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5 ENVIRONMENTAL RESEARCH CENTER

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10 Attorneys for Defendants
MULTIVITAMIN DIRECT, individually and doing
11 business as RAW GREEN ORGANICS and RAW
JUVENATE

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ALAMEDA**

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

17 Plaintiff,

18 v.

19 MULTIVITAMIN DIRECT, individually and
20 doing business as RAW GREEN
ORGANICS and RAW JUVENATE,

21 Defendants.
22
23

CASE NO. RG15759461

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

Health & Safety Code § 25249.5 *et seq.*

Action Filed: February 20, 2015
Trial Date: None set

24 **1. INTRODUCTION**

25 **1.1** On February 20, 2015, Plaintiff Environmental Research Center (“ERC”), a
26 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by
27 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the
28 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),

1 against MULTIVITAMIN DIRECT, individually and doing business as RAW GREEN
2 ORGANICS and RAW JUVENATE (collectively "Multivitamin Direct"). In this action, ERC
3 alleges that a number of products manufactured, distributed or sold by Multivitamin Direct
4 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and
5 expose consumers to this chemical at a level requiring a Proposition 65 warning. These
6 products (referred to hereinafter individually as a "Covered Product" or collectively as
7 "Covered Products") are: (1) Raw Green Organics RawJuvenate Organic Vegan Protein
8 Vanilla Flavor and (2) Raw Green Organics RawJuvenate Organic Super Greens.

9 **1.2** ERC and Multivitamin Direct are hereinafter referred to individually as a
10 "Party" or collectively as the "Parties."

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

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

19 **1.5** The Complaint is based on allegations contained in ERC's Notice of Violation
20 dated May 23, 2014, that was served on the California Attorney General, other public
21 enforcers, and Multivitamin Direct ("Notice"). A true and correct copy of the Notice is attached
22 as Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the
23 Notice was mailed and uploaded to the Attorney General's website, and no designated
24 governmental entity has filed a complaint against Multivitamin Direct with regard to the
25 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. Multivitamin Direct denies all material

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 shall constitute or be construed as an admission by any of
5 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
6 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
7 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
8 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
9 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
10 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
11 purpose.

12 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
13 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
14 other or future legal proceeding unrelated to these proceedings.

15 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
16 a Judgment by this Court.

17 **2. JURISDICTION AND VENUE**

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

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

26 **3.1** Beginning on the Effective Date, Multivitamin Direct shall be permanently
27 enjoined from manufacturing for sale in the State of California, "Distributing into the State of
28 California," or directly selling in the State of California, any Covered Product which exposes a

1 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms per day of lead when
2 the maximum suggested dose is taken as directed on the Covered Product’s label, unless it
3 meets the warning requirements under Section 3.2.

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

8 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
9 Level” shall be measured in micrograms, and shall be calculated using the following formula:
10 micrograms of lead per gram of product, multiplied by grams of product per serving of the
11 product (using the largest serving size appearing on the product label), multiplied by servings
12 of the product per day (using the largest number of servings in a recommended dosage
13 appearing on the product label), which equals micrograms of lead exposure per day.

14 **3.2 Clear and Reasonable Warnings**

15 If Multivitamin Direct is required to provide a warning pursuant to Section 3.1, the
16 following warning must be utilized:

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

19 Multivitamin Direct shall use the phrase “cancer and” in the warning only if the maximum daily
20 dose recommended on the label contains more than 15 micrograms of lead as determined pursuant
21 to the quality control methodology set forth in Section 3.4 or if Multivitamin Direct reasonably
22 believes the Covered Product contains another chemical known to the State of California to cause
23 cancer.

24 The warning shall be securely affixed to or printed upon the container or label of each
25 Covered Product. In addition, for Covered Products sold over Multivitamin Direct’s website, the
26 warning shall appear on Multivitamin Direct’s checkout page prior to completing checkout on
27 Multivitamin Direct’s website when a California delivery address is indicated for any purchase
28 of any Covered Product.

1 The warning shall be at least the same size as the largest of any other health or safety
2 warnings also appearing on its website or on the label or container of Multivitamin Direct's
3 product packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No
4 other statements about Proposition 65 or lead may accompany the warning.

5 Multivitamin Direct must display the above warnings with such conspicuousness, as
6 compared with other words, statements, or design of the label or container, as applicable, to render
7 the warning likely to be read and understood by an ordinary individual under customary conditions
8 of purchase or use of the product.

9 **3.3 Reformulated Covered Products**

10 A Reformulated Covered Product is a Covered Product for which the Daily Lead Exposure
11 Level when the maximum suggested dose is taken as directed on the Reformulated Covered
12 Product's label, contains no more than 0.5 micrograms of lead per day as determined by the
13 quality control methodology described in Section 3.4.

