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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF ALAMEDA

21 ENVIRONMENTAL RESEARCH
22 CENTER, a California non-profit
23 corporation,

24 Plaintiff,

25 v.

26 RHG & COMPANY, INC. DBA VITAL
27 NUTRIENTS and DOES 1-50, inclusive,

28 Defendants.

Case No. RG14711723

[PROPOSED] CONSENT JUDGMENT

1. INTRODUCTION

1.1 On January 28, 2014, Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive Relief and Civil Penalties ("Complaint") pursuant to the provisions of California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and

1 Safety Code § 25249.5, *et seq.* (also known as and hereinafter referred to as "Proposition 65"),
2 against Defendant RHG & Company, Inc. dba VITAL NUTRIENTS ("VITAL NUTRIENTS" or
3 "Defendant"). ERC and VITAL NUTRIENTS are hereinafter sometimes referred to individually
4 as a "Party" or collectively as the "Parties".

5 1.2 ERC is a California non-profit corporation dedicated to, among other causes,
6 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
7 and toxic chemicals, facilitating a safe environment for consumers and employees, and
8 encouraging corporate responsibility.

9 1.3 VITAL NUTRIENTS is a Connecticut company. The Parties agree there is no
10 dispute that VITAL NUTRIENTS employs ten or more persons and is a "person in the course of
11 doing business" within the meaning of Proposition 65 for the purposes of this Consent Judgment.

12 1.4 On September 13, 2013, pursuant to California Health and Safety Code
13 § 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 ("Notice of Violations")
14 on the California Attorney General, other public enforcers, and VITAL NUTRIENTS. A true
15 and correct copy of the Notice of Violations is attached hereto as Exhibit A. The Notice of
16 Violations contain allegations that VITAL NUTRIENTS, without giving a required clear and
17 reasonable warning, have exposed and continue to expose individuals in California to lead, a
18 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, by manufacturing,
19 marketing, distributing and/or selling the products identified in the Notice of Violations. More
20 than 60 days have passed since the service of each of the Notice of Violations, and neither the
21 California Attorney General nor any other public enforcer has filed suit against Defendant with
22 regard to the products identified in this Notice of Violations.

23 1.5 The Complaint is based on the September 13, 2013 Notice of Violations and
24 contains allegations that VITAL NUTRIENTS has exposed and continues to expose persons in
25 California who use and/or handle the products identified in the Notice of Violations to the
26 chemical lead in excess of the exposure levels allowed under Proposition 65 without first
27 providing clear and reasonable warnings, in violation of California Health and Safety Code §
28 25249.6. VITAL NUTRIENTS denies all material allegations, asserts affirmative defenses to

1 the alleged Proposition 65 violations, and specifically denies that those products require
2 Proposition 65 warnings or otherwise harm any person.

3 1.6 The following twenty (20) products, which are identified in the Notice of
4 Violations, are the only products covered by this Consent Judgment:

- 5 1. VITAL NUTRIENTS Berberine 200mg
- 6 2. VITAL NUTRIENTS Blood Sugar Support
- 7 3. VITAL NUTRIENTS Energy Plus
- 8 4. VITAL NUTRIENTS Adrenal Support
- 9 5. VITAL NUTRIENTS Astragalus Root Extract 300mg
- 10 6. VITAL NUTRIENTS BCQ
- 11 7. VITAL NUTRIENTS Vital Kids Berry Well Immune Support
- 12 8. VITAL NUTRIENTS GI Repair Powder
- 13 9. VITAL NUTRIENTS Calm Aide with Sensoril
- 14 10. VITAL NUTRIENTS Vital Clear
- 15 11. VITAL NUTRIENTS Rhodiola Rosea 3% 200 mg
- 16 12. VITAL NUTRIENTS Osteo-Nutrients II (with Vitamin K2-7)
- 17 13. VITAL NUTRIENTS Reishi Mushroom 500mg
- 18 14. VITAL NUTRIENTS Herbal Biotic
- 19 15. VITAL NUTRIENTS Goldenseal Plus
- 20 16. VITAL NUTRIENTS Menopause Support
- 21 17. VITAL NUTRIENTS Immune Support
- 22 18. VITAL NUTRIENTS Milk Thistle Extract 250mg
- 23 19. VITAL NUTRIENTS ViraCon
- 24 20. VITAL NUTRIENTS Saw Palmetto Pygeum Nettle Root

