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County of Santa Clara
18CV338825
By: jviramontes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

SAFE PRODUCTS FOR CALIFORNIANS,
LLC,

Plaintiff,

v.

ANCIENT BRANDS, LLC, et al.
Defendants.

LEAD CASE NO. 18CV338825

**Assigned for all Purposes to
The Hon. Maureen Folan, Dept. 6**

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 30, 2018
Trial Date: None set

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

Plaintiff,

v.

ANCIENT BRANDS, LLC, et al.
Defendants.

CASE NO. 19CV347712

**Assigned for all Purposes to
The Hon. Maureen Folan, Dept. 6**

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 9, 2019
Trial Date: None set

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17 Attorneys for Defendants Ancient Brands, LLC, formerly known as Get Real
18 Nutrition, LLC and formerly known as Ancient Nutrition, LLC, individually
19 and dba Ancient Nutrition; SF Markets, LLC, Ancient Nutrition Holdings,
20 LLC, formerly known as Get Real Holdings, LLC, individually and dba
21 Ancient Nutrition; Ancient Nutrition, LLC, individually and dba Ancient
22 Nutrition; Get Real Nutrition, LLC, individually and dba Ancient Nutrition;
23 Get Real Holdings, LLC, individually and dba Ancient Nutrition; and
24 Beyond Organic, LLC
25
26
27
28

1 **1. INTRODUCTION**

2 **1.1** On November 30, 2018, Safe Products for Californians, LLC (“SPFC”), a
3 limited liability California company with its principal place of business within the State of
4 California, County of Santa Clara, initiated an action against Ancient Brands, LLC, and SF
5 Markets, LLC, Santa Clara County Superior Court Case No. 18CV338825 (the “SPFC
6 Complaint”), alleging violations of California Health and Safety Code section 25249.5 *et seq.*
7 (“Proposition 65”).

8 **1.2** On May 9, 2019, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
9 profit corporation, as a private enforcer and in the public interest, initiated an action against
10 Ancient Brands, LLC, formerly known as Get Real Nutrition, LLC and formerly known as
11 Ancient Nutrition, LLC, individually and doing business as Ancient Nutrition; Ancient
12 Nutrition Holdings, LLC, formerly known as Get Real Holdings, LLC, individually and doing
13 business as Ancient Nutrition; Ancient Nutrition, LLC, individually and doing business as
14 Ancient Nutrition; Get Real Nutrition, LLC, individually and doing business as Ancient
15 Nutrition; Get Real Holdings, LLC, individually and doing business as Ancient Nutrition;
16 Beyond Organic, LLC (collectively “Ancient Nutrition,” and, together with SF Markets, LLC,
17 “Defendants”) and DOES 1-25, Santa Clara County Superior Court Case No. 19CV347712,
18 also alleging violations of Proposition 65. Subsequently, an Amended Complaint was filed on
19 May 17, 2019 (the “ERC Complaint”).

20 **1.3** The SPFC and ERC cases referenced in paragraphs 1.1 and 1.2, filed in the Santa
21 Clara County Superior Court with case numbers 18CV338825 and 19CV347712, are collectively
22 referred to as the “Actions.” The Actions were consolidated for all purposes via stipulation and
23 order. In the Actions, SPFC and ERC assert that a number of products manufactured, distributed
24 and/or sold by Ancient Nutrition contain lead and/or cadmium, chemicals listed under
25 Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these chemicals
26 at a level requiring a Proposition 65 warning. These products (referred to hereinafter
27 individually as a “Covered Product” or collectively as “Covered Products”) are:

