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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **COUNTY OF ALAMEDA**

19 **ENVIRONMENTAL RESEARCH**  
20 **CENTER, INC., a California non-profit**  
21 **corporation**

22 **Plaintiff,**

23 **vs.**

24 **A&Z PHARMACEUTICAL INC.; A&Z**  
25 **HOLISTIC PRODUCTS I, INC.; and**  
26 **DOES 1-100**

27 **Defendants.**

**CASE NO. RG20050505**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 15, 2020

Trial Date: None set

**FILED**  
**ALAMEDA COUNTY**

**JUN 01 2020**

**CLERK OF THE SUPERIOR COURT**

By Donnell Tabares  
Deputy

**1. INTRODUCTION**

1.1 On January 15, 2020, 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 and Declaratory Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 ("Proposition 65"), against A&Z Pharmaceutical Inc., A&Z Holistic Products I, Inc.  
2 (collectively "A&Z Pharmaceutical") and Docs 1-100. In this action, ERC alleges that a  
3 number of products manufactured, distributed, or sold by A&Z Pharmaceutical contain lead, a  
4 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
5 consumers to this chemical at a level requiring a Proposition 65 warning. These products  
6 (referred to hereinafter individually as a "Covered Product" or collectively as "Covered  
7 Products"), identified in ERC's Sixty-Day Notice of Violation dated August 29, 2019 ("First  
8 Notice") and in the Complaint and in ERC's Sixty-Day Notice of Violation dated November  
9 27, 2019 ("Second Notice") (collectively, the "Notices"), are: (1) MFit Supps Mass Advantage  
10 Optimal Recovery Formula Chocolate, (2) Mfit Supps ISO Whey Whey Protein Isolate  
11 Vanilla, (3) MFit Supps HAVOC Performance Pre-Workout Lemon Lime, (4) Mfit Supps  
12 Menace Intra-Workout Peach Mango, (5) Havoc Performance Powder Sour Watermelon FL,  
13 (6) Whey Protein Matrix Powder Chocolate FL, (7) Whey Protein Matrix Powder Vanilla FL,  
14 (8) Victus Powder Vanilla FL, (9) Victus Powder Chocolate FL, (10) Mass Advantage Powder  
15 Vanilla FL, and (11) Iso Whey Protein Powder Chocolate FL.

16 1.2 ERC and A&Z Pharmaceutical are hereinafter referred to individually as a  
17 "Party" or collectively as the "Parties."

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

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

26 1.5 The Complaint is based on allegations contained in ERC's First Notice, which  
27 was served on the California Attorney General, other public enforcers, and A&Z  
28 Pharmaceutical. A true and correct copy of the First Notice, dated August 29, 2019, is attached

1 hereto as Exhibit A and incorporated herein by reference. More than 60 days have passed  
2 since the First Notice was served on the Attorney General, public enforcers, and A&Z  
3 Pharmaceutical and no designated governmental entity has filed a Complaint against A&Z  
4 Pharmaceutical with regard to the Covered Products or the alleged violations.

5 1.6 On November 27, 2019, ERC served the Second Notice on the California  
6 Attorney General, other public enforcers, and A&Z Pharmaceutical. A true and correct copy of  
7 the Second Notice is attached hereto as Exhibit B and incorporated by reference. The parties  
8 stipulate that the Complaint be deemed amended as of February 6, 2020 to include the products  
9 set forth in ERC's Second Notice. This Consent Judgment shall apply to all Covered Products  
10 set forth in Paragraph 1.1, which includes the products identified in the Second Notice,  
11 effective 60 days after November 27, 2019, provided no public enforcer is diligently pursuing  
12 the allegations set forth in the Second Notice. On February 6, 2020 more than 60 days will  
13 have passed since the Second Notice was served on the Attorney General, public enforcers, and  
14 A&Z Pharmaceutical. References to the Complaint hereafter shall include both the originally  
15 filed Complaint and the Complaint as deemed amended.

16 1.7 ERC's Notices and Complaint allege that use of the Covered Products expose  
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. A&Z Pharmaceutical denies all material  
19 allegations contained in the Notices and Complaint.

20 1.8 The Parties have entered into this Consent Judgment in order to settle,  
21 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
22 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
23 or be construed as an admission by any of the Parties or by any of their respective officers,  
24 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
25 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
26 issue of law, or violation of law.

27 1.9 Except as expressly set forth herein, nothing in this Consent Judgment shall  
28 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in

1 any current or future legal proceeding unrelated to these proceedings.

