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22 VITAQUEST INTERNATIONAL INC.; WINDMILL HEALTH  
23 PRODUCTS, LLC; WINDMILL HEALTH PRODUCTS, LLC dba  
24 GARDEN GREENS

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

Plaintiff,

v.

VITAQUEST INTERNATIONAL, LLC, a  
Delaware Limited Liability Company;  
VITAQUEST INTERNATIONAL, INC., a  
Delaware Corporation; WINDMILL HEALTH  
PRODUCTS, LLC, a New Jersey Limited  
Liability Company; WINDMILL HEALTH  
PRODUCTS, LLC dba GARDEN GREENS, a  
New Jersey Limited Liability Company,

Defendants.

Case No. RG16801018

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE BRAD SELIGMAN  
DEPARTMENT 30

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 21, 2016  
Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On January 21, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a  
3 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by  
4 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the  
5 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),  
6 against VITAQUEST INTERNATIONAL, LLC, a Delaware Limited Liability Company;  
7 VITAQUEST INTERNATIONAL, INC., a Delaware Corporation; WINDMILL HEALTH  
8 PRODUCTS, LLC, a New Jersey Limited Liability Company; and WINDMILL HEALTH  
9 PRODUCTS, LLC dba GARDEN GREENS, a New Jersey Limited Liability Company  
10 (hereinafter referred to individually as "Defendant" or collectively as "Defendants"). In this  
11 action, ERC alleges that a number of products manufactured, distributed or sold by Defendants  
12 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and  
13 expose consumers to this chemical at a level requiring a Proposition 65 warning. These  
14 products (referred to hereinafter individually as a "Covered Product" or collectively as  
15 "Covered Products") are:

- 16 a. Garden Greens Essential Greens 3000;  
17 b. Garden Greens Essential Greens Garden Greens Blend Very Berry Flavor;  
18 c. Garden Greens 24 Hour Inner Cleanse 7 Day Intestinal Cleansing Formula, a  
19 kit containing the below products:  
20 i. Garden Greens 24 Hour Inner Cleanse 7 Day Intestinal Cleansing  
21 Formula Daytime Formula; and  
22 ii. Garden Greens 24 Hour Inner Cleanse 7 Day Intestinal Cleansing  
23 Formula Nighttime Formula.

24 **1.2** ERC and Defendants are hereinafter referred to individually as a "Party" or  
25 collectively as the "Parties."

26 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,  
27 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
28

1 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
2 encouraging corporate responsibility.

3       **1.4** For purposes of this Consent Judgment, the Parties agree that each Defendant is a  
4 business entity each of which has employed ten or more persons at all times relevant to this action,  
5 and qualifies as a "person in the course of business" within the meaning of Proposition 65.  
6 Defendants manufacture, distribute, and sell the Covered Products.

7       **1.5** The Complaint is based on allegations contained in ERC's Notice of Violation  
8 dated February 13, 2015, that was served on the California Attorney General, other public  
9 enforcers, and Defendants ("Notice"). A true and correct copy of the Notice is attached as  
10 **Exhibit A** and is hereby incorporated by reference. More than 60 days have passed since the  
11 Notice was mailed and uploaded to the Attorney General's website, and no designated  
12 governmental entity has filed a complaint against Defendants with regard to the Covered  
13 Products or the alleged violations.

14       **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes  
15 persons in California to lead without first providing clear and reasonable warnings in violation  
16 of California Health and Safety Code section 25249.6. Defendants deny all material allegations  
17 contained in the Notice and Complaint.

18       **1.7** The Parties have entered into this Consent Judgment in order to settle,  
19 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
20 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
21 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
22 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,  
23 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
24 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
25 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
26 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
27 purpose.  
28

1           **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
2     prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
3     other or future legal proceeding unrelated to these proceedings.

4           **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered as  
5     a Judgment by this Court.

