

1 Anne Barker SBN 253824  
Environmental Research Center, Inc.  
2 3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
3 Telephone: (619) 500-3090  
Facsimile: (706) 858-0326

4 Michael Freund SBN 99687  
5 Ryan Hoffman SBN 283297  
Michael Freund & Associates  
6 1919 Addison Street, Suite 105  
Berkeley, CA 94704  
7 Telephone: (510) 540-1992  
Facsimile: (510) 540-5543

8 Attorneys for Plaintiff Environmental Research Center, Inc.  
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN FRANCISCO**

12 **ENVIRONMENTAL RESEARCH**  
13 **CENTER, INC. a California non-profit**  
14 **corporation,**

15 **Plaintiff,**

16 v.

17 **NUTIVA, INC., NUTIVA, and**  
**DOES 1-100**

18 **Defendants.**

**CASE NO. CGC-15-545713**

**NOTICE OF ENTRY OF ORDER**

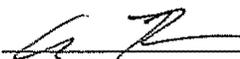
**ASSIGNED FOR ALL PURPOSES TO**  
**JUDGE: ERNEST H. GOLDSMITH**  
**DEPARTMENT 302**

19  
20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 NOTICE IS HEREBY GIVEN that the Court has entered Judgment and approved  
22 settlement by Stipulated Consent Judgment in the above entitled matter. A true and correct copy  
23 of the Stipulated Consent Judgment and Order is attached hereto as Exhibit "1".

24  
25 Date: October 22, 2015

ENVIRONMENTAL RESEARCH CENTER, INC.

26  
27 

28 Anne Barker  
In-house Counsel

# **EXHIBIT 1**

1 Anne Barker SBN 253824  
Environmental Research Center, Inc.  
2 3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
3 Telephone: (619) 500-3090  
Facsimile: (706) 858-0326  
4  
5 Michael Freund SBN 99687  
Ryan Hoffman SBN 283297  
Michael Freund & Associates  
6 1919 Addison Street, Suite 105  
Berkeley, CA 94704  
7 Telephone: (510) 540-1992  
Facsimile: (510) 540-5543  
8  
9 Attorneys for Plaintiff Environmental Research Center, Inc.

**ENDORSED  
FILED**  
*San Francisco County Superior Court*

OCT 22 2015

CLERK OF THE COURT  
BY: JACQUELINE ALAMEDA  
Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF SAN FRANCISCO**

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

14 **Plaintiff,**

15 v.

16 **NUTIVA, INC., NUTIVA, and DOES 1-**  
17 **100**

18 **Defendants.**

**CASE NO. CGC-15-545713**

**[PROPOSED] STATUTORY  
FINDINGS AND ORDER  
APPROVING PROPOSITION 65  
SETTLEMENT**

**ASSIGNED FOR ALL PURPOSES TO  
JUDGE: ERNEST H. GOLDSMITH  
DEPARTMENT 302  
RESERVATION NO: 08121005-04  
DATE: OCTOBER 5, 2015  
TIME: 9:30 A.M.**

21 This matter having come on calendar pursuant to a regularly noticed motion and the  
22 Court having reviewed all the evidence submitted in support of Plaintiff Environmental  
23 Research Center, Inc.'s motion in this case, the Court hereby makes the following findings  
24 pursuant to Health & Safety Code section 25249.7, subdivision (f)(4):

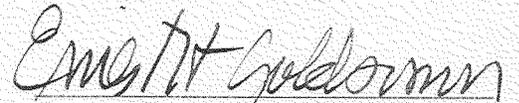
- 25 1) Any warnings that may be required by the Stipulated Consent Judgment fully  
26 comply with Proposition 65.  
27 2) The attorneys' fees provision in the Stipulated Consent Judgment is reasonable  
28 under California law; and

1           3) The civil penalty imposed by the Stipulated Consent Judgment is reasonable based on  
2 the criteria set forth in Health & Safety Code section 25249.7, subdivision (b)(2) and Cal. Code  
3 Regs., tit. 11, section 3203.

4           **IT IS HEREBY ORDERED** that the Stipulated Consent Judgment submitted in this  
5 matter is approved.