25 These twenty (20) products are hereinafter referred to collectively as "Covered Products."

26 1.7 VITAL NUTRIENTS denies and disputes the claims asserted in the Notice of
27 Violations and the Complaint. Furthermore, VITAL NUTRIENTS contends that any lead
28 present in the Covered Products is the result of naturally occurring levels, as provided for in
California Code of Regulations, Title 27, Section 25501(a). Furthermore, VITAL NUTRIENTS
maintains that all of its products satisfy applicable federal standards and requirements.

1.8 The Parties enter into this Consent Judgment in order to settle disputed claims
between them and to avoid prolonged and costly litigation.

1.9 Nothing in this Consent Judgment, nor compliance with this Consent Judgment,

1 shall constitute or be construed as an admission by the Parties of any fact, issue of law, or
2 violation of law, at any time, for any purpose. Nothing in this Consent Judgment shall be
3 construed as giving rise to any presumption or inference of admission or concession or waiver of
4 a defense by VITAL NUTRIENTS as to any fault, wrongdoing or liability whatsoever,
5 including, but not limited to, any alleged violation of Proposition 65.

6 1.10 Except as expressly provided herein, nothing in this Consent Judgment shall
7 prejudice, waive or impair any right, remedy or defense that the Parties may have in any other or
8 further legal proceedings. This paragraph shall not diminish or otherwise affect the obligations,
9 responsibilities, and duties of any Party to this Consent Judgment.

10 1.11 The "Effective Date" of this Consent Judgment shall be the date this Consent
11 Judgment is entered by the Court.

12 1.12 The only products covered by this Consent Judgment are the Covered Products,
13 and the only chemical covered by this Consent Judgment is the chemical lead as related to the
14 Covered Products only. No provision of this Consent Judgment shall apply to Vital Nutrient's
15 operations outside of the State of California unless, and only to the extent that, such operations
16 result in shipment or sale of Covered Products into California.

17 **2. JURISDICTION AND VENUE**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over the subject matter of this action and personal jurisdiction over the Parties, that
20 venue is proper in this Court, and that this Court has jurisdiction to enter a Consent Judgment
21 pursuant to the terms set forth herein.

22 **3. INJUNCTIVE RELIEF**

23 **3.1 Warnings**

24 On and after the Effective Date, Defendant shall be permanently enjoined from
25 manufacturing for sale in California, Distributing into California, in any way arranging for or
26 participating in the sale to any consumer located in California, or directly selling to any
27 consumer located in California any of the Covered Products without complying with one or more
28 of the warning methods set forth in Sections 3.2 to 3.4. below. The term "Distributing into

1 California" means to ship any of the Covered Products into California for sale in California or to
2 sell or provide any of the Covered Products to any person or entity VITAL NUTRIENTS knows
3 intends to or will ship any of the Covered Products into or sell the Covered Products in
4 California.

5 **3.2 On-Product Warning**

6 The following warning shall be permanently affixed to or printed on each product label:

7 **WARNING: This product contains a chemical known to the State of**
8 **California to cause [cancer and] birth defects or other reproductive harm.**