28 ///

- **Ancient Nutrition Organic Bone Broth Protein Meal Savory Herbs Whole Food Shake & Meal Replacement – Lead, Cadmium**
- **Ancient Nutrition Bone Broth Protein Turmeric Mobilizing - Lead**
- **Ancient Nutrition Keto Feast Vanilla - Lead**
- **Ancient Nutrition Organic Bone Broth Protein Nitro Beet – Lead**
- **Ancient Nutrition Organic Bone Broth Protein Cafe Mocha – Lead, Cadmium**
- **Ancient Nutrition Organic Bone Broth Protein Peanut Butter – Lead, Cadmium**
- **Ancient Nutrition Organic Bone Broth Protein Dark Chocolate – Lead, Cadmium**
- **Ancient Nutrition Organic Bone Broth Protein French Vanilla - Lead**
- **Ancient Nutrition Organic Bone Broth Protein Sweet Greens - Lead**
- **Ancient Nutrition Organic Bone Broth Protein Turmeric Spice - Lead**
- **Ancient Nutrition Organic Bone Broth Protein Savory Herbs - Lead**
- **Ancient Nutrition Keto Protein Turmeric - Lead**
- **Ancient Nutrition Keto Protein Chocolate - Lead**
- **Ancient Nutrition Keto Feast Caffeine Free Maple - Lead**
- **Ancient Nutrition Keto Broth Vanilla - Lead**
- **Ancient Nutrition Keto Digest Digestive Enzyme Formula - Lead**
- **Ancient Nutrition Keto Biome Probiotic - Lead**
- **Ancient Nutrition Multi Collagen Protein Chocolate – Lead, Cadmium**
- **Ancient Nutrition Bone Broth Protein Burst Pre-Workout Apple Greens - Lead**
- **Ancient Nutrition Keto Fire Ketone Activator - Lead**
- **Ancient Nutrition Keto Multi Fermented Vitamin & Mineral Formula - Lead**

- Ancient Nutrition Bone Broth Protein Peanut Butter Chocolate Chip – Cadmium
- Ancient Nutrition Organic Bone Broth Protein Meal Dark Chocolate – Lead, Cadmium
- Ancient Nutrition Bone Broth Protein Meal Vanilla Crème – Lead, Cadmium
- Ancient Nutrition Organic Bone Broth Protein Meal Peanut Butter – Lead, Cadmium
- Ancient Nutrition Organic Bone Broth Protein Meal French Vanilla – Lead, Cadmium
- Ancient Nutrition Keto Feast Chocolate - Lead
- Ancient Nutrition Keto Protein Vanilla - Lead
- Ancient Nutrition Keto Broth Chocolate - Lead
- Ancient Nutrition Keto Protein Coffee - Lead
- Ancient Nutrition Multi Collagen Protein Cold Brew Collagen – Lead
- Probiome RX Gut Formula – Lead
- Probiome RX Thyroid Support System – Lead
- Probiome RX Liver Cleanse Synergistic Milk Thistle – Lead
- Ancient Apothecary Fermented Oregano – Lead
- Ancient Apothecary Fermented Holy Basil – Lead
- Ancient Nutrition Organic Bone Broth Protein Nitro Beet Strawberry – Lead
- Ancient Nutrition Bone Broth Protein Meal Chocolate Crème – Lead, Cadmium
- Ancient Nutrition Bone Broth Protein Greens Pineapple – Lead
- Ancient Nutrition Keto Protein Banana Crème - Lead

1.4 SPFC, ERC, and Defendants are hereinafter referred to individually as a “Party” or collectively as the “Parties.”

1 **1.5** For purposes of this Consent Judgment, the Parties agree that each defendant is a
2 business entity each of which has employed ten or more persons at all times relevant to this
3 action, and qualifies as a “person in the course of doing business” within the meaning of
4 Proposition 65. Defendants manufacture, distribute, and/or sell the Covered Products.

5 **1.6** The Actions are based on allegations contained in SPFC’s and ERC’s Notices of
6 Violation dated July 23, 2018, January 10, 2019, February 22, 2019 and March 6, 2019 that
7 were served on the California Attorney General, other public enforcers, and Defendants
8 (“Notices”). True and correct copies of the 60-Day Notices dated January 10, 2019, February
9 22, 2019, and March 6, 2019 are attached hereto as **Exhibits A, B, C, and D** and each is
10 incorporated herein by reference. More than 60 days have passed since the Notices were served
11 on the Attorney General, public enforcers, and Defendants and no designated governmental
12 entity has filed a Complaint against Defendants with regard to the Covered Products or the
13 alleged violations.

14 **1.7** On October 10, 2019, SPFC served its second Notice of Violation on the
15 California Attorney General, other public enforcers, and the Defendants (hereinafter references
16 to “Notices” shall include the October 10, 2019 Notice of Violation). A true and correct copy
17 of the October 10, 2019 Notice of Violation is attached hereto as **Exhibit E** and incorporated
18 by reference. The parties stipulate that the SPFC Complaint be deemed amended as of
19 December 20, 2019 to include the products set forth in SPFC’s October 10, 2019 Notice of
20 Violation. The ERC Complaint and the SPFC Complaint, as deemed amended, shall
21 hereinafter be referred to collectively as the “Complaints.” This Consent Judgment shall apply
22 to all Covered Products set forth in Paragraph 1.3, effective 60 days after October 10, 2019,
23 provided no public enforcer is diligently pursuing the allegations set forth in SPFC’s October
24 10, 2019 Notice of Violation. On December 10, 2019 more than 60 days will have passed since
25 SPFC’s October 10, 2019 Notice of Violation was served on the Attorney General, public
26 enforcers, and the Defendants.