6  
7                           OCT **22** 2015

8 DATED: \_\_\_\_\_

  
Hon. ERNEST H. GOLDSMITH  
Judge of the Superior Court

1 Anne Barker SBN 253824  
Environmental Research Center  
2 3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108

3 Michael Freund SBN 99687  
4 Ryan Hoffman SBN 283297  
Michael Freund & Associates  
5 1919 Addison Street, Suite 105  
Berkeley, CA 94704  
6 Telephone: (510) 540-1992  
Facsimile: (510) 540-5543

7 Attorneys for Plaintiff  
8 ENVIRONMENTAL RESEARCH CENTER, INC.

9 Scott Hatch SBN 241563  
Call & Jensen  
10 610 Newport Center Drive, Suite 700  
Newport Beach, California 92660

11 Attorney for Defendants  
12 NUTIVA, INC, NUTIVA

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 ENVIRONMENTAL RESEARCH CENTER  
16 INC., a California non-profit  
corporation,

17 Plaintiff,

18 v.

19 NUTIVA, INC, NUTIVA, and DOES 1-100

20 Defendants.  
21  
22

CASE NO. CGC-15-545713

STIPULATED CONSENT JUDGMENT;  
~~[PROPOSED]~~ ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed:  
Trial Date: None set

23 1. INTRODUCTION

24 1.1 On May 7, 2015, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-  
25 profit corporation, as a private enforcer, and in the public interest, initiated this action by filing  
26 a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the  
27 provisions of California Health and Safety Code section 25249.5 et seq. ("Proposition 65"),  
28 against Nutiva, Inc, Nutiva, (collectively "Nutiva") and Does 1-100. In this action, ERC

STIPULATED CONSENT JUDGMENT; ~~[PROPOSED]~~ ORDER

CASE NO. CGC-15-545713

ENDORSED  
FILED

San Francisco County Superior Court

OCT 22 2015

CLERK OF THE COURT

BY: JACQUELINE ALAMEDA  
Deputy Clerk

1 alleges that a number of products manufactured, distributed or sold by Nutiva contain lead, a  
2 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
3 consumers to this chemical at a level requiring a Proposition 65 warning. These products  
4 (referred to hereinafter individually as a "Covered Product" or collectively as "Covered  
5 Products") are: (1) Nutiva Hemp Protein Delicious Shake Mix Vanilla, (2) Nutiva Hemp Protein  
6 15G, and (3) Nutiva Hemp Protein Delicious Shake Mix Chocolate.

7       1.2     ERC is a California non-profit corporation dedicated to, among other causes,  
8 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
9 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
10 encouraging corporate responsibility.

11       1.3     For purposes of this Consent Judgment, the parties agree that Nutiva is a business  
12 entity that has employed ten or more persons at all times relevant to this action, and qualifies as a  
13 "person in the course of business" within the meaning of Proposition 65. Nutiva manufactures,  
14 distributes and sells the Covered Products.

15       1.4     ERC and Nutiva are referred to individually as a "Party" or collectively as the  
16 "Parties."

17       1.5     The Complaint is based on allegations contained in ERC's Notice of Violation  
18 dated September 26, 2014, that was served on the California Attorney General, other public  
19 enforcers, and Nutiva ("Notice"). A true and correct copy of the Notice is attached as Exhibit  
20 A and is hereby incorporated by reference. More than 60 days have passed since the Notice  
21 was mailed and uploaded to the Attorney General's website, and no designated governmental  
22 entity has filed a complaint against Nutiva with regard to the Covered Products or the alleged  
23 violations.

24       1.6     ERC's Notice and Complaint allege that use of the Covered Products exposes  
25 persons in California to lead without first providing clear and reasonable warnings in violation  
26 of California Health and Safety Code section 25249.6. Nutiva denies all material allegations  
27 contained in the Notice and Complaint.

28 ///

1           1.7    The Parties have entered into this Consent Judgment in order to settle,  
2    compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
3    Nothing in this Consent Judgment shall constitute or be construed as an admission of  
4    wrongdoing or liability by any of the Parties, or by any of their respective officers, directors,  
5    shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,  
6    franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers. Except for  
7    the representations made above, nothing in this Consent Judgment shall be construed as an  
8    admission by the Parties of any fact, issue of law, or violation of law, nor shall compliance with  
9    this Consent Judgment be construed as an admission by the Parties of any fact, issue of law, or  
10   violation of law, at any time, for any purpose.

11           1.8    Except as expressly set forth herein, nothing in this Consent Judgment shall  
12   prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
13   other or future legal proceeding unrelated to these proceedings.

14           1.9    The Effective Date of this Consent Judgment is the date on which it is entered as  
15   a Judgment by this Court.

## 16    2.    **JURISDICTION AND VENUE**

17           For purposes of this Consent Judgment and any further court action that may become  
18   necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
19   jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
20   over Nutiva as to the acts alleged in the Complaint, that venue is proper in San Francisco County,  
21   and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of  
22   all claims up through and including the Effective Date which were or could have been asserted in  
23   this action based on the facts alleged in the Notice and Complaint.