14 **3.4 Testing and Quality Control Methodology**

15 **3.4.1** Beginning within one year of the Effective Date, Multivitamin Direct
16 shall arrange for lead testing of the Covered Products at least once a year for a minimum of
17 three consecutive years by arranging for testing of five randomly selected samples of each of
18 the Covered Products, in the form intended for sale to the end-user, which Multivitamin Direct
19 intends to sell or is manufacturing for sale in California, directly selling to a consumer in
20 California or "Distributing into California." The testing requirement does not apply to any of
21 the Covered Products for which Multivitamin Direct has provided the warning specified in
22 Section 3.2. If tests conducted pursuant to this Section demonstrate that no warning is required
23 for a Covered Product during each of three consecutive years, then the testing requirements of
24 this Section will no longer be required as to that Covered Product. However, if during or after
25 the three-year testing period, Multivitamin Direct changes ingredient suppliers for any of the
26 Covered Products and/or reformulates any of the Covered Products, Multivitamin Direct shall
27 test that Covered Product annually for at least three (3) consecutive years after such change is
28 made.

1 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
2 lead detection result of the five (5) randomly selected samples of the Covered Products will be
3 controlling.

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

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

14 **3.4.5** Nothing in this Consent Judgment shall limit Multivitamin Direct’s
15 ability to conduct, or require that others conduct, additional testing of the Covered Products,
16 including the raw materials used in their manufacture.

17 **3.4.6** Beginning on the Effective Date and continuing for a period of three
18 years, Multivitamin Direct shall arrange for copies of all laboratory reports with results of
19 testing for lead content under Section 3.4.1 to be automatically sent by the testing laboratory
20 directly to ERC within ten days after completion of the testing. Multivitamin Direct shall retain
21 all test results and documentation for a period of three years from the date of each test.

22 **4. SETTLEMENT PAYMENT**

23 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
24 penalties, attorney’s fees, and costs, Multivitamin Direct shall make a total payment of
25 \$54,000.00 (“Total Settlement Amount”) to ERC. The first payment of \$15,000.00 shall be
26 due within 5 days of the Effective Date and shall be followed by twelve equal consecutive
27 monthly payments of \$3,250.00 due and owing on the same day of the month as the initial
28 payment. Multivitamin Direct shall make these payment by wire transfer to ERC’s escrow

1 account, for which ERC will give Multivitamin Direct the necessary account information. The
2 Total Settlement Amount shall be apportioned as follows:

3 **4.2** \$16,550.00 shall be considered a civil penalty pursuant to California Health and
4 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$12,412.50) of the civil penalty to the
5 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
6 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
7 Code §25249.12(c). ERC will retain the remaining 25% (\$4,137.50) of the civil penalty.

8 **4.3** \$1,421.86 shall be distributed to ERC as reimbursement to ERC for reasonable
9 costs incurred in bringing this action.

10 **4.4** \$12,490.06 shall be distributed to ERC in lieu of further civil penalties, for the
11 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
12 includes work, analyzing, researching and testing consumer products that may contain
13 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
14 the subject matter of the current action; (2) the continued monitoring of past consent judgments
15 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
16 donation of \$625.00 to the As You Sow to address reducing toxic chemical exposures in
17 California.

18 **4.5** \$12,145.00 shall be distributed to William F. Wraith as reimbursement of ERC’s
19 attorney’s fees, while \$11,393.08 shall be distributed to ERC for its in-house legal fees.

20 **5. MODIFICATION OF CONSENT JUDGMENT**

21 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
22 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
23 judgment.

24 **5.2** If Multivitamin Direct seeks to modify this Consent Judgment under Section 5.1,
25 then Multivitamin Direct must provide written notice to ERC of its intent (“Notice of Intent”).
26 If ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent,
27 then ERC must provide written notice to Multivitamin Direct within thirty days of receiving the
28 Notice of Intent. If ERC notifies Multivitamin Direct in a timely manner of ERC’s intent to

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

8 **5.3** In the event that Multivitamin Direct initiates or otherwise requests a
9 modification under Section 5.1, and the meet and confer process leads to a joint motion or
10 application of the Consent Judgment, Multivitamin Direct shall reimburse ERC its costs and
11 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
12 arguing the motion or application.

13 **5.4** Where the meet-and-confer process does not lead to a joint motion or
14 application in support of a modification of the Consent Judgment, then either Party may seek
15 judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs
16 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
17 means a party who is successful in obtaining relief more favorable to it than the relief that the
18 other party was amenable to providing during the Parties' good faith attempt to resolve the
19 dispute that is the subject of the modification.

20 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT** 21 **JUDGMENT**

22 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
23 this Consent Judgment.