6           **2.     JURISDICTION AND VENUE**

7           For purposes of this Consent Judgment and any further court action that may become  
8     necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
9     jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
10    over Defendants as to the acts alleged in the Complaint, that venue is proper in Alameda County,  
11    and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of  
12    all claims up through and including the Compliance Date (as that term is defined in Section 3.1  
13    below) which were or could have been asserted in this action based on the facts alleged in the  
14    Notice and Complaint.

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

16          **3.1**     Any Covered Products that are manufactured six (6) months after the Effective  
17    Date (the "Compliance Date") that Defendants thereafter distribute into the State of California,  
18    offer for sale to a third party for retail sale in California, or directly sell in the State of  
19    California, shall either (1) contain no more than 0.5 micrograms of lead per day as calculated  
20    pursuant to Section 3.1.2, excluding allowances pursuant to Section 3.3, and as validated by the  
21    quality control methodology described in Section 3.4; or (2) meet the warning requirements  
22    under Section 3.2.

23               **3.1.1**   As used in this Consent Judgment, the term "Distributing into the State  
24    of California" shall mean to directly ship a Covered Product into California for sale in  
25    California or to sell a Covered Product to a distributor that Defendants know will sell the  
26    Covered Product in California.

1           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
3 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
4 product (using the largest serving size appearing on the product label), multiplied by servings  
5 of the product per day (using the largest number of servings in a recommended dosage  
6 appearing on the product label), which equals micrograms of lead exposure per day.

7           **3.2 Clear and Reasonable Warnings**

8           If Defendants are required to provide a warning pursuant to Section 3.1, the following  
9 warning must be utilized:

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

12 Defendants shall use the phrase “cancer and” in the warning only if the maximum daily dose  
13 recommended on the label contains more than 15 micrograms of lead as determined pursuant to  
14 the quality control methodology set forth in Section 3.4.

15           The warning shall be securely affixed to or printed upon the container or label of each  
16 Covered Product. Or, for Covered Products sold over Defendants’ website, the warning may  
17 appear on Defendants’ checkout page on their website for California consumers marketing any  
18 Covered Product, or appear prior to completing checkout on Defendants’ website when a  
19 California delivery address is indicated for any purchase of any Covered Product.

20           The warning shall be at least the same size as the largest of any other health or safety  
21 warnings also appearing on its website or on the label or container of Defendants’ product  
22 packaging and the word “WARNING” shall be in all capital letters. No other statements about  
23 Proposition 65 or lead may accompany the warning.

24           Defendants must display the above warnings with such conspicuousness, as compared  
25 with other words, statements, or design of the label or container, as applicable, to render the  
26 warning likely to be read and understood by an ordinary individual under customary conditions of  
27 purchase or use of the product.  
28

### 3.3 Reformulated Covered Products

A Reformulated Covered Product is one for which the Daily Lead Exposure Level when the maximum suggested dose is taken as directed on the Reformulated Covered Product's label, contains no more than 0.5 micrograms of lead per day as determined by the quality control methodology described in Section 3.4, excluding amounts of naturally occurring lead in the ingredients listed in the table below, in accordance with the Attorney General's Stipulation Modifying Consent Judgments in *People v. Warner Lambert, et al.*, San Fran. Sup. Ct. Case No. 984503.

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram

If, at any time after the Compliance Date, ERC tests a Covered Product and the test results indicate that the Daily Lead Exposure Level is greater than 0.5 micrograms per day, Defendants agree to confidentially supply to ERC within 30 days a list of ingredients, including the percentage of each ingredient ("Ingredient List"), of that particular covered product so that ERC may be able to calculate the daily exposure based on the allowances contained in the table above.

In the event that a dispute arises with respect to compliance with the terms of this Consent Judgment as to any contribution from naturally occurring lead levels under the Section, the Parties shall first meet and confer in an effort to fully resolve any dispute. If the meet and

1 confer process is unsuccessful, any Party may elect to proceed pursuant to the enforcement  
2 provisions of Section 5.4 below. In the event that Court intervention is sought by any Party, the  
3 Parties shall employ good faith efforts to seek entry of a protective order by the Court that limits  
4 public access to and disclosure of the Ingredient List provided prior to disclosure of the  
5 Ingredient List in any enforcement proceedings before the Court.

