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18 FOUR SIGMA FOODS INC., individually and doing
19 business as FOUR SIGMATIC

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

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

24 Plaintiff,

25 v.

26 FOUR SIGMA FOODS INC., individually and
27 doing business as FOUR SIGMATIC, a
28 Delaware corporation; and DOES 1 – 25,

Defendants.

CASE NO. RG18920128

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 11, 2018

Trial Date: None set

FILED
ALAMEDA COUNTY

DEC 11 2018

CLERK OF THE SUPERIOR COURT
By  Deputy

1. INTRODUCTION

1.1 On September 11, 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 “Complaint”)

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
2 (“Proposition 65”), against FOUR SIGMA FOODS INC., individually and doing business as
3 FOUR SIGMATIC (“FOUR SIGMATIC”) and DOES 1-25. In this action, ERC alleges that a
4 number of products manufactured, distributed, or sold by FOUR SIGMATIC contain lead, a
5 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
6 consumers to this chemical at a level requiring a Proposition 65 warning. These products
7 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
8 Products”) are:

- 9 • **Four Sigmatic Mushroom Coffee with Lion's Mane & Chaga Fruity &**
10 **Medium**
- 11 • **Four Sigmatic Chaga Mushroom Elixir**
- 12 • **Four Sigmatic Mushroom Matcha Drink Mix with Lion's Mane & Ginger**
- 13 • **Four Sigmatic Mushroom Mocha With Chaga Mushroom Sweet + Coffee**
- 14 • **Four Sigmatic Adaptogen Coffee With Tulsi & Astragalus Light +**
15 **Cinnamon**
- 16 • **Four Sigmatic Mushroom Coffee With Cordyceps & Chaga Rich +**
17 **Smooth**
- 18 • **Four Sigmatic Superfood Blends Hydration Blend Moisturize Your**
19 **Insides**

20 **1.2** ERC and FOUR SIGMATIC are hereinafter referred to individually as a “Party”
21 or collectively as the “Parties.”

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

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

1 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
2 FOUR SIGMATIC distributes and/or sells the Covered Products.

3 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
4 dated July 2, 2018 that was served on the California Attorney General, other public enforcers,
5 and FOUR SIGMATIC (“Notice”). A true and correct copy of the 60-Day Notice dated July 2,
6 2018 is attached hereto as **Exhibit A** and is incorporated by reference. More than 60 days have
7 passed since the Notice was served on the Attorney General, public enforcers, and FOUR
8 SIGMATIC and no designated governmental entity has filed a Complaint against FOUR
9 SIGMATIC with regard to the Covered Products or the alleged violations.

10 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
11 persons in California to lead without first providing clear and reasonable warnings in violation
12 of California Health and Safety Code section 25249.6. FOUR SIGMATIC denies all material
13 allegations contained in the Notice and Complaint. Nothing in the Consent Judgment shall be
14 construed as an admission by FOUR SIGMATIC of any fact, issue of law or violation of law,
15 nor shall compliance with the Consent Judgment constitute or be construed as an admission by
16 FOUR SIGMATIC of any fact, issue of law or violation of law, at any time, for any purpose.

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

24 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
25 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have
26 individually or jointly in any current or future legal proceeding unrelated to these proceedings.

27 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
28 a Judgment by this Court.

1 **2. JURISDICTION AND VENUE**

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

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

10 **3.1** Beginning three (3) months after the Effective Date, FOUR SIGMATIC shall be
11 permanently enjoined from manufacturing for sale in the State of California, “Distributing into
12 the State of California,” or directly selling in the State of California, any Covered Products
13 which expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead
14 per day unless it meets the warning requirements under Section 3.2.

15 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
16 of California” shall mean to directly ship a Covered Product into California for sale in
17 California or to sell a Covered Product to a distributor that FOUR SIGMATIC knows or has
18 reason to know will sell the Covered Product in California.

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

26 **3.2 Clear and Reasonable Warnings**

27 If FOUR SIGMATIC is required to provide a warning pursuant to Section 3.1, the
28 following warning must be utilized (“Warning”):

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

4 FOUR SIGMATIC shall use the phrase “cancer and” in the Warning if FOUR SIGMATIC has
5 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
6 determined pursuant to the quality control methodology set forth in Section 3.4 or if FOUR
7 SIGMATIC has reason to believe that another Proposition 65 chemical is present which may
8 require a cancer warning.

