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10 Attorneys for Defendant  
Ayush Herbs, Inc.  
11

12 SUPERIOR COURT OF CALIFORNIA  
13 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER  
14

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

18 Plaintiffs,

19 vs.

20 AYUSH HERBS, INC., individually and  
doing business as R-U-VED. and DOES 1-  
21 25, Inclusive,

22 Defendants,  
23

Case No.: 30-2013-00635134-CU-MC-CJC

Judge: Thierry Patrick Colaw

**[PROPOSED] STIPULATED CONSENT  
JUDGMENT; [PROPOSED] ORDER**

**[Health & Safety Code § 25249.5, et seq.]**

Action Filed: March 4, 2013  
Trial Date: None Set

24 1. INTRODUCTION

25 1.1 This Action arises out of the alleged violations of California's Safe Drinking  
26 Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5  
27 et seq. (also known as and herein after referred to as "Proposition 65") regarding, among other  
28 things, the following twenty-two products (hereinafter collectively the "Covered Products" or

1 "Covered Product" to refer to a single product):

- 2 1) Ayush Herbs, Inc. Eleg Fem
- 3 2) Ayush Herbs, Inc. Pippli
- 4 3) Ayush Herbs, Inc. Purush
- 5 4) Ayush Herbs, Inc. Livit 2
- 6 5) Ayush Herbs, Inc. Guggal-Lip
- 7 6) Ayush Herbs, Inc. Thyro-M
- 8 7) Ayush Herbs, Inc. Bio Gymnema
- 9 8) Ayush Herbs, Inc. Flucomune
- 10 9) Ayush Herbs, Inc. CoCurcumin Drink Mix
- 11 10) Ayush Herbs, Inc. Amla Plex
- 12 11) Ayush Herbs, Inc. Ayush Face Pack
- 13 12) Ayush Herbs Inc. Bos Welya
- 14 13) Ayush Herbs Inc. Rentone
- 15 14) Ayush Herbs Inc. Neem Plus
- 16 15) R-U-VED, Inc. For Health & Longevity Psyllium Husk Powder
- 17 16) R-U-VED, Inc. Amla Plus Immune Support Enhanced Chavanprash
- 18 17) Ayush Herbs Inc. R-U-VED, Inc. Intestone Intestinal Support
- 19 18) Ayush Herbs Inc. R-U-VED, Inc. Gymnema Metabolic Support
- 20 19) Ayush Herbs Inc. R-U-VED, Inc. Sitawari Women's Health Support
- 21 20) Ayush Herbs Inc. R-U-VED, Inc. Livtone Liver Support
- 22 21) Ayush Herbs Inc. R-U-VED, Inc. Flucomune Immune Support
- 23 22) Ayush Herbs Inc. R-U-VED, Inc. Memoren Stress & Cognitive Support

24 1.2 Plaintiff Environmental Research Center, Inc. ("ERC") is a California non-profit  
25 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other  
26 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
27 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
28 and encouraging corporate responsibility. ERC brings this Action in the public interest pursuant

1 to California Health and Safety Code Section 25249.7.

2           **1.3** Defendant Ayush Herbs, Inc. ("AYUSH") is a Washington Corporation. At all  
3 relevant times for purposes of this Consent Judgment, AYUSH is alleged to have employed ten  
4 or more persons and is alleged to be a "person in the course of doing business". AYUSH  
5 manufactures, distributes and/or sells the Covered Products:

6           **1.4** ERC and AYUSH are hereinafter sometimes referred to individually as a "Party"  
7 or collectively as the "Parties."

8           **1.5** On October 21, 2011, pursuant to California Health and Safety Code Section  
9 25249.7(d)(1), ERC issued a Notice of Violations of Proposition 65 on the California Attorney  
10 General, other public enforcers, and AYUSH regarding the Covered Products numbers One (1)  
11 through Eleven (11), listed above in Section 1.1. A true and correct copy of the October 21,  
12 2011 Notice of Violations is attached hereto as Exhibit A.

13           **1.6** On June 19, 2012, pursuant to California Health and Safety Code Section  
14 25249.7(d)(1), ERC issued a Notice of Violations of Proposition 65 on the California Attorney  
15 General, other public enforcers, and AYUSH regarding the Covered Products numbers Twelve  
16 (12) through Fourteen (14), listed above in Section 1.1. A true and correct copy of the June 19,  
17 2012 Notice of Violations is attached hereto as Exhibit B.