27
28 **1.8** SPFC’s and ERC’s Notices and Complaints allege that use of the Covered

Products exposes persons in California to lead and/or cadmium without first providing clear and reasonable warnings in violation of California Health and Safety Code section 25249.6. Defendants deny all material allegations contained in the Notices and Complaints.

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

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

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

2. JURISDICTION AND VENUE

For purposes of this Consent Judgment and any further court action that may become necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in Santa Clara County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims up through and including the Effective Date which were or could have been asserted in this action based on the facts alleged in the Notices and Complaints.

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

3.1 Beginning on the Effective Date, Defendants shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Products which expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or

1 “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day unless it
2 meets the warning requirements under Section 3.2.

3 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
4 of California” shall mean to directly ship a Covered Product into California for sale in
5 California or to sell a Covered Product to a distributor that Ancient Nutrition knows or has
6 reason to know will sell the Covered Product in California.

7 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
8 Level” shall be measured in micrograms, and shall be calculated using the following formula:
9 micrograms of lead 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), and excluding, pursuant to Section 3.1.4, any naturally occurring levels of lead as set
13 forth in **Table 1** below (the “Naturally Occurring Lead Allowance”), which equals micrograms
14 of lead exposure per day. If the label contains no recommended daily servings, then the
15 number of recommended daily servings shall be one.

16 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
17 Level” shall be measured in micrograms, and shall be calculated using the following formula:
18 micrograms of cadmium per gram of product, multiplied by grams of product per serving of
19 the product (using the largest serving size appearing on the product label), multiplied by
20 servings of the product per day (using the largest number of recommended daily servings
21 appearing on the label), which equals micrograms of cadmium exposure per day. If the label
22 contains no recommended daily servings, then the number of recommended daily servings
23 shall be one.

24 **3.1.4.** In calculating the Daily Lead Exposure Level for a Covered Product, the
25 Defendants shall be allowed to deduct the amount of lead which is deemed “naturally occurring”
26 in any ingredient listed in **Table 1** that is contained in that Covered Product under the following
27 conditions: For each year that any of the Defendants claim entitlement to a Naturally Occurring
28 Lead Allowance, Ancient Nutrition shall provide ERC with the following information: (a)

Ancient Nutrition must produce to ERC a list of each ingredient in the Covered Product for which a Naturally Occurring Lead Allowance is claimed; (b) Ancient Nutrition must provide ERC with documentation of laboratory testing that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in any ingredient listed in **Table 1** that is contained in the Covered Product and for which Ancient Nutrition intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in any ingredient listed in **Table 1** that is contained in the Covered Product, Ancient Nutrition shall be entitled to deduct up to the full amount of the allowance for that ingredient, as listed in **Table 1**, but not to exceed the total amount of lead actually contained in that ingredient in the Covered Product; and (d) If the Covered Product does not contain an ingredient listed in **Table 1**, Ancient Nutrition shall not be entitled to a deduction for “naturally occurring” lead in the Covered Product for that Covered Product. The information required by Sections 3.1.4 (a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date or anniversary thereof for any year that any of the Defendants shall claim entitlement to the Naturally Occurring Lead Allowance.

TABLE 1

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium (elemental)	Up to 0.8 micrograms of lead per gram (up to a maximum amount of 1.2 micrograms of lead if there are 1.5 grams or more of elemental calcium in the Covered Product)
Ferrous Fumarate	Up to 0.4 micrograms of lead per gram
Potassium Chloride	Up to 1.1 micrograms of lead per gram
Cocoa Powder	Up to 1.0 micrograms of lead per gram

3.2 Clear and Reasonable Warnings

If Ancient Nutrition 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] [and] [cadmium] 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.

1 Ancient Nutrition shall use the phrase “cancer and” in the Warning if Ancient Nutrition
2 has reason to believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of
3 lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if
4 Ancient Nutrition has reason to believe that another Proposition 65 chemical is present which may
5 require a cancer warning. As identified in the brackets, the warning shall appropriately reflect
6 whether there is lead, cadmium, or both chemicals present in each of the Covered Products.

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

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

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

25 **3.3 Conforming Covered Products**

26 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
27 Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure
28 Level” is no more than 4.1 micrograms of cadmium per day as determined by the quality control

methodology described in Section 3.4.