9 The words "cancer and" shall only be used if the maximum daily dose recommended on the label
10 contains more than 15 micrograms of lead. The warning shall be prominently affixed to or
11 printed on the product label with such conspicuousness, as to render it likely to be read and
12 understood by an ordinary individual under customary conditions of purchase or use. The
13 warning shall be at least the same size as the largest of any other health or safety warnings on the
14 product label, and the word "WARNING" shall be in capital letters and in bold print. The
15 warning shall be contained in the same section of the product label that states other safety
16 warnings concerning the use of the product if such other safety warnings are on the product
17 label. If the warning is affixed to the product with a sticker, VITAL NUTRIENTS must use a
18 permanent adhesive. No other statements relating to Proposition 65 or lead may accompany the
19 warning. Nothing in this Settlement Agreement shall be construed to require VITAL
20 NUTRIENTS to continue to provide a warning for Covered Products hereunder if VITAL
21 NUTRIENTS modifies or reformulates the Covered Products so the amount of lead contained in
22 the Covered Products is below the threshold required for a warning under Proposition 65.
23 VITAL NUTRIENTS shall provide ERC with a minimum of thirty (30) days notice prior to
24 discontinuation of a warning for Covered Products pursuant to this Section.

25 **3.3 Warning for Internet and Telephone Orders**

26 For sales of Covered Products made directly to consumers, such as through "patient
27 direct" mail-order programs, Internet sales, or other methods by which Covered Products are
28 shipped directly to California consumers, the warning language above would be provided in a
clear and reasonable manner on the paper invoice or a shipping package insert when a VITAL

1 NUTRIENTS product is shipped to a California address. The warning will be displayed in a
2 conspicuous manner, as compared to other words, statements, designs or devices on an invoice,
3 or shipping package insert. For shipping package inserts, the insert would be a minimum size of
4 5" by 7". The warning language on an invoice or shipping package insert would be at least the
5 same size as the largest of any other health or safety warnings that appear on the invoice or
6 shipping package insert. If no other health or safety warnings appear on the invoice or shipping
7 package insert, the warning language type size will be at least as tall as the largest letter or
8 numeral used in the name or price of the product printed on the shipping invoice. In the
9 alternative, VITAL NUTRIENTS can provide the warning on the outside packaging or container
10 of each unit in compliance with Section 3.2 or, for Internet orders, by displaying the warning in a
11 clear and reasonable manner at the time the customer enters a California shipping address when
12 placing an order for VITAL NUTRIENTS products. Where the Proposition 65 warning is
13 provided by means whereby the consumer is unable to view the warning prior to purchase, such
14 as through an invoice or shipping package or insert, VITAL NUTRIENTS will allow a consumer
15 to return the product subject to the warning for a full refund with no extra charge or shipping or
16 handling fee for any Covered Product(s) purchased from VITAL NUTRIENTS.

16 3.4 Warning in Healthcare Practitioner Offices and Retail Stores

17 For Covered Products that are sold to consumers in healthcare practitioner offices--such
18 as doctors, nutritionists, chiropractors, massage therapists, and similar establishments--or retail
19 stores, the warning language described above, listing the applicable VITAL NUTRIENTS
20 products, will be placed on a placard that is prominently and securely displayed in close
21 proximity to the location where the VITAL NUTRIENTS products are being offered for sale.
22 For healthcare practitioner offices, the placard shall be provided in close proximity to where
23 VITAL NUTRIENTS products are displayed to consumers, or if no VITAL NUTRIENTS
24 products are displayed the placard would be provided at the reception desk, in the waiting room,
25 or another location where consumers will have an opportunity to view the placard before
26 purchasing VITAL NUTRIENTS products from the healthcare practitioner.

26 (a) For retail stores that sell Covered Products, VITAL NUTRIENTS will require the
27 retailer to provide the placard on each aisle, shelf, or display where VITAL NUTRIENTS
28 products are provided to consumers; but, if the retail location contains less than 7,500 square feet
of retail space and no more than two cash registers, or the retail establishment's principal

1 purpose is to sell dietary supplements, the placard may be provided at each cash register.

2 (b) If multiple Covered Products are provided to consumers through a healthcare
3 practitioner office or retail store, warning language listing multiple products, as follows may be
4 used on the placard.

