

RICHARD M. FRANCO (CBN 170970)
LAW OFFICE OF RICHARD M. FRANCO
6500 Estates Drive
Oakland, CA 94611
Ph: 510-684-1022
Email: rick@rfrancolaw.com

Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC.

MICHAEL J. GLEASON
Email: mgleason@hahnlaw.com
HAHN LOESER & PARKS LLP
600 West Broadway, Suite 1500
San Diego, CA 92101

Attorney for Defendant
NATIONAL VITAMIN CO., INC.

FILED
ALAMEDA COUNTY

MAY 29 2019

CLERK OF THE COURT
By [Signature]

Deputy Clerk

FILED
ALAMEDA COUNTY

JUL 18 2019

CLERK OF THE SUPERIOR COURT
By [Signature]
Deputy

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

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

Plaintiff,

vs.

NATIONAL VITAMIN CO., INC., an Arizona
corporation,

Defendant.

CASE NO. RG19006193

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: February 8, 2019

Trial Date: None set

1. INTRODUCTION

1.1 On February 8, 2019, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against NATIONAL VITAMIN CO., INC., ("NATIONAL VITAMIN" or "DEFENDANT"). In this action, ERC alleges that a number of products manufactured, distributed, or sold by

1 NATIONAL VITAMIN contain lead, a chemical listed under Proposition 65 as a carcinogen and
2 reproductive toxin, and expose consumers to this chemical at levels requiring a Proposition 65
3 warning. These products (referred to hereinafter individually as a "Covered Product" or
4 collectively as "Covered Products") are:

- 5 • Nature's Blend Macuvite Eye Care (lead)
- 6 • Nature's Blend Super Theravite-M (lead)
- 7 • Nature's Blend Daily Vite Multivitamin (lead)
- 8 • Nature's Blend Prenatal Multivitamin with Minerals Softgels (lead)
- 9 • Nature's Blend Okinawa Coral Calcium 1000mg (lead)
- 10 • Nature's Blend Vitamins for Hair (lead)
- 11 • Nature's Blend Prenatal Multivitamin with Minerals Tablets (lead)

12 1.2 ERC and NATIONAL VITAMIN are hereinafter referred to individually as a
13 "Party" or collectively as the "Parties."

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

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

22 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
23 dated October 30, 2018 that was served on the California Attorney General, other public
24 enforcers, and NATIONAL VITAMIN ("Notice"). A true and correct copy of the 60-Day
25 Notice dated October 30, 2018 is attached hereto as **Exhibit A** and incorporated herein by
26 reference. More than 60 days have passed since the Notice was served on the Attorney General,
27 public enforcers, and NATIONAL VITAMIN and no designated governmental entity has filed
28 a Complaint against NATIONAL VITAMIN with regard to the Covered Products or the alleged

1 violations.

2 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
3 persons in California to lead without first providing clear and reasonable warnings in violation
4 of California Health and Safety Code section 25249.6. NATIONAL VITAMIN denies all
5 material allegations contained in the Notice and Complaint.

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

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

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

18 **2. JURISDICTION AND VENUE**

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

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

27 **3.1** Beginning on the Effective Date, NATIONAL VITAMIN shall be permanently
28 enjoined from manufacturing for sale in the State of California, "Distributing into the State of

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

4 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
5 of California" shall mean to directly ship a Covered Product into California for sale in
6 California or to sell a Covered Product to a distributor that NATIONAL VITAMIN knows or
7 has reason to know will sell the Covered Product in California.

8 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
9 Level" shall be measured in micrograms, and shall be calculated using the following formula:
10 micrograms of lead per gram of product, multiplied by grams of product per serving of the
11 product (using the largest serving size appearing on the product label), multiplied by servings
12 of the product per day (using the largest number of recommended daily servings appearing on
13 the label), but excluding lead which is deemed "naturally occurring" (as set forth in Section
14 3.1.3), which equals micrograms of lead exposure per day. If the label contains no
15 recommended daily servings, then the number of recommended daily servings shall be one.