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

25           Beginning six months from the Effective Date ("Compliance Date"), Nutiva shall be  
26   permanently enjoined from manufacturing for sale in the State of California, "Distributing into  
27   the State of California," or directly selling in the State of California, any Covered Product which  
28   exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms per day when

1 the maximum suggested dose is taken as directed on the Covered Product's label, unless it meets  
 2 the warning requirements under Section 3.2, excluding, for purposes of this consent judgment  
 3 only, the amounts of "naturally occurring" lead in the ingredients listed in the table as well as the  
 4 Cocoa powder allowance listed in the table below. If Nutiva wishes to exclude the naturally  
 5 occurring lead set forth in this section, it must, prior to the Compliance Date, provide ERC with a  
 6 list of all ingredients including the percentage and weight of each ingredient for all Covered  
 7 Products for which it is requesting that the exclusion be applied. In the event that a dispute arises  
 8 with respect to compliance with the terms of this Consent Judgment as to any contribution from  
 9 naturally occurring lead levels under the Section, the Parties shall employ good faith efforts to  
 10 seek entry of a protective order that governs access to and disclosure of the Confidential  
 11 Information Provided.

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium	0.8 micrograms/gram
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 microgram/gram

23 3.1.1 As used in this Consent Judgment, the term "Distributing into the State  
 24 of California" shall mean to directly ship a Covered Product into California for sale in  
 25 California or to sell a Covered Product to a distributor that Nutiva knows will sell the Covered  
 26 Product in California.

27 3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure  
 28 Level" shall be measured in micrograms, and shall be calculated using the following formula:

1 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
2 product (using the largest serving size appearing on the product label), multiplied by servings  
3 of the product per day (using the largest number of servings in a recommended dosage  
4 appearing on the product label), which equals micrograms of lead exposure per day.

5 **3.1 Clear and Reasonable Warnings**

6 If Nutiva is required to provide a warning pursuant to Section 3.1, the following warning  
7 must be utilized:

8 **WARNING: This product contains chemicals known to the State of California to**  
9 **cause [cancer and] birth defects or other reproductive harm.**

10 Nutiva shall use the phrase "cancer and" in the warning on the Covered Product only if Nutiva  
11 reasonably believes the maximum daily dose recommended on the label may contain more than 15  
12 micrograms of lead as determined pursuant to the quality control methodology set forth in Section  
13 3.4 or the Covered Product contains another chemical identified as a carcinogen by the State of  
14 California.

15 Nutiva shall provide the warning on the following: 1) on Nutiva's checkout page on its  
16 website for California consumers identifying each Covered Product. A second warning shall  
17 appear prior to completing checkout on the website when a California delivery address is  
18 indicated. The purchaser shall be required to accept the warning prior to completing checkout for  
19 any of the Covered Products being sold; and 2) on the label or container of Nutiva's product  
20 packaging for each Covered Product distributed into the State of California as defined in Section  
21 3.1.1.

22 The warning shall be at least the same size as the largest of any other health or safety  
23 warnings also appearing on its website or on the label or container of Nutiva's product packaging  
24 and the word "WARNING" shall be in all capital letters and in bold print. No other statements  
25 about Proposition 65 or lead may accompany the warning.

26 Nutiva must display the above warnings with such conspicuousness, as compared with  
27 other words, statements, or design of the label or container, as applicable, to render the warning  
28 likely to be read and understood by an ordinary individual under customary conditions of purchase

1 or use of the product.

2 **3.3 Reformulated Covered Products**

3 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when  
4 the maximum suggested dose is taken as directed on the Reformulated Covered Product's label,  
5 contains no more than 0.5 micrograms of lead per day as determined by the quality control  
6 methodology described in Section 3.4 and as modified by the foregoing allowance for "naturally  
7 occurring" lead.

8 **3.4 Testing and Quality Control Methodology**

9 **3.4.1** All testing pursuant to this Consent Judgment shall be performed using a  
10 laboratory method that complies with the performance and quality control factors appropriate  
11 for the method used, including limit of detection, qualification, accuracy, and precision that  
12 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)  
13 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
14 method subsequently agreed upon in writing by the Parties.

15 **3.4.2** All testing pursuant to this Consent Judgment shall be performed by a  
16 laboratory certified by the California Environmental Laboratory Accreditation Program or a  
17 laboratory that is registered with the United States Food & Drug Administration. Nothing in  
18 this Consent Judgment shall limit Nutiva's ability to conduct, or require that others conduct,  
19 additional testing of the Covered Products, including the raw materials used in their  
20 manufacture.

