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FILED
 ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
 By Jan Zilman Deputy

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 14 WINDMILL HEALTH PRODUCTS, LLC,
 individually and d/b/a COUNTRY FARMS

15
 16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 17 **COUNTY OF ALAMEDA**

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

20 Plaintiff,

21 v.

22 WINDMILL HEALTH PRODUCTS, LLC,
 23 individually and doing business as COUNTRY
 FARMS and DOES 1 – 100,

24 Defendants.

CASE NO. RG18907037

STIPULATED CONSENT
 JUDGMENT

FORWARDED
 Health & Safety Code § 25249.5 et seq.

Action Filed: May 30, 2018

Trial Date: None set

25
 26 **1. INTRODUCTION**

27 1.1 On May 30, 2018, Plaintiff Environmental Research Center, Inc. ("ERC"), a
 28 non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
3 ("Proposition 65"), against WINDMILL HEALTH PRODUCTS, LLC, individually and doing
4 business as COUNTRY FARMS ("WINDMILL") and DOES 1-100. In this action, ERC
5 alleges that a number of products manufactured, distributed, or sold by WINDMILL contain
6 lead or lead and cadmium, chemicals listed under Proposition 65 as carcinogens and
7 reproductive toxins, and expose consumers to these chemicals at levels requiring a Proposition
8 65 warning. These products (referred to hereinafter individually as a "Covered Product" or
9 collectively as "Covered Products") are:

- 10 • **Country Farms Farm Fresh Nutrition Bountiful Beets Delicious Natural**
11 **Flavor (lead)**
- 12 • **Country Farms Farm Fresh Nutrition Super Greens Certified Organic**
13 **Whole Food Formula Delicious Apple Banana Flavor (lead)**
- 14 • **Country Farms Farm Fresh Nutrition Super Greens Certified Organic**
15 **Whole Food Formula Delicious Berry Flavor (lead)**
- 16 • **Country Farms Farm Fresh Nutrition Plant Protein Super Greens**
17 **Protein Shake Tahitian Vanilla Flavor (lead)**
- 18 • **Country Farms Farm Fresh Nutrition Super Reds Berry Flavor (lead)**
- 19 • **Country Farms Farm Fresh Nutrition Super Greens Certified Organic**
20 **Whole Food Formula Delicious Chocolate Flavor (lead, cadmium)**
- 21 • **Country Farms Farm Fresh Nutrition 7 Day Inner Cleanse Two-Part**
22 **AM/PM Detox System which includes the following products: a. Country**
23 **Farms Farm Fresh Nutrition 7 Day Inner Cleanse Two-Part AM/PM**
24 **Detox System AM Cleanse Formula and b. Country Farms Farm Fresh**
25 **Nutrition 7 Day Inner Cleanse Two-Part AM/PM Detox System PM**
26 **Restore Formula (lead)**
- 27 • **Country Farms Farm Fresh Nutrition Super Greens Certified Organic**
28 **Whole Food Formula Delicious Natural Flavor (lead)**

1.2 ERC and WINDMILL are hereinafter referred to individually as a "Party" or
collectively as the "Parties."

1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
causes, helping safeguard the public from health hazards by reducing the use and misuse of

1 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
2 and encouraging corporate responsibility.

3 1.4 For purposes of this Consent Judgment, the Parties agree that WINDMILL is a
4 business entity that has employed ten or more persons at all times relevant to this action and
5 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
6 WINDMILL manufactures, distributes, and/or sells the Covered Products.

7 1.5 The Complaint is based on allegations contained in ERC’s Notice of Violation
8 dated March 20, 2018 that was served on the California Attorney General, other public
9 enforcers, and WINDMILL (“Notice”). A true and correct copy of the Notice is attached
10 hereto as **Exhibit A** and is incorporated herein by reference. More than 60 days have passed
11 since the Notice was served on the Attorney General, public enforcers, and WINDMILL and no
12 designated governmental entity has filed a complaint against WINDMILL with regard to the
13 Covered Products or the alleged violations.