16 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
17 NATIONAL VITAMIN shall be allowed to deduct the amount of lead which is deemed
18 "naturally occurring" in the ingredients listed in **Table 1** that are contained in that Covered
19 Product under the following conditions: For each year that NATIONAL VITAMIN claims
20 entitlement to a "naturally occurring" allowance, NATIONAL VITAMIN shall provide ERC
21 with the following information: (a) NATIONAL VITAMIN must produce to ERC a written list
22 of each ingredient in the Covered Product for which a "naturally occurring" allowance is
23 claimed; (b) NATIONAL VITAMIN must provide ERC with documentation of laboratory
24 testing, conducted during the year for which the "naturally occurring" allowance is claimed,
25 that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead (in micrograms
26 per gram), if any, contained in each ingredient listed in **Table 1** that is contained in the Covered
27 Product and for which NATIONAL VITAMIN intends to deduct "naturally occurring" lead; (c)
28 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, NATIONAL VITAMIN shall be entitled to deduct the amount of micrograms of lead contained in each gram of the ingredient, up to the full amount of the allowance for each ingredient as shown in **Table 1**, for those ingredients that are in the Covered Product. The deduction referenced herein shall be based on the number of grams of the ingredient contained in the Covered Product; and (d) If the Covered Product does not contain any of the ingredients listed in **Table 1**, NATIONAL VITAMIN 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 NATIONAL VITAMIN shall claim entitlement to the "naturally occurring" allowance. The requirement to provide information required by Sections 3.1.3(a) and (b) to ERC shall cease on December 31, 2022, after which time National Vitamin shall continue to comply with the requirements of Sections 3.1.3(a) and (b) without the obligation of providing such information to ERC, unless requested in writing by ERC on or before December 31, 2024, if National Vitamin intends to use the "naturally occurring" allowance:

TABLE 1

Ingredient	Amount of Lead per Gram of Ingredient Deemed Naturally Occurring for Purposes of this Consent Judgment Only
Calcium (elemental)	Up to 0.8 micrograms per gram (µg/g)
Ferrous fumarate	Up to 0.4 µg/g
Zinc oxide	Up to 8.0 µg/g
Magnesium oxide	Up to 0.4 µg/g
Magnesium carbonate	Up to 0.332 µg/g
Magnesium hydroxide	Up to 0.4 µg/g
Zinc gluconate	Up to 0.8 µg/g
Potassium chloride	Up to 1.1 µg/g
Cocoa powder	Up to 1.0 µg/g

1	Chocolate liquor	Up to 1.0 µg/g
2	Cocoa butter	Up to 0.1 µg/g

3.2 Clear and Reasonable Warnings

If NATIONAL VITAMIN is required to provide a warning pursuant to Section 3.1, the following warning must be utilized ("Warning"):

WARNING: Consuming this product can expose you to chemicals including lead which 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.

NATIONAL VITAMIN shall use the phrase "cancer and" in the Warning if NATIONAL VITAMIN has reason to believe that the the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if NATIONAL VITAMIN has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

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

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on its website or on the label or container of NATIONAL VITAMIN's product packaging and the word "WARNING" shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical. The above Warning must be prominently displayed with

1 such conspicuousness, as compared with other words, statements, designs or devices on the label,
2 labeling or sign, or website if applicable, as to render the Warning likely to be seen, read, and
3 understood by an ordinary individual under customary conditions of purchase or use of the
4 product.

5 **3.3 Conforming Covered Products**

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

9 **3.4 Testing and Quality Control Methodology**

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

23 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the highest
24 lead detection result of the three (3) randomly selected samples of the Covered Products will be
25 controlling. If, for whatever reason, the highest lead test reflects an exposure in excess of the
26 the standard for a Conforming Covered Product, NATIONAL VITAMIN has the right to retest,
27 with such retest consisting of three different samples from the same lot. In the event a retest is
28 conducted, the highest lead detection result from the retest shall be used for calculating the lead

1 exposure level for that Covered Product.

2 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
3 laboratory method that complies with the performance and quality control factors appropriate
4 for the method used, including limit of detection, qualification, accuracy, and precision that
5 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
6 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

7 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
8 independent third party laboratory certified by the California Environmental Laboratory
9 Accreditation Program or an independent third-party laboratory that is registered with the
10 United States Food & Drug Administration.

11 **3.4.5** Nothing in this Consent Judgment shall limit NATIONAL VITAMIN's
12 ability to conduct, or require that others conduct, additional testing of the Covered Products,
13 including the raw materials used in their manufacture.

14 **3.4.6** Within thirty (30) days of ERC's written request, NATIONAL
15 VITAMIN shall deliver lab reports obtained pursuant to Section 3.4 to ERC. NATIONAL
16 VITAMIN shall retain all test results and documentation for a period of five years from the date
17 of each test.

18 **3.4.7** Nothing in this Consent Judgment shall require NATIONAL VITAMIN to
19 conduct lead testing on any Covered Product that NATIONAL VITAMIN is no longer
20 Distributing into the State of California, as that term is defined in Section 3.1.1. NATIONAL
21 VITAMIN shall comply with the testing requirements of this Section 3.4 prior to the date it
22 ceases Distributing such Covered Product into the State of California.