### 6           **3.4    Testing and Quality Control Methodology**

7           **3.4.1** Beginning within one year of the Compliance Date, Defendants shall  
8 arrange for lead testing of the Covered Products at least once a year for a minimum of three  
9 consecutive years by arranging for testing of five randomly selected samples of each of the  
10 Covered Products, in the form intended for sale to the end-user, which Defendants intend to sell  
11 or are manufacturing for sale in California, directly selling to a consumer in California or  
12 "Distributing into California." The testing requirement does not apply to any of the Covered  
13 Products for which Defendants have provided the warning specified in Section 3.2. If tests  
14 conducted pursuant to this Section demonstrate that no warning is required for a Covered  
15 Product during each of three consecutive years, then the testing requirements of this Section  
16 will no longer be required as to that Covered Product. Defendants shall retain all test results  
17 and documentation for a period of five years from the date of each test.

18           **3.4.2** For purposes of measuring the "Daily Lead Exposure Level", the highest  
19 lead detection result of the five (5) randomly selected samples of the Covered Products will be  
20 controlling.

21           **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
22 laboratory method that complies with the performance and quality control factors appropriate  
23 for the method used, including limit of detection, qualification, accuracy, and precision that  
24 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
25 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
26 method subsequently agreed to in writing by the Parties.

27           **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
28 independent third party laboratory certified by the California Environmental Laboratory

1 Accreditation Program or an independent third-party laboratory that is registered with the  
2 United States Food & Drug Administration.

3           **3.4.5** Beginning on the Compliance Date and continuing for a period of three  
4 years, upon demonstration by ERC of test results showing a Daily Lead Exposure Level above  
5 0.5mcg/day, Defendants shall arrange for copies of all laboratory reports for the product in  
6 question showing lead content results under Section 3.4.1 to be sent to ERC within ten days  
7 after receipt of ERC's written request.

8 **4. SETTLEMENT PAYMENT**

9           **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
10 penalties, attorney's fees, and costs, Defendants shall make a total payment of \$85,000.00  
11 ("Total Settlement Amount") to ERC within 5 days of the Effective Date. Defendants shall  
12 make this payment by wire transfer to ERC's escrow account, for which ERC will give  
13 Defendants the necessary account information. The Total Settlement Amount shall be  
14 apportioned as follows:

15           **4.2** \$28,010.00 shall be considered a civil penalty pursuant to California Health and  
16 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$21,007.50) of the civil penalty to the  
17 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
18 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
19 Code §25249.12(c). ERC will retain the remaining 25% (\$7,002.50) of the civil penalty.

20           **4.3** \$880.14 shall be distributed to ERC as reimbursement to ERC for reasonable  
21 costs incurred in bringing this action.

22           **4.4** \$21,130.84 shall be distributed to ERC in lieu of further civil penalties, for the  
23 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
24 includes work, analyzing, researching and testing consumer products that may contain  
25 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
26 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
27 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
28



1 donation of \$1056.00 to the Center for Environmental Health to address reducing toxic  
2 chemical exposures in California.

3       **4.5**     \$24,448.95 shall be distributed to Adams Broadwell Joseph & Cardozo, and  
4 \$2,422.50 shall be distributed to Law Office of Christina M. Caro as reimbursement of ERC's  
5 attorney's fees, while \$8,107.57 shall be distributed to ERC for its in-house legal fees.

6 **5.     MODIFICATION OF CONSENT JUDGMENT**

7       **5.1**     This Consent Judgment may be modified only (i) by written stipulation of the  
8 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
9 judgment.

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

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

26       **5.4**     Where the meet-and-confer process does not lead to a joint motion or  
27 application in support of a modification of the Consent Judgment, then either Party may seek  
28

1 judicial relief on its own to enforce the terms and conditions contained in this Stipulated  
2 Consent Judgment after its entry by the Court pursuant to any applicable provision of  
3 California law. In such a situation, the prevailing Party may seek to recover costs and  
4 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
5 means a party who is successful in obtaining relief more favorable to it than the relief that the  
6 other party was amenable to providing during the Parties' good faith attempt to resolve the  
7 dispute that is the subject of the modification.