14 1.6 ERC’s Notice and Complaint allege that use of the Covered Products exposes
15 persons in California to lead or cadmium, or both, without first providing clear and reasonable
16 warnings in violation of California Health and Safety Code section 25249.6. WINDMILL
17 denies all material allegations contained in the Notice and Complaint.

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

25 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
27 current or future legal proceeding unrelated to these proceedings.

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1 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
2 a Judgment by this Court.

3 **2. JURISDICTION AND VENUE**

4 For purposes of this Consent Judgment and any further court action that may become
5 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
6 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
7 over WINDMILL as to the acts alleged in the Complaint, that venue is proper in Alameda County,
8 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
9 all claims up through and including the Effective Date which were or could have been asserted in
10 this action based on the facts alleged in the Notice and Complaint.

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

12 3.1 Beginning within three months of the Effective Date (the "Compliance Date"),
13 WINDMILL shall be permanently enjoined from manufacturing for sale in the State of
14 California, "Distributing into the State of California," or directly selling in the State of
15 California, any Covered Products which expose a person to a "Daily Lead Exposure Level" of
16 more than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" of more
17 than 4.1 micrograms of cadmium per day unless it meets the warning requirements under
18 Section 3.2.

19 3.1.1 As used in this Consent Judgment, the term "Distributing into the State
20 of California" shall mean to directly ship a Covered Product into California for sale in
21 California or to sell a Covered Product to a distributor that WINDMILL knows or has reason to
22 know will sell the Covered Product in California.

23 3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure
24 Level" shall be measured in micrograms, and shall be calculated using the following formula:
25 micrograms of lead per gram of product, multiplied by grams of product per serving of the
26 product (using the largest serving size appearing on the product label), multiplied by servings
27 of the product per day (using the largest number of recommended daily servings appearing on
28 the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section

1 3.1.4, amounts of allowances of lead in the ingredients listed in **Table 1** below. If the label
2 contains no recommended daily servings, then the number of recommended daily servings shall
3 be one.

4 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
5 Level” shall be measured in micrograms, and shall be calculated using the following formula:
6 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the
7 product (using the largest serving size appearing on the product label), multiplied by servings
8 of the product per day (using the largest number of recommended daily servings appearing on
9 the label), which equals micrograms of cadmium exposure per day. If the label contains no
10 recommended daily servings, then the number of recommended daily servings shall be one

11 **3.1.4** In calculating the Daily Lead Exposure Level for a Covered Product,
12 WINDMILL shall be allowed to deduct the amount of lead which is deemed “naturally
13 occurring” in any ingredient listed in **Table 1** that is contained in that Covered Product. under
14 the following conditions: For each year that WINDMILL claims entitlement to a “naturally
15 occurring” allowance, WINDMILL shall provide ERC with the following information: (a)
16 WINDMILL must produce to ERC a list of each ingredient in the Covered Product for which a
17 “naturally occurring” allowance is claimed; (b) WINDMILL must provide ERC with
18 documentation of laboratory testing that complies with Sections 3.4.3 and 3.4.4 and that shows
19 the amount of lead, if any, contained in any ingredient listed in **Table 1** that is contained in the
20 Covered Product and for which WINDMILL intends to deduct “naturally occurring” lead; (c) If
21 the laboratory testing reveals the presence of lead in any ingredient listed in **Table 1** that is
22 contained in the Covered Product, WINDMILL shall be entitled to deduct up to the full amount
23 of the allowance for that ingredient, as listed in **Table 1**, but not to exceed the total amount of
24 lead actually contained in that ingredient in the Covered Product; and (d) If the Covered Product
25 does not contain an ingredient listed in **Table 1**, WINDMILL shall not be entitled to a deduction
26 for “naturally occurring” lead in the Covered Product for that ingredient. The information
27 required by Sections 3.1.4 (a) and (b) shall be provided to ERC within thirty (30) days of the
28

1 Effective Date, or anniversary thereof, for any year that WINDMILL shall claim entitlement to
2 the "naturally occurring" allowance:

3 **TABLE 1**

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (Elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa-powder	Up to 1.0 micrograms/gram

15 **3.2 Clear and Reasonable Warnings**

16 If WINDMILL is required to provide a warning pursuant to Section 3.1, the following
17 warning must be utilized ("Warning"):

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

21 WINDMILL shall use the phrase "cancer and" in the Warning if WINDMILL has reason to
22 believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined
23 pursuant to the quality control methodology set forth in Section 3.4 or if WINDMILL has reason
24 to believe that another Proposition 65 chemical is present which may require a cancer warning.