23 **3.5 Additional Provisions for Prenatal Vitamin Products**

24 **3.5.1** As to the two prenatal vitamins products: Nature's Blend Prenatal
25 Multivitamin with Minerals Softgels and Nature's Blend Prenatal Multivitamin with Minerals
26 Tablets (the "Prenatal Vitamins"), NATIONAL VITAMIN shall contact all distribution centers
27 that may distribute Prenatal Vitamins to California and either (1) instruct each distribution center
28 to affix a Proposition 65 warning that complies with section 3.2 to the Prenatal Vitamins in their

1 possession or (2) instruct each distribution center to distribute the Prenatal Vitamins in their
2 possession outside of California. National Vitamin shall have no duty to contact wholesalers,
3 retailers, or individuals regarding the Prenatal Vitamins that received a Prenatal Vitamins
4 product prior to the Effective Date and all claims as to such Prenatal Vitamins are released.

5 4. SETTLEMENT PAYMENT

6 4.1 In full satisfaction of all potential civil penalties, additional settlement payments,
7 attorney's fees, and costs, NATIONAL VITAMIN shall make a total payment of \$175,000.00
8 ("Total Settlement Amount") to ERC within 15 days of the Effective Date ("Due Date").

9 NATIONAL VITAMIN shall make this payment by wire transfer to ERC's account, for which
10 ERC will give NATIONAL VITAMIN the necessary account information. The Total
11 Settlement Amount shall be apportioned as follows:

12 4.2 \$68,992.39 shall be considered a civil penalty pursuant to California Health and
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$51,744.29) of the civil penalty to
14 the 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% (\$17,248.10) of the civil
17 penalty.

18 4.3 \$4,408.11 shall be distributed to ERC as reimbursement to ERC for reasonable
19 costs incurred in bringing this action.

20 4.4 \$51,744.21 shall be distributed to ERC as an Additional Settlement Payment
21 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
22 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
23 caused by Defendant in this matter. These activities are detailed below and support ERC's
24 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
25 supplement products in California. ERC contends that its activities have had, and will continue
26 to have, a direct and primary effect within the State of California because California consumers
27 will be benefitted by the reduction and/or elimination of exposure to lead in dietary supplements
28 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of

1 the products.

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

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

27 4.5 \$24,030.00 shall be distributed to the Law Office of Richard M. Franco as
28 reimbursement of ERC's attorney's fees, while \$25,825.29 shall be distributed to ERC for its

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

13 4.7 No later than five (5) days after the date that this Consent Judgment is fully
14 executed by the Parties, ERC and its counsel will provide counsel for NATIONAL VITAMIN
15 with copies of their current W-9 forms.

16 5. MODIFICATION OF CONSENT JUDGMENT

17 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by written
18 stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by
19 motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a modified
20 consent judgment.

21 5.2 If NATIONAL VITAMIN seeks to modify this Consent Judgment under Section
22 5.1, then NATIONAL VITAMIN must provide written notice to ERC of its intent ("Notice of
23 Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of
24 Intent, then ERC must provide written notice to NATIONAL VITAMIN within thirty (30) days
25 of receiving the Notice of Intent. If ERC notifies NATIONAL VITAMIN in a timely manner of
26 ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as
27 required in this Section. The Parties shall meet in person or via telephone within thirty (30)
28 days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such

1 meeting, if ERC disputes the proposed modification, ERC shall provide to NATIONAL
2 VITAMIN a written basis for its position. The Parties shall continue to meet and confer for an
3 additional thirty (30) days in an effort to resolve any remaining disputes. Should it become
4 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer
5 period.

6 **5.3** In the event that NATIONAL VITAMIN initiates or otherwise requests a
7 modification under Section 5.1, and the meet and confer process leads to a joint motion or
8 application for a modification of the Consent Judgment, NATIONAL VITAMIN shall
9 reimburse ERC its costs and reasonable attorney's fees for the time spent in the meet-and-
10 confer process and filing and arguing the motion or application.

11 **5.4** Where the meet-and-confer process does not lead to a joint motion or
12 application in support of a modification of the Consent Judgment, then either Party may seek
13 judicial relief on its own.

14 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
15 **JUDGMENT**

16 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
17 this Consent Judgment.

18 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
19 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
20 inform NATIONAL VITAMIN in a reasonably prompt manner of its test results, including
21 information sufficient to permit NATIONAL VITAMIN to identify the Covered Products at
22 issue. NATIONAL VITAMIN shall, within thirty (30) days following such notice, provide
23 ERC with testing information, from an independent third-party laboratory meeting the
24 requirements of Sections 3.4.3 and 3.4.4, demonstrating NATIONAL VITAMIN's compliance
25 with the Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter
26 prior to ERC taking any further legal action.

