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14 NUTRITION 53, INC.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF ALAMEDA**

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

19 **Plaintiff,**

20 **v.**

21 **NUTRITION 53, INC. and DOES 1-100**

22 **Defendants.**
23
24

CASE NO. RG16809437

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 28, 2016

Trial Date: None set

25 **1. INTRODUCTION**

26 On March 28, 2016, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit
27 corporation, as a private enforcer, and in the public interest, initiated this action by filing a
28 Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant

1 to the provisions of California Health and Safety Code Section 25249.5 *et seq.* (“Proposition
2 65”), against Nutrition 53, Inc. (“Nutrition 53”) and Does 1-100. In this action, ERC alleges
3 that a number of products manufactured, distributed or sold by Nutrition 53 contain lead, a
4 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
5 consumers to this chemical at a level requiring a Proposition 65 warning. These products
6 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
7 Products”) are: (1) Nutrition53 Inc. Gainer1 Cookies & Cream, (2) Nutrition53 Inc. Gainer1
8 Chocolate, (3) Nutrition53 Inc. Lean1 Banana, (4) Nutrition53 Inc. Lean1 Chocolate, (5)
9 Nutrition53 Inc. Lean1 Chai, (6) Nutrition53 Inc. Lean1 Vanilla Raspberry, (7) Nutrition53 Inc.
10 Neuro1 Chocolate, (8) Nutrition53 Inc. Vegan1 Chai, (9) Nutrition53 Inc. Lean1 Strawberry,
11 (10) Nutrition 53 Inc. Protein1 Dutch Chocolate, (11) Nutrition 53 Inc. Protein1 Vanilla Bean,
12 (12) Nutrition53 Inc. Vegan1 Chocolate, (13) Nutrition53 Inc. Vegan1 Vanilla, (14) Nutrition53
13 Inc. Vegan1 Banana, (15) Nutrition53 Inc. Lean1 Vanilla, (16) Nutrition53 Inc. Lean1 Cookies
14 & Cream, and (17) Nutrition53 Inc. Neuro1 Mixed Berry.

15 **1.2** ERC and Nutrition 53 are hereinafter referred to individually as a “Party” or
16 collectively as the “Parties.”

17 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,
18 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
19 and toxic chemicals, facilitating a safe environment for consumers and employees, and
20 encouraging corporate responsibility.

21 **1.4** For purposes of this Consent Judgment, the Parties agree that Nutrition 53 is a
22 business entity that has employed ten or more persons at all times relevant to this action, and
23 qualifies as a “person in the course of business” within the meaning of Proposition 65. Nutrition
24 53 manufactures, distributes, and sells the Covered Products.

25 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
26 dated November 5, 2015, that was served on the California Attorney General, other public
27 enforcers, and Nutrition 53 (“Notice”). A true and correct copy of the Notice is attached as
28 Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the

1 Notice was served on the Attorney General, public enforcers, and Nutrition 53 and no
2 designated governmental entity has filed a complaint against Nutrition 53 with regard to the
3 Covered Products or the alleged violations.

4 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
5 persons in California to lead without first providing clear and reasonable warnings in violation
6 of California Health and Safety Code Section 25249.6. Nutrition 53 denies all material
7 allegations contained in the Notice and Complaint.

8 **1.7** The Parties have entered into this Consent Judgment in order to settle,
9 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
10 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
11 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
12 parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,
13 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
14 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
15 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
16 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
17 purpose.

18 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
20 current or future legal proceeding unrelated to these proceedings.

21 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
22 a Judgment by this Court.

23 **2. JURISDICTION AND VENUE**

24 For purposes of this Consent Judgment and any further court action that may become
25 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
26 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
27 over Nutrition 53 as to the acts alleged in the Complaint, that venue is proper in Alameda County,
28 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of

1 all claims up through and including the Effective Date which were or could have been asserted in
2 this action based on the facts alleged in the Notice and Complaint.

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

4 **3.1** Beginning on the Effective Date, Nutrition 53 shall be permanently enjoined
5 from "Distributing into the State of California", or directly selling in the State of California,
6 any Covered Product which exposes a person to a "Daily Lead Exposure Level" of more than
7 0.5 micrograms per day unless it meets the warning requirements under Section 3.2.