5 **WARNING: The following products contain a chemical known to the State of**
6 **California to cause [cancer and] birth defects or other reproductive harm: [list of Covered**
7 **Products that are sold at a particular retail or healthcare practitioner office location].**

8 The words "cancer and" shall only be used if the maximum daily dose recommended on
9 the label contains more than 15 micrograms of lead.

10 (c) Placards used in either a healthcare practitioner office or retail store will be a
11 minimum size of 5" by 7". The term "WARNING" will appear on the placard centered one-half
12 of an inch from the top of the placard in one-half of an inch capital, bold letters. For the body of
13 the warning, left and right margins of at least one-half of an inch, and a bottom margin of at least
14 one-half of an inch will be used. If a larger placard is used, the placard will be substantially the
15 same proportions of type size and spacing to placard dimensions as a placard that is 5" by 7" in
16 size.

17 (d) VITAL NUTRIENTS will provide each healthcare practitioner and retail store
18 that sells Covered Products with written instructions via Certified Mail, Return Receipt
19 requested, requiring that the entity post the placard in the manner described above and
20 acknowledging, in writing, that the placard will be posted as required. VITAL NUTRIENTS
21 will maintain files demonstrating that it sent written instructions regarding placard placement and
22 received a Return Receipt or a written acknowledgement from the retailer or healthcare
23 practitioner. If VITAL NUTRIENTS learns that a retailer or healthcare practitioner has failed to
24 post or maintain a placard in accordance with the placement terms described herein, VITAL
25 NUTRIENTS will, within 2 business days, stop disseminating its Covered Products to these
26 entities until it has verified compliance.

27 3.5 Additional Compliance Measures

28 (a) VITAL NUTRIENTS shall incorporate an addendum requiring its distributors and
retailers to comply with California Proposition 65, in the company's existing Distributor and

1 Retailer Agreements, if any. VITAL NUTRIENTS agrees that all future agreements with
2 distributors and retailers shall specifically require compliance with California Proposition 65.

3 (b) For distributors and retailers ordering from VITAL Nutrients' website, VITAL
4 NUTRIENTS will expand the Terms & Conditions section to include information specifically
5 requiring compliance with California Proposition 65.

6 3.6 Defendant's compliance with Sections 3.1 through 3.5 of this Consent Judgment
7 shall satisfy Defendant's obligations under Proposition 65 to provide warnings for all Covered
8 Products with respect to the presence of lead. Vital Nutrients will not be deemed to have
9 violated the terms of this Consent Judgment if a retailer or healthcare practitioner fails to provide
10 the placard in the required manner set forth in Section 3.4 above, provided that Vital Nutrients
11 has fulfilled its obligations set forth above in Sections 3.4 above.

12 3.7 Products in the Stream of Commerce

13 The injunctive relief set forth in Section 3 shall not apply to any of the Covered Products
14 that are put into the stream of commerce before the Effective Date. No later than 30 days after
15 the Effective Date, VITAL NUTRIENTS shall provide ERC with the last lot number and
16 expiration date for each of the Covered Products in the stream of commerce as of the Effective
17 Date.

18 3.8 Calculation of Lead Levels

19 (a) In complying with Sections 3.2 to 3.4, VITAL NUTRIENTS shall not be required
20 to provide any of the warnings specified therein for any Covered Product if the maximum daily
21 dose or serving recommended on the Covered Product's label contains no more than 0.5 mcg of
22 lead per day as defined herein. For purposes of determining whether the maximum daily dose of
23 a Covered Product contains no more than 0.5 mcg of lead, three (3) randomly selected samples
24 of that Covered Product (in the form intended for distribution or sale to an end-user in
25 California) shall be tested. As used in this Consent Judgment, "no more than 0.5 mcg of lead per
26 day" means that the samples of Covered Products tested by VITAL NUTRIENTS pursuant to
27 this Consent Judgment each result in a daily exposure of no more than 0.5 mcg per day using the
28 following formula: micrograms of lead per gram of Covered Product, multiplied by grams of