18           **1.7** On September 17, 2012, pursuant to California Health and Safety Code Section  
19 25249.7(d)(1), ERC issued a Notice of Violations of Proposition 65 on the California Attorney  
20 General, other public enforcers, AYUSH and R-U-VED, Inc. (a brand currently being used by  
21 AYUSH) (regarding the Covered Products numbers Fifteen (15) through Twenty-Two (22),  
22 listed above in Section 1.1. A true and correct copy of the September 17, 2012 Notice of  
23 Violations is attached hereto as Exhibit C.

24           **1.8** The Notices of Violations attached hereto as Exhibits A – C are collectively  
25 referred to herein as "Notices of Violations."

26           **1.9** After more than sixty (60) days passed since service of the Notices of Violations,  
27 and no designated governmental agency filed a complaint against AYUSH with regard to the  
28 Covered Products or the alleged violations, ERC filed the Complaint in this Action (the

1 "Complaint") for injunctive relief and civil penalties. The Complaint is based on the allegations  
2 in the Notices of Violations.

3       **1.10** The Complaint and the Notices of Violations allege that AYUSH and R-U-VED,  
4 Inc. manufactured, distributed, and/or sold in California Covered Products, which contain lead, a  
5 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose  
6 consumers at a level requiring a Proposition 65 warning. They further allege that use of the  
7 Covered Products exposes persons in California to lead without first providing clear and  
8 reasonable warnings, in violation of California Health and Safety Code Section 25249.6.  
9 AYUSH denies all material allegations of the Notices of Violation and the Complaint, asserts  
10 numerous affirmative defenses, and specifically denies that the Covered Products require a  
11 Proposition 65 warning or otherwise cause harm to any person.

12       **1.11** The Parties enter into this Consent Judgment in order to settle, compromise and  
13 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent  
14 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any  
15 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
16 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,  
17 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,  
18 wrongdoing, or liability, including without limitation, any admission concerning any alleged  
19 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent  
20 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties  
21 may have in any other or future legal proceeding unrelated to these proceedings. However,  
22 nothing in this Section shall affect the enforceability of this Consent Judgment.

23       **1.12** The "Effective Date" of this Consent Judgment shall be the date this Consent  
24 Judgment is entered by the Court.

25 **2. JURISDICTION AND VENUE**

26       For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that  
28 venue is proper in this Court, and that this Court has jurisdiction to enter this Consent Judgment

1 pursuant to the terms set forth herein.

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

3       3.1 Beginning on the Effective Date, AYUSH shall be permanently enjoined from  
4 manufacturing for sale in California, directly selling to a consumer in California or “Distributing  
5 into California” any of the Covered Products for which the maximum daily dose recommended  
6 on the label contains more than 0.5 micrograms of lead, unless such Covered Product complies  
7 with the warning requirements in Section 3.3 or qualifies a “Reformulated Covered Product”  
8 pursuant to Section 3.4. Covered Products, which are in the stream of commerce as of the  
9 Effective Date, however, do not violate this Consent Judgment. “Distributing into California”  
10 means to directly ship any of the Covered Products into California for sale or to sell any of the  
11 Covered Products in California.

12       3.2 Calculation of Lead Levels

13 As used in this Consent Judgment, lead levels are calculated pursuant to the testing  
14 protocol described in Section 3.5. For purposes of measuring the lead, the highest lead detection  
15 result of the 5 randomly selected samples of the Covered Products will be controlling.

16       3.3 Clear and Reasonable Warnings.

17 For those Covered Products that are subject to the warning requirement of Section 3.1,  
18 AYUSH shall provide the following warning:

19       **[California Proposition 65] WARNING:** This product contains [lead,] a  
20 chemical known to the State of California to cause [cancer and] birth defects or  
21 other reproductive harm.

22 The text in brackets in the warning above is optional, except that the term “cancer” must  
23 be included only if the maximum daily dose recommended on the label contains more than 15  
24 micrograms of lead.

25 The warning shall be prominently affixed to or printed upon the label of the Covered  
26 Product so as to be clearly conspicuous, as compared with other statements or designs on the  
27 label as to render it likely to be read and understood by an ordinary purchaser or user of the  
28 product. If the warning is displayed on the product’s label, it shall be at least the same size as the

1 largest of any other health or safety warnings on the product and the word "WARNING" shall  
2 be in all capital letters and in bold print and, if used, the words "California Proposition 65" shall  
3 be in bold print.

