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section 6103*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA

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13  
14 **THE PEOPLE OF THE STATE OF  
CALIFORNIA, ex rel. XAVIER  
15 BECERRA, Attorney General,**

16 Plaintiff,

17 v.

18 **HEALTHFORCE, INC. d/b/a  
19 HEALTHFORCE NUTRITIONALS, a  
Nevada Corporation; GRASS  
20 ADVANTAGE d/b/a AMAZING GRASS, a  
California Corporation; and DOES 1-50,  
21 inclusive,**

22 Defendants.  
23

Case No. RG15764860

**STIPULATION FOR ENTRY OF  
[PROPOSED] CONSENT JUDGMENT  
AND ORDER AS TO DEFENDANT  
GRASS ADVANTAGE**

Action Filed: April 2, 2015  
Dept: 21  
Judge: Hon. Winifred Smith

24 **1. INTRODUCTION.**

25 **1.1. Introduction.**

26 Plaintiff, the People of the State of California, ex rel. Xavier Becerra, Attorney General (the  
27 People), and Defendant, Grass Advantage, LLC., a Delaware limited liability corporation doing  
28 business as Amazing Grass (Grass Advantage), by and through their respective representatives

1 and counsel, enter into this Stipulation for Entry of [Proposed] Consent Judgment and Order  
2 (Consent Judgment). Hereafter, the People and Grass Advantage shall be collectively referred to  
3 as “the Parties.”

4 **1.2. Plaintiff.**

5 Plaintiff in Case No. RG15764860 is the People. The Safe Drinking Water and Toxic  
6 Enforcement Act of 1986, California Health and Safety Code section 25249.5 et seq. (Proposition  
7 65), at section 25249.7, subdivision (c), provides that actions to enforce Proposition 65 may be  
8 brought by the Attorney General in the name of the People of the State of California. California  
9 Business and Professions Code section 17206 provides that actions to prohibit unfair and  
10 unlawful business practices may also be brought by the Attorney General in the name of the  
11 People of the State of California.

12 **1.3 Defendant.**

13 The settling defendant is Grass Advantage with its principal place of business in Newport  
14 Beach, California. Grass Advantage engages in the business of selling and distributing  
15 “nutritional supplement” products, including the thirteen products referred to as the “Covered  
16 Products” in Exhibit A, in California and in other jurisdictions. For the purposes of this Consent  
17 Judgment, Grass Advantage agrees that it is a “person in the course of doing business” within the  
18 meaning of Proposition 65. (Health & Saf. Code, § 25249.13).

19 **1.4 General Allegations.**

20 1.4.1 In the People’s Amended Complaint for Civil Penalties and Injunctive Relief  
21 (Complaint), filed on April 2, 2015 in Case No. RG15764860, the People allege that Grass  
22 Advantage: violated Proposition 65 by knowingly and intentionally exposing California  
23 consumers to lead without first providing a clear and reasonable warning to such individuals;  
24 violated the “False Advertising Law,” Business and Professions Code section 17500 et seq., by  
25 making or causing others to make untrue or misleading statements to induce California consumers  
26 to purchase and consume its products; and violated the “Unfair Competition Law,” Business and

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1 Professions Code section 17200 et seq., by engaging in the foregoing activities. The People  
2 identified thirteen Grass Advantage products in their First Amended Complaint.

3 1.4.2 Grass Advantage has asserted several defenses to liability. Grass Advantage  
4 contends that under the methodology approved by the Court of Appeal in *Environmental Law*  
5 *Foundation v. Beech-Nut Nutrition Corp.* (2015) 253 Cal. App. 4th 307, all of the Covered  
6 Products are below the 0.5 microgram per day regulatory safe harbor warning threshold for lead  
7 under section 25249.10, subdivision (c) of Proposition 65, and title 27, section 25805 of the  
8 California Code of Regulations. Grass Advantage further contends that all or a substantial portion  
9 of lead present in the Covered Products is naturally occurring in the ingredients used in the Covered  
10 Products, and does not constitute or count towards an “exposure” under title 27, section 25501 of  
11 the California Code of Regulations. Grass Advantage contends, therefore, that none of the Covered  
12 Products cause an exposure that requires a warning under Proposition 65. The People dispute these  
13 defenses.

