



FILED
ALAMEDA COUNTY

SEP 18 2018

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

1 MATTHEW C. MACLEAR (SBN 209228)
2 ANTHONY M. BARNES (SBN 199048)
3 AQUA TERRA AERIS LAW GROUP
4 828 San Pablo Ave, Suite 115B
5 Albany, CA 94706
6 Ph: 415-568-5200
7 Email: mcm@atalawgroup.com

8 Attorneys for Plaintiff
9 ENVIRONMENTAL RESEARCH CENTER, INC.

10 ALEJANDRO L. BRAS
11 MORRISON & FOERSTER
12 425 Market Street
13 San Francisco, CA 94105-2482
14 Ph: 415-268-7569
15 Email: abras@mofo.com

16 Attorney for Defendant
17 NYR ORGANIC, INC.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **COUNTY OF ALAMEDA**

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

22 Plaintiff,

23 v.

24 NYR ORGANICS, INC., individually and
25 doing business as NEAL'S YARD
26 REMEDIES, a New York corporation;
27 NEAL'S YARD (NATURAL REMEDIES)
28 LIMITED, a United Kingdom limited
company; and DOES 1 - 25,

Defendants.

CASE NO. RG18905937

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

May 22, 2018

Trial Date: None set

1. INTRODUCTION

1.1 On May 22, 2018, 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 Complaint for Permanent Injunction, Civil Penalties and Other Relief (the

1 “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5
2 *et seq.* (“Proposition 65”), against NYR ORGANIC, INC., individually and doing business as
3 NEAL’S YARD REMEDIES (“NYR ORGANIC”), NEAL’S YARD (NATURAL
4 REMEDIES) LIMITED and Does 1-100. Should the Motion to Approve this Consent
5 Judgment be granted, as a material component to the Motion to Approve NEAL’S YARD
6 (NATURAL REMEDIES) LIMITED will be dismissed from this action with prejudice. In this
7 action, ERC alleges that a number of products manufactured, distributed, or sold by NYR
8 ORGANIC contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens
9 and reproductive toxins, and expose consumers to these chemicals at a level requiring a
10 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered
11 Product” or collectively as “Covered Products”) are: (1) Neal's Yard Remedies Covent Garden
12 Superfood Organic Greens Complex With Purifying Chlorella (allegedly containing lead) and
13 (2) Neal's Yard Remedies Covent Garden Superfood Organic Cocoa Blend Rebalance Increase
14 Relaxation (allegedly containing cadmium).

15 1.2 ERC and NYR ORGANIC are hereinafter referred to individually as a “Party”
16 or collectively as the “Parties.”

17 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
18 causes, helping safeguard the public from health hazards by reducing the use and misuse of
19 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
20 and encouraging corporate responsibility.

21 1.4 For purposes of this Consent Judgment, the Parties agree that defendant qualifies
22 as a “person in the course of doing business” within the meaning of Proposition 65. NYR
23 ORGANIC manufactures, distributes, and/or sells the Covered Products.

24 1.5 The Complaint is based on allegations contained in ERC’s Notice of Violation
25 dated March 2, 2018 that was served on the California Attorney General, other public
26 enforcers, and NYR ORGANIC (“Notice”). A true and correct copy of the 60-Day Notice dated
27 March 2, 2018 is attached hereto as **Exhibit A** and incorporated herein by reference. More
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1 than 60 days have passed since the Notice was served on the Attorney General, public
2 enforcers, and NYR ORGANIC and no designated governmental entity has filed a complaint
3 against NYR ORGANIC with regard to the Covered Products or the alleged violations.

4 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
5 persons in California to lead and/or cadmium without first providing clear and reasonable
6 warnings in violation of California Health and Safety Code section 25249.6. NYR ORGANIC
7 denies all material allegations contained in the Notice and Complaint, asserts multiple
8 affirmative defenses to the allegations, and denies that the Covered Products require any
9 warning under Proposition 65 or otherwise cause any harm.

10 **1.7** The Parties have entered into this Consent Judgment in order to settle,
11 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
12 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
13 be construed as an admission by any of the Parties or by any of their respective officers,
14 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
15 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
16 violation of law.

