



\*14963054\*

Courtesy Copy

1 MATTHEW C. MACLEAR (SBN 209228)  
2 ANTHONY M. BARNES (SBN 199048)  
3 AQUA TERRA AERIS LAW GROUP  
4 490 43<sup>rd</sup> Street, Suite 108  
Oakland, CA 94609  
Telephone: (415) 568-5200  
Email: mcm@atalawgroup.com

5 Attorneys for Plaintiff  
6 ENVIRONMENTAL RESEARCH CENTER, INC.

7 JOSHUA G. SIMON (SBN 264714)  
8 CALL & JENSEN  
9 A PROFESSIONAL CORPORATION  
610 Newport Center Drive, Suite 700  
Newport Beach, CA 92660  
Telephone: (949) 717-3000  
Facsimile: (949) 717-3100

11 Attorney for Defendants  
12 SBD ENTERPRISES, LLC; NUTRISYSTEM, INC.;  
13 NUTRI/SYSTEM IPHC, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF ALAMEDA

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

18 Plaintiff,

19 v.

20 SBD ENTERPRISES, LLC, a Delaware  
21 limited liability company; NUTRISYSTEM,  
22 INC., a Delaware corporation;  
NUTRI/SYSTEM IPHC, INC., a Delaware  
23 corporation; and DOES 1 – 25,

24 Defendants.

CASE NO. RG18929063

25 STIPULATED CONSENT  
26 JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 19, 2018

Trial Date: None set

~~ENDORSED  
FILED  
ALAMEDA COUNTY  
FEB 22 2019  
CLERK OF THE SUPERIOR COURT  
By D. Dumer Deputy~~

FILED  
ALAMEDA COUNTY

APR 30 2019

CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

26 1. INTRODUCTION

27 1.1 On November 19, 2018, Plaintiff Environmental Research Center, Inc. ("ERC"),  
28 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Permanent Injunction, Civil Penalties and Other Relief (the  
2 "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5  
3 *et seq.* ("Proposition 65"), against SBD ENTERPRISES, LLC; NUTRISYSTEM, INC.;  
4 NUTRI/SYSTEM IPHC, INC. (collectively "SBD ENTERPRISES") and DOES 1-25. In this  
5 action, ERC alleges that a number of products manufactured, distributed, or sold by SBD  
6 ENTERPRISES contain lead, a chemical listed under Proposition 65 as a carcinogen and  
7 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65  
8 warning. These products (referred to hereinafter individually as a "Covered Product" or  
9 collectively as "Covered Products") are:

- 10 • South Beach Diet Phase 1 Entrée Shake Chocolate Caramel Shake
- 11 • South Beach Diet Phase 1 Breakfast Beach Shack Cappuccino Shake
- 12 • South Beach Diet Phase 1 Breakfast Beach Shack Chocolate Shake
- 13 • South Beach Diet Phase 1 Entrée Bar Peanut Butter Chocolate Bar
- 14 • South Beach Diet Phase 1 Entrée Bar Cinnamon Bun Bar
- 15 • South Beach Diet Phase 1 Entrée Bar Double Chocolate Bar

16 1.2 ERC's Notice and Complaint allege that use of the Covered Products exposes  
17 persons in California to lead without first providing clear and reasonable warnings in violation  
18 of California Health and Safety Code section 25249.6. SBD ENTERPRISES denies all material  
19 allegations contained in the Notice and Complaint. Nothing in the Consent Judgment shall be  
20 construed as an admission by SBD ENTERPRISES of any fact, issue of law or violation of law,  
21 nor shall compliance with the Consent Judgment constitute or be construed as an admission by  
22 SBD ENTERPRISES of any fact, issue of law or violation of law, at any time, for any purpose.

23 1.3 ERC and SBD ENTERPRISES are hereinafter referred to individually as a  
24 "Party" or collectively as the "Parties."

25 1.4 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
26 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
27 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
28 and encouraging corporate responsibility.

1           1.5     For purposes of this Consent Judgment, the Parties agree that the defendant is a  
2 business entity which has employed ten or more persons at all times relevant to this action, and  
3 qualifies as a "person in the course of doing business" within the meaning of Proposition 65. SBD  
4 ENTERPRISES manufactures, distributes, and/or sells the Covered Products.

