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17 Attorney for Defendants
 18 EFX SPORTS SUPPLEMENTS, LLC; ALL
 19 AMERICAN PHARMACEUTICAL & NATURAL
 20 FOODS CORPORATION

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

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

25 Plaintiff,

26 v.

27 EFX SPORTS SUPPLEMENTS, LLC, a
 28 Montana limited liability company; ALL
 AMERICAN PHARMACEUTICAL &
 NATURAL FOODS CORP., a Montana
 corporation; and DOES 1 – 25,

Defendants.

CASE NO. RG18911257

STIPULATED CONSENT
 JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 2, 2018
 Trial Date: None set

R-2016036

FILED
 ALAMEDA COUNTY
 JAN 11 2019
 CLERK OF THE SUPERIOR COURT
 By *[Signature]* Deputy

Courtesy Copy

1. INTRODUCTION

1.1 On July 2, 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

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 EFX SPORTS SUPPLEMENTS, LLC and ALL AMERICAN
4 PHARMACEUTICAL & NATURAL FOODS CORPORATION ("ALL AMERICAN") and
5 DOES 1-25. In this action, ERC alleges that two products manufactured, distributed, or sold
6 by ALL AMERICAN contain lead, a chemical listed under Proposition 65 as a carcinogen and
7 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
8 reproductive toxin warning. These products (referred to hereinafter individually as a "Covered
9 Product" or collectively as "Covered Products") are: (1) EFX Sports Training Ground PRE
10 Orange Mango and (2) EFX Sports Training Ground PRE Blueberry.

11 1.2 ERC and ALL AMERICAN are hereinafter referred to individually as a "Party"
12 or collectively as the "Parties."

13 1.3 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
14 causes, helping safeguard the public from health hazards by reducing the use and misuse of
15 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
16 and encouraging corporate responsibility.

17 1.4 For purposes of this Consent Judgment, the Parties agree that ALL AMERICAN
18 is a business entity which has employed ten or more persons at all times relevant to this action
19 and qualifies as a "person in the course of doing business" within the meaning of Proposition
20 65. ALL AMERICAN manufactures, distributes, and/or sells the Covered Products.

21 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
22 dated April 20, 2018 that was served on the California Attorney General, other public
23 enforcers, and EFX SPORTS SUPPLEMENTS, LLC and ALL AMERICAN ("Notice"). A true
24 and correct copy of the 60-Day Notice dated April 20, 2018 is attached hereto as **Exhibit A** and
25 is incorporated by reference. More than sixty (60) days have passed since the Notice was
26 served on the Attorney General, public enforcers, and EFX SPORTS SUPPLEMENTS, LLC
27 and ALL AMERICAN and no designated governmental entity has filed a complaint against
28 EFX SPORTS SUPPLEMENTS, LLC and ALL AMERICAN with regard to the Covered

1 Products or the alleged violations.

2 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
3 persons in California to lead without first providing clear and reasonable warnings in violation
4 of California Health and Safety Code section 25249.6. EFX SPORTS SUPPLEMENTS, LLC
5 and ALL AMERICAN deny all material allegations contained in the Notice and Complaint.

6 **1.7** The Parties have entered into this Consent Judgment in order to settle,
7 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
8 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
9 be construed as an admission by any of the Parties or by any of their respective officers,
10 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
11 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
12 violation of law.

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

16 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
17 a Judgment by this Court.

18 **2. JURISDICTION AND VENUE**

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

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

27 **3.1** Beginning sixty (60) days after the Effective Date, ALL AMERICAN shall be
28 permanently enjoined from manufacturing for sale in the State of California, "Distributing into

1 the State of California,” or directly selling in the State of California, any Covered Products
2 which expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead
3 per day unless it meets the warning requirements under Section 3.2.

4 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
5 of California” shall mean to directly ship a Covered Product into California for sale in
6 California or to sell a Covered Product to a distributor that ALL AMERICAN knows will sell
7 the Covered Product in California.

8 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
9 Level” shall be measured in micrograms, and shall be calculated using the following formula:
10 micrograms of lead per gram of product, multiplied by grams of product per serving of the
11 product (using the largest serving size appearing on the product label), multiplied by servings
12 of the product per day (using the largest number of recommended daily servings appearing on
13 the label), which equals micrograms of lead exposure per day. If the label contains no
14 recommended daily servings, then the number of recommended daily servings shall be one.

