

JAN 23 2019

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ENVIRONMENTAL RESEARCH CENTER, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

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

12 Plaintiff,

13 v.

14 SCITEC USA INC., individually and doing  
15 business as SCITEC NUTRITION, a Delaware  
16 corporation; and DOES 1 - 25,

17 Defendants.

CASE NO. RG18928642

STIPULATED CONSENT  
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed:  
Trial Date: None set

18 **1. INTRODUCTION**

19 **1.1** On November 15, 2018, Plaintiff Environmental Research Center, Inc. ("ERC"), a  
20 non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
21 filing a Complaint for Permanent Injunction, Civil Penalties, and Other Relief (the "Complaint")  
22 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
23 ("Proposition 65"), against SCITEC USA INC., individually and doing business as SCITEC  
24 NUTRITION ("SCITEC USA"); and DOES 1-25. In this action, ERC alleges that a number of  
25 products manufactured, distributed, or sold by SCITEC USA contain lead, a chemical listed  
26 under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this  
27 chemical at a level requiring a Proposition 65 warning. These products (referred to hereinafter  
28

1 individually as a "Covered Product" or collectively as "Covered Products") are:

- 2 • Scitec Nutrition Big Bang 3.0 Mango
- 3 • Scitec Nutrition Protein Delite Milk Chocolate
- 4 • Scitec Nutrition Jumbo Hardcore Brownie Praline
- 5 • Scitec Nutrition Jumbo Hardcore Banana-Yogurt
- 6 • Scitec Nutrition 100% Plant Protein Green Series Chocolate Praline
- 7 • Scitec Nutrition Revex-16
- 8 • Scitec Nutrition Protein Pudding Gourmet Dessert With Casein and
- 9 Whey Double Chocolate
- 10 • Scitec Nutrition Protein Pudding Gourmet Dessert With Casein and
- 11 Whey Vanilla Cream
- 12 • Scitec Nutrition Greens & Fruit Superfood Green Series Apple

13 1.2 ERC and SCITEC USA are hereinafter referred to individually as a "Party" or  
14 collectively as the "Parties."

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

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

23 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation  
24 dated July 2, 2018 that was served on the California Attorney General, other public enforcers,  
25 and SCITEC USA ("Notice"). A true and correct copy of the 60-Day Notice dated July 2, 2018  
26 is attached hereto as **Exhibit A** and is incorporated by reference. More than 60 days have  
27 passed since the Notice was served on the Attorney General, public enforcers, and SCITEC  
28 USA and no designated governmental entity has filed a complaint against SCITEC USA with

1 regard to the Covered 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 of  
4 California Health and Safety Code section 25249.6. SCITEC USA denies all material and  
5 factual allegations outlined in or arising from ERC's Notice and Complaint, asserts that it has  
6 various affirmative defenses to such potential claims, and specifically denies that the Plaintiff or  
7 California Consumers have been harmed or damaged by its conduct or products, including the  
8 Covered Products. SCITEC USA also expressly asserts that the Covered Products are  
9 manufactured using good manufacturing principles, and that SCITEC USA does not add any lead  
10 or any other harmful substances to the Covered Products.

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

18       **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
20 current or future legal proceeding unrelated to these proceedings.

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

23       **2.     JURISDICTION AND VENUE**

24       For purposes of this Consent Judgment and any further court action that may become  
25 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
26 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
27 over SCITEC USA as to the acts alleged in the Complaint, that venue is proper in Alameda  
28 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final

1 resolution of all claims up through and including the Effective Date which were or could have  
2 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

4 **3.1** Beginning three months from the Effective Date (the "Compliance Date"),  
5 SCITEC USA shall be permanently enjoined from manufacturing for sale in the State of  
6 California, "Distributing into the State of California," or directly selling in the State of  
7 California, any Covered Product unless it meets the warning requirements under Section 3.2.

8 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
9 of California" shall mean to directly ship a Covered Product into California for sale in  
10 California or to sell a Covered Product to a distributor that SCITEC USA knows or has reason  
11 to know will sell the Covered Product in California.

12 **3.1.2** SCITEC USA is not required to undertake any efforts or conduct to  
13 remove from the stream of commerce Covered Products that have entered the stream of  
14 commerce prior to the Compliance Date so long as SCITEC USA can document the date that  
15 any such Covered Product entered the stream of commerce. All Covered Products that have  
16 been or will have been distributed, shipped, sold or otherwise placed into the stream of  
17 commerce by SCITEC USA up to and including the Compliance Date are exempt from the  
18 provisions of Section 3 and are included within the release in Section 8 so long as SCITEC  
19 USA can document the date that such Covered Products were placed into the stream of  
20 commerce by SCITEC USA.