25 WINDMILL shall provide the Warning to consumers of each Covered Product, either on
26 the label of each Covered Product or through an online Warning prior to purchase. If
27 WINDMILL, itself or by or through third-parties, provides the Covered Products to the public
28 other than through WINDMILL's own website, WINDMILL must provide the Warning on the
label of each Covered Product. If the Warning is provided on the label, it must be set off from

1 other surrounding information and enclosed in a box. In addition, for any Covered Product sold
2 over the internet where a California delivery address is indicated, the Warning shall be provided
3 either by including the Warning on the product display page or by otherwise prominently
4 displaying the Warning to the purchaser prior to completing the purchase as authorized by
5 Section 25602(b) of Title 27 of the California Code of Regulations. An asterisk or other
6 identifying method must be utilized to identify which products on the checkout page are subject
7 to the Warning. Further, the online warning shall not be displayed in a manner wherein the
8 purchaser must search for it in the general contents of the website.

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

16 WINDMILL must display the above Warning with such conspicuousness, as compared
17 with other words, statements or designs on the label or container, or on its website, if applicable, to
18 render the Warning likely to be read and understood by an ordinary individual under customary
19 conditions of purchase or use of the product.

20 **3.3 Reformulated Covered Products**

21 A Reformulated Covered Product is a Covered Product for which the "Daily Lead
22 Exposure Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium
23 Exposure Level" is no more than 4.1 micrograms of cadmium per day as determined by the quality
24 control methodology described in Section 3.4.

25 **3.4 Testing and Quality Control Methodology**

26 **3.4.1** Beginning within one year of the Effective Date, WINDMILL shall
27 arrange for lead and cadmium testing of the Covered Products at least once a year for a
28 minimum of three consecutive years by arranging for testing of three randomly selected

1 samples of each of the Covered Products, in the form intended for sale to the end-user, which
2 WINDMILL intends to sell or is manufacturing for sale in California, directly selling to a
3 consumer in California or "Distributing into the State of California." If tests conducted
4 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
5 each of three consecutive years, then the testing requirements of this Section will no longer be
6 required as to that Covered Product. However, if during or after the three-year testing period,
7 WINDMILL changes ingredient suppliers for any of the Covered Products and/or reformulates
8 any of the Covered Products, WINDMILL shall test that Covered Product annually for at least
9 three (3) consecutive years after such change is made.

10 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or
11 "Daily Cadmium Exposure Level," the arithmetic mean of the lead and cadmium detection
12 results of the three (3) randomly selected samples of the Covered Products will be controlling.

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

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

24 **3.4.5** Nothing in this Consent Judgment shall limit WINDMILL's ability to
25 conduct, or require that others conduct, additional testing of the Covered Products, including
26 the raw materials used in their manufacture.

27 **3.4.6** Within thirty (30) days of receiving a written notice of further violation
28 from ERC, WINDMILL shall deliver lab reports obtained pursuant to Section 3.4 to ERC.

1 WINDMILL shall retain all test results and documentation for a period of three years from the
2 date of each test. ERC shall treat all documents provided as confidential.

3 3.4.7 Except for the requirements of Section 3.1, the testing requirements of
4 Section 3.4 of this Consent Judgment shall not apply to any Covered Products for which a
5 Warning is provided, continuously and without interruption after the Compliance Date,
6 pursuant to Section 3.