15 **3.2 Clear and Reasonable Warnings**

16 If ALL AMERICAN is required to provide a warning pursuant to Section 3.1, the
17 following warning must be utilized (“Warning”):

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

20 ALL AMERICAN shall use the phrase “cancer and” in the Warning if the “Daily Lead Exposure
21 Level” is greater than 15 micrograms of lead as determined pursuant to the testing methodology
22 set forth in Section 3.4 or if ALL AMERICAN has reason to believe that another Proposition 65
23 chemical is present which may require a cancer warning. In lieu of the preceding Warning, ALL
24 AMERICAN may use any warning language that complies with Title 27, California Code of
25 Regulations, section 25607.2, effective August 30, 2018.

26 The Warning shall be securely affixed to or printed upon the container or label of each
27 Covered Product. If the Warning is provided on the label, it must be set off from other
28 surrounding information and enclosed in a box. In addition, for internet sales on its own website,

1 ALL AMERICAN must comply with Title 27, California Code of Regulations, section 25602(b),
2 effective August 30, 2018.

3 The Warning shall be at least the same size as the largest of any other health or safety
4 warnings also appearing on its website or on the label or container of ALL AMERICAN's product
5 packaging and the word "WARNING" shall be in all capital letters and in bold print. No
6 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
7 clarity of, the Warning on the average lay person shall accompany the Warning. Information that
8 is supplemental to the Warning is permitted only to the extent that such supplemental information
9 identifies the source of the exposure or provides information on how to avoid or reduce exposure
10 to the identified chemical or chemicals.

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

15 3.3 Reformulated Covered Products

16 A Reformulated Covered Product is a Covered Product for which the "Daily Lead
17 Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the testing
18 methodology described in Section 3.4.

19 3.4 Testing Methodology

20 3.4.1 Beginning within one year of the Effective Date, ALL AMERICAN
21 shall arrange for lead testing of the Covered Products at least once a year for a minimum of five
22 (5) consecutive years by arranging for testing of five (5) randomly selected samples of each of
23 the Covered Products, in the form intended for sale to the end-user, which ALL AMERICAN
24 intends to sell, or is directly selling, to a consumer in California, is manufacturing for sale by
25 others in California, or is "Distributing into the State of California." If tests conducted
26 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
27 each of five (5) consecutive years, then the testing requirements of this Section will no longer
28 be required as to that Covered Product. However, if during or after the five-year testing period,

1 ALL AMERICAN changes ingredient suppliers for any of the Covered Products and/or
2 reformulates any of the Covered Products, ALL AMERICAN shall test that Covered Product
3 annually for at least four (4) consecutive years after such change is made. The testing
4 requirements set forth in this Paragraph 3.4.1 do not apply to any Covered Product for which
5 ALL AMERICAN has provided a Warning in the preceding year so long as the Warning on
6 such Covered Products continues to be provided for the Covered Product, without interruption,
7 in accordance with Section 3.2.

8 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the
9 average of the results of the five (5) randomly selected samples of the Covered Products will be
10 controlling.

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

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 ALL AMERICAN's ability
22 to conduct, or require that others conduct, additional testing of the Covered Products, including
23 the raw materials used in their manufacture.

24 **3.4.6** ALL AMERICAN shall retain all test results and documentation for a
25 period of five years from the date of each test and shall provide such test results and
26 documentation to ERC upon ERC's written request.

27 **4. SETTLEMENT PAYMENT**

28 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,

1 attorney's fees, and costs, ALL AMERICAN shall make a total payment of \$67,500.00 ("Total
2 Settlement Amount") to ERC within ten (10) business days of the Effective Date ("Due Date").
3 ALL AMERICAN shall make this payment by wire transfer to ERC's account, for which ERC
4 will give ALL AMERICAN the necessary account information. The Total Settlement Amount
5 shall be apportioned as follows:

6 4.2 \$13,615.10 shall be considered a civil penalty pursuant to California Health and
7 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$10,211.33) of the civil penalty to
8 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
9 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
10 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,403.77) of the civil penalty.

11 4.3 \$4,539.53 shall be distributed to ERC as reimbursement to ERC for reasonable
12 costs incurred in bringing this action.

13 4.4 \$10,211.32 shall be distributed to ERC as an Additional Settlement Payment
14 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
15 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
16 caused by ALL AMERICAN in this matter. These activities are detailed below and support
17 ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
18 supplement products in California. ERC's activities have had, and will continue to have, a direct
19 and primary effect within the State of California because California consumers will be benefitted
20 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
21 providing clear and reasonable warnings to California consumers prior to ingestion of the
22 products.