## 14 **2. COVERED PRODUCTS.**

15 A list of the products to be covered by the provisions of this Consent Judgment, and which  
16 have been advertised, manufactured, packaged, distributed, marketed, offered for sale or sold by  
17 Grass Advantage in California, is attached as Exhibit A. The products in Exhibit A shall be referred  
18 to as the “Covered Products.” Grass Advantage represents that the subset of Covered Products  
19 listed on Exhibit B are no longer being manufactured, distributed, or shipped for sale in California  
20 by Grass Advantage or its Affiliates, and are exempt from the obligations set forth in Section 9 of  
21 this Consent Judgment, unless Grass Advantage resumes sales, distribution for sales, or shipment  
22 for sales in California of (1) those products listed on Exhibit B or (2) products with formulations  
23 that are materially the same as the formulations of the Products listed on Exhibit B. For purposes of  
24 this Consent Judgment, products shall be considered “materially the same” as a listed Product  
25 where the formulations of both products are substantially similar to and/or contain the same Major  
26 Ingredients as the products listed on Exhibit B. Grass Advantage may update the list of Covered  
27 Products identified in Exhibit A from time to time after the Effective Date to include additional  
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1 products by seeking to modify the Consent Judgment following the procedures under Section 17 to  
2 this Consent Judgment.

3 **3. AGREEMENT TO SETTLE DISPUTE.**

4 Pursuant to the Stipulation, as a compromise and settlement of the disputed claims, the  
5 Parties mutually consent to the entry by the Court of this Consent Judgment. The Parties are each  
6 represented by counsel. The Office of the Attorney General represents the People,  
7 and Morrison & Foerster LLP represents Grass Advantage. This Consent Judgment was negotiated  
8 in good faith and at arms' length by the Parties to further the public interest and to avoid expensive  
9 and protracted litigation regarding the violations alleged in the Complaint.

10 **4. NO ADMISSION OR FINDINGS.**

11 Entry into this Consent Judgment does not constitute an admission of law by any of the  
12 Parties, nor shall such entry constitute an admission or denial of the factual allegations arising out  
13 of the matters alleged in the People's Complaint.

14 **5. JURISDICTION AND VENUE.**

15 The Parties agree that, for purposes of this Consent Judgment, this Court has statewide  
16 subject matter jurisdiction over the matters alleged in the Complaint and personal jurisdiction over  
17 Grass Advantage, and that venue is proper in Alameda County.

18 **6. WAIVER OF HEARING AND TRIAL AND ENTRY OF JUDGMENT.**

19 By signing the Stipulation and consenting to the entry of this Consent Judgment, Grass  
20 Advantage waives its right to hearing and a trial on the matters alleged in the Complaint. Grass  
21 Advantage agrees not to challenge or object to the entry of this Consent Judgment by the Court  
22 unless the People have notified Grass Advantage in writing that (1) the People no longer support  
23 entry of the Judgment, or that (2) the People seek to modify the Judgment.

24 **7. APPLICABILITY.**

25 Unless otherwise expressly provided herein, it is the intent of the parties that the provisions  
26 of this Consent Judgment shall apply to and be binding on the People and, to the extent allowed by  
27 law, all other potential plaintiffs authorized to bring actions to enforce the claims resolved by this  
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1 Consent Judgment, and on Grass Advantage and its agents, servants, employees, representatives,  
2 successors, and all persons acting in concert or participating with Grass Advantage.

3 **8. MATTERS COVERED.**

4 8.1. Except as otherwise provided herein, this Consent Judgment is a full, final, and  
5 binding resolution and settlement of all claims and causes of action that were or could have been  
6 brought against Grass Advantage in regard to the Covered Products in the People’s Complaint  
7 (“Covered Matters”). Except as otherwise provided herein, nothing in this Consent Judgment is  
8 intended to, nor shall it be construed to, preclude the People, or any federal, state, or local agency,  
9 department, board, or other government entity, from exercising its authority or rights under any  
10 federal, state, or local law, statute, or regulation. Subject to these limitations, in any subsequent  
11 action that may be brought by the People based on any claim, violation, or cause of action not  
12 covered by this Consent Judgment, Grass Advantage agrees that it will not assert that failing to  
13 pursue such claim, violation, or cause of action as part of this action constitutes claim-splitting,  
14 laches, waiver, or any other lack of timeliness.