9 The Warning shall appear on the container or label of each Covered Product. If the
10 Warning is provided on the label, it must be set off from other surrounding information and
11 enclosed in a box. In addition, for any Covered Product sold over the internet, the Warning, or a
12 link to the Warning using the word “WARNING” in capital and bold letters, shall appear on the
13 product information/display page, or the Warning shall be prominently displayed on the
14 checkout page when a California delivery address is indicated for any purchase of any Covered
15 Product. An asterisk or other identifying method must be utilized to identify which products on
16 the checkout page are subject to the Warning. The Warning may be used in conjunction with a
17 more general warning in the checkout process indicating that item(s) in the customer’s order are
18 subject to a California Proposition 65 warning. Additionally, for Covered Products sold over the
19 internet, the Warning shall not be displayed in such a manner that requires the purchaser to
20 search for it in the general content of the website.

21 The Warning shall be at least the same size as the largest of any other health or safety
22 warnings also appearing on its website or on the label or container of the Covered Product’s
23 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No
24 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
25 clarity of, the Warning on the average lay person shall accompany the Warning. Further, no
26 statements may accompany the Warning that state or imply that the source of the listed chemical
27 has an impact on or results in a less harmful effect of the listed chemical.

28 FOUR SIGMATIC must display the above Warning with such conspicuousness, as
29 compared with other words, statements or designs on the label or container, or on its website, if

1 applicable, to render the Warning likely to be read and understood by an ordinary individual under
2 customary conditions of purchase or use of the product.

3 If subsequently enacted changes to Proposition 65 or its implementing regulations require
4 the use of additional or different information on any warning, the Parties agree that the new safe
5 harbor warning may be utilized in place of the Warnings set forth in this Section.

6 **3.3 Reformulated Covered Products**

7 A Reformulated Covered Product is a Covered Product for which the “Daily Lead
8 Exposure Level” is no greater than 0.5 micrograms of lead per day as determined by the quality
9 control methodology described in Section 3.4.

10 **3.4 Testing and Quality Control Methodology**

11 **3.4.1** Beginning within one year of the Effective Date, FOUR SIGMATIC
12 shall arrange for lead testing of the Covered Products at least once a year for a minimum of
13 ~~three (3)~~ consecutive years by ~~arranging~~ for testing of five (5) randomly selected samples of
14 each of the Covered Products, in the form intended for sale to the end-user, which FOUR
15 SIGMATIC intends to sell or is manufacturing for sale in California, directly selling to a
16 consumer in California or “Distributing into the State of California.” If tests conducted
17 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
18 each of three (3) consecutive years, then the testing requirements of this Section will no longer
19 be required as to that Covered Product. However, if during or after the three-year testing
20 period, FOUR SIGMATIC changes ingredient suppliers for any of the Covered Products and/or
21 reformulates any of the Covered Products, FOUR SIGMATIC shall test that Covered Product
22 annually for at least three (3) consecutive years after such change is made.

23 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
24 lead detection result of the five (5) randomly selected samples of the Covered Products will be
25 controlling.

26 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
27 laboratory method that complies with the performance and quality control factors appropriate
28 for the method used, including limit of detection, qualification, accuracy, and precision that

1 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
2 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

3 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
4 independent third party laboratory certified by the California Environmental Laboratory
5 Accreditation Program or an independent third-party laboratory that is registered with the
6 United States Food & Drug Administration.

7 **3.4.5** Nothing in this Consent Judgment shall limit FOUR SIGMATIC’s
8 ability to conduct, or require that others conduct, additional testing of the Covered Products,
9 including the raw materials used in their manufacture.

10 **3.4.6** Within thirty (30) days of ERC’s written request, FOUR SIGMATIC
11 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. FOUR SIGMATIC shall
12 retain all test results and documentation for a period of three years from the date of each test.

13 **4. SETTLEMENT PAYMENT**

14 ~~4.1~~ In full satisfaction of all potential civil penalties, additional settlement payments,
15 attorney’s fees, and costs, FOUR SIGMATIC shall make, or have made on its behalf, a total
16 payment of \$125,000.00 (“Total Settlement Amount”) to ERC in three periodic payments (the
17 “Periodic Payments”) according to the following payment schedule (“Due Dates”):

- 18 • Payment 1 -- \$41,666.67 within 5 days of the Effective Date
- 19 • Payment 2 -- \$41,666.67 within 35 days of the Effective Date
- 20 • Payment 3 -- \$41,666.66 within 65 days of the Effective Date

21 FOUR SIGMATIC shall make, or have made on its behalf, these payments by wire
22 transfer to ERC’s account, for which ERC will give FOUR SIGMATIC the necessary account
23 information. The Total Settlement Amount shall be apportioned as follows:

24 **4.2** \$52,186.81 shall be considered a civil penalty pursuant to California Health and
25 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$39,140.10) of the civil penalty to
26 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
27 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
28

1 Code section 25249.12(c). ERC will retain the remaining 25% (\$13,046.71) of the civil
2 penalty.

3 4.3 \$3,058.38 shall be distributed to ERC as reimbursement to ERC for reasonable
4 costs incurred in bringing this action.