3.4 Testing and Quality Control Methodology

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

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

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

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

3.4.5 Nothing in this Consent Judgment shall limit Ancient Nutrition’s ability to conduct, or require that others conduct, additional testing of the Covered Products, including

the raw materials used in their manufacture.

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

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, additional settlement payments, attorney's fees, and costs, Ancient Nutrition shall make a total payment of \$425,000.00 ("Total Settlement Amount") to ERC in two payments (the "Periodic Payments") according to the following payment schedule ("Due Dates"):

- Payment 1 -- \$300,000.00 within 5 days of the Effective Date
- Payment 2 -- \$125,000.00 within 45 days of the Effective Date

Ancient Nutrition shall make these payments by wire transfer to ERC's account, for which ERC will give Ancient Nutrition the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.2 \$166,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$124,500.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). Of the remaining 25% (\$41,500.00) of the civil penalty ERC will retain \$36,520.00 and will distribute \$4,980.00 to Safe Products for Californians, LLC pursuant to the agreement between ERC and Safe Products for Californians, LLC.

4.3 \$13,227.07 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 \$124,031.40 shall be distributed to ERC as an Additional Settlement Payment ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly caused by Defendant in this matter. These activities are detailed below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic

chemicals in dietary supplement products in California. ERC's activities have had, and will continue to have, a direct and primary effect within the State of California because California consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements and/or by providing clear and reasonable warnings to California consumers prior to ingestion of the products.

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

ERC shall be fully accountable in that it will maintain adequate records to document and will be able to demonstrate how the ASP funds will be spent and can assure that the funds are being spent only for the proper, designated purposes described in this Consent Judgment.

1 ERC shall provide the Attorney General, within thirty days of any request, copies of
2 documentation demonstrating how such funds have been spent.

3 **4.5** \$54,966.45 shall be distributed to Aqua Terra Aeris Law Group as
4 reimbursement of ERC's attorney's fees, while \$25,774.95 shall be distributed to ERC for its
5 in-house legal fees. In addition, \$41,000.13 shall be distributed to Moore Law Firm, P.C. as
6 complete reimbursement of any and all attorney's fees and expenses incurred by Moore Law
7 Firm, P.C. and/or Safe Products for Californians, LLC for or related to the case of Safe
8 Products for Californians, LLC v. Ancient Brands, LLC, et al, in the Santa Clara Superior
9 Court, docket number 18CV338825. Except as explicitly provided herein, each Party shall bear
10 its own fees and costs.

11 **4.6** In the event that Ancient Nutrition fails to remit the Periodic Payments owed
12 under Section 4.1 of this Consent Judgment on or before the applicable Due Date, Ancient
13 Nutrition shall be deemed to be in material breach of its obligations under this Consent
14 Judgment. ERC shall provide written notice of the delinquency to Ancient Nutrition via
15 electronic mail. If Ancient Nutrition fails to deliver the delinquent payment within five (5)
16 days from the written notice, the Total Settlement Amount, less any amounts previously paid
17 pursuant to Section 4.1, shall be immediately due and owing and shall accrue interest at the
18 statutory judgment interest rate provided in the California Code of Civil Procedure section
19 685.010. Additionally, Ancient Nutrition agrees to pay ERC's reasonable attorney's fees and
20 costs for any efforts to collect the payment(s) due under this Consent Judgment.

21 **5. MODIFICATION OF CONSENT JUDGMENT**

22 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
23 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
24 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
25 modified consent judgment.

26 **5.2** If Ancient Nutrition seeks to modify this Consent Judgment under Section 5.1,
27 then Ancient Nutrition must provide written notice to ERC of its intent ("Notice of Intent"). If
28 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then

1 ERC must provide written notice to Ancient Nutrition within thirty (30) days of receiving the
2 Notice of Intent. If ERC notifies Ancient Nutrition in a timely manner of ERC's intent to meet
3 and confer, then the Parties shall meet and confer in good faith as required in this Section. The
4 Parties shall meet in person or via telephone within thirty (30) days of ERC's notification of its
5 intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the
6 proposed modification, ERC shall provide to Ancient Nutrition a written basis for its position.
7 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to
8 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing
9 to different deadlines for the meet-and-confer period.

10 **5.3** In the event that ANCIENT NUTRITION initiates or otherwise requests a
11 modification under Section 5.1, and the meet and confer process leads to a joint motion or
12 application for a modification of the Consent Judgment, ANCIENT NUTRITION shall
13 reimburse ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer
14 process and filing and arguing the motion or application. However, ERC shall not be entitled to
15 reimbursement for attorney's fees if ERC does not expend more than five (5) hours of attorney
16 time on the joint motion or application for modification.