21 **3.2 Clear and Reasonable Warnings**

22 SCITEC USA is required to provide the following warning ("Warning") on its Covered  
23 Products pursuant to Section 3.1:

24 **PROPOSITION 65 WARNING FOR CALIFORNIA RESIDENTS:**

25 **WARNING:** Consuming this product can expose you to chemicals including lead which  
26 is [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](http://www.P65Warnings.ca.gov/food).

27 The Warning shall be securely affixed to or printed upon the container, cap or label of each  
28 Covered Product. If the Warning is provided on the label, it must be set off from other

1 surrounding information and enclosed in a box. In addition, for any Covered Product sold over the  
2 internet, the Warning shall appear on the checkout page when a California delivery address is  
3 indicated for any purchase of any Covered Product. An asterisk or other identifying method must  
4 be utilized to identify which products on the checkout page are subject to the Warning. In no  
5 event shall any internet or website Warning be contained in or made through a link.

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

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

### 17 3.3 Reformulated Covered Products

18 A Reformulated Covered Product is a Covered Product for which the "Daily Lead  
19 Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the quality  
20 control methodology described in Section 3.4. If a Covered Product meets the requirements to be  
21 considered a Reformulated Covered Product, no Warning shall be required on that Reformulated  
22 Covered Product so long as SCITEC USA complies with the testing requirements of this Section  
23 3.3.

24 3.3.1 For purposes of this Consent Judgment, the "Daily Lead Exposure Level"  
25 shall be measured in micrograms, and shall be calculated using the following formula:  
26 micrograms of lead per gram of product, multiplied by grams of product per serving of the product  
27 (using the largest serving size appearing on the product label), multiplied by servings of the  
28 product per day (using the largest number of recommended daily servings appearing on the label),

1 which equals micrograms of lead exposure per day. If the label contains no recommended daily  
2 servings, then the number of recommended daily servings shall be one.

3           **3.3.2** In order to establish that a Covered Product should be considered a  
4 Reformulated Covered Product, SCITEC USA shall measure the "Daily Lead Exposure Level"  
5 by arranging for lead testing of the Covered Product at least once a year for a minimum of five  
6 consecutive years. Such lead testing shall consist of the testing of five randomly selected  
7 samples of each of the Covered Products being considered as a Reformulated Covered Product,  
8 in the form intended for sale to the end-user, which SCITEC USA intends to sell or is  
9 manufacturing for sale in California, directly selling to a consumer in California or "Distributing  
10 into the State of California." If during or after the five-year testing period, SCITEC  
11 NUTRITION changes ingredient suppliers for any of the Reformulated Covered Products and/or  
12 reformulates any of the Reformulated Covered Products, SCITEC NUTRITION shall test that  
13 Reformulated Covered Product annually for at least four (4) consecutive years after such change  
14 is made.

15           **3.3.3** For purposes of measuring the "Daily Lead Exposure Level," the highest  
16 lead detection result of the five (5) randomly selected samples of the Covered Product will be  
17 controlling.

18           **3.3.4** All testing pursuant to this Consent Judgment shall be performed using a  
19 laboratory method that complies with the performance and quality control factors appropriate  
20 for the method used, including limit of detection, qualification, accuracy, and precision that  
21 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
22 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

23           **3.3.5** All testing pursuant to this Consent Judgment shall be performed by an  
24 independent third party laboratory certified by the California Environmental Laboratory  
25 Accreditation Program or an independent third-party laboratory that is registered with the  
26 United States Food & Drug Administration.

27           **3.3.6** Nothing in this Consent Judgment shall limit SCITEC NUTRITION's  
28 ability to conduct, or require that others conduct, additional testing of the Covered Products or

1 Reformulated Covered Products, including the raw materials used in their manufacture.

2           **3.3.7** Within thirty (30) days of ERC's written request, SCITEC NUTRITION  
3 shall deliver lab reports obtained pursuant to Section 3.3 to ERC. SCITEC NUTRITION shall  
4 retain all test results and documentation for a period of five years from the date of each test.

5       **4. SETTLEMENT PAYMENT**

6           **4.1** In full satisfaction of all potential civil penalties of ERC's alleged claims,  
7 additional settlement payments, attorney's fees, and costs, SCITEC USA shall make a total  
8 payment of \$55,000.00 ("Total Settlement Amount") to ERC within 5 days of the Effective  
9 Date ("Due Date"). SCITEC USA shall make this payment by wire transfer to ERC's account,  
10 for which ERC will give SCITEC USA the necessary account information. The Total  
11 Settlement Amount shall be apportioned as follows:

12           **4.2** \$11,204.53 shall be considered a civil penalty pursuant to California Health and  
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$8,403.40) of the civil penalty to the  
14 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
16 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,801.13) of the civil penalty.