2 1.10 The Effective Date of this Consent Judgment is the date on which it is entered  
3 as a Judgment by this Court.

4 **2. JURISDICTION AND VENUE**

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

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

13 3.1 Beginning on the Effective Date, A&Z Pharmaceutical shall be permanently  
14 enjoined from manufacturing for sale in the State of California, "Distributing into the State of  
15 California," or directly selling in the State of California, any Covered Products which expose a  
16 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it  
17 meets the warning requirements under Section 3.2.

18 3.1.1 As used in this Consent Judgment, the term "Distributing into the State  
19 of California" shall mean to directly ship a Covered Product into California for sale in  
20 California or to sell a Covered Product to a distributor that A&Z Pharmaceutical knows or has  
21 reason to know will sell the Covered Product in California.

22 3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure  
23 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
24 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
25 product (using the largest serving size appearing on the product label), multiplied by servings  
26 of the product per day (using the largest number of recommended daily servings appearing on  
27 the label), which equals micrograms of lead exposure per day. If the label contains no  
28 recommended daily servings, then the number of recommended daily servings shall be one.

### 3.2 Clear and Reasonable Warnings

If A&Z Pharmaceutical is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized ("Warning"):

#### OPTION 1

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

Or

#### OPTION 2

**⚠ WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

A&Z Pharmaceutical shall use the phrase "cancer and" in the Warning if A&Z Pharmaceutical 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 A&Z Pharmaceutical 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 by A&Z Pharmaceutical, 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. Alternatively, the Warning for any Covered Product sold over the internet by A&Z Pharmaceutical may be made through a clearly marked hyperlink using the word "WARNING" in all capital and bold letters on the checkout page so long as the hyperlink goes directly to a page prominently displaying the Option 1 Warning without content that detracts from the Warning.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label or container of A&Z Pharmaceutical's

1 product packaging and the word "WARNING" shall be in all capital letters and in bold print. No  
2 statements intended to or likely to have the effect of diminishing the impact of the Warning on the  
3 average lay person shall accompany the Warning. Further, no statements may accompany the  
4 Warning that state or imply that the source of the listed chemical has an impact on or results in a  
5 less harmful effect of the listed chemical.

6 A&Z Pharmaceutical must display the above Warning with such conspicuousness, as  
7 compared with other words, statements or designs on the label or container, or on its website, if  
8 applicable, to render the Warning likely to be read and understood by an ordinary individual under  
9 customary conditions of purchase or use of the product.

### 10 3.3 Conforming Covered Products

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

### 14 3.4 Testing and Quality Control Methodology

15 3.4.1 Subject to Section 3.4.7, beginning within one year of the Effective  
16 Date, A&Z Pharmaceutical shall arrange for lead testing of the Covered Products at least once  
17 a year for a minimum of five consecutive years by arranging for testing of five randomly  
18 selected samples of each of the Covered Products, in the form intended for sale to the end-user,  
19 which A&Z Pharmaceutical intends to sell or is manufacturing for sale in California, directly  
20 selling to a consumer in California or "Distributing into the State of California." If tests  
21 conducted pursuant to this Section demonstrate that no Warning is required for a Covered  
22 Product during each of five consecutive years, then the testing requirements of this Section will  
23 no longer be required as to that Covered Product. However, if during or after the five-year  
24 testing period, A&Z Pharmaceutical changes ingredient suppliers for any of the Covered  
25 Products and/or reformulates any of the Covered Products, A&Z Pharmaceutical shall test that  
26 Covered Product annually for at least four (4) consecutive years after such change is made.

27 3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the highest  
28 lead detection result of the five (5) randomly selected samples of the Covered Products will be

1 controlling.

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 A&Z Pharmaceutical'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, A&Z Pharmaceutical  
15 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. A&Z Pharmaceutical shall  
16 retain all test results and documentation for a period of five years from the date of each test.

17           3.4.7 The testing requirements under this Section 3.4 do not apply to any  
18 Covered Product for which A&Z Pharmaceutical has provided the Warning specified in  
19 Section 3.2 continuously and uninterrupted after the Effective Date; however, in the event  
20 A&Z Pharmaceutical ceases to provide the Warning specified in Section 3.2, A&Z  
21 Pharmaceutical shall be required to comply with the testing requirements of this section  
22 beginning immediately after the date the Warning ceases to be provided or one year after the  
23 Effective Date, whichever date is later, unless A&Z Pharmaceutical can show to the  
24 satisfaction of ERC that the cessation in providing the Warning was a temporary error that was  
25 resolved when discovered

26 **4. SETTLEMENT PAYMENT**

27           4.1 In full satisfaction of all potential civil penalties, additional settlement  
28 payments, attorney's fees, and costs, A&Z Pharmaceutical shall make, either itself or through

its attorneys, a total payment of \$25,000.00 ("Total Settlement Amount") to ERC within 15 days of the Effective Date ("Due Date"). A&Z Pharmaceutical shall make this payment by wire transfer to ERC's account, for which ERC will give A&Z Pharmaceutical the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.2 \$9,500.00 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$7,125.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$2,375.00) of the civil penalty.