8 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
9 of California" shall mean to directly ship a Covered Product into California for sale in
10 California or to sell a Covered Product to a distributor that Nutrition 53 knows will sell the
11 Covered Product in California.

12 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
13 Level" shall be measured in micrograms, and shall be calculated using the following formula:
14 micrograms of lead per gram of product minus the amount of lead listed in Table 3.1.2,
15 multiplied by grams of product per serving of the product (using the largest serving size
16 appearing on the product label), multiplied by servings of the product per day (using the largest
17 number of servings in a recommended dosage appearing on the product label), which equals
18 micrograms of lead exposure per day.

19 If Nutrition 53 seeks to subtract out any amounts of naturally occurring lead listed in
20 Table 3.1.2, Nutrition 53 shall provide ERC with the name of the Covered Product that
21 Nutrition 53 contends contains naturally occurring lead, and a complete list showing all the
22 ingredients in that Covered Product including the ingredients from Table 3.1.2 that are
23 contained in the Covered Product, as well as the amount in grams per serving of each
24 ingredient in the Covered Product. Nutrition 53 may update this information from time to time
25 and will be entitled to submit this information to ERC confidentially.

26 ///

27 ///

28 ///

TABLE 3.1.2

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Elemental 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
Cocoa-powder	1.0 micrograms/gram

3.2 Clear and Reasonable Warnings

If Nutrition 53 is required to provide a warning pursuant to Section 3.1, the following warning must be utilized (“Warning”):

WARNING: This product can expose you to chemicals including lead which is known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov. Nutrition 53 shall use the phrase “cancer and” in the Warning only if the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4.

The Warning shall be securely affixed to or printed upon the container or label of each Covered Product. In addition, for Covered Products sold over Nutrition 53’s website, the Warning shall appear on Nutrition 53’s checkout page on its website for California consumers identifying any Covered Product, and also appear prior to completing checkout on Nutrition 53’s website when a California delivery address is indicated for any purchase of any Covered Product.

The Warning shall be at least the same size as the largest of any other health or safety

1 warnings also appearing on its website or on the label or container of Nutrition 53's product
2 packaging and the word "WARNING" shall be in all capital letters and in bold print. No
3 statements contradicting or conflicting with the Warning shall accompany the Warning.

4 Nutrition 53 must display the above Warning with such conspicuousness, as compared
5 with other words, statements, design of the label, container, or on its website, as applicable, to
6 render the Warning likely to be read and understood by an ordinary individual under customary
7 conditions of purchase or use of the product.

8 **3.3 Reformulated Covered Products**

9 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no
10 greater than 0.5 micrograms of lead per day as determined by the quality control methodology
11 described in Section 3.4.

12 **3.4 Testing and Quality Control Methodology**

13 **3.4.1** Beginning within one year of the Effective Date, Nutrition 53 shall
14 arrange for lead testing of the Covered Products at least once a year for a minimum of five
15 consecutive years by arranging for testing of five randomly selected samples of each of the
16 Covered Products, in the form intended for sale to the end-user, which Nutrition 53 intends to
17 sell or is manufacturing for sale in California, directly selling to a consumer in California or
18 "Distributing into the State of California." If tests conducted pursuant to this Section
19 demonstrate that no Warning is required for a Covered Product during each of five consecutive
20 years, then the testing requirements of this Section will no longer be required as to that Covered
21 Product. However, if during or after the five-year testing period, Nutrition 53 changes
22 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered
23 Products, Nutrition 53 shall test that Covered Product annually for at least four (4) consecutive
24 years after such change is made. The testing requirement does not apply to any of the Covered
25 Products for which Nutrition 53 has provided the Warning specified in Section 3.2.

26 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level", the highest
27 lead detection result of the five (5) randomly selected samples of the Covered Products will be
28 controlling.

1 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
2 laboratory method that complies with the performance and quality control factors appropriate
3 for the method used, including limit of detection, qualification, accuracy, and precision that
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
5 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
6 method subsequently agreed to in writing by the Parties and approved by the Court through
7 entry of a modified consent judgment.