7 4. SETTLEMENT PAYMENT

8 4.1 In full satisfaction of all potential civil penalties, additional settlement payments,
9 attorney's fees, and costs, WINDMILL shall make a total payment of \$180,000 ("Total
10 Settlement Amount") to ERC in two equal installments (each an "Installment Payment"). The
11 first Installment Payment shall be made within 5 days of the Effective Date or January 2, 2019,
12 whichever is later. The second Installment Payment shall be made within 35 days of the
13 Effective Date or February 2, 2019, whichever is later.

14 WINDMILL shall make each Installment Payment by wire transfer to ERC's account,
15 for which ERC will give WINDMILL the necessary account information on or before the
16 Effective Date. The Total Settlement Amount shall be apportioned as follows:

17 4.2 \$75,183.79 of the Total Settlement Amount shall be considered a civil penalty
18 pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75%
19 (\$56,387.84) of the civil penalty to the Office of Environmental Health Hazard Assessment
20 ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in
21 accordance with California Health and Safety Code section 25249.12(c). ERC will retain the
22 remaining 25% (18,795.95) of the civil penalty.

23 4.3 \$4,831.42 of the Total Settlement Amount shall be distributed to ERC as
24 reimbursement to ERC for reasonable costs incurred in bringing this action.

25 4.4 \$56,387.76 of the Total Settlement Amount shall be distributed to ERC as an
26 Additional Settlement Payment ("ASP"), pursuant to California Code of Regulations, title 11,
27 sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the
28 same public harm as allegedly caused by WINDMILL in this matter. These activities are

1 detailed below and support ERC's overarching goal of reducing and/or eliminating hazardous
2 and toxic chemicals in dietary supplement products in California. ERC's activities have had, and
3 will continue to have, a direct and primary effect within the State of California because
4 California consumers will be benefitted by the reduction and/or elimination of exposure to lead
5 and/or cadmium in dietary supplements and/or by providing clear and reasonable warnings to
6 California consumers prior to ingestion of the products.

7 Based on a review of past years' actual budgets, ERC is providing the following list of
8 activities ERC engages in to protect California consumers through Proposition 65 citizen
9 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
10 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
11 supplement products that may contain lead and/or cadmium and are sold to California
12 consumers. This work includes continued monitoring and enforcement of past consent
13 judgments and settlements to ensure companies are in compliance with their obligations
14 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
15 cadmium. This work also includes investigation of new companies that ERC does not obtain any
16 recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-
17 20%): maintaining ERC's Voluntary Compliance Program by acquiring products from
18 companies, developing and maintaining a case file, testing products from these companies,
19 providing the test results and supporting documentation to the companies, and offering guidance
20 in warning or implementing a self-testing program for lead and/or cadmium in dietary
21 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got
22 Lead?" Program which reduces the numbers of contaminated products that reach California
23 consumers by providing access to free testing for lead in dietary supplement products (Products
24 submitted to the program are screened for ingredients which are suspected to be contaminated,
25 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and the
26 results shared with the consumer that submitted the product).

27 ERC shall be fully accountable in that it will maintain adequate records to document and
28 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are

1 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
2 shall provide the Attorney General, within thirty days of any request, copies of documentation
3 demonstrating how such funds have been spent.

4 **4.5** \$16,847.50 of the Total Settlement Amount shall be distributed to Michael
5 Freund as reimbursement of ERC's attorney's fees while \$26,749.53 of the Total Settlement
6 Amount shall be distributed to ERC for its in-house legal fees. Except as explicitly provided
7 herein, each Party shall bear its own fees and costs.

8 **4.6** In the event that WINDMILL fails to remit an Installment Payment owed under
9 Section 4 of this Consent Judgment on or before the date that such Installment Payment is due
10 pursuant to Section 4.1, WINDMILL shall be deemed to be in material breach of its obligations
11 under this Consent Judgment. ERC shall provide written notice of the delinquency to
12 WINDMILL via electronic mail. If WINDMILL fails to deliver the delinquent payment within
13 five (5) days from the written notice, the Total Settlement Amount, less any amounts
14 previously paid pursuant to Section 4.1, shall be immediately due and owing and shall accrue
15 interest at the statutory judgment interest rate provided in the California Code of Civil
16 Procedure section 685.010. Additionally, WINDMILL agrees to pay ERC's reasonable
17 attorneys' fees and costs for any efforts to collect the payment(s) due under this Consent
18 Judgment.