5           1.6     The Complaint is based on allegations contained in ERC's Notice of Violation  
6 dated August 21, 2018 that was served on the California Attorney General, other public  
7 enforcers, and SBD ENTERPRISES ("Notice"). A true and correct copy of the 60-Day Notice  
8 is attached hereto as Exhibit A and incorporated herein by reference. More than 60 days have  
9 passed since the Notice was served on the Attorney General, public enforcers, and SBD  
10 ENTERPRISES and no designated governmental entity has filed a Complaint against SBD  
11 ENTERPRISES with regard to the Covered Products or the alleged violations.

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

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

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

## 24     2.     **JURISDICTION AND VENUE**

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

1 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
2 resolution of all claims up through and including the Effective Date which were or could have  
3 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

5 **3.1** Beginning three (3) months after the Effective Date (the "Compliance Date"),  
6 SBD ENTERPRISES shall be permanently enjoined from manufacturing for sale in the State of  
7 California, "Distributing into the State of California," or directly selling in the State of  
8 California, any Covered Products which expose a person to a "Daily Lead Exposure Level" of  
9 more than 0.5 micrograms of lead per day unless it meets the warning requirements under  
10 Section 3.2.

11 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State  
12 of California" shall mean to directly ship a Covered Product into California for sale in  
13 California or to sell a Covered Product to a distributor that SBD ENTERPRISES knows or has  
14 reason to know will sell the Covered Product in California.

15 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure  
16 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
17 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
18 product (using the largest serving size appearing on the product label), multiplied by servings  
19 of the product per day (using the largest number of recommended daily servings appearing on  
20 the label), which equals micrograms of lead exposure per day. If the label contains no  
21 recommended daily servings, then the number of recommended daily servings shall be one.

22 **3.2 Clear and Reasonable Warnings**

23 If SBD ENTERPRISES is required to provide a warning pursuant to Section 3.1, the  
24 following warning must be utilized ("Warning"):

25 **WARNING:** Consuming this product can expose you to chemicals including lead which is  
26 [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 SBD ENTERPRISES shall use the phrase "cancer and" in the Warning if SBD ENTERPRISES  
28 has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead

1 as determined pursuant to the quality control methodology set forth in Section 3.4 or if SBD  
2 ENTERPRISES has reason to believe that another Proposition 65 chemical is present which may  
3 require a cancer warning.

4 The Warning shall be provided to consumers prior to the purchase of each Covered  
5 Product, either on the container or label of each Covered Product or on SBD ENTERPRISES's  
6 website. If the Warning is provided on the label, it must be set off from other surrounding  
7 information and enclosed in a box. For any Covered Product sold over the internet through SBD  
8 ENTERPRISES's website, the Warning shall appear on the product information/display page, or  
9 the Warning shall be prominently displayed on the checkout page when a California delivery  
10 address is indicated for any purchase of any Covered Product, or a link to the Warning, using the  
11 word "WARNING," in all capital and bold letters, shall appear on the product display page prior  
12 to completing checkout when a California delivery address is indicated for any purchase of any  
13 Covered Product. An asterisk or other identifying method must be utilized to identify which  
14 products on the checkout page are subject to the Warning. Additionally, for Covered Products  
15 sold over the internet, the Warning shall not be displayed in such a manner that requires the  
16 purchaser to search for it in the general content of the website. In light of SBD  
17 ENTERPRISES's inability to control third-party websites, the online warning requirements  
18 expressed in this Section will apply only to Covered Products sold through SBD  
19 ENTERPRISES's website; however, SBD ENTERPRISES shall advise, in writing, third-parties  
20 who sell the Covered Products to provide Warnings in compliance with Proposition 65 and this  
21 Consent Judgment for any Covered Products sold via such third-parties' websites or brick-and-  
22 mortar establishments.

23 The Warning shall be at least the same size as the largest of any other health or safety  
24 warnings also appearing on SBD ENTERPRISES's website or on the label or container of any  
25 Covered Product's packaging and the word "WARNING" shall be in all capital letters and in bold  
26 print. No statements intended to or likely to have the effect of diminishing the impact of, or  
27 reducing the clarity of, the Warning on the average lay person shall accompany the Warning.  
28 Further, no statements may accompany the Warning that state or imply that the source of the listed

1 chemical has an impact on or results in a less harmful effect of the listed chemical.

2 SBD ENTERPRISES must display the above Warning with such conspicuousness, as  
3 compared with other words, statements or designs on the label or container, or on its website, if  
4 applicable, to render the Warning likely to be read and understood by an ordinary individual under  
5 customary conditions of purchase or use of the product. If subsequently enacted changes to  
6 Proposition 65 or its implementing regulations require the use of additional or different  
7 information on any warning, the Parties agree that the new safe harbor warning may be utilized in  
8 place of the Warnings set forth in this Section.