27 **7. APPLICATION OF CONSENT JUDGMENT**

28 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their

1 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
2 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
3 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
4 application to any Covered Product which is distributed or sold exclusively outside the State of
5 California and which is not used by California consumers.

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

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

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

26 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
27 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
28 discovered. ERC on behalf of itself only, and NATIONAL VITAMIN on behalf of itself only,

1 acknowledge that this Consent Judgment is expressly intended to cover and include all such
2 claims up through and including the Effective Date, including all rights of action therefore.
3 ERC and NATIONAL VITAMIN acknowledge that the claims released in Sections 8.1 and 8.2
4 above may include unknown claims, and nevertheless waive California Civil Code section
5 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

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

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

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

19 9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

22 10. GOVERNING LAW

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

25 11. PROVISION OF NOTICE

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

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

2 Chris Heptinstall, Executive Director, Environmental Research Center
3 3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108
5 Ph: (619) 500-3090
6 Email: chris.heptinstall@erc501c3.org

7 With a copy to:
8 RICHARD M. FRANCO
9 LAW OFFICE OF RICHARD M. FRANCO
10 6500 Estates Drive
11 Oakland, CA 94611
12 Ph: (510) 684-1022
13 Email: rick@rfrancolaw.com

14 **FOR NATIONAL VITAMIN CO., INC.:**

15 Craig A. Marquiz, Esq.
16 General Counsel – National Vitamin
17 Marquiz Law Office, P.C.
18 3088 Via Flaminia Court
19 Henderson, NV 89052
20 Phone: (702) 263-5533
21 MarquizLaw@cox.net

22 With a copy to:
23 MICHAEL J. GLEASON
24 Email: mgleason@hahnlaw.com
25 HAHN LOESER & PARKS LLP
26 One American Plaza
27 600 West Broadway, Suite 1500
28 San Diego, CA 92101
Ph: (619) 810-4310

1 **12. COURT APPROVAL**

2 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 12.2 If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be

1 void and have no force or effect.

2 **13. EXECUTION AND COUNTERPARTS**

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

6 **14. DRAFTING**

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

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

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

20 **16. ENFORCEMENT**

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

1 **17. ENTIRE AGREEMENT, AUTHORIZATION**

2 17.1 This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter herein, and any and all
4 prior discussions, negotiations, commitments, and understandings related hereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
7 herein, shall be deemed to exist or to bind any Party.

8 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

10 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
11 **CONSENT JUDGMENT**

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

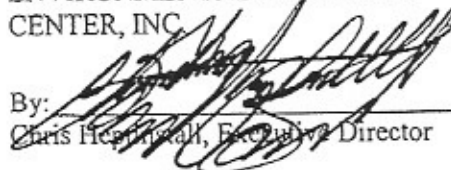
15 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
16 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
17 been diligently prosecuted, and that the public interest is served by such settlement; and

18 (2) Make the findings pursuant to California Health and Safety Code section
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

20 **IT IS SO STIPULATED:**

21 Dated: 5/15/, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

22
23 By: 
24 Chris Heffernan, Executive Director

1 Dated: 5-24-19, 2019

NATIONAL VITAMIN CO., INC.

2 Joanne Courtney
3 By: President
4

5 APPROVED AS TO FORM:

6 Dated: 5/15, 2019

LAW OFFICE OF RICHARD M.
FRANCO

7 By: Richard M. Franco
8 Richard M. Franco
9 Attorney for Plaintiff Environmental
10 Research Center, Inc.
11

12 Dated: 5-24-19, 2019

HAHN, LOESER & PARKS LLP

13 By: Michael J. Gleason
14 Michael J. Gleason
15 Attorneys for Defendant National
16 Vitamin Co., Inc.
17

18 ORDER AND JUDGMENT

19 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
20 approved and Judgment is hereby entered according to its terms.
21 IT IS SO ORDERED, ADJUDGED AND DECREED.

22 Dated: July 18, 2019

23 Julia A. Spain
24 Judge of the Superior Court
25 JULIA A. SPAIN
26
27
28

Case Title: Environmental Research Center v. National Vitamin Co, Inc
Case No. RG19-006193

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 24405 Amador Street, Hayward, California. I served the CONSENT JUDGMENT by placing copies in envelopes addressed as shown below and sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Franco, Richard M.
Law Office of Richard M. Franco
6500 Estates Drive
Oakland, CA 94611

Gleason, Michael J.
Hahn Loeser & Parks LLP
600 W. Broadway Ste. 1500
San Diego, CA 92101

Dated: 07/18/2019

Chad Finke
Executive Officer/Clerk of the Superior Court

By: *Danielle Labrecque*
Danielle Labrecque, Deputy Clerk