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FILED
ALAMEDA COUNTY

MAR 29 2019

CLERK OF THE SUPERIOR COURT

By Vernon L. Witt Deputy

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **COUNTY OF ALAMEDA**

14 ENVIRONMENTAL RESEARCH
 15 CENTER, INC., a California non-profit
 16 corporation

17 **Plaintiff,**

17 vs.

18 MAGNUM NUTRACEUTICALS INC. and
 19 DOES 1-100

20 **Defendants.**

CASE NO. RG18933803

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: December 27, 2018

Trial Date: None set

22 **1. INTRODUCTION**

23 **1.1** On December 27, 2018, Plaintiff Environmental Research Center, Inc. ("ERC"),
 24 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by
 25 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")
 26 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
 27 ("Proposition 65"), against Magnum Nutraceuticals Inc. ("Magnum Nutraceuticals") and Does
 28 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or sold

1 by Magnum Nutraceuticals contain lead and/or cadmium, chemicals listed under Proposition 65
2 as carcinogens and reproductive toxins, and expose consumers to these chemicals at a level
3 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a
4 "Covered Product" or collectively as "Covered Products") are: (1) Magnum Nutraceuticals
5 Carne Diem (lead), (2) Magnum Nutraceuticals Quattro Protein Isolate Formula Soft Serve
6 Vanilla Ice Cream (lead), (3) Magnum Nutraceuticals Quattro Protein Isolate Formula
7 Chocolate Love (lead, cadmium), (4) Magnum Nutraceuticals Heat Accelerated Thermogenic
8 Stimulant Matrix (lead), (5) Magnum Nutraceuticals Drip Dry (lead), (6) Magnum
9 Nutraceuticals Quattro Protein Isolate Formula Half-Baked Cookies N' Cream (lead), (7)
10 Magnum Nutraceuticals Quattro Protein Isolate Formula Chocolate Peanut Butter Addiction
11 (lead, cadmium), (8) Magnum Nutraceuticals Quattro Protein Isolate Formula Salted Freakin'
12 Caramel (lead), (9) Magnum Nutraceuticals Opus Blue Yaberry (lead), (10) Magnum
13 Nutraceuticals Performance Greens Wild Berry (lead), (11) Magnum Nutraceuticals Limitless
14 Fearless Fruit Punch with a Peach Kicker (lead), (12) Magnum Nutraceuticals Inc Primer
15 Performance Packs (lead), (13) Magnum Nutraceuticals Thrust (lead), (14) Magnum
16 Nutraceuticals After Burner, (15) Magnum Nutraceuticals E-Brake (lead), (16) Magnum
17 Nutraceuticals Tonic (lead), (17) Magnum Nutraceuticals Fixation (lead), (18) Magnum
18 Nutraceuticals DNA (lead), (19) Magnum Nutraceuticals Opus Extreme Intra-Workout Twister
19 Pop (lead), (20) Magnum Nutraceuticals Opus Extreme Intra-Workout Red Berry Candy (lead),
20 and (21) Magnum Nutraceuticals Opus Orange Dreamsicle (lead).

21 1.2 ERC and Magnum Nutraceuticals are hereinafter referred to individually as a
22 "Party" or collectively as the "Parties."

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

27 1.4 For purposes of this Consent Judgment, the Parties agree that Magnum
28 Nutraceuticals is a business entity that has employed ten or more persons at all times relevant to

1 this action, and qualifies as a "person in the course of doing business" within the meaning of
2 Proposition 65. Magnum Nutraceuticals manufactures, distributes, and/or sells the Covered
3 Products.

4 1.5 The Complaint is based on allegations contained in ERC's Notices of Violation
5 dated July 24, 2018, September 14, 2018, and October 9, 2018 that were served on the
6 California Attorney General, other public enforcers, and Magnum Nutraceuticals ("Notices").
7 A true and correct copy of the 60-Day Notices dated July 24, 2018, September 14, 2018, and
8 October 9, 2018 are attached hereto as Exhibits A, B and C, respectively, and incorporated
9 herein by reference. More than 60 days have passed since the Notices were served on the
10 Attorney General, public enforcers, and Magnum Nutraceuticals and no designated
11 governmental entity has filed a complaint against Magnum Nutraceuticals with regard to the
12 Covered Products or the alleged violations.

