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FILED
ALAMEDA COUNTY
JUN 29 2020

CLERK OF THE SUPERIOR COURT
 By Michelle Hawkins
 Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

**THE BEST OF ORGANIC, LLC,
 individually and dba DR. KELLYANN and
 DOES 1-100**

Defendants.

CASE NO. RG20052230

**STIPULATED CONSENT
 JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 28, 2020

Trial Date: None set

1. INTRODUCTION

1.1 On January 28, 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.*

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1 (“Proposition 65”), against The Best of Organic, LLC, individually and dba Dr. Kellyann (“Dr.
 2 Kellyann”) and Does 1-100. In this action, ERC alleges that a number of products
 3 manufactured, distributed, or sold by Dr. Kellyann contain lead, a chemical listed under
 4 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical
 5 at a level requiring a Proposition 65 warning. These products (referred to hereinafter
 6 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Dr.
 7 Kellyann's Slim Collagen Shake Drink Mix To Go! Chocolate Almond, (2) Dr. Kellyann
 8 Collagen Broth Natural Bone Broth, and (3) Dr. Kellyann Collagen Cocoa Hot Chocolate.

9 **1.2** ERC and Dr. Kellyann are hereinafter referred to individually as a “Party” or
 10 collectively as the “Parties.”

11 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
 12 causes, helping safeguard the public from health hazards by reducing the use and misuse of
 13 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
 14 and encouraging corporate responsibility.

15 **1.4** For purposes of this Consent Judgment, the Parties agree that Dr. Kellyann is a
 16 business entity that has employed ten or more persons at all times relevant to this action, and
 17 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. Dr.
 18 Kellyann manufactures, distributes, and/or sells the Covered Products.

19 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
 20 dated September 6, 2019 that was served on the California Attorney General, other public
 21 enforcers, and Dr. Kellyann (“Notice”). A true and correct copy of the 60-Day Notice dated
 22 September 6, 2019 is attached hereto as **Exhibit A** and incorporated herein by reference. More
 23 than 60 days have passed since the Notice was served on the Attorney General, public
 24 enforcers, and Dr. Kellyann and no designated governmental entity has filed a Complaint
 25 against Dr. Kellyann with regard to the Covered Products or the alleged violations.

26 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
 27 persons in California to lead without first providing clear and reasonable warnings in violation
 28 of California Health and Safety Code section 25249.6. Dr. Kellyann denies all material

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1 allegations contained in the Notice and Complaint.

2 1.7 The Parties have entered into this Consent Judgment in order to settle,
3 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
4 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
5 or be construed as an admission by any of the Parties or by any of their respective officers,
6 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
7 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
8 issue of law, or violation of law.

9 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
10 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
11 any current or future legal proceeding unrelated to these proceedings.

12 1.9 The Effective Date of this Consent Judgment is the date on which it is entered
13 as a Judgment by this Court.

14 **2. JURISDICTION AND VENUE**

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

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

23 3.1 Beginning on the Effective Date, Dr. Kellyann shall be permanently enjoined
24 from manufacturing for sale in the State of California, "Distributing into the State of
25 California," or directly selling in the State of California, any Covered Product which exposes a
26 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it
27 meets the warning requirements under Section 3.2.

28 3.1.1 As used in this Consent Judgment, the term "Distributing into the State

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1 of California" shall mean to directly ship a Covered Product into California for sale in
2 California or to sell a Covered Product to a distributor that Dr. Kellyann knows or has reason
3 to know will sell the Covered Product in California.

4 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
5 Level" shall be measured in micrograms, and shall be calculated using the following formula:
6 micrograms of lead per gram of product, multiplied by grams of product per serving of the
7 product (using the largest serving size appearing on the product label), multiplied by servings
8 of the product per day (using the largest number of recommended daily servings appearing on
9 the label), which equals micrograms of lead exposure per day. If the label contains no
10 recommended daily servings, then the number of recommended daily servings shall be one.

11 **3.2 Clear and Reasonable Warnings**

12 If Dr. Kellyann is required to provide a warning pursuant to Section 3.1, the following
13 warning must be utilized ("Warning"):

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

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

22 The Warning shall be securely affixed to or printed upon the container or label of each
23 Covered Product. If the Warning is provided on the label, it must be set off from other
24 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
25 the internet, the Warning shall appear on the checkout page when a California delivery address
26 is indicated for any purchase of any Covered Product. An asterisk or other identifying method
27 must be utilized to identify which products on the checkout page are subject to the Warning.
28 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

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

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

11 3.3 Conforming Covered Products

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

15 3.4 Testing and Quality Control Methodology

16 3.4.1 Beginning within one year of the Effective Date, Dr. Kellyann shall
17 arrange for lead testing of the Covered Products at least once a year for a minimum of three
18 consecutive years by arranging for testing of five randomly selected samples of each of the
19 Covered Products, in the form intended for sale to the end-user, which Dr. Kellyann intends to
20 sell or is manufacturing for sale in California, directly selling to a consumer in California or
21 "Distributing into the State of California." If tests conducted pursuant to this Section
22 demonstrate that no Warning is required for a Covered Product during each of three
23 consecutive years, then the testing requirements of this Section will no longer be required as to
24 that Covered Product. However, if during or after the three-year testing period, Dr. Kellyann
25 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the
26 Covered Products, Dr. Kellyann shall test that Covered Product annually for at least two (2)
27 consecutive years after such change is made.