21 **3.4.3** Nutiva shall arrange, for at least three consecutive years and at least once  
22 per year, for the lead testing of five randomly selected samples of each Covered Product in the  
23 form intended for sale to the end-user to be distributed or sold to California. Nutiva shall  
24 continue testing so long as the Covered Products are sold in California or sold to a third party  
25 for retail sale in California. If tests conducted pursuant to this Section demonstrate that no  
26 warning is required for a Covered Product during each of five consecutive years, then the  
27 testing requirements of this Section will no longer be required as to that Covered Product.  
28 However, if after the five-year period, Nutiva changes ingredient suppliers for any of the

1 Covered Products and/or reformulates any of the Covered Products, Nutiva shall test that  
2 Covered Product at least once after such change is made. The testing requirements discussed in  
3 Section 3.4 are not applicable to any Covered Product for which Nutiva has provided the  
4 warning as specified in Section 3.2. Nutiva shall retain all test results and documentation for a  
5 period of five years from the date of each test.

6 **4. SETTLEMENT PAYMENT**

7 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil  
8 penalties, attorney's fees, and costs, Nutiva shall make a total payment of \$48,000.00. ("Total  
9 Settlement Amount") to ERC within 5 days of the Effective Date. Nutiva shall make this  
10 payment by wire transfer to ERC's escrow account, for which ERC will give Nutiva the  
11 necessary account information. The Total Settlement Amount shall be apportioned as follows:

12 4.2 \$20,337.00 shall be considered a civil penalty pursuant to California Health  
13 and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$15,253.00) of the civil penalty to the  
14 Office of Environmental Health Hazard Assessment ("OEHHHA") for deposit in the Safe  
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
16 Code §25249.12(c). ERC will retain the remaining 25% (\$5,084.00) of the civil penalty.

17 4.3 \$1,400.00 shall be distributed to Environmental Research Center as  
18 reimbursement to ERC for reasonable costs incurred in bringing this action; and \$15,441.45  
19 shall be distributed to Environmental Research Center in lieu of further civil penalties, for the  
20 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
21 includes work, analyzing, researching and testing consumer products that may contain  
22 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
23 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
24 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
25 donation of \$767.00 to the Center for Environmental Health to address reducing toxic chemical  
26 exposures in California.

27 4.4 \$900.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's  
28 attorney's fees, while \$9,921.55 shall be distributed to ERC for its in-house legal fees.

1     **5.    MODIFICATION OF CONSENT JUDGMENT**

2           **5.1**       This Consent Judgment may be modified only (i) by written stipulation of  
3 the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
4 judgment.

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

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

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

1     **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
2     **JUDGMENT**

3     6.1         This Court shall retain jurisdiction of this matter to enforce, modify or  
4 terminate this Consent Judgment.

5     6.2         If ERC alleges that any Covered Product fails to qualify as a Reformulated  
6 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
7 inform Nutiva in a reasonably prompt manner of its test results, including information sufficient  
8 to permit Nutiva to identify the Covered Products at issue. Nutiva shall, within thirty days  
9 following such notice, provide ERC with testing information, from an independent third-party  
10 laboratory meeting the requirements of Sections 3.4.1 and 3.4.2, demonstrating Nutiva's  
11 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve  
12 the matter prior to ERC taking any further legal action.

13     **7. APPLICATION OF CONSENT JUDGMENT**

14         This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
15 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
16 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,  
17 wholesalers, retailers, predecessors, successors, assigns, upstream suppliers, and downstream  
18 sellers. This Consent Judgment shall have no application to Covered Products which are  
19 distributed or sold exclusively outside the State of California and which are not used by California  
20 consumers.

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

22     8.1         This Consent Judgment is a full, final, and binding resolution between ERC,  
23 on behalf of itself and in the public interest, and Nutiva, of any alleged violation of Proposition  
24 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to  
25 lead from the handling, use, or consumption of the Covered Products and fully resolves all  
26 claims that have been or could have been asserted in this action up to and including the  
27 Effective Date for failure to provide Proposition 65 warnings for the Covered Products. ERC,  
28 on behalf of itself and in the public interest, hereby discharges Nutiva and its respective

1 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
2 affiliates, suppliers, franchisees, licensees, customers (not including private label customers of  
3 Nutiva), distributors, wholesalers, retailers, and all other upstream and downstream entities in  
4 the distribution chain of any Covered Product, and the predecessors, successors and assigns of  
5 any of them (collectively, "Released Parties"), from any and all claims, actions, causes of  
6 action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that  
7 could have been asserted, as to any alleged violation of Proposition 65 arising from the failure  
8 to provide Proposition 65 warnings on the Covered Products.