17 **1.8** 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 current or future legal proceeding unrelated to these proceedings.

20 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
21 a Judgment by this Court.

22 **2. JURISDICTION AND VENUE**

23 For purposes of this Consent Judgment and any further court action that may become
24 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
25 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
26 over NYR ORGANIC as to the acts alleged in the Complaint, that venue is proper in Alameda
27 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
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1 resolution of all claims up through and including the Effective Date which were or could have
2 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

4 **3.1** Beginning on the Effective Date, NYR ORGANIC shall be permanently
5 enjoined from manufacturing for sale in the State of California, "Distributing into the State of
6 California," or directly selling in the State of California, any Covered Products which expose a
7 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or
8 "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it
9 meets the warning requirements under Section 3.2.

10 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
11 of California" shall mean to directly ship a Covered Product into California for sale in
12 California or to sell a Covered Product to a distributor that NYR ORGANIC knows or has
13 reason to know will sell the Covered Product in California.

14 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
15 Level" shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of lead per gram of product, multiplied by grams of product per serving of the
17 product (using the largest serving size appearing on the product label), multiplied by servings
18 of the product per day (using the largest number of recommended daily servings appearing on
19 the label), which equals micrograms of lead exposure per day. If the label contains no
20 recommended daily servings, then the number of recommended daily servings shall be one.

21 **3.1.3** For purposes of this Consent Judgment, the "Daily Cadmium Exposure
22 Level" shall be measured in micrograms, and shall be calculated using the following formula:
23 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the
24 product (using the largest serving size appearing on the product label), multiplied by servings
25 of the product per day (using the largest number of recommended daily servings appearing on
26 the label), which equals micrograms of cadmium exposure per day. If the label contains no
27 recommended daily servings, then the number of recommended daily servings shall be one.

1 **3.2 Clear and Reasonable Warnings**

2 If NYR ORGANIC is required to provide a warning pursuant to Section 3.1, one of the
3 following warning options must be utilized (“Warning”):

4 **OPTION 1:**

5 **WARNING:** Consuming this product can expose you to [chemicals including] [lead]
6 [and] [cadmium] which is [are] known to the State of California to cause [cancer and] birth
7 defects or other reproductive harm. For more information go to
8 www.P65Warnings.ca.gov/food.

8 OR

9 **OPTION 2:**

10 **ΔWARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov.

11 NYR ORGANIC shall use the phrase “cancer and” in the Warning if NYR ORGANIC has
12 reason to believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead
13 as determined pursuant to the quality control methodology set forth in Section 3.4 or if NYR
14 ORGANIC has reason to believe that another Proposition 65 chemical is present which may
15 require a cancer warning. As identified in the brackets, the warning shall appropriately reflect
16 whether there is lead or cadmium present in each of the Covered Products. The words “chemicals
17 including” may be deleted from the warning content if the warning is being provided for an
18 exposure to a single chemical.

19 The Warning shall be securely affixed to or printed upon the container or label of each
20 Covered Product. If the Warning is provided on the label, it must be set off from other
21 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
22 the internet where a California delivery address is indicated, the Warning shall be provided either
23 by including the Warning on the product display page, by otherwise prominently displaying the
24 Warning to the purchaser during the checkout process prior to completing the purchase, or by
25 any other means authorized under Section 25607.1 of Title 27 of the California Code of
26 Regulations. An asterisk or other identifying method must be utilized to identify which products
27 on the checkout page are subject to the Warning.

28 In the event NYR ORGANIC provides the Warning pursuant to OPTION 2, above, the

1 entire Warning must be in a type size no smaller than the largest type size used for other consumer
2 information on the product, and in no case shall the Warning appear in a type size smaller than 6-
3 point type. For all Warnings, the word “WARNING” shall be in all capital letters and in bold
4 print. No statements intended to or likely to have the effect of diminishing the impact of the
5 Warning on the average lay person shall accompany the Warning. Further, no statements may
6 accompany the Warning that state or imply that the source of the listed chemical has an impact on
7 or results in a less harmful effect of the listed chemical.

8 NYR ORGANIC must display the above Warning with such conspicuousness, as
9 compared with other words, statements or designs on the label or container, or on its website, if
10 applicable, to render the Warning likely to be read and understood by an ordinary individual under
11 customary conditions of purchase or use of the product.