13 1.6 ERC's Notices and Complaint allege that use of the Covered Products exposes
14 persons in California to lead and/or cadmium without first providing clear and reasonable
15 warnings in violation of California Health and Safety Code section 25249.6. Magnum
16 Nutraceuticals denies all material allegations contained in the Notices and Complaint.

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, franchisees,
22 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
23 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 in any
26 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, personal jurisdiction
5 over Magnum Nutraceuticals as to the acts alleged in the Complaint, that venue is proper in
6 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and
7 final resolution of all claims up through and including the Effective Date which were or could
8 have been asserted in this action based on the facts alleged in the Notices and Complaint.

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

10 **3.1** Beginning on the Effective Date, Magnum Nutraceuticals shall be permanently
11 enjoined from manufacturing for sale in the State of California, "Distributing into the State of
12 California," or directly selling in the State of California, any Covered Products which expose a
13 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or
14 "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it
15 meets the warning requirements under Section 3.2.

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

20 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
21 Level" shall be measured in micrograms, and shall be calculated using the following formula:
22 micrograms of lead per gram of product, multiplied by grams of product per serving of the
23 product (using the largest serving size appearing on the product label), multiplied by servings
24 of the product per day (using the largest number of recommended daily servings appearing on
25 the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section
26 3.1.3, the amount of lead in the ingredients listed in **Table 1** below, if applicable. If the label
27 contains no recommended daily servings, then the number of recommended daily servings shall
28 be one.

3.1.3 In calculating the Daily Lead Exposure Level for a Covered Product, Magnum Nutraceuticals shall be allowed to deduct the amount of lead which is deemed "naturally occurring" in the ingredients listed in Table 1 that are contained in that Covered Product under the following conditions: For each year that Magnum Nutraceuticals claims entitlement to a "naturally occurring" allowance, Magnum Nutraceuticals shall provide ERC with the following information: (a) Magnum Nutraceuticals must produce to ERC a written list of each ingredient in the Covered Product for which a "naturally occurring" allowance is claimed; (b) Magnum Nutraceuticals must provide ERC with documentation of laboratory testing, conducted during the year for which the "naturally occurring" allowance is claimed, that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in each ingredient listed in Table 1 that is contained in the Covered Product and for which Magnum Nutraceuticals intends to deduct "naturally occurring" lead; (c) If the laboratory testing reveals the presence of lead in any of the ingredients listed in Table 1 that are contained in the Covered Product, Magnum Nutraceuticals shall be entitled to deduct up to the full amount of the allowance for those ingredients, as listed in Table 1, but not to exceed the total amount of lead actually contained in those ingredients that are in the Covered Product; and (d) If the Covered Product does not contain any of the ingredients listed in Table 1, Magnum Nutraceuticals shall not be entitled to a deduction for "naturally occurring" lead in the Covered Product for those ingredients. The information required by Sections 3.1.3 (a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date, or anniversary thereof, for any year that Magnum Nutraceuticals shall claim entitlement to the "naturally occurring" allowance:

TABLE 1

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram

1	Magnesium Carbonate	Up to 0.332 micrograms/gram
2	Magnesium Hydroxide	Up to 0.4 micrograms/gram
3	Zinc Gluconate	Up to 0.8 micrograms/gram
4	Potassium Chloride	Up to 1.1 micrograms/gram
5	Cocoa-powder	Up to 1.0 micrograms/gram

7 **3.1.4** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
8 Level” shall be measured in micrograms, and shall be calculated using the following formula:
9 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the
10 product (using the largest serving size appearing on the product label), multiplied by servings
11 of the product per day (using the largest number of recommended daily servings appearing on
12 the label), which equals micrograms of cadmium exposure per day. If the label contains no
13 recommended daily servings, then the number of recommended daily servings shall be one.