28 3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the highest

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1 lead detection result of the five (5) randomly selected samples of the Covered Products will be
2 controlling.

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

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

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

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

18 **3.5** Nothing in this Section 3 is intended to apply to Dr. Kellyann during any quarter
19 of a year in which it is not a "person in the course of doing business" as defined in Cal. Health &
20 Safety Code § 25249.11(b). Dr. Kellyann's status as a "person in the course of doing business"
21 shall be determined by the number of its Employees, as defined in 27 California Code of
22 Regulations § 25102(h). Upon ERC's written request, Dr. Kellyann shall provide to ERC (1) a
23 Declaration stating the number of its employees and (2) copies of its IRS Form 941 Reports, for
24 each quarter during the one year prior to ERC's request to document its status as a "person in the
25 course of doing business." ERC shall be entitled to request such information for a period of
26 three years after the Effective Date and shall not request such information more than twice per
27 calendar year.

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1 **4. SETTLEMENT PAYMENT**

2 **4.1** In full satisfaction of all potential civil penalties, additional settlement
3 payments, attorney's fees, and costs, Dr. Kellyann shall make a total payment of \$45,000.00
4 ("Total Settlement Amount") to ERC in three (3) periodic payments (the "Periodic Payments")
5 according to the following payment schedule ("Due Dates"):

- 6 • Payment 1 - \$15,000.00 within five (5) days of the Effective Date
7 • Payment 2 - \$15,000.00 within thirty-five (35) days of the Effective Date
8 • Payment 3 - \$15,000.00 within sixty-five (65) days of the Effective Date

9 Dr. Kellyann shall make the Periodic Payments by wire transfer to ERC's account, for
10 which ERC will give Dr. Kellyann the necessary account information. The Total Settlement
11 Amount shall be apportioned as follows:

12 **4.2** \$22,000.00 shall be considered a civil penalty pursuant to California Health and
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$16,500.00) 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% (\$5,500.00) of the civil penalty.

17 **4.3** \$2,407.33 shall be distributed to ERC as reimbursement to ERC for reasonable
18 costs incurred in bringing this action.

19 **4.4** \$15,052.84 shall be distributed to ERC as an Additional Settlement Payment
20 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
21 and 3204. ERC will utilize the ASP for activities that address the same public harm as
22 allegedly caused by Defendant in this matter. These activities are detailed
23 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic
24 chemicals in dietary supplement products in California. ERC's activities have had, and will
25 continue to have, a direct and primary effect within the State of California because California
26 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary
27 supplements and/or by providing clear and reasonable warnings to California consumers prior
28 to ingestion of the products.

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

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

26 4.5 \$5,539.83 shall be distributed to ERC for its in-house legal fees. Except as
27 explicitly provided herein, each Party shall bear its own fees and costs.

28 4.6 In the event that Dr. Kellyann fails to remit any of the Periodic Payments owed

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1 under Section 4.1 of this Consent Judgment on or before the applicable Due Date, Dr. Kellyann
2 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
3 shall provide written notice of the delinquency to Dr. Kellyann via electronic mail. If Dr.
4 Kellyann fails to deliver the delinquent payment within five (5) days from the written notice,
5 the Total Settlement Amount, less any amounts previously paid pursuant to Section 4.1, shall
6 be immediately due and owing and shall accrue interest at the statutory judgment interest rate
7 provided in the California Code of Civil Procedure section 685.010. Additionally, Dr. Kellyann
8 agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment
9 due under this Consent Judgment.

10 5. MODIFICATION OF CONSENT JUDGMENT

11 5.1 This Consent Judgment may be modified only as to injunctive terms (i) by
12 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
13 or (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
14 modified consent judgment.

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

27 5.3 In the event that Dr. Kellyann initiates or otherwise requests a modification
28 under Section 5.1, and the meet and confer process leads to a joint motion or application for a

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1 modification of the Consent Judgment, Dr. Kellyann shall reimburse ERC its costs and
2 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
3 arguing the motion or application.

4 5.4 Where the meet-and-confer process does not lead to a joint motion or
5 application in support of a modification of the Consent Judgment, then either Party may seek
6 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
7 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure
8 section 1021.5.

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

11 6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or
12 terminate this Consent Judgment.