17           **4.3** \$3,245.41 shall be distributed to ERC as reimbursement to ERC for reasonable  
18 costs incurred in bringing this action.

19           **4.4** \$8,403.39 shall be distributed to ERC as an Additional Settlement Payment  
20 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and  
21 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
22 caused by SCITEC USA in this matter. These activities are detailed below and support ERC's  
23 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
24 supplement products in California. ERC's activities have had, and will continue to have, a direct  
25 and primary effect within the State of California because California consumers will be benefitted  
26 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by  
27 providing clear and reasonable warnings to California consumers prior to ingestion of the  
28 products.

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

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

26           4.5   \$14,915.00 shall be distributed to Aqua Terra Aeris Law Group as  
27 reimbursement of ERC's attorney's fees, while \$17,231.67 shall be distributed to ERC for its  
28



1 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and  
2 costs.

3           **4.6** In the event that SCITEC USA fails to remit the Total Settlement Amount owed  
4 under Section 4 of this Consent Judgment on or before the Due Date, SCITEC USA shall be  
5 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall  
6 provide written notice of the delinquency to SCITEC USA via electronic mail. If SCITEC  
7 USA fails to deliver the Total Settlement Amount within five (5) days from the written notice,  
8 the Total Settlement Amount shall accrue interest at the statutory judgment interest rate  
9 provided in the California Code of Civil Procedure section 685.010. Additionally, SCITEC  
10 USA agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the  
11 payment due under this Consent Judgment.

12           **5. MODIFICATION OF CONSENT JUDGMENT**

13           **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
14 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or  
15 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
16 modified consent judgment.

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

1           **5.3**     In the event that SCITEC USA initiates or otherwise requests a modification  
2 under Section 5.1, and the meet and confer process leads to a joint motion or application for a  
3 modification of the Consent Judgment, SCITEC USA shall reimburse ERC its costs and  
4 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
5 arguing the motion or application.

6           **5.4**     Where the meet-and-confer process does not lead to a joint motion or  
7 application in support of a modification of the Consent Judgment, then either Party may seek  
8 judicial relief on its own.

9       **6.   RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
10       **JUDGMENT**

11       **6.1**     This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
12 this Consent Judgment.

13       **6.2**     If ERC alleges that any Covered Product fails to qualify as a Reformulated  
14 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
15 inform SCITEC USA in a reasonably prompt manner of its test results, including information  
16 sufficient to permit SCITEC USA to identify the Covered Products at issue. SCITEC USA  
17 shall, within thirty (30) days following such notice, provide ERC with testing information, from  
18 an independent third-party laboratory meeting the requirements of Sections 3.3.4 and 3.3.5,  
19 demonstrating SCITEC USA's compliance with the Consent Judgment. The Parties shall first  
20 attempt to resolve the matter prior to ERC taking any further legal action.

21       **7.   APPLICATION OF CONSENT JUDGMENT**

22       This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their  
23 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
24 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
25 retailers, predecessors, successors, and assigns, including, without limitation, Ascendis Health  
26 Limited and all its subsidiaries, Scitec Kft. and any other Scitec group company. This Consent  
27 Judgment shall have no application to any Covered Product which is distributed or sold  
28 exclusively outside the State of California and which is not used by California consumers.

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

4 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
5 on behalf of itself and in the public interest, and SCITEC USA and its respective officers,  
6 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
7 franchisees, licensees, customers (not including private label customers of SCITEC USA),  
8 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
9 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
10 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,  
11 hereby fully releases and discharges the Released Parties from any and all claims, actions,  
12 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses  
13 asserted, or that could have been asserted from the handling, use, or consumption of the  
14 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations  
15 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding  
16 lead up to and including the Compliance Date.

17 **8.2** ERC on its own behalf only, and SCITEC USA on its own behalf only,  
18 further waive and release any and all claims they may have against each other for all actions or  
19 statements made or undertaken in the course of seeking or opposing enforcement of Proposition  
20 65 in connection with the Notice and Complaint up through and including the Effective Date,  
21 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to  
22 enforce the terms of this Consent Judgment.