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

12 **3.4.5** Nothing in this Consent Judgment shall limit Nutrition 53’s ability to
13 conduct, or require that others conduct, additional testing of the Covered Products, including
14 the raw materials used in their manufacture.

15 **3.4.6** Within thirty (30) days of ERC’s written request, Nutrition 53 shall
16 deliver lab reports obtained pursuant to Section 3.4 to ERC. Nutrition 53 shall retain all test
17 results and documentation for a period of five years from the date of each test.

18 **4. SETTLEMENT PAYMENT**

19 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
20 penalties, attorney’s fees, and costs, Nutrition 53 shall make a total payment of \$82,500.00
21 (“Total Settlement Amount”) to ERC in ten consecutive monthly payments in the amount of
22 \$5,000.00 for payments one through nine and the tenth payment of \$37,500.00 with the first
23 payment due and owing within 5 days of the Effective Date and nine consecutive monthly
24 payment due in 30 day increments thereafter. Nutrition 53 shall make these payments by wire
25 transfer to ERC’s escrow account, for which ERC will give Nutrition 53 the necessary account
26 information. The Total Settlement Amount shall be apportioned as follows:

27 **4.2** \$25,699.31 shall be considered a civil penalty pursuant to California Health and
28 Safety Code Section 25249.7(b)(1). ERC shall remit 75% (\$19,274.48) of the civil penalty to

1 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
2 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
3 Code Section 25249.12(c). ERC will retain the remaining 25% (\$6,424.83) of the civil penalty.

4 **4.3** \$4,096.35 shall be distributed to ERC as reimbursement to ERC for reasonable
5 costs incurred in bringing this action.

6 **4.4** \$19,274.44 shall be distributed to ERC as an Additional Settlement Payment
7 (“ASP”), pursuant to California Code of Regulations, title 27, sections 3203, subdivision (d) and
8 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
9 caused by Defendant in this matter. These activities are detailed below and support ERC’s
10 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
11 supplement products in California. ERC’s activities have had, and will continue to have, a direct
12 and primary effect within the State of California because California consumers will be benefitted
13 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
14 providing clear and reasonable warnings to California consumers prior to ingestion of the
15 products.

16 Based on a review of past years’ actual budgets, ERC is providing the following list of
17 activities ERC engages in to protect California consumers through Proposition 65 citizen
18 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
19 activities: (1) ENFORCEMENT (55-70%): obtaining, shipping, analyzing, and testing dietary
20 supplement products that may contain lead and are sold to California consumers; continued
21 monitoring and enforcement of past consent judgments and settlements to ensure companies are
22 in compliance with their obligations thereunder, with a specific focus on those judgments and
23 settlements concerning lead (which necessarily includes additional work purchasing, processing,
24 analyzing and testing consumer products; litigating matters that result in defaults, bankruptcies,
25 or dismissals; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC’s
26 Voluntary Compliance Program by acquiring products from companies, developing and
27 maintaining a case file, testing products from these companies, providing the test results and
28 supporting documentation to the companies, and offering guidance in implementing a self-testing

1 program for lead in dietary supplement products; (3) "GOT LEAD" PROGRAM (up to 5%):
2 maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated products
3 that reach California consumers by providing access to free testing for lead in dietary supplement
4 products (Products submitted to the program are screened for ingredients which are suspected to
5 be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory
6 for testing, and the results shared with the consumer that submitted the product); (4)
7 DONATION: from this settlement, a donation of \$900.00 to Center For Environmental Health
8 will be provided to address reducing toxic chemical exposures in California and following up
9 with the recipient to ensure the funds are utilized in a manner that is consistent with ERC's
10 mission and stated purpose of the Donation; (5) PUBLIC OUTREACH (up to 5%): public
11 outreach programs including maintaining ERC's blog, website, and social media accounts; (6)
12 SPECIAL PROJECTS (10-20%): projects including obtaining expert and legal opinions not
13 specific to any one case that are necessary to the continued private enforcement of Proposition
14 65 (7) SCHOLARSHIPS (up to 5%): scholarships for college students in California who have
15 been or are currently diagnosed with cancer or who are pursuing an environmental health science
16 major; and (8) PRODUCT DATABASE (up to 5%): maintaining a database with all products
17 sold to California consumers that ERC has tested for lead, cadmium, or arsenic.