5 4.4 \$39,140.05 shall be distributed to ERC as an Additional Settlement Payment
6 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
7 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
8 caused by FOUR SIGMATIC in this matter. These activities are detailed below and support
9 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
10 supplement products in California. ERC’s activities have had, and will continue to have, a direct
11 and primary effect within the State of California because California consumers will be benefitted
12 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
13 providing clear and reasonable warnings to California consumers prior to ingestion of the
14 products.

15 Based on a review of past years’ actual budgets, ERC is providing the following list of
16 activities ERC engages in to protect California consumers through Proposition 65 citizen
17 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
18 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
19 supplement products that may contain lead and are sold to California consumers. This work
20 includes continued monitoring and enforcement of past consent judgments and settlements to
21 ensure companies are in compliance with their obligations thereunder, with a specific focus on
22 those judgments and settlements concerning lead. This work also includes investigation of new
23 companies that ERC does not obtain any recovery through settlement or judgment; (2)
24 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC’s Voluntary
25 Compliance Program by acquiring products from companies, developing and maintaining a case
26 file, testing products from these companies, providing the test results and supporting
27 documentation to the companies, and offering guidance in warning or implementing a self-
28 testing program for lead in dietary supplement products; and (3) “GOT LEAD” PROGRAM (up

1 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
2 products that reach California consumers by providing access to free testing for lead in dietary
3 supplement products (Products submitted to the program are screened for ingredients which are
4 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
5 qualified laboratory for testing, and the results shared with the consumer that submitted the
6 product).

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

12 4.5 \$14,970.00 shall be distributed to Aqua Terra Aeris Law Group as
13 reimbursement of ERC's attorney's fees, while \$15,644.76 shall be distributed to ERC for its
14 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
15 costs.

16 4.6 In the event that FOUR SIGMATIC fails to remit any of the Periodic Payments
17 owed pursuant to Section 4.1 of this Consent Judgment on or before the applicable Due Date,
18 FOUR SIGMATIC shall be deemed to be in material breach of its obligations under this
19 Consent Judgment. ERC shall provide written notice of the delinquency to FOUR SIGMATIC
20 via electronic mail. If FOUR SIGMATIC fails to deliver the delinquent payment within five
21 (5) business days from the written notice, the Total Settlement Amount, less any amounts
22 previously paid pursuant to Section 4.1, shall be immediately due and owing and shall accrue
23 interest at the statutory judgment interest rate provided in the California Code of Civil
24 Procedure section 685.010. Additionally, FOUR SIGMATIC agrees to pay ERC's reasonable
25 attorney's fees and costs for any efforts to collect any payment(s) due under this Consent
26 Judgment.

1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
3 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
4 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
5 modified consent judgment.

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

18 **5.3** In the event that FOUR SIGMATIC initiates or otherwise requests a
19 modification under Section 5.1, and the meet and confer process leads to a joint motion or
20 application for a modification of the Consent Judgment, FOUR SIGMATIC shall reimburse
21 ERC its costs and reasonable attorney’s fees for the time spent in the meet-and-confer process
22 and filing and arguing the motion or application. ERC shall not be reimbursed for costs or
23 attorney’s fees for an uncontested motion, or for a ministerial motion (such as a change in name
24 or contact information) or if ERC does not expend more than two (2) hours of attorney time on
25 the joint motion. 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.

1 5.4 In the event that Proposition 65 is repealed, and as a result of such repeal the
2 Covered Products are no longer subject to Proposition 65, then FOUR SIGMATIC shall have no
3 further obligation as to injunctive terms pursuant to this Consent Judgment with respect to the
4 Covered Products.

5 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
6 **JUDGMENT**

7 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
8 this Consent Judgment.

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

18 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

27 8.1 This Consent Judgment is a full, final, and binding resolution between ERC,
28 on behalf of itself and in the public interest, and FOUR SIGMATIC and its respective officers,

1 directors, shareholders, owners, employees, agents, parent companies, subsidiaries, divisions,
2 affiliated entities under common (full or partial) ownership, attorneys, suppliers, franchisees,
3 licensees, customers (not including private label customers of FOUR SIGMATIC), distributors,
4 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain
5 of any Covered Product, and the predecessors, successors, and assigns of any of them
6 (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby
7 fully releases and discharges the Released Parties from any and all claims, actions, causes of
8 action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that
9 could have been asserted from the handling, use, or consumption of the Covered Products, as to
10 any alleged violation of Proposition 65 or its implementing regulations arising from the failure
11 to provide Proposition 65 warnings on the Covered Products regarding lead up to and including
12 the Effective Date.

13 **8.2** ERC on its own behalf only, and FOUR SIGMATIC on its own behalf only,
14 further waive and release any and all claims they may have against each other and their
15 respective officers, directors, shareholders, owners, employees, agents, parents, subsidiaries,
16 divisions, affiliated entities under common (full or partial) ownership, and attorneys for all
17 actions or statements made or undertaken in the course of seeking or opposing enforcement of
18 Proposition 65 in connection with the Notice and Complaint up through and including the
19 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
20 right to seek to enforce the terms of this Consent Judgment.