23 **8.3** It is possible that other claims not known to the Parties, arising out of the facts  
24 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
25 discovered. ERC on behalf of itself only, and SCITEC USA on behalf of itself only,  
26 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
27 claims up through and including the Effective Date, including all rights of action therefore.  
28 ERC and SCITEC USA acknowledge that the claims released in Sections 8.1 and 8.2 above

1 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to

2 ///

3 any such unknown claims. California Civil Code section 1542 reads as follows:

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

9 ERC on behalf of itself only, and SCITEC USA on behalf of itself only, acknowledge and  
10 understand the significance and consequences of this specific waiver of California Civil Code  
11 section 1542.

12 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
13 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
14 in the Covered Products as set forth in the Notice and Complaint.

15 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
16 environmental exposures arising under Proposition 65, nor shall it apply to any of SCITEC  
17 USA's products other than the Covered Products.

18 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

21 **10. GOVERNING LAW**

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

24 **11. PROVISION OF NOTICE**

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

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

Chris Heptinstall, Executive Director, Environmental Research Center  
3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108

1 Ph: (619) 500-3090  
2 Email: chris\_erc501c3@yahoo.com

3 With a copy to:  
4 MATTHEW C. MACLEAR  
5 ANTHONY M. BARNES  
6 AQUA TERRA AERIS LAW GROUP  
7 490 43<sup>rd</sup> Street, Suite 108  
8 Oakland, CA 94609  
9 Telephone: (415) 568-5200  
10 Email: amb@atalawgroup.com

11 FOR SCITEC USA INC., individually and doing business as SCITEC NUTRITION  
12 SCITEC USA  
13 Szabolcs Gall  
14 11555 Heron Bay Blvd., Suite 200,  
15 Coral Springs, FL, 33076.  
16 Email: szabolcs.gall@scitecnutrition.com

## 12 12. COURT APPROVAL

13 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
14 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
15 Consent Judgment.

16 12.2 If the California Attorney General objects to any term in this Consent Judgment,  
17 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
18 prior to the hearing on the motion.

19 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be  
20 void and have no force or effect.

## 21 13. EXECUTION AND COUNTERPARTS

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

## 25 14. DRAFTING

26 The terms of this Consent Judgment have been reviewed by the respective counsel for each  
27 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
28

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

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

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

12 **16. ENFORCEMENT**

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

21 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

28

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. Except as  
3 explicitly provided herein, each Party shall bear its own fees and costs

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

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

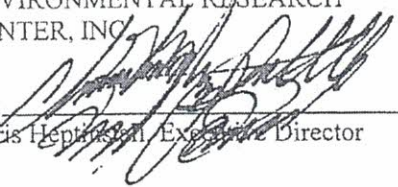
9           (1)       Find that the terms and provisions of this Consent Judgment represent a fair and  
10 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
11 been diligently prosecuted, and that the public interest is served by such settlement; and

12           (2)       Make the findings pursuant to California Health and Safety Code section  
13 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

14  
15  
16  
17 **IT IS SO STIPULATED:**

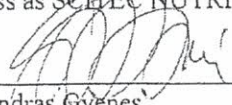
18 Dated: 11/13/, 2018

ENVIRONMENTAL RESEARCH  
CENTER, INC

19  
20 By:   
21 Chris Hephner, Executive Director

22 Dated: NOVEMBER 14, 2018

SCITEC USA INC., individually and doing  
business as SCITEC NUTRITION

23  
24   
25 By: Andras Gyenes  
26 Its: Chief Executive Officer  
27  
28

1 APPROVED AS TO FORM:

2 Dated: November 13, 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.

9  
10  
11 ORDER AND JUDGMENT

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

14 IT IS SO ORDERED, ADJUDGED AND DECREED.

15  
16 Dated: Jan. 23, 2018

  
17 Judge of the Superior Court



CLERK'S CERTIFICATE OF SERVICE BY MAIL  
CCP 1013a(3)

CASE NAME: Environmental Research Center, Inc. vs. SCITEC USA INC  
ACTION NO.: RG18928642

I certify that, I am not a party to the within action. I served the foregoing **STIPULATED CONSENT JUDGMENT** by depositing a true copy thereof in the United States mail in Oakland, California in a sealed envelope with postage fully prepaid thereon addressed to:

Barnes, Anthony M.  
Aqua Terra Aeris Law Group  
490 43<sup>rd</sup> St., Ste. 108  
Oakland, CA 94609

SCITEC USA INC  
11555 Heron Bay Blvd. #200  
Coral Springs, FL 33076

I declare under penalty of perjury that the following is true and correct

Executed on January 23, 2019 at Oakland, California.

Chad Finke,  
Executive Officer/Clerk

by Pamela Greene  
Deputy Clerk