19 **5. MODIFICATION OF CONSENT JUDGMENT**

20 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
21 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
22 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
23 modified consent judgment.

24 **5.2** If WINDMILL seeks to modify this Consent Judgment under Section 5.1, then
25 WINDMILL must provide written notice to ERC of its intent ("Notice of Intent"). If ERC
26 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
27 must provide written notice to WINDMILL within thirty (30) days of receiving the Notice of
28 Intent. If ERC notifies WINDMILL in a timely manner of ERC's intent to meet and confer,

1 then the Parties shall meet and confer in good faith as required in this Section. The Parties
2 shall meet in person or via telephone within thirty (30) days of ERC's notification of its intent
3 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
4 modification, ERC shall provide to WINDMILL a written basis for its position. The Parties
5 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
6 remaining disputes. Should it become necessary, the Parties may agree in writing to different
7 deadlines for the meet-and-confer period.

8 **5.3** In the event that WINDMILL initiates or otherwise requests a modification
9 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
10 modification of the Consent Judgment, WINDMILL shall reimburse ERC its costs and
11 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
12 arguing the motion or application.

13 **5.4** By contrast, where the meet-and-confer process does not lead to a joint motion
14 or application in support of a modification of the Consent Judgment, then either Party may seek
15 judicial relief on its own.

16 **6. RETENTION OF JURISDICTION; ENFORCEMENT OF AGREEMENT**

17 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
18 this Consent Judgment.

19 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
20 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
21 inform WINDMILL in a reasonably prompt manner of its test results, including information
22 sufficient to permit WINDMILL to identify the Covered Products at issue. WINDMILL shall,
23 within thirty (30) days following such notice, provide ERC with testing information, from an
24 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
25 demonstrating WINDMILL's compliance with the Consent Judgment, if warranted. The
26 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

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1 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

9 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
10 on behalf of itself and in the public interest, and WINDMILL and its respective officers,
11 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
12 franchisees, licensees, customers (not including private label customers of WINDMILL),
13 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
14 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
15 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
16 hereby fully releases and discharges the Released Parties from any and all claims, actions,
17 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
18 asserted, or that could have been asserted from the handling, use, or consumption of the
19 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
20 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
21 lead and/or cadmium up to and including the Effective Date.

22 **8.2** ERC on its own behalf only, and WINDMILL on its own behalf only,
23 further waive and release any and all claims they may have against each other for all actions or
24 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
25 65 in connection with the Notice and Complaint up through and including the Effective Date,
26 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
27 enforce the terms of this Consent Judgment.

28 **8.3** It is possible that other claims not known to the Parties, arising out of the facts

1 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
2 discovered. ERC on behalf of itself only, and WINDMILL on behalf of itself only,
3 acknowledge that this Consent Judgment is expressly intended to cover and include all such
4 claims up through and including the Effective Date, including all rights of action therefore.
5 ERC and WINDMILL acknowledge that the claims released in Sections 8.1 and 8.2 above may
6 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any
7 such unknown claims. California Civil Code section 1542 reads as follows:

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

11 ERC on behalf of itself only, and WINDMILL on behalf of itself only, acknowledge and
12 understand the significance and consequences of this specific waiver of California Civil Code
13 section 1542.

14 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
15 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
16 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

17 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
18 environmental exposures arising under Proposition 65, nor shall it apply to any of WINDMILL
19 products other than the Covered Products.

20 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

23 **10. GOVERNING LAW**

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

26 **11. PROVISION OF NOTICE**

27 All notices required to be given to either Party to this Consent Judgment by the other shall
28 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via

1 email may also be sent.