1 product per serving of the Covered Product (using the largest serving size appearing on the
 2 product label), multiplied by servings of product per day (using the largest recommended number
 3 of servings per day appearing on the product label), which equals micrograms of lead per day,
 4 excluding the amounts of naturally occurring lead in the ingredients listed in the table below in
 5 accordance with the Attorney General's Stipulation Modifying Consent Judgments in *People v.*
 6 *Warner Lambert, et al.* (San Fran. Sup. Ct. Case no. 984503). Before VITAL NUTRIENTS'
 7 first distribution or sale of a Covered Product without a warning after the Effective Date, and
 8 continuing for at least three (3) years thereafter, at least once every year, VITAL NUTRIENTS
 9 shall test the Covered Products sold without a warning for lead content in the manner provided
 10 for in this Consent Judgment.

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium (elemental)	0.8 mcg/1000 milligrams
Ferrous Fumarate	0.4 mcg/g
Zinc Oxide	8.0 mcg/g
Magnesium Oxide	0.4 mcg/g
Magnesium Carbonate	.332 mcg/g
Magnesium Hydroxide	0.4 mcg/g
Zinc Gluconate	0.8 mcg/g
Potassium Chloride	1.1 mcg/g

21 (b) If VITAL NUTRIENTS intends to use this Warner Lambert calculation, it must
 22 first submit to ERC a complete list showing all the ingredients, including ingredients in the Table
 23 above, that are being used in a Covered Product, the percentage and amount in grams of each
 24 ingredient being used in the overall Covered Product, and data that independently confirms the
 25 percentage of each ingredient in the Covered Product using the maximum daily serving
 26 recommended by VITAL NUTRIENTS. VITAL NUTRIENTS may update this list from time to
 27 time. VITAL NUTRIENTS will be entitled to submit this information to ERC confidentially.

28 **3.9 Reformulation and Testing Methodology**

1 (a) On and after the Effective Date, if the formula of any Covered Product is altered
2 by either the inclusion of a new ingredient or an increase in the percentage of an existing
3 ingredient, or if any ingredient in a Covered Product is sourced from a different supplier, and
4 such change materially impacts or is reasonably likely to materially impact VITAL
5 NUTRIENTS' warning requirement set forth in Sections 3.2 to 3.4 above, VITAL NUTRIENTS
6 shall have three (3) randomly selected samples of that Covered Product (in the form intended for
7 distribution or sale to an end-user in California) tested according to the requirements of this
8 Section to determine whether a warning is required. For purposes of determining which
9 warning, if any, is required under Sections 3.2 to 3.4(d), the highest lead detection result of the
randomly selected samples of the Covered Products will be controlling.

10 (b) All testing is to be performed by a laboratory certified by the California
11 Environmental Laboratory Accreditation Program or a laboratory that uses scientifically valid
12 testing methods as set forth under 21 CFR Part 111. Testing under this section shall be
13 performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), any scientifically
14 valid testing method, or any other testing method agreed upon in writing by the Parties.

15 (c) If testing is required pursuant to Section 3.9(a) and the result requires a change in
16 the warning presently in use and approved by both Parties at the time of this writing for a
17 product, VITAL NUTRIENTS shall forward to ERC the copies of all test results and laboratory
18 report documentation relating to the testing for lead content of each of the lots of Covered
19 Products within twenty (20) working days after receipt by VITAL NUTRIENTS of the test
20 results.

21 (d) For purposes of this Section 3.9, daily lead exposure levels shall be measured in
22 micrograms and shall be calculated as set forth in Section 3.8 above.

23 (e) Nothing in this Consent Judgment shall limit VITAL Nutrients' ability to conduct,
24 or require that others conduct, additional testing of the Covered Products including the raw
materials used in their manufacture.

25 (f) The testing and sampling methodology set forth above is a result of negotiation
26 and compromise, and is accepted by the Parties for the purposes of settling, compromising, and
27 resolving the issues in this matter, including future compliance with this Consent Judgment, and
28 shall not be used for any purpose or in any other matter, except for the purposes of determining

1 future compliance with this Consent Judgment.

