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**FILED FEB - 8 2017**  
**ALAMEDA COUNTY**

MAR 28 2017

CLERK OF THE SUPERIOR COURT  
 By: [Signature]  
 Deputy

6 Attorneys for Plaintiff  
 ENVIRONMENTAL RESEARCH CENTER, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

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

12 Plaintiff,

14 v.

15 APRICOT POWER, INC., a Nevada corporation,  
 and DOES 1-25,

16 Defendants.

CASE NO. RG16822787

~~PROPOSED~~ STATUTORY  
 FINDINGS AND ORDER APPROVING  
 PROPOSITION 65 SETTLEMENT

ASSIGNED FOR ALL PURPOSES TO:

Judge: HON. BRAD SELIGMAN

Department: 30

Reservation No.: R-1820423

Date: March 28, 2017

Time: 3:00 P.M.

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

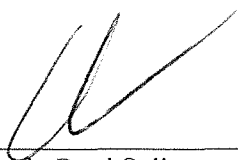
23 1) Any warnings that may be required by the Stipulated Consent Judgment fully  
 24 comply with Proposition 65.

25 2) The attorneys' fees awarded in the Stipulated Consent Judgment are reasonable  
 26 under California law; and

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

4        **IT IS HEREBY ORDERED** that the Stipulated Consent Judgment submitted in this matter is  
5 approved and will be entered in accordance with the terms of the Stipulated Consent Judgment,  
6 attached hereto as an Exhibit.

7  
8 DATED: 3/24, 2017

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11 \_\_\_\_\_  
12 Honorable Brad Seligman  
13 Judge of the Superior Court  
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# **ATTACHMENT 1**

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8 Attorneys for Plaintiff  
9 ENVIRONMENTAL RESEARCH CENTER, INC.

10 R. MORGAN GILHULY (SBN 133659)  
11 DAVID M. METRES (SBN 273081)  
12 BARG COFFIN LEWIS & TRAPP, LLP  
13 350 California Street, 22nd Floor  
14 San Francisco, CA 94104  
15 Ph: 415-228-5400  
16 Email: mgilhuly@bargcoffin.com  
17 dmetres@bargcoffin.com

18 Attorneys for Defendant  
19 APRICOT POWER, INC.

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

22 ENVIRONMENTAL RESEARCH  
23 CENTER, INC. a non-profit California  
24 corporation

25 Plaintiff,

26 v.

27 APRICOT POWER, INC., a Nevada  
28 corporation, and DOES 1-25,

Defendants.

CASE NO. RG16822787

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 11, 2016

Trial Date: None set

**1. INTRODUCTION**

1.1 On July 11, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a

1 Complaint for Permanent Injunction, Civil Penalties, and Other Relief (the "Complaint")  
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
3 ("Proposition 65"), against APRICOT POWER, INC. ("APRICOT POWER") and DOES 1-25.  
4 In this action, ERC alleges that a number of products manufactured, distributed, or sold by  
5 APRICOT POWER contain lead and/or cadmium, chemicals listed under Proposition 65 as  
6 carcinogens and reproductive toxins, and expose consumers to these chemicals at a level  
7 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a  
8 "Covered Product" or collectively as "Covered Products") are:

- 9 • Apricot Power Probiotic Shield - Lead
- 10 • Only Natural Inc. Yeast Therapy - Lead
- 11 • Apricot Power Ground SuperFood Mix Chocolate Brownie – Lead,  
12 Cadmium
- 13 • Apricot Power Green Phytofoods - Lead
- 14 • Apricot Power Chlorella - Lead
- 15 • Apricot Power Megazyme Forte 1018 mg - Lead
- 16 • Diamond Interest USA Ganoderma Chocolate Instant Chocolate Mixture  
17 with Ganoderma Powder – Lead, Cadmium
- 18 • Apricot Power Valerian Root 500 mg - Lead
- 19 • Apricot Power Coral Calcium - Cadmium

20 **1.2** ERC and APRICOT POWER are hereinafter referred to individually as a  
21 "Party" or collectively as the "Parties."

22 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
23 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
24 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
25 and encouraging corporate responsibility.