9       8.2       ERC on its own behalf only, on one hand, and Nutiva on its own behalf only,  
10 on the other, further waive and release any and all claims they may have against each other for  
11 all actions or statements made or undertaken in the course of seeking or opposing enforcement  
12 of Proposition 65 in connection with the Notice or Complaint up through and including the  
13 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
14 right to seek to enforce the terms of this Consent Judgment.

15       8.3       It is possible that other claims not known to the Parties arising out of the  
16 facts alleged in the Notices or the Complaint and relating to the Covered Products will develop  
17 or be discovered. ERC on behalf of itself only, on one hand, and Nutiva, on the other hand,  
18 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
19 claims up through the Effective Date, including all rights of action therefore. ERC and Nutiva  
20 acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown  
21 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown  
22 claims. California Civil Code section 1542 reads as follows:

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

28       ERC on behalf of itself only, on the one hand, and Nutiva, on the other hand, acknowledge and  
understand the significance and consequences of this specific waiver of California Civil Code  
section 1542.

1           8.4           Compliance with the terms of this Consent Judgment shall be deemed to  
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
3 in the Covered Products as set forth in the Notice and the Complaint.

4           8.5           Nothing in this Consent Judgment is intended to apply to any occupational  
5 or environmental exposures arising under Proposition 65, nor shall it apply to any of Nutiva's  
6 products other than the Covered Products.

7           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10          **10. GOVERNING LAW**

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

13          **11. PROVISION OF NOTICE**

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

17          **FOR ENVIRONMENTAL RESEARCH CENTER:**

18 Chris Heptinstall, Executive Director, Environmental Research Center  
19 3111 Camino Del Rio North, Suite 400  
20 San Diego, CA 92108  
21 Tel: (619) 500-3090  
22 Email: chris\_erc501c3@yahoo.com

23          With a copy to:

24 Michael Freund  
25 Ryan Hoffman  
26 Michael Freund & Associates  
27 1919 Addison Street, Suite 105  
28 Berkeley, CA 94704  
Telephone: (510) 540-1992  
Facsimile: (510) 540-5543

**NUTIVA, INC, NUTIVA**

1 John Roulac  
2 Nutiva  
3 213 West Cutting Blvd  
4 Richmond, CA 94804  
5 Telephone: (800) 993-4367

6 With copies to:

7 Scott Hatch  
8 Call & Jensen  
9 610 Newport Center Drive, Suite 700  
10 Newport Beach, California 92660  
11 Telephone: (949) 717-3000

12 Rakesh Amin  
13 Amin, Talati & Upadhye  
14 55 West Monroe Street  
15 Suite 3400  
16 Chicago, IL 60603  
17 Telephone: (312) 466-1033

## 18 12. COURT APPROVAL

19 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
20 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
21 Consent Judgment.

22 12.2 If the California Attorney General objects to any term in this Consent  
23 Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and  
24 if possible prior to the hearing on the motion.

25 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be  
26 void and have no force or effect.

## 27 13. EXECUTION AND COUNTERPARTS

28 This Consent Judgment may be executed in counterparts, which taken together shall be  
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 each  
Party prior to its signing, and each Party has had an opportunity to fully discuss the terms with

1 counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent  
2 Judgment entered thereon, the terms and provisions shall not be construed against any Party.

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

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

13 **16. ENTIRE AGREEMENT, AUTHORIZATION**

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

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

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

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

28 (1) Find that the terms and provisions of this Consent Judgment represent a fair and

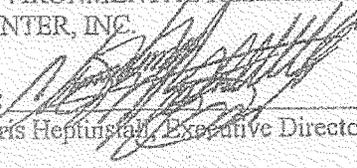
1 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has  
2 been diligently prosecuted, and that the public interest is served by such settlement; and

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

5 **IT IS SO STIPULATED:**

6 Dated: 6/26, 2015

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Heffernan, Executive Director

9 Dated: 7/13, 2015

NUTIVA, INC. NUTIVA

By:   
John Roule, CEO

13 **APPROVED AS TO FORM:**

14 Dated: 6/26, 2015

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Anne Barker, In-house Counsel

18 Dated: July 14, 2015

CALL & JENSEN

By:   
Scott Hatch  
Attorneys for Defendant Nutiva Inc. and  
Nutiva

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 IT IS SO ORDERED, ADJUDGED AND DECREED.

27 Dated: October 22, 2015

  
Judge of the Superior Court

ERNEST H. GOLDSMITH