24 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
25 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
26 inform Multivitamin Direct in a reasonably prompt manner of its test results, including
27 information sufficient to permit Multivitamin Direct to identify the Covered Products at issue.
28 Multivitamin Direct shall, within thirty days following such notice, provide ERC with testing

1 information, from an independent third-party laboratory meeting the requirements of Sections
2 3.4.1 and 3.4.2, demonstrating Multivitamin Direct's compliance with the Consent Judgment, if
3 warranted. The Parties shall first attempt to resolve the matter prior to ERC taking any further
4 legal action.

5 **7. APPLICATION OF CONSENT JUDGMENT**

6 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
7 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
8 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
9 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
10 application to Covered Products which are distributed or sold exclusively outside the State of
11 California and which are not shipped to California consumers.

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

13 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
14 behalf of itself and in the public interest, and Multivitamin Direct and its respective officers,
15 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
16 suppliers, franchisees, licensees, customers (not including private label customers of
17 Multivitamin Direct), distributors, wholesalers, retailers, and all other upstream and
18 downstream entities in the distribution chain of any Covered Product, and the predecessors,
19 successors and assigns of any of them (collectively, "Released Parties"). fully and finally
20 releasing Multivitamin Direct and the Released Parties from any and all claims, actions, causes
21 of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or
22 that could have been asserted from the handling, use, or consumption of the Covered Products,
23 as to any alleged violation of Proposition 65 or its implementing regulations arising from the
24 failure to provide Proposition 65 warnings on the Covered Products regarding lead up to and
25 including the Effective Date.

26 **8.2** ERC on its own behalf only, on one hand, and Multivitamin Direct on its own
27 behalf only, on the other, further waive and release any and all claims they may have against
28 each other and against the Released Parties for all actions or statements of any nature up

1 through and including the Effective Date, provided, however, that nothing in Section 8 shall
2 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

3 **8.3** It is possible that other claims not known to the Parties arising out of the facts
4 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
5 discovered. ERC on behalf of itself only, on one hand, and Multivitamin Direct, on the other
6 hand, acknowledge that this Consent Judgment is expressly intended to cover and include all
7 such claims up through the Effective Date, including all rights of action therefore. ERC and
8 Multivitamin Direct acknowledge that the claims released in Sections 8.1 and 8.2 above may
9 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any
10 such unknown claims. California Civil Code section 1542 reads as follows:

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

16 ERC on behalf of itself only, on the one hand, and Multivitamin Direct, on the other hand,
17 acknowledge and understand the significance and consequences of this specific waiver of
18 California Civil Code section 1542.

19 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
20 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
21 in the Covered Products as set forth in the Notice and the Complaint.

22 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
23 environmental exposures arising under Proposition 65, nor shall it apply to any of Multivitamin
24 Direct's products other than the Covered Products.

25 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

28 **10. GOVERNING LAW**

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

1 **11. PROVISION OF NOTICE**

2 All notices required to be given to either Party to this Consent Judgment by the other shall
3 be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified
4 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

5 **FOR ENVIRONMENTAL RESEARCH CENTER:**

6 Chris Heptinstall, Executive Director, Environmental Research Center
7 3111 Camino Del Rio North, Suite 400
8 San Diego, CA 92108
9 Tel: (619) 500-3090
10 Email: chris_erc501c3@yahoo.com

11 With a copy to:

12 WILLIAM F. WRAITH
13 WRAITH LAW
14 24422 Avenida de la Carlota, Suite 400
15 Laguna Hills, CA 92653
16 Tel: (949) 452-1234
17 Fax: (949) 452-1102

18 **MULTIVITAMIN DIRECT, individually and doing business as**
19 **RAW GREEN ORGANICS and RAW JUVENATE**

20 Paul Huang
21 Multivitamin Direct, Inc.
22 2178 Paragon Drive
23 San Jose, CA 95131
24 Office: (408) 573-7276 ext 106
25 Fax : (408) 624-4338
26 Email: phuang@multivitamindirect.com

27 With a copy to:

28 MATTHEW R. ORR
SCOTT R. HATCH
CALL & JENSEN
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
Telephone: (949) 717-3000
Facsimile: (949) 717-3100

1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

1 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
2 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
3 prior to the hearing on the motion.

4 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
5 void and have no force or effect.

6 **13. EXECUTION AND COUNTERPARTS**

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

10 **14. DRAFTING**

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

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

20 If a dispute arises with respect to either Party's compliance with the terms of this Consent
21 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
22 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
23 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is
24 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
25 used in the preceding sentence, the term "prevailing party" means a party who is successful in
26 obtaining relief more favorable to it than the relief that the other party was amenable to providing
27 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement
28 action.