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

21 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
3 on behalf of itself and in the public interest, and Dr. Kellyann and its respective officers,
4 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
5 franchisees, licensees, customers (not including private label customers of Dr. Kellyann),
6 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
7 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
8 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
9 hereby fully releases and discharges the Released Parties from any and all claims, actions,
10 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
11 asserted, or that could have been asserted from the handling, use, or consumption of the
12 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
13 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
14 lead up to and including the Effective Date.

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

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

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

5 ERC on behalf of itself only, and Dr. Kellyann on behalf of itself only, acknowledge and
6 understand the significance and consequences of this specific waiver of California Civil Code
7 section 1542.

8 8.4 Compliance with the terms of this Consent Judgment shall be deemed to
9 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
10 in the Covered Products as set forth in the Notice and Complaint.

11 8.5 Nothing in this Consent Judgment is intended to apply to any occupational or
12 environmental exposures arising under Proposition 65, nor shall it apply to any of Dr.
13 Kellyann's products other than the Covered Products.

14 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

18 **10. GOVERNING LAW**

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

21 **11. PROVISION OF NOTICE**

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

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

26 Chris Heptinstall, Executive Director, Environmental Research Center
27 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
28 Ph: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

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1 With a copy to:
 2 Charles W. Poss
 3 Environmental Research Center, Inc.
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 5 San Diego, CA 92108
 6 Ph: (619) 500-3090
 7 Fax: (706) 858-0326
 8 Email: charles.poss@erc501c3.org

9 **FOR THE BEST OF ORGANIC, LLC, individually and dba DR. KELLYANN:**

10 David Urman
 11 Best of Organic, LLC
 12 219 Elm Street
 13 Birmingham, MI 48009
 14 Email: david@drkellyann.com

15 With a copy to:
 16 Michael J. Gleason
 17 Hahn Loeser & Parks LLP
 18 One American Plaza
 19 600 West Broadway, Suite 1500
 20 San Diego, CA 92101
 21 Ph: (619) 810-4310
 22 Email: mgleason@hahnlaw.com

23 **12. COURT APPROVAL**

24 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
 25 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
 26 Consent Judgment.

27 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
 28 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

1 deemed to constitute one document. A facsimile or pdf signature shall be construed to be as valid
2 as the original signature.

3 **14. DRAFTING**

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

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

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

17 **16. ENFORCEMENT**

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

26 **17. ENTIRE AGREEMENT, AUTHORIZATION**

27 **17.1** This Consent Judgment contains the sole and entire agreement and
28 understanding of the Parties with respect to the entire subject matter herein, and any and all

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1 prior discussions, negotiations, commitments, and understandings related hereto. No
2 representations, oral or otherwise, express or implied, other than those contained herein have
3 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
4 herein, shall be deemed to exist or to bind any Party.

5 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
6 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

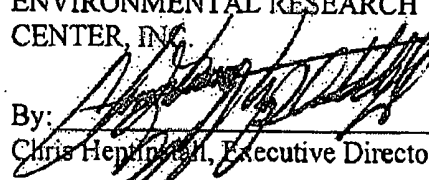
12 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
13 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
14 been diligently prosecuted, and that the public interest is served by such settlement; and

15 (2) Make the findings pursuant to California Health and Safety Code section
16 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

17 **IT IS SO STIPULATED:**

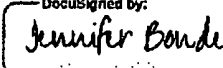
18 Dated: 2/14, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.

19
20 By: 
21 Chris Hepburn, Executive Director

22 Dated: February 21, 2020

THE BEST OF ORGANIC, LLC,
individually and dba DR. KELLYANN

23
24 DocuSigned by:

25 Jennifer Bonde

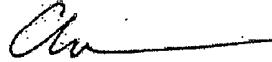
26 By: Jennifer Bonde
27 Its: CEO
28

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1 APPROVED AS TO FORM:

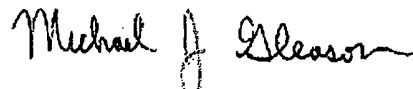
2 Dated: February 14, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.

3
4 By: 
5 Charles W. Poss
6 In-House Counsel

7 Dated: February 21, 2020

HAHN LOESER & PARKS LLP

8
9 By: 
10 Michael J. Gleason
11 Attorney for The Best of Organic, LLC,
12 individually and dba Dr. Kellyann
13
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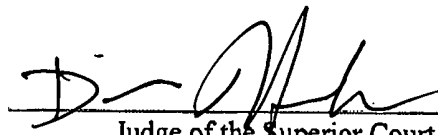
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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: June 29, 2020



Judge of the Superior Court

Case Title: Environmental Research Center vs Best of Organic
Case No. RG20052230

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 STIPULATED 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.

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

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

Dated: 06/30/2020

Chad Finke
Executive Officer/Clerk of the Superior Court

By: Michelle Hawkins
Deputy Clerk