2 **4. SETTLEMENT PAYMENT**

3 **4.1 Total Payment**

4 In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,
5 ERC's expenses and costs of litigation, and ERC's attorney fees, VITAL NUTRIENTS shall,
6 within 10 business days after the Effective Date, issue a single check in the amount of \$85,000
7 ("Total Settlement Amount"), made payable to "Environmental Research Center – ERC Escrow
8 Account", and send the check by first-class registered or certified mail, or overnight delivery,
9 directly to ERC at the following address:

10
11 Environmental Research Center
12 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

13 VITAL NUTRIENTS shall also issue a single IRS Federal Tax Form 1099 for the above
14 payment to ERC. Sections 4.2-4.4 below describe the agreed partition of the Total Settlement
15 Amount.

16 **4.2 Civil Penalty**

17 As a portion of the Total Settlement Amount, \$12,128.00 shall be considered a civil
18 penalty pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75%
19 (\$9,096,00) of the civil penalties to the Office of Environmental Health Hazard Assessment
20 ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance
21 with California Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be
22 sent to Defendant's counsel. ERC will retain the remaining 25% (\$3,032.00) of the civil penalty.

23 **4.3 Reimbursement of Expenses and Costs**

24 As a portion of the Total Settlement Amount, \$20,220.80 shall be considered a
25 reimbursement to ERC for its reasonable costs associated with the enforcement of Proposition 65
26 and other expenses and costs incurred as a result of bringing this matter to the attention of
27 VITAL NUTRIENTS, and litigating and negotiating a settlement in the public interest.

28 **4.4 Payment In Lieu of Further Penalties**

1 As a portion of the Total Settlement Amount, \$36,376.20 shall be considered a payment
2 to ERC in lieu of further civil penalties for activities such as (1) funding the purchasing and
3 testing of consumer products that may contain Proposition 65 listed chemicals; (2) funding the
4 continued day-to-day business of enforcement of Proposition 65 matters that address
5 contaminated ingestible products similar to the subject matter of this action; and (3) giving a
6 donation of \$1,820.00 to As You Sow to address reducing toxic chemical exposures in
7 California.

8 **4.5 Attorney Fees**

9 As a portion of the Total Settlement Amount, \$16,275.00 shall be considered a
10 reimbursement to ERC for its attorney fees (\$12,000.00 for attorney fees of Karen A. Evans,
11 \$2,250.00 for attorney fees of Ryan Hoffman, and \$2,025.00 for attorney fees of Michael
12 Freund).

13 **5. COSTS AND FEES**

14 Except as expressly set forth herein in Section 4, each Party shall bear its own attorneys'
15 fees, costs and expenses in this action.

16 **6. RELEASE**

17 **6.1** ERC and its agents (including its attorneys), acting on its own behalf and in the
18 public interest, releases VITAL NUTRIENTS, and its respective officers, directors, shareholders,
19 employees, agents, representatives, parents, subsidiaries, divisions, subdivisions, affiliates,
20 franchisees, licensees, predecessors, successors, assigns, attorneys, suppliers, manufacturers,
21 distributors, wholesalers, retailers and all other entities (excluding private label customers of
22 Defendant) in the distribution chain of the Covered Products ("Released Parties"), from any and
23 all claims, including without limitation, all actions and causes of action in law or in equity, suits,
24 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
25 but not limited to, investigation fees, expert fees, and attorneys' fees) for violations of
26 Proposition 65 up through the Effective Date for alleged exposures to lead from the Covered
27 Products as set forth in the Notices of Violations and the Complaint.

28 **6.2** Compliance with the terms of this Consent Judgment constitutes compliance with

1 Proposition 65 with respect to any and all alleged exposures to lead from the Covered Products
2 as set forth in the Notice of Violations and the Complaint.