### 9 3.3 Reformulated Covered Products

10 A Reformulated Covered Product is a Covered Product for which the "Daily Lead  
11 Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the quality  
12 control methodology described in Section 3.4.

### 13 3.4 Testing and Quality Control Methodology

14 3.4.1 Beginning within one year of the Effective Date, SBD ENTERPRISES  
15 shall arrange for lead testing of the Covered Products at least once a year for a minimum of  
16 three consecutive years by arranging for testing of five randomly selected samples of each of  
17 the Covered Products, in the form intended for sale to the end-user, which SBD  
18 ENTERPRISES intends to sell or is manufacturing for sale in California, directly selling to a  
19 consumer in California or "Distributing into the State of California." If tests conducted  
20 pursuant to this Section demonstrate that no Warning is required for a Covered Product during  
21 each of three consecutive years, then the testing requirements of this Section will no longer be  
22 required as to that Covered Product. However, if during or after the three-year testing period,  
23 SBD ENTERPRISES changes ingredient suppliers for any of the Covered Products and/or  
24 reformulates any of the Covered Products, SBD ENTERPRISES shall test that Covered  
25 Product annually for at least three (3) consecutive years after such change is made. The testing  
26 requirement under this section does not apply to any Covered Product for which SBD  
27 ENTERPRISES has provided the Warning specified in Section 3.2 continuously and  
28 uninterrupted after the Compliance Date; however, in the event SBD ENTERPRISES ceases to

1 provide the Warning specified in Section 3.2, SBD ENTERPRISES shall be required to comply  
2 with the testing requirements of this section beginning immediately after the date the Warning  
3 ceases to be provided or one year after the Effective Date, whichever date is later.

4           3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the highest  
5 lead detection result of the five (5) randomly selected samples of the Covered Products will be  
6 controlling.

7           3.4.3 All testing pursuant to this Consent Judgment shall be performed using a  
8 laboratory method that complies with the performance and quality control factors appropriate  
9 for the method used, including limit of detection, qualification, accuracy, and precision that  
10 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
11 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

12           3.4.4 All testing pursuant to this Consent Judgment shall be performed by an  
13 independent third party laboratory certified by the California Environmental Laboratory  
14 Accreditation Program or an independent third-party laboratory that is registered with the  
15 United States Food & Drug Administration.

16           3.4.5 Nothing in this Consent Judgment shall limit SBD ENTERPRISES'  
17 ability to conduct, or require that others conduct, additional testing of the Covered Products,  
18 including the raw materials used in their manufacture.

19           3.4.6 Within thirty (30) days of ERC's written request, SBD ENTERPRISES  
20 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. SBD ENTERPRISES shall  
21 retain all test results and documentation for a period of three years from the date of each test.

#### 22   4. SETTLEMENT PAYMENT

23           4.1 In full satisfaction of all potential civil penalties, additional settlement payments,  
24 attorney's fees, and costs, SBD ENTERPRISES shall make a total payment of \$90,000.00  
25 ("Total Settlement Amount") to ERC within 5 days of the Effective Date ("Due Date"). SBD  
26 ENTERPRISES shall make this payment by wire transfer to ERC's account, for which ERC  
27 will give SBD ENTERPRISES the necessary account information. The Total Settlement  
28 Amount shall be apportioned as follows:

1           4.2     \$30,735.46 shall be considered a civil penalty pursuant to California Health and  
2 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$23,051.59) of the civil penalty to  
3 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
4 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
5 Code section 25249.12(c). ERC will retain the remaining 25% (\$7,683.87) of the civil penalty.

6           4.3     \$3,569.77 shall be distributed to ERC as reimbursement to ERC for reasonable  
7 costs incurred in bringing this action.

8           4.4     \$23,051.56 shall be distributed to ERC as an Additional Settlement Payment  
9 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and  
10 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
11 caused by SBD ENTERPRISES in this matter. These activities are detailed below and support  
12 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
13 supplement products in California. ERC’s activities have had, and will continue to have, a direct  
14 and primary effect within the State of California because California consumers will be benefitted  
15 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by  
16 providing clear and reasonable warnings to California consumers prior to ingestion of the  
17 products.