15 8.2. Compliance with the terms of this Consent Judgment resolves, as to Covered  
16 Products, any issue or claim, now, in the past, and in the future, concerning compliance by Grass  
17 Advantage, its parents, shareholders, divisions, subdivisions, subsidiaries, sister companies,  
18 affiliates, franchisees, cooperative members, and licensees; and distributors, wholesalers, and  
19 retailers who sell Covered Products; and the predecessors, successors, and assigns of any of them  
20 (collectively, “Affiliates”), with the requirements of Proposition 65 and its implementing  
21 regulations as to the duty to warn about lead in Covered Products shipped for sale in California.

22 **9. INJUNCTIVE TERMS.**

23 9.1. **Sale of Covered Products.**

24 Beginning on the the Effective Date (which is defined in Section 21 of this Consent Judgment),  
25 Grass Advantage shall be permanently enjoined and restrained, pursuant to Health & Safety Code,  
26 section 25249.7, and Business and Professions Code, section 17203, from manufacturing for sale in  
27 California, distributing into California, or directly selling to a consumer in California any Covered  
28 Product that does not comply with the requirements of this Section 9.

1           **9.2.           Lead Monitoring Requirements.**

2           Grass Advantage shall test lots of each Covered Product in accordance with the procedures set  
3 forth in Exhibit C to determine whether such lots may be sold in California without a warning as  
4 required by Proposition 65. The laboratory used for testing must be qualified and must use  
5 appropriate methods as set forth in Exhibit C. Grass Advantage shall retain copies of all test results  
6 for a minimum of three (3) years and shall make them available to the Attorney General on written  
7 request.

8           **9.3.           Warning Language.**

9           For Covered Products that require a warning under Proposition 65, Grass Advantage shall  
10 provide the following warning language:

11           **WARNING:** This product can expose you to lead, a chemical known to the State of  
12 California to cause birth defects or other reproductive harm. For more information go  
13 to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

14           **9.4.           Placement of Warning Language.**

15           **9.4.1.    *Sales in Retail Stores.***

16           For Covered Products sold in retail stores that require a warning, the warning shall be  
17 permanently affixed to or printed on (at the point of manufacture, prior to shipment to California, or  
18 prior to distribution within California) the outside packaging or container of each unit of the  
19 Covered Product. The warning shall be displayed with such conspicuousness, as compared with  
20 other words, statements, designs, or devices on the packaging or labeling, as to render it likely to be  
21 read and understood by an ordinary individual under customary conditions of purchase. If the  
22 warning is displayed on the product container or labeling, the warning shall be at least the same size  
23 as the largest of any other health or safety warnings or notices on the product container or labeling,  
24 and the word “warning” shall be in all capital letters and in bold print. If printed on the labeling  
25 itself, the warning shall be contained in the same section of the labeling that states other health or  
26 safety warnings or notices concerning the use of the product. Alternatively, the warning may be  
27 permanently affixed or prominently printed on any placards, signs, or shelf stickers proximate to  
28 the point of display of each Covered Product for sale in California. The warning shall be displayed

1 proximately to the point of display of each Covered Product with such conspicuousness, as  
2 compared with other words, statements, designs, or devices proximate to the point of display, as to  
3 render it likely to be read and understood by an ordinary individual under customary conditions of  
4 purchase. The word “warning” shall be in all capital letters and in bold print.

5 9.4.2. Sales through the Internet.

6 For Covered Products sold by Grass Advantage through the internet that require a warning,  
7 the warning shall be prominently displayed on each webpage describing the ingredients or  
8 attributes of the Covered Product, or the warning may be provided at the time the customer enters a  
9 California address for the shipping address. In all circumstances, the warning shall be displayed  
10 with such conspicuousness, as compared with other words, statements, designs, or devices on the  
11 webpages, as to render it likely to be read and understood by an ordinary individual under  
12 customary conditions of purchase. The warning shall be at least the size of the largest of any other  
13 health or safety warnings on the webpage, and the word “warning” shall be in all capital letters and  
14 in bold print. The warning is not prominently displayed if the purchaser must search for it in the  
15 general content of the website or otherwise take affirmative action, such as clicking on a hyperlink,  
16 to view the warning prior to purchase.