3 6.3 ERC, on behalf of itself, its past and current agents, representatives, attorneys,
4 successors and/or assignees and not in its representative capacity, provides a general release
5 herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions,
6 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities
7 and demands of any nature, character or kind, known or unknown, suspected or unsuspected
8 against the Released Parties relating to Covered Products manufactured, distributed, and/or sold
9 by VITAL NUTRIENTS prior to the Effective Date. ERC acknowledges that it is familiar with
10 section 1542 of the California Civil Code, which provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
12 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
13 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
14 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
15 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
HER SETTLEMENT WITH THE DEBTOR.

16 ERC, in its individual capacity and *not* in its representative capacity, and on behalf of itself, its
17 past and current agents, representatives, attorneys, successors and/or assignees expressly and
18 knowingly waives and relinquishes any and all rights and benefits which it may have under, or
19 which may be conferred on it by the provisions of section 1542 of the California Civil Code, as
20 well as under any other state or federal statute or common law principle of similar effect, to the
21 fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

22 6.4 ERC on behalf of itself only, on the one hand, and VITAL NUTRIENTS, on the
23 other hand, release and waive all claims they may have against each other and their respective
24 officers, directors, employees, agents, representatives and attorneys for any statements or actions
25 made or undertaken by them or their respective officers, directors, employees, agents,
26 representatives and attorneys in connection with the Notice of Violations or this action.

27 6.5 Nothing in this release is intended to apply to any occupational or environmental
28 exposures arising under Proposition 65, nor shall it apply to any products other than the Covered

1 Products.

2 **7. MOTION FOR COURT APPROVAL**

3 7.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice,
4 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California
5 Code of Regulations § 3000, *et seq.* This motion shall be served upon VITAL NUTRIENTS and
6 upon the California Attorney General's Office. VITAL NUTRIENTS and ERC shall use their
7 best efforts to support entry of this Consent Judgment in the form submitted to the Court for
8 approval.

9 7.2 If, after service of the Motion for Approval & Entry of Consent Judgment, the
10 California Attorney General objects in writing to any term in this Consent Judgment or files an
11 opposition to the motion, the Parties shall use their best efforts to resolve the concern in a timely
12 manner prior to the hearing on the motion. If the concern of the California Attorney General is
13 not resolved prior to the hearing on the motion, any Party may withdraw from this Consent
14 Judgment prior to the date of the hearing, with notice to all Parties in accordance with Paragraph
15 17 below and notice to the California Attorney General's Office; and upon such notice this
16 Consent Judgment shall be null and void.

17 7.3 This Consent Judgment shall be effective only after it has been entered by the
18 Court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for
19 any purpose.

20 **8. RETENTION OF JURISDICTION**

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

23 **9. MODIFICATION OF CONSENT JUDGMENT**

24 This Consent Judgment after its entry by the Court may be modified only upon written
25 agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon.

26 **10. ENFORCEMENT OF CONSENT JUDGMENT; GOOD FAITH ATTEMPT TO**
27 **RESOLVE DISPUTES**

28 In the event a dispute arises with respect to any Party's compliance with the terms and/or

1 conditions of this Consent Judgment after its entry by the Court, the Party seeking compliance by
2 another Party shall make a good faith attempt to resolve the dispute by conferring with the other
3 Party in person, by telephone, or by written communication before seeking relief from the Court.
4 If the dispute is not resolved after such an attempt, this Consent Judgment may be enforced in
5 this Court pursuant to Code of Civil Procedure § 664.6 or any other valid provision of the law.
6 The prevailing party in any such dispute brought to this Court for resolution shall be awarded all
7 reasonable costs and attorney's fees. As used in the preceding sentence, the term "prevailing
8 party" means a party who is successful in obtaining relief more favorable to it than the relief the
9 other party was agreeable to providing during the Parties' good faith attempt to resolve the
10 dispute that is the subject of such an enforcement proceeding.

11 **11. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

12 In the event that, after entry of this Consent Judgment in its entirety, any of the provisions
13 hereof are subsequently held by a court to be unenforceable, the validity of the enforceable
14 provisions shall not be adversely affected.