12 3.3 Reformulated Covered Products

13 A Reformulated Covered Product is a Covered Product for which the “Daily Lead
14 Exposure Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium
15 Exposure Level” is no more than 4.1 micrograms of cadmium per day as determined by the quality
16 control methodology described in Section 3.4.

17 3.4 Testing and Quality Control Methodology

18 3.4.1 Beginning within one year of the Effective Date, NYR ORGANIC shall
19 arrange for lead and/or cadmium testing of the Covered Products at least once a year for a
20 minimum of three consecutive years by arranging for testing of three randomly selected
21 samples of each of the Covered Products, in the form intended for sale to the end-user, which
22 NYR ORGANIC intends to sell or is manufacturing for sale in California, directly selling to a
23 consumer in California or “Distributing into the State of California.” If tests conducted
24 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
25 each of three consecutive years, then the testing requirements of this Section will no longer be
26 required as to that Covered Product. However, if during or after the three year testing period,
27 NYR ORGANIC changes ingredient suppliers for any of the Covered Products and/or

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1 reformulates any of the Covered Products, NYR ORGANIC shall test that Covered Product
2 annually for at least two consecutive years after such change is made, but in no event shall all
3 testing on the Covered Product be for less than three years.

4 3.4.2 For purposes of measuring the “Daily Lead Exposure Level” and/or
5 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the
6 three (3) randomly selected samples of the Covered Products will be controlling.

7 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
8 laboratory method that complies with the performance and quality control factors appropriate
9 for the method used, including limit of detection, qualification, accuracy, and precision that
10 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
11 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

12 3.4.4 All testing pursuant to this Consent Judgment shall be performed by an
13 independent third party laboratory certified by the California Environmental Laboratory
14 Accreditation Program or an independent third-party laboratory that is registered with the
15 United States Food & Drug Administration.

16 3.4.5 Nothing in this Consent Judgment shall limit NYR ORGANIC’s ability
17 to conduct, or require that others conduct, additional testing of the Covered Products, including
18 the raw materials used in their manufacture.

19 3.4.6 Within thirty (30) days of ERC’s written request, NYR ORGANIC shall
20 deliver lab reports obtained pursuant to Section 3.4 to ERC. NYR ORGANIC shall retain all
21 test results and documentation for a period of three years from the date of each test.

22 4. **SETTLEMENT PAYMENT**

23 4.1 In full satisfaction of all potential civil penalties, additional settlement payments,
24 attorney’s fees, and costs, NYR ORGANIC shall make a total payment of \$27,000 (“Total
25 Settlement Amount”) to ERC within 14 days of the Effective Date (“Due Date”). NYR
26 ORGANIC shall make this payment by wire transfer to ERC’s account, for which ERC will
27 give NYR ORGANIC the necessary account information. The Total Settlement Amount shall
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1 be apportioned as follows:

2 4.2 \$1,500.00 shall be considered a civil penalty pursuant to California Health and
3 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$1,125.00) of the civil penalty to the
4 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
5 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
6 Code section 25249.12(c). ERC will retain the remaining 25% (\$375.00) of the civil penalty.

7 4.3 \$3,283.20 shall be distributed to ERC as reimbursement to ERC for reasonable
8 costs incurred in bringing this action.

9 4.4 \$9,690.00 shall be distributed to Aqua Terra Aeris Law Group as reimbursement
10 of ERC’s attorney’s fees, while \$12,526.80 shall be distributed to ERC for its in-house legal
11 fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

12 4.5 In the event that NYR ORGANIC fails to remit the Total Settlement Amount
13 owed under Section 4 of this Consent Judgment on or before the Due Date, NYR ORGANIC
14 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
15 shall provide written notice of the delinquency to NYR ORGANIC via electronic mail. If NYR
16 ORGANIC fails to deliver the Total Settlement Amount within five (5) days from the written
17 notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate
18 provided in the California Code of Civil Procedure section 685.010. Additionally, NYR
19 ORGANIC agrees to pay ERC’s reasonable attorney’s fees and costs for any efforts to collect
20 the payment due under this Consent Judgment.