23 Based on a review of past years' actual budgets, ERC is providing the following list of
24 activities ERC engages in to protect California consumers through Proposition 65 citizen
25 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
26 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
27 supplement products that may contain lead and are sold to California consumers. This work
28 includes continued monitoring and enforcement of past consent judgments and settlements to

1 ensure companies are in compliance with their obligations thereunder, with a specific focus on
2 those judgments and settlements concerning lead. This work also includes investigation of new
3 companies that ERC does not obtain any recovery through settlement or judgment; (2)
4 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
5 Compliance Program by acquiring products from companies, developing and maintaining a case
6 file, testing products from these companies, providing the test results and supporting
7 documentation to the companies, and offering guidance in warning or implementing a self-
8 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up
9 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
10 products that reach California consumers by providing access to free testing for lead in dietary
11 supplement products (Products submitted to the program are screened for ingredients which are
12 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
13 qualified laboratory for testing, and the results shared with the consumer that submitted the
14 product).

15 ERC shall be fully accountable in that it will maintain adequate records to document and
16 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
17 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
18 shall provide the Attorney General, within thirty (30) days of any request, copies of
19 documentation demonstrating how such funds have been spent.

20 4.5 \$15,891.00 shall be distributed to Aqua Terra Aeris Law Group as
21 reimbursement of ERC's attorney's fees, while \$23,243.05 shall be distributed to ERC for its
22 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
23 costs.

24 4.6 In the event that ALL AMERICAN fails to remit the Total Settlement Amount
25 owed under Section 4 of this Consent Judgment on or before the Due Date, ALL AMERICAN
26 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
27 shall provide written notice of the delinquency to ALL AMERICAN via electronic mail. If
28 ALL AMERICAN fails to deliver the Total Settlement Amount within five (5) days from the

1 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment
2 interest rate provided in the California Code of Civil Procedure section 685.010.

3 **5. MODIFICATION OF CONSENT JUDGMENT**

4 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
5 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
6 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
7 modified consent judgment.

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

20 **5.3** In the event that ALL AMERICAN initiates or otherwise requests a
21 modification under Section 5.1, and the meet and confer process leads to a joint motion or
22 application for a modification of the Consent Judgment, ALL AMERICAN shall reimburse
23 ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process
24 and filing and arguing the motion or application.

25 **5.4** Where the meet-and-confer process does not lead to a joint motion or
26 application in support of a modification of the Consent Judgment, then either Party may seek
27 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
28

1 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure
2 section 1021.5.

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

5 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
6 this Consent Judgment.

7 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
8 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
9 inform ALL AMERICAN in a reasonably prompt manner of its test results, including
10 information sufficient to permit ALL AMERICAN to identify the Covered Products at issue.
11 ALL AMERICAN shall, within thirty (30) days following such notice, provide ERC with
12 testing information, from an independent third-party laboratory meeting the requirements of
13 Sections 3.4.3 and 3.4.4, demonstrating ALL AMERICAN's compliance with the Consent
14 Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further
15 legal action.

16 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

24 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
25 on behalf of itself and in the public interest, and ALL AMERICAN and its respective officers,
26 directors, shareholders, employees, agents, parent companies, affiliates, subsidiaries, divisions,
27 suppliers, franchisees, licensees, customers (not including private label customers of ALL
28 AMERICAN), distributors, wholesalers, retailers, and all other upstream and downstream

1 entities in the distribution chain of any Covered Product, and the predecessors, successors, and
2 assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the
3 public interest, hereby fully releases and discharges the Released Parties from any and all
4 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
5 expenses asserted, or that could have been asserted from the handling, use, or consumption of
6 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
7 regulations arising from the failure to provide Proposition 65 warnings on the Covered
8 Products regarding lead up to and including the Effective Date.

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

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

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

28 ERC on behalf of itself only, and ALL AMERICAN on behalf of itself only, acknowledge and
understand the significance and consequences of this specific waiver of California Civil Code
section 1542.

1 **8.4** ALL AMERICAN's compliance with the terms of this Consent Judgment shall
2 be deemed to constitute compliance with Proposition 65 by any Released Party regarding
3 alleged exposures to lead 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 ALL
6 AMERICAN's products other than the Covered Products.

7 **8.6** Within ten (10) days of the Effective Date, ERC shall file a dismissal with
8 prejudice as to defendant EFX SPORTS SUPPLEMENTS, LLC.

9 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

12 **10. GOVERNING LAW**

13 The terms and conditions of this Consent Judgment shall be governed by and construed in
14 accordance with the laws of the State of California. In the event that Proposition 65 is repealed,
15 and as a result of such repeal the Covered Products are no longer subject to Proposition 65, then
16 ALL AMERICAN shall have no further obligation as to the injunctive terms pursuant to this
17 Consent Judgment with respect to the Covered Products to the extent that the Covered Products
18 are so affected.