4 For any products sold via a website, the warning shall appear on AYUSH's checkout  
5 page on its website for California consumers relating to any of the Covered Products being sold.  
6 AYUSH shall not provide any additional information, statements, or comments regarding  
7 Proposition 65 on the Covered Product, its packaging, or accompanying documents in addition to  
8 the warning on the Covered Products. However, additional information, statements, or  
9 comments regarding Proposition 65 may be included on the website provided that the warning on  
10 the website is clearly conspicuous, as compared with other statements or language on the  
11 website.

12 **3.4 Reformulated Covered Products.**

13 A Reformulated Covered Product is one for which the maximum recommended daily  
14 serving on the label contains no more than 0.5 micrograms of lead per day.

15 **3.5 Testing and Quality Control Methodology**

16 The testing requirement, as set forth in this Section, does not apply to any of the Covered  
17 Products for which AYUSH has provided the warning specified in Section. 3.3.

18 (a) Beginning within one year of the Effective Date, AYUSH shall test five (5)  
19 randomly selected samples of each of the Covered Products (in the form intended for sale to the  
20 end-user) for lead content. However, if a Covered Product has less than five (5) lots per year,  
21 AYUSH must only conduct the number of tests as lots it receives for that Covered Product.

22 (b) Testing for lead shall be performed using Inductively Coupled Plasma-Mass  
23 Spectrometry ("ICP-MS") and closed-vessel, microwave-assisted digestion employing high-  
24 purity reagents or any other testing method subsequently agreed to in writing by the Parties.

25 (c) All testing pursuant to this Consent Judgment shall be performed by a California-  
26 certified laboratory or a laboratory that is registered with the United States Food & Drug  
27 Administration for the analysis of heavy metals.

28 (d) AYUSH shall retain all test results and documentation for a period of four (4)

1 years from the date of the test. If requested in writing by Plaintiff, then AYUSH shall provide  
2 copies of the test results to ERC within 10 business days of AYUSH's receipt of Plaintiff's  
3 request or, in the event AYUSH has not yet received the test results at the time of Plaintiff's  
4 request, within 10 business days of AYUSH'S receipt of the test results.

5 (e) AYUSH shall test each of the Covered Products at least once a year for a  
6 minimum of three (3) consecutive years by testing five (5) randomly selected samples of each  
7 Covered Product which AYUSH intends to sell or is manufacturing for sale in California,  
8 directly selling to a consumer in California, or Distributing into California. If tests conducted  
9 pursuant to this Section demonstrate that no warning is required for a particular product during  
10 each of the three (3) consecutive years, then the testing requirements of this Section will no  
11 longer be required as to that product.

12 (f) For purposes of this Consent Judgment, daily lead exposure levels shall be  
13 measured in micrograms, and shall be calculated using the following formula: Micrograms of  
14 lead per gram of product, multiplied by grams per serving of the product (using the largest  
15 serving size appearing on the product label), multiplied by servings of the product per day (using  
16 the largest number of servings in the recommended dosage appearing on the product label).

#### 17 4. SETTLEMENT PAYMENT

18 4.1 AYUSH shall make a total payment of \$65,000.00, which shall be in full and final  
19 satisfaction of all potential civil penalties, payment in lieu of civil penalties, and attorney's fees  
20 and costs. The total payment will be sent to counsel for ERC, William F. Wraith, Wraith Law,  
21 16485 Laguna Canyon Road, Suite 250, Irvine, California, 92618 in six equal increments. The  
22 first payment will be made within 10 business days of the Effective Date. Each successive  
23 payment will be made within 30 days of the prior payment. Each payment will be made by check  
24 payable to "ERC and its attorney Wraith Law." The total payment shall be apportioned as  
25 follows:

26 4.2 \$8,420.00 as civil penalties pursuant to California Health and Safety Code Section  
27 25249.7(b)(1). Of this amount, \$6,315.00 shall be payable to the Office of Environmental Health  
28 Hazard Assessment ("OEHHA"), and \$2,105.00 shall be payable to ERC. (Cal. Health & Safety

1 Code § 25249.12(c)(1) & (d)). ERC's counsel will forward the civil penalty to OEEHA.

2 4.3 \$15,500.00 payable to ERC as reimbursement to ERC for reasonable costs  
3 associated with the enforcement of Proposition 65 and other costs incurred as a result of work in  
4 bringing this Action.