21 **5. MODIFICATION OF CONSENT JUDGMENT**

22 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by
23 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
24 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
25 modified consent judgment.

26 5.2 If either party seeks to modify this Consent Judgment under Section 5.1, then
27 that party must provide written notice to the other party of its intent (“Notice of Intent”). If the
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1 noticed party seeks to meet and confer regarding the proposed modification in the Notice of
2 Intent, then the noticed party must provide written notice to the noticing party within thirty (30)
3 days of receiving the Notice of Intent. If the noticed party notifies noticing party in a timely
4 manner of their intent to meet and confer, then the Parties shall meet and confer in good faith as
5 required in this Section. The Parties shall meet in person or via telephone within thirty (30)
6 days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such
7 meeting, if the noticed party disputes the proposed modification, the noticed party shall
8 provide to the noticing party a written basis for its position. The Parties shall continue to meet
9 and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.
10 Should it become necessary, the Parties may agree in writing to different deadlines for the
11 meet-and-confer period.

12 5.3 In the event that NYR ORGANIC initiates or otherwise requests a modification
13 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
14 modification of the Consent Judgment, NYR ORGANIC shall reimburse ERC its costs and
15 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
16 arguing the motion or application. ERC shall not be reimbursed for costs or attorneys' fees for
17 an uncontested motion, or for a ministerial motion (such as a change in name or contact
18 information) or if ERC does not expend more than two (2) hours of attorney time on the joint
19 motion.

20 5.4 Where the meet-and-confer process does not lead to a joint motion or
21 application in support of a modification of the Consent Judgment, then either Party may seek
22 judicial relief on its own.

23 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
24 **JUDGMENT**

25 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
26 this Consent Judgment.

27 6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated
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1 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
2 inform NYR ORGANIC in a reasonably prompt manner of its test results, including
3 information sufficient to permit NYR ORGANIC to identify the Covered Products at issue.
4 NYR ORGANIC shall, within thirty (30) days following such notice, provide ERC with testing
5 information, from an independent third-party laboratory meeting the requirements of Sections
6 3.4.3 and 3.4.4, demonstrating NYR ORGANIC's compliance with the Consent Judgment, if
7 warranted. The Parties shall first attempt to resolve the matter in good faith prior to ERC
8 taking any further legal action.

9 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

17 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
18 on behalf of itself and in the public interest, and NYR ORGANIC and its respective officers,
19 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
20 franchisees, licensees, customers (not including private label customers of NYR ORGANIC),
21 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
22 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
23 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
24 hereby fully releases and discharges the Released Parties from any and all claims, actions,
25 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
26 asserted, or that could have been asserted from the handling, use, or consumption of the
27 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
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1 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
2 lead and/or cadmium up to and including the Effective Date.

3 **8.2** ERC on its own behalf only, and NYR ORGANIC on its own behalf only,
4 further waive and release any and all claims they may have against each other for all actions or
5 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
6 65 in connection with the Notice and Complaint up through and including the Effective Date,
7 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
8 enforce the terms of this Consent Judgment.

9 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
10 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
11 discovered. ERC on behalf of itself only, and NYR ORGANIC on behalf of itself only,
12 acknowledge that this Consent Judgment is expressly intended to cover and include all such
13 claims up through and including the Effective Date, including all rights of action therefore.
14 ERC and NYR ORGANIC acknowledge that the claims released in Sections 8.1 and 8.2 above
15 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
16 any such unknown claims. California Civil Code section 1542 reads as follows:

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

22 ERC on behalf of itself only, and NYR ORGANIC on behalf of itself only, acknowledge and
23 understand the significance and consequences of this specific waiver of California Civil Code
24 section 1542.

25 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
26 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
27 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

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1 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or
2 environmental exposures arising under Proposition 65, nor shall it apply to any of NYR
3 ORGANIC's products other than the Covered Products.

4 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7 **10. GOVERNING LAW**

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

10 **11. PROVISION OF NOTICE**

11 All notices required to be given to either Party to this Consent Judgment by the other shall
12 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
13 email may also be sent.