1 **16. ENTIRE AGREEMENT, AUTHORIZATION**

2 **16.1** This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter herein, and any and all
4 prior discussions, negotiations, commitments and understandings related hereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
7 herein, shall be deemed to exist or to bind any Party.

8 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
10 explicitly provided herein, each Party shall bear its own fees and costs.

11 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
12 **CONSENT JUDGMENT**

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

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

19 (2) Make the findings pursuant to California Health and Safety Code section
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

21
22 **IT IS SO STIPULATED:**

23 Dated: 10/21, 2015

ENVIRONMENTAL RESEARCH
CENTER

24 By: 
25 Chris Heptinstall, Executive Director

1 Dated: 10/12/15, 2015

MULTIVITAMIN DIRECT, individually
and doing business as RAW GREEN
ORGANICS and RAW JUVENATE

By: 
Its: _____

5 **APPROVED AS TO FORM:**

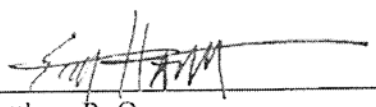
6 Dated: _____, 2015

WRAITH LAW

By: _____
William F. Wraith
Attorney for Plaintiff Environmental
Research Center

11 Dated: October 8, 2015

CALL & JENSEN

By: 
Matthew R. Orr
Scott R. Hatch
Attorney for Defendants Multivitamin
Direct., individually and doing business as
Raw Green Organics and Raw Juvenate

17 **ORDER AND JUDGMENT**

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

20 IT IS SO ORDERED, ADJUDGED AND DECREED.

21 Dated: _____, 2015

Judge of the Superior Court

1 Dated: _____, 2015

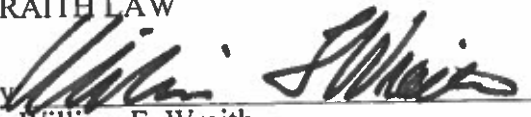
MULTIVITAMIN DIRECT, individually
and doing business as RAW GREEN
ORGANICS and RAW JUVENATE

By: _____
Its: _____

5 **APPROVED AS TO FORM:**

6 Dated: 10/13, 2015

WRAITH LAW

By: 
William F. Wraith
Attorney for Plaintiff Environmental
Research Center

11 Dated: _____, 2015

CALL & JENSEN

By: _____
Matthew R. Orr
Scott R. Hatch
Attorney for Defendants Multivitamin
Direct,, individually and doing business as
Raw Green Organics and Raw Juvenate

17 **ORDER AND JUDGMENT**

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

20 IT IS SO ORDERED, ADJUDGED AND DECREED.

21 Dated: _____, 2015

Judge of the Superior Court

EXHIBIT “A”

WRAITH LAW
16485 LAGUNA CANYON ROAD
SUITE 250
IRVINE, CALIFORNIA 92618
Tel (949) 251-9977
Fax (949) 251-9978

May 23, 2014

**NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

Multivitamin Direct, individually and doing business as Raw Green Organics and RawJuvenate

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Raw Green Organics RawJuvenate Organic Vegan Protein Vanilla Flavor - Lead
Raw Green Organics RawJuvenate Organic Super Greens - Lead**

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On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

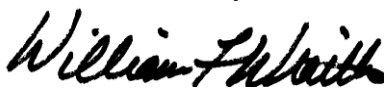
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 23, 2011, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Multivitamin Direct, individually and doing business as Raw Green Organics and RawJuvenate, and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

**Re: Environmental Research Center's Notice of Proposition 65 Violations by
Multivitamin Direct, individually and doing business as Raw Green Organics and
RawJuvenate**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

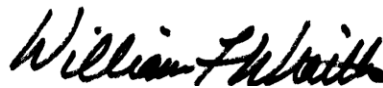
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 23, 2014



William F. Wraith

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On May 23, 2014, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Multivitamin Direct, individually and
doing business as Raw Green Organics
and RawJuvenate
2150 Paragon Drive
San Jose, CA 95131

Current President or CEO
Multivitamin Direct, individually and doing
business as Raw Green Organics and
RawJuvenate
1325 S Howard Avenue, #810
Burlingame, CA 94010

Current President or CEO
Multivitamin Direct, individually and
doing business as Raw Green Organics
and RawJuvenate
716 San Antonio Road
Palo Alto, CA 94303

VCorp Services CA, Inc.
(Registered Agent for Multivitamin Direct,
individually and doing business as
Raw Green Organics and RawJuvenate)
5670 Wilshire Blvd, Suite 1530
Los Angeles, CA 90036

On May 23, 2014, I electronically served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following party by uploading a true and correct copy thereof on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

On May 23, 2014, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on May 23, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 23, 2014

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Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 nd Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 rd Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 th Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	