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



1 file, testing products from these companies, providing the test results and supporting  
2 documentation to the companies, and offering guidance in warning or implementing a self-  
3 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up  
4 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated  
5 products that reach California consumers by providing access to free testing for lead in dietary  
6 supplement products (Products submitted to the program are screened for ingredients which are  
7 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a  
8 qualified laboratory for testing, and the results shared with the consumer that submitted the  
9 product).

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

15 4.5 \$15,830.00 shall be distributed to Aqua Terra Aeris Law Group as  
16 reimbursement of ERC's attorney's fees, while \$16,813.21 shall be distributed to ERC for its  
17 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and  
18 costs.

19 4.6 In the event that SBD ENTERPRISES fails to remit the Total Settlement  
20 Amount owed under Section 4 of this Consent Judgment on or before the Due Date, SBD  
21 ENTERPRISES shall be deemed to be in material breach of its obligations under this Consent  
22 Judgment. ERC shall provide written notice of the delinquency to SBD ENTERPRISES via  
23 electronic mail. If SBD ENTERPRISES fails to deliver the Total Settlement Amount within  
24 five (5) days from the written notice, the Total Settlement Amount shall accrue interest at the  
25 statutory judgment interest rate provided in the California Code of Civil Procedure section  
26 685.010. Additionally, SBD ENTERPRISES agrees to pay ERC's reasonable attorney's fees  
27 and costs for any efforts to collect the payment due under this Consent Judgment.

28 ///

1 ///

2 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

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

28 ///

1 ///

2           5.4     Where the meet-and-confer process does not lead to a joint motion or application  
3 in support of a modification of the Consent Judgment, then either Party may seek judicial relief  
4 on its own.

5           5.5     In the event that Proposition 65 is repealed, and as a result of such repeal the  
6 Covered Products are no longer subject to Proposition 65, then SBD ENTERPRISES shall have  
7 no further obligation as to injunctive terms pursuant to this Consent Judgment with respect to  
8 the Covered Products.

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 SBD ENTERPRISES in a reasonably prompt manner of its test results, including  
16 information sufficient to permit SBD ENTERPRISES to identify the Covered Products at issue.  
17 SBD ENTERPRISES shall, within thirty (30) days following such notice, provide ERC with  
18 testing information, from an independent third-party laboratory meeting the requirements of  
19 Sections 3.4.3 and 3.4.4, demonstrating SBD ENTERPRISES' compliance with the Consent  
20 Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further  
21 legal action.

22       **7.     APPLICATION OF CONSENT JUDGMENT**

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

1 consumers.

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

3 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
4 on behalf of itself and in the public interest, and SBD ENTERPRISES and its respective  
5 officers, directors, shareholders, owners, employees, agents, parent companies, subsidiaries,  
6 divisions, affiliated entities under common (full or partial) ownership, attorneys, suppliers,  
7 franchisees, licensees, customers (not including private label customers of SBD  
8 ENTERPRISES), distributors, wholesalers, retailers, and all other upstream and downstream  
9 entities in the distribution chain of any Covered Product, and the predecessors, successors, and  
10 assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the  
11 public interest, hereby fully releases and discharges the Released Parties from any and all  
12 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
13 expenses asserted, or that could have been asserted from the handling, use, or consumption of  
14 the Covered Products, as to any alleged violation of Proposition 65 or its implementing  
15 regulations arising from the failure to provide Proposition 65 warnings on the Covered  
16 Products regarding lead up to and including the Effective Date.

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

25 **8.3** It is possible that other claims not known to the Parties, arising out of the facts  
26 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
27 discovered. ERC on behalf of itself only, and SBD ENTERPRISES on behalf of itself only,  
28 acknowledge that this Consent Judgment is expressly intended to cover and include all such

1 claims up through and including the Effective Date, including all rights of action therefore.  
2 ERC and SBD ENTERPRISES acknowledge that the claims released in Sections 8.1 and 8.2  
3 above may include unknown claims, and nevertheless waive California Civil Code section  
4 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

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

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

14 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or  
15 environmental exposures arising under Proposition 65, nor shall it apply to any of SBD  
16 ENTERPRISES' products other than the Covered Products.