26 **1.4** For purposes of this Consent Judgment, the Parties agree that APRICOT POWER  
27 is a business entity that has employed ten or more persons at all times relevant to this action, and  
28

1 qualifies as a “person in the course of business” within the meaning of Proposition 65. APRICOT  
2 POWER manufactures, distributes, and/or sells the Covered Products.

3       **1.5**     The Complaint is based on allegations contained in ERC’s Notice of Violation  
4 dated April 29, 2016, that was served on the California Attorney General, other public  
5 enforcers, and APRICOT POWER (“Notice”). A true and correct copy of the Notice is attached  
6 as **Exhibit A** and is hereby incorporated by reference. More than 60 days have passed since the  
7 Notice was served on the Attorney General, public enforcers, and APRICOT POWER and no  
8 designated governmental entity has filed a complaint against APRICOT POWER with regard to  
9 the Covered Products or the alleged violations.

10       **1.6**     ERC’s Notice and Complaint allege that use of the Covered Products exposes  
11 persons in California to lead and/or cadmium without first providing clear and reasonable  
12 warnings in violation of California Health and Safety Code section 25249.6. APRICOT  
13 POWER denies all material allegations contained in the Notice and Complaint.

14       **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
15 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
16 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or  
17 be construed as an admission by any of the Parties or by any of their respective officers,  
18 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,  
19 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or  
20 violation of law.

21       **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
22 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
23 current or future legal proceeding unrelated to these proceedings.

24       **1.9**     The Effective Date of this Consent Judgment is the date on which ERC gives  
25 Notice of Entry of Judgment to Defendant.

## 26       **2.     JURISDICTION AND VENUE**

27       For purposes of this Consent Judgment and any further court action that may become  
28 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter

1 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
2 over APRICOT POWER as to the acts alleged in the Complaint, that venue is proper in Alameda  
3 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
4 resolution of all claims up through and including the Effective Date which were or could have  
5 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

7 **3.1** Beginning on the Effective Date, APRICOT POWER shall be permanently  
8 enjoined from manufacturing for sale in the State of California, "Distributing into the State of  
9 California", or directly selling in the State of California, any Covered Products which exposes a  
10 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or  
11 "Daily Cadmium Exposure Level" of more than 4.10 micrograms of cadmium per day unless it  
12 meets the warning requirements under Section 3.2.

13 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
14 of California" shall mean to directly ship a Covered Product into California for sale in  
15 California or to sell a Covered Product to a distributor that APRICOT POWER knows or has  
16 reason to know will sell the Covered Product in California.

17 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure  
18 Level" and "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be  
19 calculated using the following formula: micrograms of lead or cadmium per gram of product,  
20 multiplied by grams of product per serving of the product (using the largest serving size  
21 appearing on the product label), multiplied by servings of the product per day (using the largest  
22 number of servings in a recommended dosage appearing on the product label), which equals  
23 micrograms of lead or cadmium exposure per day.

24 If APRICOT POWER seeks to subtract out any amounts of naturally occurring  
25 lead listed in Table 3.1.2, APRICOT POWER shall provide ERC with the name of the Covered  
26 Product that APRICOT POWER contends contains naturally occurring lead, and a complete list  
27 showing all the ingredients in that Covered Product including the ingredients from Table 3.1.2  
28 that are contained in the Covered Product, as well as the amount in grams per serving of each

1 ingredient in the Covered Product. APRICOT POWER may update this information from time  
2 to time and will be entitled to submit this information to ERC confidentially

3 **TABLE 3.1.2**

4

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Elemental 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 micrograms/gram

15

16 **3.2 Clear and Reasonable Warnings**

17 If APRICOT POWER is required to provide a warning pursuant to Section 3.1, the  
18 following warning must be utilized (“Warning”):

19 **WARNING:** This product can expose you to chemicals including [lead] [and] [cadmium]  
20 which is [are] known to the State of California to cause [cancer and] birth defects or other  
21 reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

22 APRICOT POWER shall use the phrase “cancer and” in the Warning only if the “Daily Lead  
23 Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality  
24 control methodology set forth in Section 3.4. As identified in the brackets, the warning shall  
25 appropriately reflect whether there is lead, cadmium, or both chemicals present in each of the  
26 Covered Products.