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

3 Chris Heptinstall
4 Executive Director
5 Environmental Research Center
6 3111 Camino Del Rio North, Suite 400
7 San Diego, CA 92108
8 Tel: (619) 500-3090
9 Email: chris_erc501c3@yahoo.com

10 With a copy to:

11 MICHAEL FREUND
12 RYAN HOFFMAN
13 MICHAEL FREUND & ASSOCIATES
14 1919 Addison Street, Suite 105
15 Berkeley, CA 94704
16 Tel: (510) 540-1992
17 Fax: (510) 540-5543

18 **WINDMILL HEALTH PRODUCTS, LLC**

19 Philip A. Piscopo
20 Chief Financial Officer
21 Windmill Health Products
22 10 Henderson Drive
23 West Caldwell, NJ 07006

24 With a copy to:

25 ANTHONY J. CORTEZ
26 SEAN A. NEWLAND
27 GREENBERG TRAUERIG, LLP
28 1201 K Street, Suite 1100
Sacramento, CA 95814
Ph: 916-442-1111
Email: cortezan@gtlaw.com
Email: newlands@gtlaw.com

12. **COURT APPROVAL**

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

12.2 If the California Attorney General objects to any term in this Consent Judgment,

1 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
2 prior to the hearing on the motion.

3 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
4 void and have no force or effect.

5 **13. EXECUTION AND COUNTERPARTS**

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

9 **14. DRAFTING**

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

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

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

23 **16. ENFORCEMENT**

24 ERC may, by motion or order to show cause before the Superior Court of Alameda
25 County, enforce the terms and conditions contained in this Consent Judgment. In any action
26 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
27 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
28 To the extent the failure to comply with the Consent Judgment constitutes a violation of

1 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
2 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
3 law for failure to comply with Proposition 65 or other laws.

4 **17. ENTIRE AGREEMENT, AUTHORIZATION**

5 **17.1** This Consent Judgment contains the sole and entire agreement and
6 understanding of the Parties with respect to the entire subject matter herein, and any and all
7 prior discussions, negotiations, commitments, and understandings related hereto. No
8 representations, oral or otherwise, express or implied, other than those contained herein have
9 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
10 herein, shall be deemed to exist or to bind any Party.

11 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
12 authorized by the Party he or she represents to stipulate to this Consent Judgment.

13 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
14 **CONSENT JUDGMENT**

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

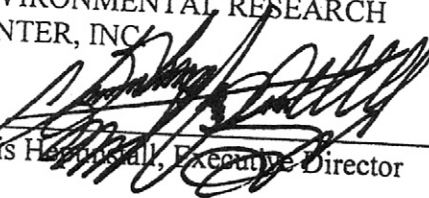
18 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
19 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
20 been diligently prosecuted, and that the public interest is served by such settlement; and

21 (2) Make the findings pursuant to California Health and Safety Code section
22 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

23 **IT IS SO STIPULATED:**

24 Dated: 10/11, 2018

25 ENVIRONMENTAL RESEARCH
26 CENTER, INC

27 By: 
28 Chris Heppinstall, Executive Director

1
2 Dated: 10/1, 2018

WINDMILL HEALTH PRODUCTS, LLC

3
4 By: *Philip A. Piscopo*
Its: CHIEF FINANCIAL OFFICER

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12 **APPROVED AS TO FORM:**

13 Dated: 9/29, 2018

14 MICHAEL FREUND AND ASSOCIATES

15 By: *M.F.*
16 Michael Freund
17 Ryan Hoffman
18 Attorneys for Plaintiff Environmental
19 Research Center, Inc.

20 Dated: October 1, 2018

21 GREENBERG TRAUERIG, LLP

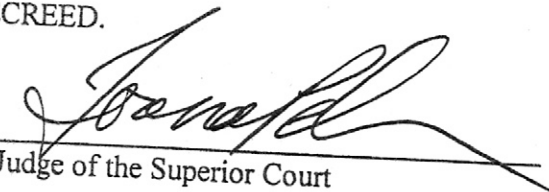
22 By: *Anthony Cortez*
23 Anthony Cortez
24 Sean Newland
25 Attorney for Windmill Health Products,
26 LLC

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 11/28, 2018



Judge of the Superior Court

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