5 4.4 \$25,260.00 payable to ERC in lieu of further civil penalties, for the day-to-day  
6 business activities such as (1) continued enforcement of Proposition 65, which includes work,  
7 analysis, and testing of consumer products that may contain Proposition 65 chemicals, focusing  
8 on the same or similar type of ingestible products that are the subject matter of the current action;  
9 (2) the continued monitoring of past consent judgments and settlements to ensure companies are  
10 complying with Proposition 65; and (3) giving a donation of \$1,263.00 to the Environmental  
11 Health Condition to address reducing toxic chemical exposures in California.

12 4.5 \$15,820.00 payable to William F. Wraith as reimbursement of ERC's attorney's  
13 fees and attorney's costs.

14 **5. MODIFICATION OF CONSENT JUDGMENT**

15 This Consent Judgment may be modified only by: (i) Written agreement and stipulation  
16 of the Parties or (ii) Upon entry of a modified Consent Judgment by the Court.

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

18 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
19 this Consent Judgment.

20 6.2 Any Party may, by motion or application for an order to show cause filed with  
21 this Court, enforce the terms and conditions contained in this Consent Judgment.

22 **7. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

23 8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on  
24 behalf of itself and in the public interest, and AYUSH, of any alleged violation of Proposition 65  
25 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to  
26 lead from the Covered Products and fully resolves all claims that have been or could have been  
27 asserted in this action up to and including the date of entry of Judgment for failure to provide  
28 Proposition 65 warnings for the Covered Products. ERC, on behalf of itself and in the public



1 interest, hereby releases and discharges AYUSH and its respective officers, directors,  
2 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,  
3 franchisees, licensees, customers (not including private label customers of AYUSH), distributors,  
4 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of  
5 any Covered Product, and the predecessors, successors and assigns of any of them (collectively,  
6 "Released Parties"), from all claims for violations of Proposition 65 up through the Effective  
7 Date, including claims for Covered Products, which are in the stream of commerce as of the  
8 Effective Date, based on exposure to lead from the Covered Products as set forth in the Notices  
9 of Violations and the Complaint.

10 **8.2** ERC, on behalf of itself only, hereby releases and discharges the Released Parties  
11 from all known and unknown claims for alleged violations of Proposition 65, or for any other  
12 statutory or common law claims arising from or relating to alleged exposures to lead in the  
13 Covered Products as set forth in the Notices of Violations and the Complaint.

14 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to  
15 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to  
16 lead in the Covered Products.

17 **8.4 Unknown Claims**

18 It is possible that other claims not known to the Parties arising out of the facts alleged in  
19 the Notices of Violations or the Complaint and relating to lead in the Covered Products that were  
20 manufactured before the Effective Date will develop or be discovered. ERC, on behalf of itself  
21 only, acknowledges that this Consent Judgment states that the claims released herein may  
22 include unknown claims, and nevertheless waives California Civil Code Section 1542 as to any  
23 such unknown claims. California Civil Code Section 1542 reads as follows:

24 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
25 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
26 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**  
27 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**  
28 **SETTLEMENT WITH THE DEBTOR."**

1 ERC, on behalf of itself only, acknowledges and understands the significance and consequences  
2 of this specific waiver of California Civil Code Section 1542.

3 8.5 ERC, on the one hand, and AYUSH, on the other hand, each release and waive all  
4 claims they may have against each other for any statements or actions made or undertaken by  
5 them in connection with the Notices of Violations or the Complaint. However, this shall not  
6 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

7 **9. CONSTRUCTION AND SEVERABILITY**

8 9.1 The terms and conditions of this Consent Judgment have been reviewed by the  
9 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to  
10 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or  
11 construction of this Consent Judgment, the terms and conditions shall not be construed against  
12 any Party.

13 9.2 In the event that any of the provisions of this Consent Judgment is held by a court  
14 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely  
15 affected.

16 9.3 The terms and conditions of this Consent Judgment shall be governed by and  
17 construed in accordance with the laws of the State of California.