1 The Warning shall be securely affixed to or printed upon the container or label of each  
2 Covered Product. In addition, for any Covered Product sold over APRICOT POWER's website,  
3 the Warning shall appear on the checkout page when a California delivery address is indicated  
4 for any purchase of any Covered Product. An asterisk or other identifying method must be  
5 utilized to identify which products on the checkout page are subject to the Warning.

6 The Warning shall be at least the same size as the largest of any other health or safety  
7 warnings also appearing on its website or on the label or container of APRICOT POWER's  
8 product packaging and the word "WARNING" shall be in all capital letters and in bold print. No  
9 statements intended to or likely to have the effect of diminishing the impact of the Warning on the  
10 average lay person shall accompany the Warning. Further, no statements may accompany the  
11 Warning that state or imply that the source of the listed chemical has an impact on or results in a  
12 less harmful effect of the listed chemical.

13 APRICOT POWER must display the above Warning with such conspicuousness, as  
14 compared with other words, statements, design of the label, container, or on its website, as  
15 applicable, to render the Warning likely to be read and understood by an ordinary individual under  
16 customary conditions of purchase or use of the product.

### 17 3.3 Reformulated Covered Products

18 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no  
19 greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" is no more  
20 than 4.10 micrograms of cadmium per day as determined by the quality control methodology  
21 described in Section 3.4.

### 22 3.4 Testing and Quality Control Methodology

23 3.4.1 Beginning within one year of the Effective Date, APRICOT POWER  
24 shall arrange for lead and/or cadmium testing of the Covered Products at least once a year for a  
25 minimum of five consecutive years by arranging for testing of five randomly selected samples  
26 of each of the Covered Products, in the form intended for sale to the end-user, which APRICOT  
27 POWER intends to sell or is manufacturing for sale in California, directly selling to a  
28 consumer in California or "Distributing into the State of California." If tests conducted

1 pursuant to this Section demonstrate that no Warning is required for a Covered Product during  
2 each of five consecutive years, then the testing requirements of this Section will no longer be  
3 required as to that Covered Product. However, if during or after the five-year testing period,  
4 APRICOT POWER changes ingredient suppliers for any of the Covered Products and/or  
5 reformulates any of the Covered Products, APRICOT POWER shall test that Covered Product  
6 annually for at least four (4) consecutive years after such change is made.

7           **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or  
8 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the five  
9 (5) randomly selected samples of the Covered Products will be controlling.

10           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
11 laboratory method that complies with the performance and quality control factors appropriate  
12 for the method used, including limit of detection, qualification, accuracy, and precision that  
13 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)  
14 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
15 method subsequently agreed to in writing by the Parties and approved by the Court through  
16 entry of a modified consent judgment.

17           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
18 independent third party laboratory certified by the California Environmental Laboratory  
19 Accreditation Program or an independent third-party laboratory that is registered with the  
20 United States Food & Drug Administration.

21           **3.4.5** Nothing in this Consent Judgment shall limit APRICOT POWER’s  
22 ability to conduct, or require that others conduct, additional testing of the Covered Products,  
23 including the raw materials used in their manufacture.

24           **3.4.6** Within thirty (30) days of ERC’s written request, APRICOT POWER  
25 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. APRICOT POWER shall  
26 retain all test results and documentation for a period of five years from the date of each test.

1     **4. SETTLEMENT PAYMENT**

2             **4.1**     In full satisfaction of all potential civil penalties, additional settlement  
3 payments, attorney's fees, and costs, APRICOT POWER shall make a total payment of  
4 \$40,000.00 ("Total Settlement Amount") plus eight percent (8%) interest per annum on the  
5 balance of \$20,000.00 that remains after the first payment is made to ERC. The Total Settlement  
6 Amount including interest shall be paid according to the following schedule ("Due Dates"):

7             a.     \$20,000.00 shall be paid within five (5) days of the Effective Date

8             b.     \$20,400.00 shall be paid within ninety (90) days of the Effective Date

9 APRICOT POWER shall make this payment by wire transfer to ERC's escrow account, for  
10 which ERC will give APRICOT POWER the necessary account information. The Total  
11 Settlement Amount shall be apportioned as follows:

12             **4.2**     \$2,985.52 shall be considered a civil penalty pursuant to California Health and  
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$2,239.14) of the civil penalty to the  
14 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
16 Code section 25249.12(c). ERC will retain the remaining 25% (\$746.38) of the civil penalty.