15 **12. GOVERNING LAW**

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

18 **13. RELATION TO OTHER ACTIONS**

19 This Consent Judgment shall have no application or effect outside the State of California
20 or on VITAL NUTRIENTS for the Covered Products or other products distributed or sold by
21 VITAL NUTRIENTS to consumers outside the State of California.

22 **14. DRAFTING**

23 The terms of this Consent Judgment have been reviewed by the respective legal counsel
24 for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the
25 terms and conditions with its legal counsel. The Parties agree that, in any subsequent
26 interpretation or construction of this Consent Judgment, no inference, assumption or presumption
27 shall be drawn, and no provision of this Consent Judgment shall be construed against any Party,
28 based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or

1 drafted all or any portion of this Consent Judgment. It is conclusively presumed that all of the
2 Parties participated equally in the preparation and drafting of this Consent Judgment.

3 **15. ENTIRE AGREEMENT**

4 This Consent Judgment contains the sole and entire agreement and understanding of the
5 Parties with respect to the entire subject matter hereof, and supersedes and replaces any and all
6 prior agreements or understandings, written or oral, with regard to the matters set forth herein.
7 No other agreements or understandings not specifically referred to herein, oral or otherwise, shall
8 be deemed to exist or to bind any of the Parties.

9 **16. EXECUTION IN COUNTERPARTS**

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

13 **17. NOTICES**

14 All notices required by this Consent Judgment to be given to any Party shall be sent by
15 first-class registered or certified mail, or overnight delivery, to the following:

16 **FOR ERC:**

17
18 Chris Heptinstall, Executive Director
19 Environmental Research Center
20 3111 Camino Del Rio North, Suite 400
21 San Diego, CA 92108

22 Ryan Hoffman
23 Michael Freund
24 Michael Freund & Associates
25 1919 Addison Street, Suite 105
26 Berkeley, CA 94704

27 **FOR DEFENDANT:**

28 Mr. Thomas J. Petrarca
RHG & Company, Inc. dba VITAL NUTRIENTS
45 Kenneth Dooley Drive

1 Middletown, CT 06457
2
3 Les S. Brener (SBN 180235)
4 Kelley Drye & Warren LLP
5 10100 Santa Monica Blvd., Suite 2300
6 Los Angeles CA 90067

7 **18. AUTHORITY TO STIPULATE TO THIS CONSENT JUDGMENT**

8 Each person signing this Consent Judgment on behalf of a Party certifies that he or she is
9 fully authorized by that Party to stipulate to the terms and conditions of this Consent Judgment
10 on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that Party,
11 and to legally bind that Party to this Consent Judgment. Each person signing this Consent
12 Judgment on behalf of a Party represents and warrants that he or she has read and understands }
13 this Consent Judgment, and agrees to all of the terms and conditions of this Consent Judgment on
14 behalf of that Party.

15 **IT IS SO STIPULATED:**

16 Dated: 2/28/2014

ENVIRONMENTAL RESEARCH CENTER

17 By: 

Chris McQuinn
Executive Director

18
19
20 Dated: 3/5/2014

RHG & COMPANY, INC. DBA
VITAL NUTRIENTS

21
22 By: 

Name: THOMAS J. PETRARCA
Title: PRESIDENT & CEO

23
24
25
26 **APPROVED AS TO FORM:**

27 Dated: 3-5-14

LAW OFFICE OF KAREN A. EVANS

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By: Karen A. Evans
Karen A. Evans
Attorney for Plaintiff
ENVIRONMENTAL RESEARCH CENTER

Dated: 3-5-14

KELLY DRYE & WARREN LLP

By: Les S. Brenner
Les S. Brenner
Attorneys for Defendant
RHG dba VITAL NUTRIENTS

JUDGMENT

Based on the Parties' stipulation, and good cause appearing therefore, this Consent Judgment is approved and judgment is hereby entered according to its terms.
IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____

Judge of the Superior Court

EXHIBIT A - [Notice of Violations]