18 **10. PROVISION OF NOTICE**

19 All notices required to be given to either Party to this Consent Judgment by the other  
20 shall be in writing and sent to the following agents listed below by: (a) first-class, registered, (b)  
21 certified mail, (b) overnight courier, or (c) personal delivery to the following

22 **For Environmental Research Center**

23 Chris Heptinstall, Executive Director  
24 Environmental Research Center  
25 3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108

26 William F. Wraith, Esq.  
27 Wraith Law  
16485 Laguna Canyon Road, Suite 250  
Irvine, CA 92618

28 Karen Evans, Esq.  
Environmental Research Center

1 4218 Biona Place  
2 San Diego, CA 92116

3 **For Ayush Herbs, Inc.**

4 Dr. Shailinder Sodhi  
5 Gunny Sodhi  
6 2239 152<sup>nd</sup> Ave NE  
7 Redmond, WA 98052

8 With a copy to:

9 Malcolm C. Weiss  
10 Diana F. Bason  
11 Hunton & Williams LLP  
12 550 S. Hope Street, Suite 2000  
13 Los Angeles, CA 90071

#### 14 **11. COURT APPROVAL**

15 **11.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
16 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
17 Consent Judgment.

18 **11.2** If the California Attorney General objects to any term in this Consent Judgment,  
19 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
20 prior to the hearing on the motion.

21 **11.3** If this Stipulated Consent Judgment is not approved by the Court despite the  
22 Parties best efforts, it shall be null and void and have no force or effect.

#### 23 **12. EXECUTION AND COUNTERPARTS**

24 This Stipulated Consent Judgment may be executed in counterparts, which taken together  
25 shall be deemed one document. A facsimile or pdf signature shall be construed as valid and as  
26 the original signature.

#### 27 **13. ENTIRE AGREEMENT, AUTHORIZATION**

28 **13.1** 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

1 exist or to bind any Party.

2           **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
3 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly  
4 provided herein, each Party shall bear its own fees and costs.

5 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

6           **14.1** This Consent Judgment has come before the Court upon the request of the Parties.  
7 The Parties request the Court to fully review this Consent Judgment and, being fully informed  
8 regarding the matters which are the subject of this action, to:

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

12           (b) Make the findings pursuant to California Health and Safety Code Section  
13 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

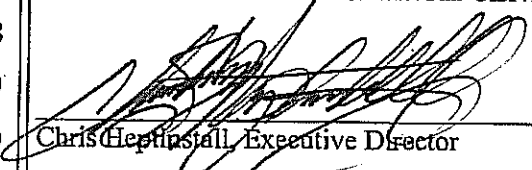
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15 **IT IS SO STIPULATED:**

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17 **ENVIRONMENTAL RESEARCH CENTER**

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19   
20 \_\_\_\_\_  
Chris Heptinstall, Executive Director

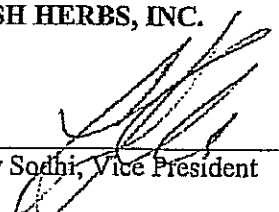
Dated: 4/26/2013

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23 **AYUSH HERBS, INC.**

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26 \_\_\_\_\_  
Gunny Sodhi, Vice President

Dated: 4/26/13

27 **APPROVED AS TO FORM:**

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**WRAITH LAW**

\_\_\_\_\_  
William F. Wraith  
Counsel for Environmental Research Center

Dated: \_\_\_\_\_

**HUNTON & WILLIAMS LLP**

\_\_\_\_\_  
Malcolm C. Weiss  
Diana F. Bason  
Counsel for Ayush Herbs, Inc.

Dated: 4/26/13

**ORDER AND JUDGMENT**

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

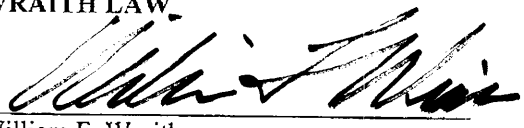
**IT IS SO ORDERED, ADJUDGED AND DECREED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge, Superior Court of the State of California

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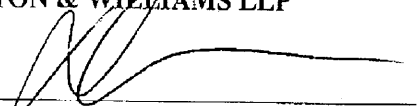
WRAITH LAW



Dated: 4/26/2013

William F. Wraith  
Counsel for Environmental Research Center

HUNTON & WILLIAMS LLP



Dated: 4/26/13

Malcolm C. Weiss  
Diana F. Bason  
Counsel for Ayush Herbs, Inc.

**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge, Superior Court of the State of California