

16 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

19 **10. GOVERNING LAW**

20 The terms and conditions of this Consent Judgment shall be governed by and construed in
21 accordance with the laws of the State of California.

22 **11. PROVISION OF NOTICE**

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

26 **FOR ENVIRONMENTAL RESEARCH CENTER:**

27 Chris Heptinstall, Executive Director
28 Environmental Research Center

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

3 With a copy to:

4 ROSE, KLEIN & MARIAS LLP
5 David A. Rosen (SBN 101287)
6 Kevin P. Smith (SBN 252580)
7 801 South Grand Avenue, 11th floor
8 Los Angeles, CA 90017
9 213.626.0571
10 FAX 213.623.7755
11 d.rosen@rkmlaw.net

12 **FOR ORTHO MOLECULAR PRODUCTS, INC.**

13 Anthony J. Cortez
14 Jim Mattesich
15 Greenberg Traurig, LLP
16 1201 K Street, Suite 1100
17 Sacramento, CA 95814-3938
18 T: (916) 442-1111
19 F: (916) 448-1709

20 **12. COURT APPROVAL**

21 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be
22 void and have no force or effect.

23 **12.2** Following Court Approval of the Consent Judgment, ERC shall comply with
24 California Health and Safety Code section 25249.7(f) and with Title II of the California Code
25 Regulations, Section 3003.

26 **13. EXECUTION AND COUNTERPARTS**

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

14. DRAFTING

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

1 construed against any Party.

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

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

12 **16. ENTIRE AGREEMENT, AUTHORIZATION**

13 **16.1** This Consent Judgment contains the sole and entire agreement and
14 understanding of the Parties with respect to the entire subject matter herein, and any and all
15 prior discussions, negotiations, commitments and understandings related hereto. No
16 representations, oral or otherwise, express or implied, other than those contained herein have
17 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
18 herein, shall be deemed to exist or to bind any Party.

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

22 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND**
23 **ENTRY OF CONSENT JUDGMENT**

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

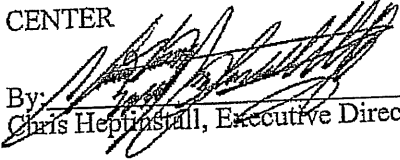
27 (1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable
28 settlement of all matters raised by the allegations of the Complaint, that the matter has been

1 diligently prosecuted, and that the public interest is served by such settlement; and
2 (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4),
3 approve the Settlement, and approve this Consent Judgment.

4 **IT IS SO STIPULATED:**

5 Dated: 8/13/, 2014

ENVIRONMENTAL RESEARCH
CENTER

By: 
Chris Hepinstall, Executive Director

9 Dated: _____, 2014

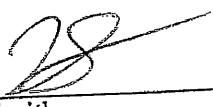
ORTHO MOLECULAR PRODUCTS, INC.

By: _____

13 **APPROVED AS TO FORM:**

15 Dated: 8/13, 2014

ENVIRONMENTAL RESEARCH
CENTER

By: 
Kevin Smith
Attorney for Plaintiff
ENVIRONMENTAL RESEARCH
CENTER

21 Dated: _____, 2014

ORTHO MOLECULAR PRODUCTS, INC.

By: _____
Anthony J. Cortez
Attorney for Defendant
ORTHO MOLECULAR PRODUCTS,
INC.

26 ///
27 ///
28 ///

1 diligently prosecuted, and that the public interest is served by such settlement; and

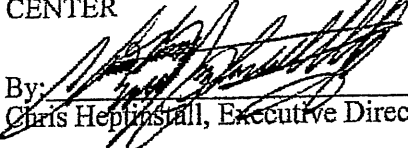
2 (2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4),

3 approve the Settlement, and approve this Consent Judgment.

4 **IT IS SO STIPULATED:**

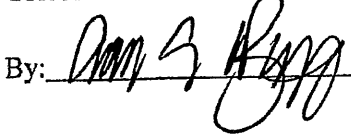
5 Dated: 8/13/, 2014

ENVIRONMENTAL RESEARCH
CENTER

By: 
Chris Hepinstall, Executive Director

9 Dated: 8/19, 2014

ORTHO MOLECULAR PRODUCTS, INC.

By: 

13 **APPROVED AS TO FORM:**

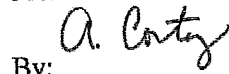
15 Dated: _____, 2014

ENVIRONMENTAL RESEARCH
CENTER

By: _____
Kevin Smith
Attorney for Plaintiff
ENVIRONMENTAL RESEARCH
CENTER

21 Dated: _____, 2014

ORTHO MOLECULAR PRODUCTS, INC.

By: 
Anthony J. Cortez
Attorney for Defendant
ORTHO MOLECULAR PRODUCTS,
INC.

26 ///

27 ///

28 ///

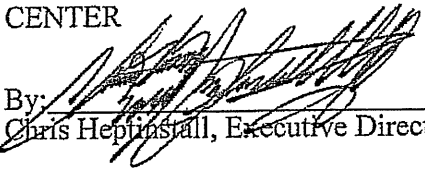
1 diligently prosecuted, and that the public interest is served by such settlement; and

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

4 **IT IS SO STIPULATED:**

5 Dated: 8/13/, 2014

ENVIRONMENTAL RESEARCH
CENTER

By: 
Chris Hepinstall, Executive Director

9 Dated: _____, 2014

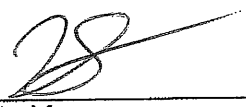
ORTHO MOLECULAR PRODUCTS, INC.

By: _____

13 **APPROVED AS TO FORM:**

15 Dated: 8/13, 2014

ENVIRONMENTAL RESEARCH
CENTER

By: 
Kevin Smith
Attorney for Plaintiff
ENVIRONMENTAL RESEARCH
CENTER

21 Dated: _____, 2014

ORTHO MOLECULAR PRODUCTS, INC.

By: _____
Anthony J. Cortez
Attorney for Defendant
ORTHO MOLECULAR PRODUCTS,
INC.

26 ///

27 ///

28 ///

JUDGMENT

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

Dated: JAN 08 2015, 2014

Ernest M. Hiroshige

Judge of the Superior Court

ROSE, KLEIN & MARIAS LLP
801 S. GRAND AVENUE, 11TH FLOOR
LOS ANGELES, CALIFORNIA 90017-4645
TEL (213) 626-0571 • FAX (213) 623-7755

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Grand Avenue, 11th Floor, Los Angeles, CA 90017-4645.

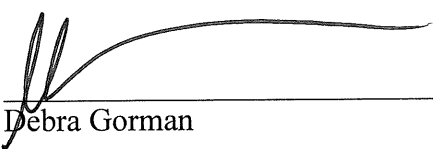
On January 12, 2015, I served true copies of the following document(s) described as **COURT EXECUTED STIPULATED CONSENT JUDGMENT** on the interested parties in this action as follows:

Vitacost.Com, Inc. James M. Mattesich Anthony Cortez Gregory Sperla GREENBERG TRAUIG LLP 1201 K Street, Suite 1100 Sacramento, California 95814-3938	Environmental Research Center (ERC) 3111 Camino Del Rio North #400 San Diego, CA 92108 Proposition 65 Enforcement Reporting Attn: Prop 65 Coordinator 1515 Clay Street, Suite 2000 Post Office Box 70550 Oakland, CA. 94612-0550
--	---

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Rose, Klein & Marias LLP 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 am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 12, 2015, at Los Angeles, California.



Debra Gorman