17             **4.3**     \$5,186.96 shall be distributed to ERC as reimbursement to ERC for reasonable  
18 costs incurred in bringing this action.

19             **4.4**     \$11,265.66 shall be distributed to Aqua Terra Aeris Law Group as  
20 reimbursement of ERC's attorney's fees, while \$20,561.86 shall be distributed to ERC for its  
21 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and  
22 costs.

23             **4.5**     In the event that APRICOT POWER fails to remit any of the settlement  
24 payments owed under Section 4 of this Consent Judgment on or before the Due Dates,  
25 APRICOT POWER shall be deemed to be in material breach of its obligations under this  
26 Consent Judgment. ERC shall provide written notice of the delinquency to APRICOT POWER  
27 via electronic mail. If APRICOT POWER fails to deliver the past due settlement  
28 payment within five (5) days from the written notice, the Total Settlement Payment shall be

1 immediately due and owing and shall accrue interest at the statutory judgment interest rate  
2 provided in the California Code of Civil Procedure section 685.010. Additionally, APRICOT  
3 POWER agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the  
4 payment due under this Consent Judgment.

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

6 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
7 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a  
8 modified consent judgment.

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

21 **5.3** In the event that APRICOT POWER initiates or otherwise requests a  
22 modification under Section 5.1, and the meet and confer process leads to a joint motion or  
23 application of the Consent Judgment, APRICOT POWER shall reimburse ERC its costs and  
24 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
25 arguing the motion or application.

26 **5.4** Where the meet-and-confer process does not lead to a joint motion or  
27 application in support of a modification of the Consent Judgment, then either Party may seek  
28 judicial relief on its own.

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 terminate  
4 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 APRICOT POWER in a reasonably prompt manner of its test results, including  
8 information sufficient to permit APRICOT POWER to identify the Covered Products at issue.  
9 APRICOT POWER shall, within thirty (30) days following such notice, provide ERC with  
10 testing information, from an independent third-party laboratory meeting the requirements of  
11 Sections 3.4.3 and 3.4.4, demonstrating APRICOT POWER's compliance with the Consent  
12 Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to ERC taking  
13 any further legal action.

14     **7.    APPLICATION OF CONSENT JUDGMENT**

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

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

22             **8.1**     This Consent Judgment is a full, final, and binding resolution between  
23 ERC, on behalf of itself and in the public interest, and APRICOT POWER and its respective  
24 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
25 suppliers, franchisees, licensees, customers (not including private label customers of APRICOT  
26 POWER), distributors, wholesalers, retailers, and all other upstream and downstream entities in  
27 the distribution chain of any Covered Product, and the predecessors, successors, and assigns of  
28 any of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the

1 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,  
2 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from  
3 the handling, use, or consumption of the Covered Products, as to any alleged violation of  
4 Proposition 65 or its implementing regulations arising from the failure to provide Proposition  
5 65 warnings on the Covered Products regarding lead and/or cadmium up to and including the  
6 Effective Date.

7           **8.2**           ERC on its own behalf only, and APRICOT POWER on its own behalf  
8 only, further waive and release any and all claims they may have against each other for all  
9 actions or statements made or undertaken in the course of seeking or opposing enforcement of  
10 Proposition 65 in connection with the Notice and Complaint up through and including the  
11 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
12 right to seek to enforce the terms of this Consent Judgment.

13           **8.3**           It is possible that other claims not known to the Parties, arising out of the facts  
14 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
15 discovered. ERC on behalf of itself only, and APRICOT POWER on behalf of itself only,  
16 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
17 claims up through and including the Effective Date, including all rights of action therefore.  
18 ERC and APRICOT POWER acknowledge that the claims released in Sections 8.1 and 8.2  
19 above may include unknown claims, and nevertheless waive California Civil Code section  
20 1542 as to any such unknown 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  
24           KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
25           OR HER SETTLEMENT WITH THE DEBTOR.