21 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
22 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
23 discovered. ERC on behalf of itself only, and FOUR SIGMATIC on behalf of itself only,
24 acknowledge that this Consent Judgment is expressly intended to cover and include all such
25 claims up through and including the Effective Date, including all rights of action therefore.
26 ERC and FOUR SIGMATIC acknowledge that the claims released in Sections 8.1 and 8.2
27 above may include unknown claims, and nevertheless waive California Civil Code section
28 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
4 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
5 OR HER SETTLEMENT WITH THE DEBTOR.

6 ERC on behalf of itself only, and FOUR SIGMATIC on behalf of itself only, acknowledge and
7 understand the significance and consequences of this specific waiver of California Civil Code
8 section 1542.

9 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
10 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
11 in the Covered Products as set forth in the Notice and Complaint.

12 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
13 environmental exposures arising under Proposition 65, nor shall it apply to any of FOUR
14 SIGMATIC's products other than the Covered Products.

15 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

18 **10. GOVERNING LAW**

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

21 **11. PROVISION OF NOTICE**

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

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

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

With a copy to:

1 ANTHONY M. BARNES
2 AQUA TERRA AERIS LAW GROUP
3 490 43rd Street, Suite 108
4 Oakland, CA 94609
5 Telephone: (415) 568-5200
6 Email: amb@atalawgroup.com

7 FOUR SIGMA FOODS INC., individually and doing business as FOUR SIGMATIC

8 TERO ISOKAUPPILA
9 FOUR SIGMA FOODS, INC.
10 1450 2nd St, Unit 1020,
11 Santa Monica, CA 90401

12 With a copy to:

13 ABHISHEK K. GURNANI
14 AMIN TALATI UPADHYE, LLP
15 100 S. Wacker Drive, Suite 2000
16 Chicago, IL 60606
17 Telephone: 312-466-1033
18 Email: www.amintalati.com

19 12. COURT APPROVAL

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

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

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

28 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
as the original signature.

14. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each

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

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

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

13 **16. ENFORCEMENT**

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

22 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

1 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
2 authorized by the Party he or she represents to stipulate to this Consent Judgment.

3 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
4 **CONSENT JUDGMENT**

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

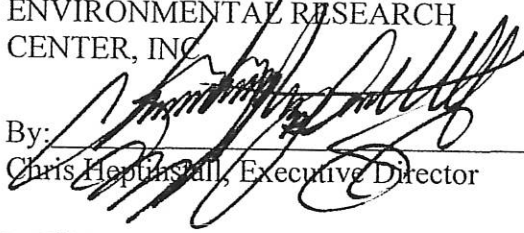
8 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
9 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
10 been diligently prosecuted, and that the public interest is served by such settlement; and

11 (2) Make the findings pursuant to California Health and Safety Code section
12 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

13
14 **IT IS SO STIPULATED:**

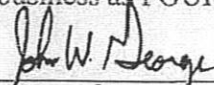
15
16 Dated: 9/24/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

17
18 By: 
19 Chris Hepinstall, Executive Director

1 Dated: September 24, 2018

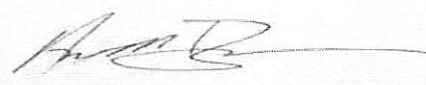
2 FOUR SIGMA FOODS INC., individually
3 and doing business as FOUR SIGMATIC

4 
By: John W. George
Its: COO

11 **APPROVED AS TO FORM:**

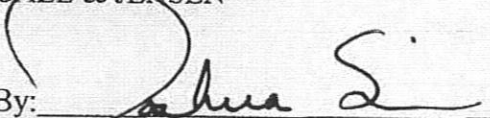
12
13 Dated: September 24, 2018

14 AQUA TERRA AERIS LAW GROUP

15 
By: _____
16 Matthew C. Maclear
17 Anthony M. Barnes
18 Attorneys for Plaintiff Environmental
19 Research Center, Inc.

20 Dated: September 24, 2018

21 CALL & JENSEN

22 
By: _____
23 Joshua G. Simon
24 Attorney for Defendant Four Sigma Foods
25 Inc., individually and doing business as
26 Four Sigmatic

27 **ORDER AND JUDGMENT**

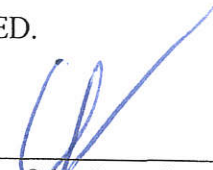
28 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is

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approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 12/11, 2018



Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG18920128

Case name: Environmental Research Center, Inc. v. Four Sigma Foods, 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: December 14, 2018

Jhalisa A. Castaneda

Courtroom Clerk, Dept. 23

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