14 **3.2 Clear and Reasonable Warnings**

15 If Magnum Nutraceuticals is required to provide a warning pursuant to Section 3.1, the
16 following warning must be utilized (“Warning”):

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

20 Magnum Nutraceuticals may elect to use the one of the following short form warnings as
21 well:

- 22 ⚠ **WARNING:** Cancer – www.P65Warnings.ca.gov.
- 23 ⚠ **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.
- 24 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

25 Magnum Nutraceuticals shall use the phrase “cancer and” in the Warning if Magnum
26 Nutraceuticals has reason to believe that the the “Daily Lead Exposure Level” is greater than 15
27 micrograms of lead as determined pursuant to the quality control methodology set forth in Section
28 3.4 or if Magnum Nutraceuticals has reason to believe that another Proposition 65 chemical is

1 present which may require a cancer warning. As identified in the brackets, if the long-form
2 warning is used, the warning shall appropriately reflect whether there is lead, cadmium, or both
3 chemicals present in each of the Covered Products.

4 The Warning shall be securely affixed to or printed upon the container or label of each
5 Covered Product. If the Warning is provided on the label, it must be set off from other
6 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
7 the internet on Magnum Nutraceutical's website, the Warning shall appear on the checkout page
8 when a California delivery address is indicated for any purchase of any Covered Product. An
9 asterisk or other identifying method must be utilized to identify which products on the checkout
10 page are subject to the Warning. In no event shall any internet or website Warning be contained
11 in or made through a link.

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

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

23 **3.3 Reformulated Covered Products**

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

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1 **3.4 Testing and Quality Control Methodology**

2 **3.4.1** Beginning within one year of the Effective Date, Magnum Nutraceuticals
3 shall arrange for lead and cadmium testing of the Covered Products at least once a year for a
4 minimum of five consecutive years by arranging for testing of five randomly selected samples of
5 each of the Covered Products, in the form intended for sale to the end-user, which Magnum
6 Nutraceuticals intends to sell or is manufacturing for sale in California, directly selling to a
7 consumer in California or "Distributing into the State of California." If tests conducted pursuant
8 to this Section demonstrate that no Warning is required for a Covered Product during each of
9 five consecutive years, then the testing requirements of this Section will no longer be required as
10 to that Covered Product. However, if during or after the five-year testing period, Magnum
11 Nutraceuticals changes ingredient suppliers for any of the Covered Products and/or reformulates
12 any of the Covered Products, Magnum Nutraceuticals shall test that Covered Product annually
13 for at least four (4) consecutive years after such change is made.

14 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or
15 "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the five
16 (5) randomly selected samples of the Covered Products will be controlling.

17 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
18 laboratory method that complies with the performance and quality control factors appropriate
19 for the method used, including limit of detection, qualification, accuracy, and precision that
20 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
21 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

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

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

1 3.4.6 Within thirty (30) days of ERC's written request, Magnum Nutraceuticals
2 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. Magnum Nutraceuticals shall
3 retain all test results and documentation for a period of five years from the date of each test.

4 3.4.7 Except for the requirements of Section 3.1.3, as applicable, the
5 requirements of Section 3.4.1 of this Consent Judgment shall not apply to any Covered Product
6 for which a Warning is provided, continuously and without interruption from the Effective
7 Date, in accordance with Section 3. In the event a Warning is provided after the Effective Date
8 but Magnum Nutraceuticals thereafter ceases to provide the Warning, the requirements of
9 Section 3.4.1 of this Consent Judgment shall apply beginning one year after the date the
10 Warning ceases to be provided, unless Magnum Nutraceuticals can show to the satisfaction of
11 ERC that the cessation in providing the Warning was a temporary error that was resolved when
12 discovered.