26 ERC on behalf of itself only, and APRICOT POWER on behalf of itself only, acknowledge and  
27 understand the significance and consequences of this specific waiver of California Civil Code  
28 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 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

4           **8.5**     Nothing in this Consent Judgment is intended to apply to any occupational or  
5 environmental exposures arising under Proposition 65, nor shall it apply to any of APRICOT  
6 POWER's 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 via first-class mail. Courtesy copies via  
16 email may also be sent.

17 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

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 MATTHEW C. MACLEAR  
25 ANTHONY M. BARNES  
26 AQUA TERRA AERIS LAW GROUP  
27 7425 Fairmount Ave.  
28 El Cerrito, CA 94530  
Ph: 415-568-5200  
Email: mcm@atalawgroup.com  
Facsimile: (510) 540-5543

1 **APRICOT POWER, INC.**

2 John Richardson  
3 720 South Main Street  
4 Lakeport, CA 94553  
5 Ph: (707) 262-1394  
6 Email: john@apricotpower.com

7 With a copy to:

8 R. MORGAN GILHULY  
9 DAVID M. METRES  
10 BARG COFFIN LEWIS & TRAPP, LLP  
11 350 California Street, 22nd Floor  
12 San Francisco, CA 94104  
13 Ph: 415-228-5400  
14 Email: mgilhuy@bargcoffin.com  
15 dmetres@bargcoffin.com  
16 Facsimile: 415-228-5450

17 **12. COURT APPROVAL**

18 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
19 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
20 Consent Judgment.

21 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
22 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
23 prior to the hearing on the motion.

24 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
25 void and have no force or effect.

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 to be 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 and  
conditions with legal counsel. The Parties agree that, in any subsequent interpretation and



1 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
2 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
3 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
4 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
5 equally in the preparation and drafting of this Consent Judgment.

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

7 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
8 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in  
9 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be  
10 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

11 **16. ENFORCEMENT**

12 ERC may, by motion or order to show cause before the Superior Court of Alameda  
13 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
14 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
15 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
16 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
17 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,  
18 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by  
19 law for failure to comply with Proposition 65 or other laws.

20 **17. ENTIRE AGREEMENT, AUTHORIZATION**

21 **17.1** This Consent Judgment contains the sole and entire agreement and  
22 understanding of the Parties with respect to the entire subject matter herein, and any and all  
23 prior discussions, negotiations, commitments, and understandings related hereto. No  
24 representations, oral or otherwise, express or implied, other than those contained herein have  
25 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
26 herein, shall be deemed to exist or to bind any Party.

27 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
28 authorized by the Party he or she represents to stipulate to this Consent Judgment.

1 18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF  
2 CONSENT JUDGMENT

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

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

9 (2) Make the findings pursuant to Canon 41 Item 4 and safety code section  
10 252-29.2(d)(4), approve the Settlement, and approve this Consent Judgment.

11 IT IS SO STIPULATED:

12 Date 1/19/ 2017

ENVIRONMENTAL RESEARCH  
CENTERS



13 Date 1/23 2017


APRICO POWER, INC.

  
BY THOMAS A. GARDNER  
PRESIDENT

20 APPROVED AS TO FORM:


21 Date 1/23 2017

AQUA TERRA JURIS LAW GROUP

  
Matthew C. Maziar  
Anthony N. Barbo  
Attorneys for Pharmaceutical  
Research Center, Inc.

1 Dated: January 24, 2017

BARG COFFIN LEWIS & TRAPP, LLP

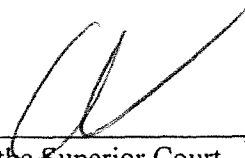
2  
3 By:   
4 R. Morgan Gilhuly  
5 David M. Metres  
6 Attorneys for Defendant Apricot Power,  
7 Inc.

8 **ORDER AND JUDGMENT**

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

11 IT IS SO ORDERED, ADJUDGED AND DECREED.

12 Dated: 3/24, 2017

13   
14 \_\_\_\_\_  
15 Judge of the Superior Court