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

10 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
11 this Consent Judgment.

12 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
13 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
14 inform Defendants in a reasonably prompt manner of its test results, including information  
15 sufficient to permit Defendants to identify the Covered Products at issue. Defendants shall,  
16 within thirty days following such notice, provide ERC with testing information, from an  
17 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
18 demonstrating Defendants' compliance with the Consent Judgment, if warranted. The Parties  
19 shall first attempt to resolve the matter prior to ERC taking any further legal action.

20 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

14 **8.2** ERC on its own behalf only, on one hand, and Defendants on their own  
15 behalf only, on the other, further waive and release any and all claims they may have against  
16 each other for all actions or statements made or undertaken in the course of seeking or opposing  
17 enforcement of Proposition 65 in connection with the Notice or Complaint up through and  
18 including the Compliance Date, provided, however, that nothing in Section 8 shall affect or  
19 limit any Party's right to seek to enforce the terms of this Consent Judgment.

20 **8.3** It is possible that other claims not known to the Parties arising out of the facts  
21 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be  
22 discovered. ERC on behalf of itself only, on one hand, and Defendants, on the other hand,  
23 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
24 claims up through the Compliance Date, including all rights of action therefore. ERC and  
25 Defendants acknowledge that the claims released in Sections 8.1 and 8.2 above may include  
26 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
27 unknown claims. California Civil Code section 1542 reads as follows:  
28

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

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

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

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

14 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

17 **10. GOVERNING LAW**

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

20 **11. PROVISION OF NOTICE**

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

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

25 Chris Heptinstall, Executive Director, Environmental Research Center  
26 3111 Camino Del Rio North, Suite 400  
27 San Diego, CA 92108  
28 Tel: (619) 500-3090  
Email: [chris\\_erc501c3@yahoo.com](mailto:chris_erc501c3@yahoo.com)

1 With a copy to:

2 TANYA A. GULESSERIAN (CBN 198640)  
3 CHRISTINA M. CARO (CBN 250797)  
4 ADAMS BROADWELL JOSEPH & CARDOZO  
5 601 Gateway Boulevard, Suite 1000  
6 South San Francisco, CA 94080-7037  
7 Telephone: (650) 589-1660  
8 Facsimile: (650) 589-5062  
9 Email: tgulesserian@adamsbroadwell.com  
10 ccaro@adamsbroadwell.com

11 **VITAQUEST INTERNATIONAL LLC and**  
12 **VITAQUEST INTERNATIONAL INC**

13 Scott Yagoda, General Counsel  
14 8 Henderson Drive  
15 West Caldwell, NJ 07006

16 **WINDMILL HEALTH PRODUCTS, LLC and**  
17 **WINDMILL HEALTH PRODUCTS, LLC dba GARDEN GREENS**

18 Philip Piscopo, Chief Financial Officer  
19 6 Henderson Drive  
20 West Caldwell, NJ 07006

21 With a copy to:

22 GREG SPERLA  
23 GREENBERG TRAURIG LLP  
24 1201 K Street, Suite 1100  
25 Sacramento, CA 95814-3938  
26 T: (916) 442-1111  
27 F: (916) 448-1709

28 **12. COURT APPROVAL**

12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a Motion for Approval of Stipulated Consent Judgment. The Parties shall use their best efforts to support entry of this 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  
24 Dated: February 25, 2016

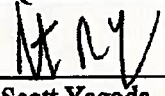
ENVIRONMENTAL RESEARCH  
CENTER, INC.

25  
26 By:   
27 Chris Heptinstall, Executive Director  
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Dated: Feb. 24, 2016

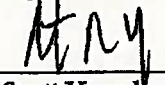
VITAQUEST INTERNATIONAL LLC



By: Scott Yagoda  
Its: General Counsel

Dated: Feb. 24, 2016

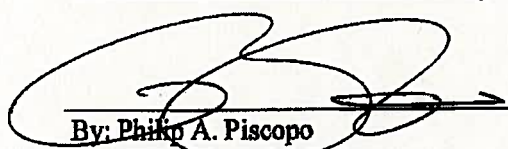
VITAQUEST INTERNATIONAL INC.