13 **4. SETTLEMENT PAYMENT**

14 4.1 In full satisfaction of all potential civil penalties, additional settlement payments,
15 attorney's fees, and costs, Magnum Nutraceuticals shall make a total payment of \$85,000.00
16 ("Total Settlement Amount") to ERC in four periodic payments (the "Periodic Payments")
17 according to the following payment schedule ("Due Dates"):

- 18 • Payment 1 -- \$40,000.00 within 5 days of the Effective Date
- 19 • Payment 2 -- \$15,000.00 within 35 days of the Effective Date
- 20 • Payment 3 -- \$15,000.00 within 65 days of the Effective Date
- 21 • Payment 4 -- \$15,000.00 within 95 days of the Effective Date

22 Magnum Nutraceuticals shall make these payment by wire transfer to ERC's account,
23 for which ERC will give Magnum Nutraceuticals the necessary account information. The Total
24 Settlement Amount shall be apportioned as follows:

25 4.2 \$23,957.78 shall be considered a civil penalty pursuant to California Health and
26 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$17,968.32) of the civil penalty to
27 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
28

1 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
2 Code section 25249.12(c). ERC will retain the remaining 25% (\$5,989.46) of the civil penalty.

3 4.3 \$5,717.91 shall be distributed to ERC as reimbursement to ERC for reasonable
4 costs incurred in bringing this action.

5 4.4 \$17,968.32 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 Defendant in this matter. These activities are detailed below and support ERC's
9 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 and/or cadmium in dietary supplements
13 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of
14 the 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/or cadmium and are sold to California
20 consumers. This work includes continued monitoring and enforcement of past consent judgments
21 and settlements to ensure companies are in compliance with their obligations thereunder, with a
22 specific focus on those judgments and settlements concerning lead and/or cadmium. This work
23 also includes investigation of new companies that ERC does not obtain any recovery through
24 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining
25 ERC's Voluntary Compliance Program by acquiring products from companies, developing and
26 maintaining a case file, testing products from these companies, providing the test results and
27 supporting documentation to the companies, and offering guidance in warning or implementing a
28 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT

1 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the
2 numbers of contaminated products that reach California consumers by providing access to free
3 testing for lead in dietary supplement products (Products submitted to the program are screened
4 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,
5 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
6 that submitted the 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 \$9,825.00 shall be distributed to Michael Freund as reimbursement of ERC's
13 attorney's fees, \$1,365.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
14 attorney's fees, while \$26,165.99 shall be distributed to ERC for its in-house legal fees. Except
15 as explicitly provided herein, each Party shall bear its own fees and costs.

16 4.6 In the event that Magnum Nutraceuticals fails to remit the Periodic Payments
17 owed pursuant to Section 4.1 of this Consent Judgment on or before the applicable Due Date,
18 Magnum Nutraceuticals 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 Magnum
20 Nutraceuticals and its attorney, Charles C. Weller, via electronic mail and certified mail. If
21 Magnum Nutraceuticals fails to deliver the delinquent payment within ten (10) days of the
22 certified mailing or five (5) days from receipt of the certified mailing, whichever date is later,
23 the Total Settlement Amount, less any amounts previously paid pursuant to Section 4.1, shall
24 be immediately due and owing and shall accrue interest at the statutory judgment interest rate
25 provided in the California Code of Civil Procedure section 685.010. Additionally, Magnum
26 Nutraceuticals agrees to pay ERC's reasonable attorney's fees and costs for any efforts to
27 collect the payment(s) due under this Consent Judgment.

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

19 5.3 Where the meet-and-confer process does not lead to a joint motion or
20 application in support of a modification of the Consent Judgment, then either Party may seek
21 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
22 attorney’s fees incurred in opposing the motion pursuant to California Code of Civil Procedure
23 section 1021.5.

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

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

28 6.2 If ERC alleges that any Covered Product fails to qualify as a Reformulated

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

9 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

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

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

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

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

24 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
25 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
26 and/or cadmium in the Covered Products as set forth in the Notices and Complaint.