18 ERC will maintain adequate records to document that the funds paid as an ASP are spent
19 on the activities described herein. ERC shall provide the Attorney General, within thirty days of
20 any request, copies of documentation demonstrating how such funds have been spent.

21 **4.5** \$4,590.00 shall be distributed to Michael Freund as reimbursement of ERC's
22 attorney's fees, \$10,100.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
23 attorney's fees, while \$18,739.90 shall be distributed to ERC for its in-house legal fees. Except
24 as explicitly provided herein, each Party shall bear its own fees and costs.

25 **4.6** In the event that Nutrition 53 fails to remit any of the settlement payments owed
26 under Section 4 of this Consent Judgment on or before the due dates, Nutrition 53 shall be
27 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
28 provide written notice of the delinquency to Nutrition 53 via electronic mail. If Nutrition 53

1 fails to deliver the payment within five (5) days from the written notice, the Total Settlement
2 Payment shall become immediately due and payable and shall accrue interest at the statutory
3 judgment interest rate provided in the Code of Civil Procedure Section 685.010. Additionally,
4 Nutrition 53 agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect
5 the payment due under this Consent Judgment.

6 **5. MODIFICATION OF CONSENT JUDGMENT**

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

10 **5.2** If Nutrition 53 seeks to modify this Consent Judgment under Section 5.1, then
11 Nutrition 53 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 Nutrition 53 within thirty (30) days of receiving the Notice of Intent.
14 If ERC notifies Nutrition 53 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 (30) days of such meeting, if ERC disputes the proposed modification,
18 ERC shall provide to Nutrition 53 a written basis for its position. The Parties shall continue to
19 meet 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 Nutrition 53 initiates or otherwise requests 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, Nutrition 53 shall reimburse ERC its costs and reasonable attorney's fees
25 for the time spent in the meet-and-confer process and filing and arguing the motion or
26 application.

1 **5.4** Where the meet-and-confer process does not lead to a joint motion or
2 application in support of a modification of the Consent Judgment, then either Party may seek
3 judicial relief on its own.

4 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
5 **JUDGMENT**

6 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
7 this Consent Judgment.

8 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
9 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
10 inform Nutrition 53 in a reasonably prompt manner of its test results, including information
11 sufficient to permit Nutrition 53 to identify the Covered Products at issue. Nutrition 53 shall,
12 within thirty (30) days following such notice, provide ERC with testing information, from an
13 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
14 demonstrating Nutrition 53's compliance with the Consent Judgment, if warranted. The Parties
15 shall first attempt to resolve the matter prior to ERC taking any further legal action.

16 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

24 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
25 behalf of itself and in the public interest, and Nutrition 53 and its respective officers, directors,
26 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
27 franchisees, licensees, customers (not including private label customers of Nutrition 53),
28 distributors, wholesalers, retailers, and all other upstream and downstream entities in the

1 distribution chain of any Covered Product, and the predecessors, successors and assigns of any
2 of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the
3 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
4 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from
5 the handling, use, or consumption of the Covered Products, as to any alleged violation of
6 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
7 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

8 **8.2** ERC on its own behalf only, and Nutrition 53 on its own behalf only, further
9 waive and release any and all claims they may have against each other for all actions or
10 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
11 65 in connection with the Notice or Complaint up through and including the Effective Date,
12 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
13 enforce the terms of this Consent Judgment.

14 **8.3** It is possible that other claims not known to the Parties arising out of the facts
15 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
16 discovered. ERC on behalf of itself only, and Nutrition 53, on behalf of itself only,
17 acknowledge that this Consent Judgment is expressly intended to cover and include all such
18 claims up through and including the Effective Date, including all rights of action therefore.

19 ERC and Nutrition 53 acknowledge that the claims released in Sections 8.1 and 8.2 above may
20 include unknown claims, and nevertheless waive California Civil Code Section 1542 as to any
21 such unknown claims. California Civil Code Section 1542 reads as follows:

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

27 ERC on behalf of itself only, and Nutrition 53, acknowledge and understand the significance
28 and consequences of this specific waiver of California Civil Code Section 1542.