#### 17 9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

#### 20 10. GOVERNING LAW

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

#### 23 11. PROVISION OF NOTICE

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

27 ///

28 ///

1 ///

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

3 Chris Heptinstall, Executive Director, Environmental Research Center  
4 3111 Camino Del Rio North, Suite 400  
5 San Diego, CA 92108  
6 Ph: (619) 500-3090  
7 Email: chris\_erc501c3@yahoo.com

8 With a copy to:

9 MATTHEW C. MACLEAR  
10 ANTHONY M. BARNES  
11 AQUA TERRA AERIS LAW GROUP  
12 490 43<sup>rd</sup> Street, Suite 108  
13 Oakland, CA 94609  
14 Telephone: (415) 568-5200  
15 Email: mcm@atalawgroup.com

16 DENISE BERGNER  
17 SBD ENTERPRISES, LLC; NUTRISYSTEM, INC.;  
18 NUTRI/SYSTEM IPHC, INC.  
19 Fort Washington Executive Center  
20 600 Office Center  
21 Fort Washington, PA 19034

22 With a copy to:

23 JOSHUA G. SIMON  
24 CALL & JENSEN  
25 A PROFESSIONAL CORPORATION  
26 610 Newport Center Drive, Suite 700  
27 Newport Beach, CA 92660  
28 Telephone: (949) 717-3000  
Facsimile: (949) 717-3100

ABHISHEK K. GURNANI  
AMIN TALATI UPADHYE, LLP  
100 South Wacker Drive, Suite 2000  
Chicago, IL 60606  
Telephone: (312) 466-1033  
Facsimile: (312) 884-7352

1  
2 **12. COURT APPROVAL**

3 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
4 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
5 Consent Judgment.

6 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
7 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
8 prior to the hearing on the motion.

9 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
10 void and have no force or effect.

11 **13. EXECUTION AND COUNTERPARTS**

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

15 **14. DRAFTING**

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

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

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

1     **16. ENFORCEMENT**

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

10     **17. ENTIRE AGREEMENT, AUTHORIZATION**

11             **17.1** This Consent Judgment contains the sole and entire agreement and  
12 understanding of the Parties with respect to the entire subject matter herein, and any and all  
13 prior discussions, negotiations, commitments, and understandings related hereto. No  
14 representations, oral or otherwise, express or implied, other than those contained herein have  
15 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
16 herein, shall be deemed to exist or to bind any Party.

17             **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
18 authorized by the Party he or she represents to stipulate to this Consent Judgment.

19     **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
20     **CONSENT JUDGMENT**

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

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

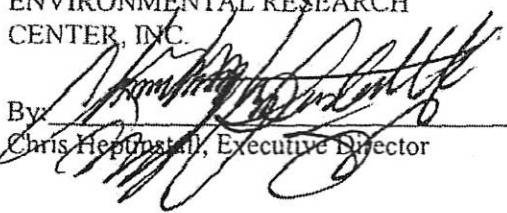
27             (2) Make the findings pursuant to California Health and Safety Code section  
28 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.



1 IT IS SO STIPULATED:

2 Dated: 1/15/, 2019

ENVIRONMENTAL RESEARCH  
CENTER, INC.

3  
4 By:   
Chris Hepburn, Executive Director

5  
6 Dated: 1-14, 2019

SBD ENTERPRISES, LLC

7  
8 Y BURTAN  
By: DAVID BURTAN, SR.  
Its: EUP OPERATIONS

9  
10 Dated: 1-14, 2019

NUTRISYSTEM, INC.

11  
12 Y BURTAN  
By: DAVID BURTAN, JR.  
Its: EUP OPERATIONS

13  
14 Dated: Jan 14, 2019


NUTRI/SYSTEM IPHC, INC.

15  
16 Denise Berger  
By: Denise Berger  
Its: Vice President

17 APPROVED AS TO FORM:

18  
19 Dated: January 15, 2019

AQUA TERRA AERIS LAW GROUP

20  
21 By:   
22 Matthew C. Maclear  
23 Anthony M. Barnes  
24 Attorneys for Plaintiff Environmental  
25 Research Center, Inc.  
26  
27  
28

1 Dated: January 16, 2019

CALL & JENSEN

2  
3 By: 

Joshua G. Simon

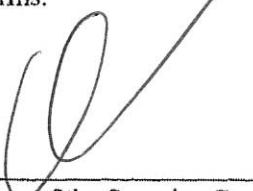
4 Attorney for Defendants SBD Enterprises,  
5 LLC; Nutrisystem, Inc. and Nutri/System  
6 IPHC, Inc.

7  
8  
9 **ORDER AND JUDGMENT**

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

12 IT IS SO ORDERED, ADJUDGED AND DECREED.

13  
14 Dated: 7/30, 2019

  
15 \_\_\_\_\_  
16 Judge of the Superior Court