19 **11. PROVISION OF NOTICE**

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

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

24 Chris Heptinstall, Executive Director, Environmental Research Center
25 3111 Camino Del Rio North, Suite 400
26 San Diego, CA 92108
27 Ph: (619) 500-3090
28 Email: chris_erc501c3@yahoo.com

///

1 With a copy to:
2 MATTHEW C. MACLEAR
3 ANTHONY M. BARNES
4 AQUA TERRA AERIS LAW GROUP
5 490 43rd Street
6 Suite 108
7 Oakland, CA 94609
8 Email: mcm@atalawgroup.com

9 **ALL AMERICAN**
10 **PHARMACEUTICAL & NATURAL FOODS CORP.:**

11 Jeff Golini, Ph.D.
12 All American Pharmaceutical & Natural Foods Corporation
13 2376 Main Street
14 Billings, MT 59105

15 With a copy to:
16 PEG CAREW TOLEDO
17 PEG CAREW TOLEDO, LAW CORPORATION
18 3001 Douglas Blvd., Suite 340
19 Roseville, CA 95661-3853
20 Telephone: (916) 462-8950
21 Facsimile: (916) 791-0175
22 Email: peg@toledolawcorp.com

23 **12. COURT APPROVAL**

24 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
25 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
26 Consent Judgment.

27 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
28 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
prior to the hearing on the motion.

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

13. EXECUTION AND COUNTERPARTS

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

1 as the original signature.

2 **14. DRAFTING**

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

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

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

16 **16. ENFORCEMENT**

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

25 **17. ENTIRE AGREEMENT, AUTHORIZATION**

26 **17.1** This Consent Judgment contains the sole and entire agreement and
27 understanding of the Parties with respect to the entire subject matter herein, and any and all
28 prior discussions, negotiations, commitments, and understandings related hereto. No

1 representations, oral or otherwise, express or implied, other than those contained herein have
2 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
3 herein, shall be deemed to exist or to bind any Party.

4 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
5 authorized by the Party he or she represents to stipulate to this Consent Judgment.

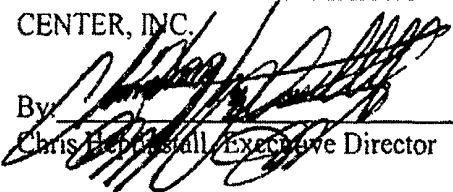
6 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
7 **CONSENT JUDGMENT**

8 This Consent Judgment has come before the Court upon the request of the Parties. The
9 Parties request the Court to fully review this Consent Judgment and, being fully informed
10 regarding the matters which are the subject of this action, make the findings pursuant to California
11 Health and Safety Code section 25249.7(f)(4), and approve this Consent Judgment.

12 **IT IS SO STIPULATED:**

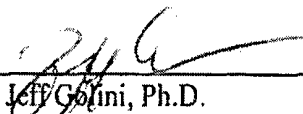
13 Dated: 10/22, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

14
15 By: 
16 Chris Hepp, Executive Director

17
18 Dated: 10/22, 2018

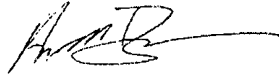
ALL AMERICAN PHARMACEUTICAL &
NATURAL FOODS CORP.

19
20 
21 By: Jeff Golini, Ph.D.
22 Its: Founder and Executive Scientist
23
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1 APPROVED AS TO FORM:

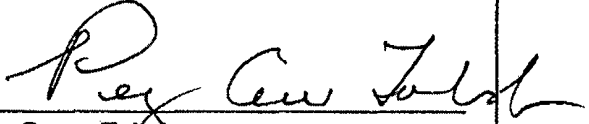
2 Dated: October 22, 2018

AQUA TERRA AERIS LAW GROUP

3
4 By: 
5 Matthew C. Maclear
6 Anthony M. Barnes
7 Attorneys for Plaintiff Environmental
8 Research Center, Inc.

8 Dated: 10/27, 2018

PEG CAREW TOLEDO, LAW
CORPORATION

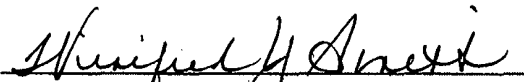
9
10 By: 
11 Peg Carew Toledo
12 Attorney for Defendants EFX Sports
13 Supplements, LLC; All American
14 Pharmaceutical & Natural Foods Corp.

15 **ORDER AND JUDGMENT**

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

18 IT IS SO ORDERED, ADJUDGED AND DECREED.

19 Dated: January 11, 2018

20 
21 Judge of the Superior Court