By: Scott Yagoda  
Its: General Counsel

Dated: FEB 24, 2016

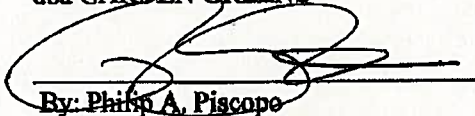
WINDMILL HEALTH PRODUCTS, LLC



By: Philip A. Piscopo  
Its: Chief Financial Officer

Dated: FEB 24, 2016

WINDMILL HEALTH PRODUCTS, LLC  
dba GARDEN GREENS

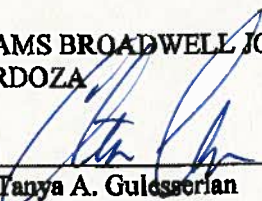


By: Philip A. Piscopo  
Its: Chief Financial Officer

APPROVED AS TO FORM:

Dated: February 24, 2016

ADAMS BROADWELL JOSEPH &  
CARDOZA

By: 

Tanya A. Gulassarian  
Christina M. Caro  
Attorneys for Plaintiff Environmental  
Research Center, Inc.



1 Dated: February 24, 2016

GREENBERG TRAURIG LLP

By: 

Anthony J. Cortez

Greg Sperla

Attorney for Defendants Vitaquest

International, LLC, Vitaquest

International, Inc., Windmill Health

Products, LLC and Windmill Health

Products, LLC dba Garden Greens

13 **ORDER AND JUDGMENT**

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

16 IT IS SO ORDERED, ADJUDGED AND DECREED.

18 Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Honorable Brad Seligman  
Judge of the Superior Court

# EXHIBIT A

## LAW OFFICE OF CHRISTINA M. CARO

2506 Haste St.  
Berkeley, CA 94704

Tel: (510) 545-9346  
Fax: (510) 295-2649

christina@ccarolaw.com  
www.ccarolaw.com

### VIA CERTIFIED MAIL

Current CEO or President  
Windmill Health Products, LLC  
6 Henderson Drive  
West Caldwell, NJ 07006

Current CEO or President  
Windmill Health Products, LLC  
100 Lehigh Drive  
Fairfield, NJ 07004

Current CEO or President  
Windmill Health Products, LLC  
21 Dwight Place  
Fairfield, NJ 07004

Current CEO or President  
Windmill Health Products, LLC  
dba Garden Greens  
6 Henderson Drive  
West Caldwell, NJ 07006

Current CEO or President  
Windmill Health Products, LLC  
dba Garden Greens  
100 Lehigh Drive  
Fairfield, NJ 07004

Current CEO or President  
Windmill Health Products, LLC  
dba Garden Greens  
21 Dwight Place  
Fairfield, NJ 07004

Current CEO or President  
Vitacost International LLC  
8 Henderson Drive  
West Caldwell, NJ 07006

Current CEO or President  
Vitacost International Inc.  
8 Henderson Drive  
West Caldwell, NJ 07006

### VIA CERTIFIED MAIL

Angela Vanhouten  
(Windmill Health Products, LLC's  
Registered Agent for Service of Process)  
6 Henderson Drive  
West Caldwell, NJ 07006

Angela Vanhouten  
(Windmill Health Products, LLC  
dba Garden Greens's Registered Agent  
for Service of Process)  
6 Henderson Drive  
West Caldwell, NJ 07006

Scott Yagoda, Esquire  
(Vitaquest International LLC's  
Registered Agent for Service of Process)  
8 Henderson Drive  
West Caldwell, NJ 07006

Scott Yagoda, Esquire  
(Vitaquest International Inc.'s  
Registered Agent for Service of Process)  
8 Henderson Drive  
West Caldwell, NJ 07006