1 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
3 in the Covered Products as set forth in the Notice and the Complaint.

4 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
5 environmental exposures arising under Proposition 65, nor shall it apply to any of Nutrition
6 53's products other than the Covered Products.

7 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10 **10. GOVERNING LAW**

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

13 **11. PROVISION OF NOTICE**

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

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

18 Chris Heptinstall, Executive Director, Environmental Research Center
19 3111 Camino Del Rio North, Suite 400
20 San Diego, CA 92108
21 Tel: (619) 500-3090
22 Email: chris_erc501c3@yahoo.com

23 With a copy to:

24 Michael Freund
25 Ryan Hoffman
26 Michael Freund & Associates
27 1919 Addison Street, Suite 105
28 Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

1 **NUTRITION 53, INC.**

2 Pete Olander
3 Nutriton53
3706 Mt. Diablo Blvd.
4 Lafayette CA, 94549
Telephone: (925) 283-5325
5 Email: peteo@nutrition53.com

6 With a copy to:
7 Brian S. Haughton
David M. Metres
8 Barg Coffin Lewis & Trapp, LLP
350 California Street, 22nd Floor
9 San Francisco, CA 94104-1435
Telephone: (415) 228-5400
10 Facsimile: (415) 228-5450
11 Email: bhaughton@bargcoffin.com dmetres@bargcoffin.com

12 **12. COURT APPROVAL**

13 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
14 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
15 Consent Judgment.

16 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
17 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
18 prior to the hearing on the motion.

19 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
20 void and have no force or effect.

21 **13. EXECUTION AND COUNTERPARTS**

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

25 **14. DRAFTING**

26 The terms of this Consent Judgment have been reviewed by the respective counsel for each
27 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
28 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and

1 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
2 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
3 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
4 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
5 equally in the preparation and drafting of this Consent Judgment.

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

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

11 **16. ENFORCEMENT**

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

20 **17. ENTIRE AGREEMENT, AUTHORIZATION**

21 **17.1** This Consent Judgment contains the sole and entire agreement and
22 understanding of the Parties with respect to the entire subject matter herein, and any and all
23 prior discussions, negotiations, commitments, and understandings related hereto. No
24 representations, oral or otherwise, express or implied, other than those contained herein have
25 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
26 herein, shall be deemed to exist or to bind any Party.

27 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
28 authorized by the Party he or she represents to stipulate to this Consent Judgment.

1 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
2 **CONSENT JUDGMENT**

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

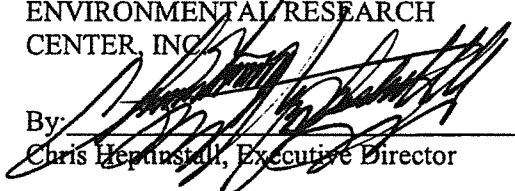
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
7 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11 **IT IS SO STIPULATED:**


12 Dated: 11/30/, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

13
14 By: 
Chris Hepinstall, Executive Director

15 Dated: 11/30/16, 2016

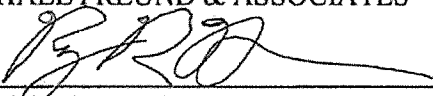
NUTRITION 53, INC.

16 
17 By: Peter Olander
18 Its: Operations

19 **APPROVED AS TO FORM:**

20 Dated: 11/30, 2016

MICHAEL FREUND & ASSOCIATES

21 By: 
22 Michael Freund
23 Ryan Hoffman
24 Attorneys for Plaintiff Environmental
25 Research Center, Inc.
26
27
28

1 Dated: 11/30, 2016

BARG COFFIN LEWIS & TRAPP, LLP

2 By: David M. Metres

3 Brian S. Haughton

4 David M. Metres

Attorneys for Defendant Nutrition 53, Inc.

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6
7
8 **ORDER AND JUDGMENT**

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

11 IT IS SO ORDERED, ADJUDGED AND DECREED.

12 Dated: _____, 2016

13 _____
14 Judge of the Superior Court