17 9.4.3. Sales through Printed Catalogs.

18 For Covered Products sold to California consumers by Grass Advantage through a printed  
19 catalog, the warning shall be prominently displayed on a catalog page describing the ingredients or  
20 attributes of the Covered Product. In all circumstances, the warning shall be displayed with such  
21 conspicuousness, as compared with other words, statements, designs, or devices on the catalog  
22 page, as to render it likely to be read and understood by an ordinary individual under customary  
23 conditions of purchase. The warning shall be at least the size of the largest of any other health or  
24 safety warnings on the catalog page, and the word “warning” shall be in all capital letters and in  
25 bold print.

26 9.4.4. Sales Not Covered in Paragraphs 9.4.1 - 9.4.3.

27 For sales and distribution of Covered Products by Grass Advantage not described in  
28 paragraphs 9.4.1-9.4.3 above, the warning shall be provided at the point of sale or distribution prior

1 to purchase by the consumer. The warning shall be displayed with such conspicuousness, as  
2 compared with other words, statements, designs, or devices as to render it likely to be read and  
3 understood by an ordinary individual under customary conditions of purchase. The warning shall  
4 be at least the size of the largest of any other health or safety warnings and the word “warning” shall  
5 be in all capital letters and in bold print.

6 9.4.5. Warnings Imposed Pursuant to Consent Judgment.

7 The warning requirements set forth herein are imposed pursuant to the terms of this Consent  
8 Judgment, and are recognized by the Parties as not being the exclusive methods of providing a  
9 warning for the Covered Products pursuant to Proposition 65 and its implementing regulations.

10 9.5. **Audit for Naturally-Occurring Lead.**

11 9.5.1. Definitions.

12 9.5.1.1. “Independent Food Processing Auditor” shall mean an independent auditor  
13 or auditing company, foreign or domestic, that: (i) has extensive knowledge of good manufacturing  
14 practices in the food processing industry; (ii) has sufficient experience in inspecting food  
15 processing facilities to ensure compliance with good manufacturing practices and with the Hazard  
16 Analysis and Critical Control Points (HACCP) Food Safety Management Systems; (iii) is qualified  
17 as an International HACCP Alliance Lead Instructor, a Safe Quality Food Institute (SQFI) HACCP  
18 Lead Auditor or SQFI Consultant, or a Certified Food Scientist by the Institute of Food  
19 Technology, or holds a National Environmental Health Association (NEHA) Certified  
20 Professional-Food Safety Credential, or has similar qualifications or credentials; and (iv) has  
21 submitted a résumé or other summary of qualifications that is satisfactory to the People, in their  
22 reasonable discretion. Upon request, the Attorney General will provide Grass Advantage with a  
23 non-exclusive list of Independent Food Processing Auditors who have previously submitted their  
24 qualifications to the People, whose qualifications are up to date, and who are deemed to meet the  
25 criteria set forth in this paragraph

26 9.5.1.2. “Major Ingredients” shall be any ingredient or combination of ingredients  
27 that contribute a significant share of lead in the Covered Product, as set forth in this paragraph. The  
28 Independent Food Processing Auditor will conduct a mass balance exercise for each Covered



1 Product to identify which ingredients, or combination of ingredients, may contribute lead in  
2 amounts that would cause the amount of lead in a serving of that Covered Product to exceed 0.5  
3 micrograms; ingredients that have been so identified will be regarded as Major Ingredients for the  
4 purposes of this Consent Judgment.

5 9.5.1.3. "Naturally Occurring" shall have the meaning set forth in Title 27, section  
6 25501 of the California Code of Regulations. Lead in Major Ingredients shall be deemed Naturally  
7 Occurring pursuant to the procedures set forth in section 9.5.2 below.

8 9.5.1.4. "Lowest Level Currently Feasible" shall be defined as the U.S. Food &  
9 Drug Administration has, to mean levels achievable through the application of Quality Control  
10 Measures, defined as (1) Current Good Manufacturing Practices and Current Good Agricultural  
11 Practices as those terms are defined in Article 110 of Title 21 of the Code of Federal Regulations,  
12 and (2) any measures for lead reduction as identified through a risk-based analysis consistent with  
13 the federal Hazard Analysis and Critical Control Points (HACCP) Food Safety Management  
14 System.