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

4 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7 **10. GOVERNING LAW**

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

10 **11. PROVISION OF NOTICE**

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

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

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

20 With a copy to:
21 Michael Freund
22 Michael Freund & Associates
23 1919 Addison Street, Suite 105
24 Berkeley, CA 94704
25 Ph: (510) 540-1992
26 Fax: (510) 540-5543

27 **MAGNUM NUTRACEUTICALS INC.**

28 Markus Kaulius
Magnum Nutraceuticals
19278 25 Ave
Surrey BC V3Z 3X1
Canada
Email: markus@magnumhq.com

///

1 With a copy to:
2 Charles C. Weller, Esq.
3 Charles C. Weller, A.P.C.
4 11412 Corley Ct.
5 San Diego, CA 92126
6 Email: legal@cweller.com

5 12. COURT APPROVAL

6 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
7 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
8 Consent Judgment.

9 12.2 If the California Attorney General objects to any term in this Consent Judgment,
10 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
11 prior to the hearing on the motion.

12 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
13 void and have no force or effect.

14 13. EXECUTION AND COUNTERPARTS

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

18 14. DRAFTING

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

27 15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

28 If a dispute arises with respect to either Party's compliance with the terms of this Consent

1 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
2 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
3 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

4 **16. ENFORCEMENT**

5 ERC may, by motion or order to show cause before the Superior Court of Alameda
6 County, enforce the terms and conditions contained in this Consent Judgment. In any action
7 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
8 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
9 To the extent the failure to comply with the Consent Judgment constitutes a violation of
10 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
11 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
12 law for failure to comply with Proposition 65 or other laws.

13 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

20 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
21 authorized by the Party he or she represents to stipulate to this Consent Judgment.

22 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
23 **CONSENT JUDGMENT**

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

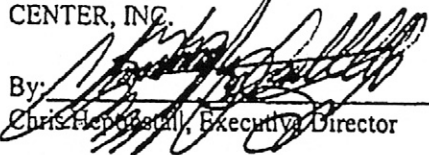
27 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
28 equitable settlement of all matters raised by the allegations of the Complaint that the matter has

1 been diligently prosecuted, and that the public interest is served by such settlement; and
2 (2) Make the findings pursuant to California Health and Safety Code section
3 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

4 **IT IS SO STIPULATED:**

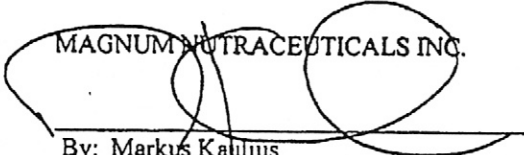
5 Dated: 12/31, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hepburn, Executive Director

9
10 Dated: 12/31, 2018


MAGNUM NUTRACEUTICALS INC.


By: Markus Kaulius
Its: President

14 **APPROVED AS TO FORM:**

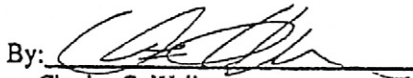
15 Dated: 12/31, 2018

MICHAEL FREUND & ASSOCIATES

By: 
Michael Freund
Attorney for Plaintiff Environmental
Research Center, Inc.

20 Dated: 12/31, 2018

CHARLES C. WELLER, A.P.C.

By: 
Charles C. Weller
Attorney for Defendant Magnum
Nutraceuticals Inc.

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RG18933803

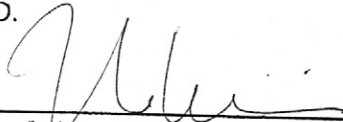
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ORDER AND JUDGMENT

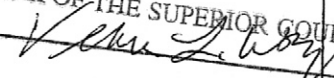
Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: MAR 28 2019, ~~2018~~



 Judge of the Superior Court

FILED
 ALAMEDA COUNTY
 MAR 29 2019
 CLERK OF THE SUPERIOR COURT
 By 
 Deputy

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

CASE NAME: Environmental Research vs. Magnum Nutraceuticals
ACTION NO.: RG18933803

I certify that, I am not a party to the within action. I served the foregoing STIPULATED CONSENT JUDGMENT and ORDER AND 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:

Michael Freund, Esq.
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704

Charles C. Weller, Esq.
Charles C. Weller, A.P.C.
11412 Corley Court
San Diego, CA 92126

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

Executed on March 29, 2019 at Oakland, California.

Chad Finke
Executive Officer/Clerk

By: Venus L. Wright
Deputy Clerk