4.3 \$2,185.37 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 \$6,905.15 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 Defendants 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 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 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



1 those judgments and settlements concerning lead. This work also includes investigation of new  
2 companies that ERC does not obtain any recovery through settlement or judgment; (2)  
3 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary  
4 Compliance Program by acquiring products from companies, developing and maintaining a  
5 case file, testing products from these companies, providing the test results and supporting  
6 documentation to the companies, and offering guidance in warning or implementing a self-  
7 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM  
8 (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of  
9 contaminated products that reach California consumers by providing access to free testing for  
10 lead in dietary supplement products (Products submitted to the program are screened for  
11 ingredients which are suspected to be contaminated, and then may be purchased by ERC,  
12 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
13 that submitted the product).

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

19 4.5 \$6,409.48 shall be distributed to ERC for its in-house legal fees. Except as  
20 explicitly provided herein, each Party shall bear its own fees and costs.

21 4.6 In the event that A&Z Pharmaceutical fails to remit the Total Settlement  
22 Amount owed under Section 4 of this Consent Judgment on or before the Due Date, A&Z  
23 Pharmaceutical shall be deemed to be in material breach of its obligations under this Consent  
24 Judgment. ERC shall provide written notice of the delinquency to A&Z Pharmaceutical via  
25 electronic mail. If A&Z Pharmaceutical fails to deliver the Total Settlement Amount within  
26 five business (5) days from the written notice, the Total Settlement Amount shall accrue  
27 interest at the statutory judgment interest rate provided in the California Code of Civil  
28 Procedure section 685.010. Additionally, A&Z Pharmaceutical agrees to pay ERC's reasonable

1 attorney's fees and costs for any efforts to collect the payment due under this Consent

2 Judgment.

3 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

21 **5.3** In the event that A&Z Pharmaceutical initiates or otherwise requests a  
22 modification under Section 5.1, and the meet and confer process leads to a joint motion or  
23 application for a modification of the Consent Judgment, A&Z Pharmaceutical shall reimburse  
24 ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process  
25 and filing and arguing the motion or application.

26 **5.4** Where the meet-and-confer process does not lead to a joint motion or  
27 application in support of a modification of the Consent Judgment, then either Party may seek  
28 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any

attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure section 1021.5.

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

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

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

**7. APPLICATION OF CONSENT JUDGMENT**

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

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

**8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself and in the public interest, and A&Z Pharmaceutical and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of A&Z Pharmaceutical), distributors, wholesalers, retailers, and all other upstream and downstream

1 entities in the distribution chain of any Covered Product, and the predecessors, successors, and  
2 assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the  
3 public interest, hereby fully releases and discharges the Released Parties from any and all  
4 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
5 expenses asserted, or that could have been asserted from the handling, use, or consumption of  
6 the Covered Products, as to any alleged violation of Proposition 65 or its implementing  
7 regulations arising from the failure to provide Proposition 65 warnings on the Covered  
8 Products regarding lead up to and including the Effective Date.

9       8.2       ERC on its own behalf only, and A&Z Pharmaceutical on its own behalf  
10 only, further waive and release any and all claims they may have against each other for all  
11 actions or statements made or undertaken in the course of seeking or opposing enforcement of  
12 Proposition 65 in connection with the Notices and Complaint up through and including the  
13 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
14 right to seek to enforce the terms of this Consent Judgment.

15       8.3       It is possible that other claims not known to the Parties, arising out of the facts  
16 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
17 discovered. ERC on behalf of itself only, and A&Z Pharmaceutical on behalf of itself only,  
18 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
19 claims up through and including the Effective Date, including all rights of action therefore.  
20 ERC and A&Z Pharmaceutical acknowledge that the claims released in Sections 8.1 and 8.2  
21 above may include unknown claims, and nevertheless waive California Civil Code section  
22 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

27 ERC on behalf of itself only, and A&Z Pharmaceutical on behalf of itself only, acknowledge  
28 and understand the significance and consequences of this specific waiver of California Civil

1 Code section 1542.

2 8.4 Compliance with the terms of this Consent Judgment shall be deemed to  
3 constitute compliance with Proposition 65 by any release regarding alleged exposures to lead  
4 in the Covered Products as set forth in the Notices and Complaint.