17 **5.4 Change in Proposition 65.** If (1) Proposition 65 or its implementing
18 regulations (including but not limited to the "safe harbor no significant risk level" for lead or
19 cadmium or any "alternative risk level" adopted by regulation or California Supreme Court
20 decision) are changed from their terms as they exist on the date of entry of this Consent
21 Judgment in a manner that impacts the "Daily Lead Exposure Level" or the "Daily Cadmium
22 Exposure Level" for any of the Covered Products, or (2) after entry of this Consent Judgment,
23 OEHHA takes some other final regulatory action for nutritional supplement products similar to
24 the Covered Products and such final regulatory action impacts the "Daily Lead Exposure
25 Level" or the "Daily Cadmium Exposure Level" for any of the Covered Products or (3) after
26 entry of this Consent Judgment, OEHHA adopts a regulation that eliminates the requirement
27 for warnings for lead or cadmium for the Covered Products, then either party may seek to
28 modify this Consent Judgment.

1 **5.5** In the event that Proposition 65 is repealed, or otherwise invalidated, by
2 regulation or California or United States Supreme Court case law, and as a result of such repeal
3 or invalidation the Covered Products are no longer subject to Proposition 65, then Ancient
4 Nutrition shall have no further obligations as to the injunctive terms pursuant to this Consent
5 Judgment with respect to, and to the extent that, the Covered Products are so affected.

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

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

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

18 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

26 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
27 on behalf of itself and in the public interest, and Ancient Nutrition and its respective officers,
28 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,

1 franchisees, licensees, customers (not including private label customers of Ancient Nutrition),
2 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
3 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
4 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
5 hereby fully releases and discharges the Released Parties from any and all claims, actions,
6 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
7 asserted, or that could have been asserted from the handling, use, or consumption of the
8 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
9 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
10 lead and/or cadmium up to and including the Effective Date.

11 **8.2** ERC on its own behalf only, and Ancient Nutrition on its own behalf only,
12 further waive and release any and all claims they may have against each other for all actions or
13 statements made or undertaken in the course of seeking or opposing enforcement of
14 Proposition 65 in connection with the Notices and Complaints up through and including the
15 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
16 right to seek to enforce the terms of this Consent Judgment.

17 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
18 alleged in the Notices and Complaints, and relating to the Covered Products, will develop or be
19 discovered. ERC on behalf of itself only, and Ancient Nutrition on behalf of itself only,
20 acknowledge that this Consent Judgment is expressly intended to cover and include all such
21 claims up through and including the Effective Date, including all rights of action therefore.
22 ERC and Ancient Nutrition acknowledge that the claims released in Sections 8.1 and 8.2 above
23 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
24 any such unknown claims. California Civil Code section 1542 reads as follows:

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

1 ERC on behalf of itself only, and Ancient Nutrition on behalf of itself only, acknowledge and
2 understand the significance and consequences of this specific waiver of California Civil Code
3 section 1542.

4 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
5 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
6 and/or cadmium in the Covered Products as set forth in the Notices and Complaints.

7 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
8 environmental exposures arising under Proposition 65, nor shall it apply to any of Ancient
9 Nutrition's products other than the Covered Products.

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

14 **10. GOVERNING LAW**

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

17 **11. PROVISION OF NOTICE**

18 All notices required to be given to either Party to this Consent Judgment by the other shall
19 be in writing and sent to the following agents listed below via first-class mail or via electronic
20 mail where required. Courtesy copies via email may also be sent.

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

22 Chris Heptinstall, Executive Director, Environmental Research Center
23 3111 Camino Del Rio North, Suite 400
24 San Diego, CA 92108
25 Telephone: (619) 500-3090
26 Email: chris.heptinstall@erc501c3.org

27 ///

28 ///

///

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

9 **FOR SAFE PRODUCTS FOR CALIFORNIANS, LLC:**

10 TANYA E. MOORE
11 MOORE LAW FIRM, P.C.
12 300 South First Street, Suite 342
13 San Jose, CA 95113
14 Telephone: (408) 298-2000
15 Email: service@moorelawfirm.com