Corporation Service Company  
(Vitaquest International LLC's  
Registered Agent for Service of Process)  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

### VIA ONLINE SUBMISSION

Office of the California Attorney General

### VIA PRIORITY MAIL

District Attorneys of All California Counties  
and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 et seq.**

Dear Addressees:

I represent the Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

The names of the Companies covered by this notice that violated Proposition 65 (hereinafter the “Violators”) are:

**Vitaquest International LLC  
Vitaquest International Inc.  
Windmill Health Products, LLC  
Windmill Health Products, LLC dba Garden Greens**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- **Garden Greens Essential Greens 3000- Lead**
- **Garden Greens Essential Greens Garden Greens Blend Very Berry Flavor - Lead**
- **Garden Greens 24 Hour Inner Cleanse 7 Day Intestinal Cleansing Formula- Lead**
  - \*\*\***(kit contains the below products)**
  - a. **Garden Greens 24 Hour Inner Cleanse 7 Day Intestinal Cleansing Formula Daytime Formula**
  - b. **Garden Greens 24 Hour Inner Cleanse 7 Day Intestinal Cleansing Formula Nighttime Formula**

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.

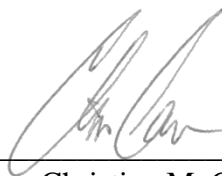
This letter is a notice to each of the Violators and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violators currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to each of the Violators.

Each of the Violators has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. Each of the Violators violated Proposition 65 because they failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since February 13, 2012, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless each of the Violators agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



---

Christina M. Caro

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Vitaquest International LLC; Vitaquest International Inc.;

Windmill Health Products, LLC; Windmill Health Products, LLC dba Garden Greens;  
and their Registered Agents for Service of Process only)

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


**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Vitaquest International LLC; Vitaquest International Inc.; Windmill Health Products, LLC; and Windmill Health Products, LLC dba Garden Greens**

I, Christina Caro, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties 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 chemical that is 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 Violators 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: February 13, 2015

  
\_\_\_\_\_  
Christina M. Caro

**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 February 13, 2015, 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 in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
Windmill Health Products, LLC  
6 Henderson Drive  
West Caldwell, NJ 07006

Current CEO or President  
Vitacost International Inc.  
8 Henderson Drive  
West Caldwell, NJ 07006

Current CEO or President  
Windmill Health Products, LLC  
100 Lehigh Drive  
Fairfield, NJ 07004

Angela Vanhouten  
(Windmill Health Products, LLC's  
Registered Agent for Service of Process)  
6 Henderson Drive  
West Caldwell, NJ 07006

Current CEO or President  
Windmill Health Products, LLC  
21 Dwight Place  
Fairfield, NJ 07004

Angela Vanhouten  
(Windmill Health Products, LLC  
dba Garden Greens's Registered Agent  
for Service of Process)  
6 Henderson Drive  
West Caldwell, NJ 07006

Current CEO or President  
Windmill Health Products, LLC  
dba Garden Greens  
6 Henderson Drive  
West Caldwell, NJ 07006

Scott Yagoda, Esquire  
(Vitaquest International LLC's  
Registered Agent for Service of Process)  
8 Henderson Drive  
West Caldwell, NJ 07006

Current CEO or President  
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dba Garden Greens  
100 Lehigh Drive  
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Scott Yagoda, Esquire  
(Vitaquest International Inc.'s  
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dba Garden Greens  
21 Dwight Place  
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Corporation Service Company  
(Vitaquest International LLC's  
Registered Agent for Service of Process)  
2711 Centerville Road, Suite 400  
Wilmington, DE 19808

Current CEO or President  
Vitacost International LLC  
8 Henderson Drive  
West Caldwell, NJ 07006

February 13, 2015


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On February 13, 2015, 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 February 13, 2015, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on February 13, 2015, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Tiffany Capehart



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

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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 <sup>nd</sup> 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 <sup>rd</sup> 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 <sup>th</sup> 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 Post Office Box 720 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>nd</sup> 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	