5 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or  
6 environmental exposures arising under Proposition 65, nor shall it apply to any of A&Z  
7 Pharmaceutical's products other than the Covered Products.

8 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

12 **10. GOVERNING LAW**

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

15 **11. PROVISION OF NOTICE**

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

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

20 Chris Heptinstall, Executive Director, Environmental Research Center  
21 3111 Camino Del Rio North, Suite 400  
22 San Diego, CA 92108  
23 Ph: (619) 500-3090  
Email: chris.heptinstall@erc501c3.org

24 With a copy to:  
25 Charles W. Poss  
26 Environmental Research Center, Inc.  
27 3111 Camino Del Rio North, Suite 400  
28 San Diego, CA 92108  
Ph: (619) 500-3090  
Email: charles.poss@erc501c3.org

**FOR A&Z PHARMACEUTICAL INC.; A&Z HOLISTIC PRODUCTS I, INC.:**

**John Frame**

**A&Z Pharmaceutical, Inc.; A&Z Holistic Products I, Inc.**

**350 Wireless Boulevard**

**Hauppauge, NY 11788**

**Ph: (631) 521-8847**

**Email: jframe@azpharmaceutical.com**

**With a copy to:**

**Christopher W. Smith**

**Pillsbury Winthrop Shaw Pittman LLP**

**725 S. Figueroa Street, 28<sup>th</sup> Floor**

**Los Angeles, CA 90071**

**Ph: (213) 488-3619**

**Email: christopher.smith@pillsburylaw.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 Consent Judgment.

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

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

**13. EXECUTION AND COUNTERPARTS**

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

**14. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and

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

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

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

11 **16. ENFORCEMENT**

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

20 **17. ENTIRE AGREEMENT, AUTHORIZATION**

21 **17.1** This Consent Judgment contains the sole and entire agreement and  
22 understanding of the Parties with respect to the entire subject matter herein, and any and all  
23 prior discussions, negotiations, commitments, and understandings related hereto. No  
24 representations, oral or otherwise, express or implied, other than those contained herein have  
25 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
26 herein, shall be deemed to exist or to bind any Party.

27 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
28 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.

IT IS SO STIPULATED:

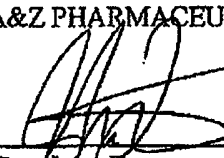
Dated: 1/22/, 2020

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By:   
Chris Heggenhall, Executive Director

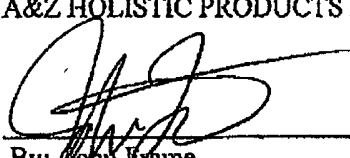
Dated: 1/22, 2020

A&Z PHARMACEUTICAL INC.

By:   
John Frame  
Vice President, Brand Marketing &  
Sales

Dated: 1/22, 2020

A&Z HOLISTIC PRODUCTS I, INC.

By:   
John Frame  
Vice President, Brand Marketing &  
Sales



1 APPROVED AS TO FORM:

2 Dated: January 22, 2020

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: Ch

Charles W. Poss  
In-House Counsel

7 Dated: 1/22, 2020

PILLSBURY WINTHROP SHAW  
PITTMAN LLP

By: CS

Christopher W. Smith  
Attorney for A&Z Pharmaceutical Inc.,  
A&Z Holistic Products I, Inc.

15 **ORDER AND JUDGMENT**

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

18 IT IS SO ORDERED, ADJUDGED AND DECREED.

20 Dated: 5/20, 2020

Julia L. Smith  
Judge of the Superior Court

Case Title: Environmental Research Center v. A&Z Pharmaceutical  
Case No. RG20-050505

### 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 ORDER PROP 65 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.

Poss, Charles  
Environmental Research Center  
3111 Camino Del Rio North Ste. 400  
San Diego, CA 92108

Smith, Christopher W.  
Pillsbury Winthrop Shaw Pittman LLP  
725 South Figueroa Street 28<sup>th</sup> Floor  
Los Angeles, CA 90017

Dated: 06/01/20

Chad Finke  
Executive Officer/Clerk of the Superior Court

By: *Danielle Labrecque*  
Danielle Labrecque, Deputy Clerk