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

15 Chris Heptinstall, Executive Director, Environmental Research Center
16 3111 Camino Del Rio North, Suite 400
17 San Diego, CA 92108
18 Tel: (619) 500-3090
19 Email: chris_erc501c3@yahoo.com

20 With a copy to:

21 MATTHEW C. MACLEAR
22 ANTHONY M. BARNES
23 AQUA TERRA AERIS LAW GROUP
24 828 San Pablo Ave, Suite 115B
25 Albany, CA 94706
26 Ph: 415-568-5200
27 Email: mcm@atalawgroup.com

28 **NYR ORGANIC, INC.**

Giacomo Corrado
745 Fifth Avenue, Suite 500
New York, New York 10151
212-838-0600
gjc@corradoesquire.com

1 With a copy to:
2 ALEJANDRO L. BRAS
3 MORRISON & FOERSTER
4 425 Market Street
5 San Francisco, CA 94105-2482
6 415-268-7569
7 Email: abras@mofo.com

8 **12. COURT APPROVAL**

9 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
10 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
11 Consent Judgment.

12 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
13 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
14 prior to the hearing on the motion.

15 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
16 void and have no force or effect.

17 **13. EXECUTION AND COUNTERPARTS**

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

21 **14. DRAFTING**

22 The terms of this Consent Judgment have been reviewed by the respective counsel for each
23 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
24 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
25 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
26 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
27 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
28 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
equally in the preparation and drafting of this Consent Judgment.

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

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

6 **16. ENFORCEMENT**

7 ERC may, by motion or order to show cause before the Superior Court of Alameda
8 County, enforce the terms and conditions contained in this Consent Judgment. In any action
9 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
10 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

11 **17. ENTIRE AGREEMENT, AUTHORIZATION**

12 **17.1** This Consent Judgment contains the sole and entire agreement and
13 understanding of the Parties with respect to the entire subject matter herein, and any and all
14 prior discussions, negotiations, commitments, and understandings related hereto. No
15 representations, oral or otherwise, express or implied, other than those contained herein have
16 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
17 herein, shall be deemed to exist or to bind any Party.

18 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
19 authorized by the Party he or she represents to stipulate to this Consent Judgment.

20 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
21 **CONSENT JUDGMENT**

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

25 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
26 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
27 been diligently prosecuted, and that the public interest is served by such settlement; and
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1 (2) Make the findings pursuant to California Health and Safety Code section
2 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.
3

4 **IT IS SO STIPULATED:**
5

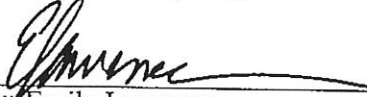
6 Dated: 7/16/, 2018
7

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Herpin, Executive Director

10 Dated: July 17, 2018
11

NYR ORGANIC, INC.



By: Emily Lawrence
Its: Chief Financial Officer

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19 ///
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22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 APPROVED AS TO FORM:
2
3

4 Dated: July 16, 2018
5 _____, 2018


AQUA TERRA AERIS LAW GROUP

6 By: 
7 _____

8 Matthew C. Maclear
9 Anthony M. Barnes
10 Attorneys for Plaintiff Environmental
11 Research Center, Inc.

12 Dated: July 17, 2018
13 _____, 2018

MORRISON & FOERSTER

14 By: 
15 _____

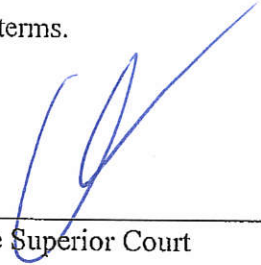
16 Alejandro L. Bras
17 Attorney for Defendant NYR
18 Organic, Inc.,
19
20

21 ORDER AND JUDGMENT

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

24 IT IS SO ORDERED, ADJUDGED AND DECREED.

25 Dated: 9/18
26 _____, 2018

27 
28 _____
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG18905937

Case name: Environmental Research Center, Inc. v. NYR Organics, Inc.

CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause and that a true and correct copy of this Order was emailed to the addresses shown on at the bottom of this document.

Dated: September 19, 2018

Jhalisa A. Castaneda

Courtroom Clerk, Dept. 23

Matthew C. Maclear
mcm@atalawgroup.com

Anthony M. Barnes
amb@atalawgroup.com

Alejandro L. Bras
abras@mofoc.com