16 **FOR ANCIENT BRANDS, LLC, formerly known as GET REAL NUTRITION, LLC and
17 formerly known as ANCIENT NUTRITION, LLC, individually and dba ANCIENT
18 NUTRITION; ANCIENT NUTRITION HOLDINGS, LLC, formerly known as GET
19 REAL HOLDINGS, LLC, INDIVIDUALLY and dba ANCIENT NUTRITION; ANCIENT
20 NUTRITION, LLC, individually and dba ANCIENT NUTRITION; GET REAL
21 NUTRITION, LLC, individually and dba ANCIENT NUTRITION; GET REAL
22 HOLDINGS, LLC, individually and dba ANCIENT NUTRITION; BEYOND ORGANIC,
23 LLC**

24 Colt Morton, the Chief Operating Officer, Ancient Brands, LLC
25 1201 U.S. Highway One, Suite 350
26 North Palm Beach FL 33408
27 Telephone: 855-713-2136
28 Email: colt.morton@AncientNutrition.com

With a copy to:
DAVID KWASNIEWSKI
J. TOBIAS ROWE
BRAUNHAGEY & BORDEN LLP
220 Sansome Street, 2nd Floor
San Francisco, CA 94104-2711
Telephone: (415) 599-0210
Email: kwasniewski@braunhagey.com

12. COURT APPROVAL

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

1 Consent Judgment.

2 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
3 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
4 prior to the hearing on the motion.

5 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
6 void and have no force or effect.

7 **13. EXECUTION AND COUNTERPARTS**

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

11 **14. DRAFTING**

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

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

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

25 **16. ENFORCEMENT**

26 ERC may, by motion or order to show cause before the Superior Court of Santa Clara
27 County, enforce the terms and conditions contained in this Consent Judgment. In any action
28 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,

penalties, or remedies as are provided by law for failure to comply with the Consent Judgment. To the extent the failure to comply with the Consent Judgment constitutes a violation of Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with Proposition 65 or other laws.

17. ENTIRE AGREEMENT, AUTHORIZATION

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

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

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

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

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

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

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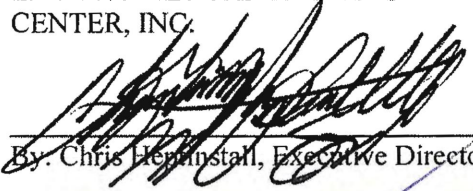
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1 **IT IS SO STIPULATED:**

2
3
4 Dated: 2/25/, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.

5
6
7 By:  Chris Herpin, Executive Director

8 Dated: 2/25, 2020

SAFE PRODUCTS FOR CALIFORNIANS,
LLC.

9
10
11 By:  Kenneth R. Moore, Operating Manager

12 Dated: February 27, 2020

13 ANCIENT BRANDS, LLC; ANCIENT
14 NUTRITION HOLDINGS, LLC;
15 ANCIENT NUTRITION, LLC; GET
16 REAL NUTRITION, LLC, GET REAL
17 HOLDINGS, LLC, and BEYOND
18 ORGANIC, LLC

DocuSigned by:



92D36FD8CCE2476

By: Colt Morton

Its: Chief Operating Officer

19
20
21 **APPROVED AS TO FORM:**

22 Dated: February 25, 2020

AQUA TERRA AERIS LAW GROUP

23
24
25 By: 

Matthew C. Maclear

26 Anthony M. Barnes

27 Attorneys for Plaintiff Environmental
28 Research Center, Inc.

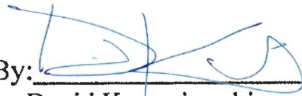
1
2 Dated: 2-25, 2020

MOORE LAW FIRM, P.C.

3
4 By: Tanya Moore
5 Tanya E. Moore
6 Attorneys for Plaintiff Safe Products for
Californians, LLC

7 Dated: February 26, 2020

BRAUNHAGEY & BORDEN LLP

8
9 By: 
10 David Kwasniewski
11 J. Tobias Rowe
12 Attorneys for Defendants Ancient Brands,
13 LLC, formerly known as Get Real
14 Nutrition, LLC and formerly known as
15 Ancient Nutrition, LLC, individually and
16 dba Ancient Nutrition; SF Markets, LLC,
17 Ancient Nutrition Holdings, LLC,
18 formerly known as Get Real Holdings,
19 LLC, individually and dba Ancient
20 Nutrition; Ancient Nutrition, LLC,
21 individually and dba Ancient Nutrition;
22 Get Real Nutrition, LLC, individually and
23 dba Ancient Nutrition; Get Real Holdings,
24 LLC, individually and dba Ancient
25 Nutrition; and Beyond Organic, LLC
26
27
28

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: May 27, 2020, 2020



Judge of the Superior Court