15 9.5.2. Naturally Occurring Lead Allowance.

16 Within 30 days of the Effective Date, Grass Advantage will retain an Independent Food  
17 Processing Auditor for the purpose of conducting an audit of the Covered Products ("Audit").

18 9.5.2.1. Within 120 days of the Effective Date, the Auditor shall do the following:

19 9.5.2.1.1. Determine the amount of lead in the Major Ingredients of each  
20 Covered Product that is deemed not to be the result of human activity. For purposes  
21 of this Consent Judgment only, this determination may be made by:

- 22 1. Evaluating the range of lead levels that are present in the various commercial  
23 sources of the Major Ingredients and determining which reasonably  
24 available ingredient sources have the lowest lead levels;
- 25 2. Determining which Major Ingredient sources (if any) should be avoided  
26 because they have comparatively high lead levels that appear to result from  
27 industrial pollution or other human activities that are prevalent in the areas  
28 where those ingredients are grown or produced; and

1 3. Choosing the available Major Ingredient Sources that have the lowest lead  
2 levels, as set forth in (1), and do not include sources that appear to result  
3 from human activities as set forth in (2).

4 9.5.2.1.2. Once the Auditor has determined the concentration of lead in the  
5 Major Ingredients that is deemed not to be the result of human activity, and lead  
6 from human sources has been subtracted from the amount of total lead in each Major  
7 Ingredient consistent with steps 1-3 above, the Auditor shall determine what  
8 additional measures, if any, can be feasibly implemented to reduce the remaining  
9 lead concentrations in the Major Ingredients in that Covered Product to the Lowest  
10 Level Currently Feasible. In selecting such additional measures, the Auditor shall  
11 identify and recommend sourcing and feasible lead reduction measures for the  
12 Major Ingredients in each Covered Product. The Auditor shall then calculate the  
13 amount of naturally occurring lead that is likely to be present in each Major  
14 Ingredient once these sourcing and lead reduction measures are implemented. This  
15 calculation shall take into account reasonably expected variability between  
16 ingredient sources, sampling and analytical variability, and any other sources of  
17 uncertainty, availability or variability that the Auditor deems appropriate. This  
18 estimated amount shall be referred to as the “Naturally Occurring Lead Allowance”  
19 for each Major Ingredient. The Auditor shall also determine the Naturally  
20 Occurring Lead Allowance for the Covered Product by calculating the amount of  
21 naturally occurring lead that is likely to be present in the daily intake of that Covered  
22 Product. This calculation shall take into account (1) the recommended daily  
23 serving, if any, on the Covered Product’s label; or, (2) if the Covered Product’s label  
24 does not contain a recommended daily serving, the daily rate of intake calculated  
25 pursuant to the provisions of section 25821 of title 27 of the California Code of  
26 Regulations.

27 9.5.2.2. Within six months of the Effective Date, Grass Advantage will provide a  
28 report to the Attorney General containing the results of the Audit of the Covered Products (“Audit

1 Report”), including confirmation by the Independent Food Processing Auditor and a compliance  
2 plan prepared by Grass Advantage (“Compliance Plan”) that:

- 3 1. identifies the amount of the Naturally Occurring Lead Allowance identified by  
4 the Auditor for each Major Ingredient; and
- 5 2. for those Covered Products for which warnings are not required by Section 9.6:
  - 6 a. describes the steps Grass Advantage will take to continuously implement  
7 the feasible sourcing and Quality Control Measures identified pursuant  
8 to the Audit that would materially reduce the levels of lead in the  
9 Covered Product, if any, and;
  - 10 b. describes the periodic testing, consistent with Section 9.2, above, that  
11 Grass Advantage will conduct to ensure that the lead levels in the  
12 Covered Products do not exceed the level at which warnings are required  
13 pursuant to Section 9.6.1 of this Consent Judgment.
- 14 3. for those Covered Products for which warnings are required by Section 9.6:
  - 15 a. indicate which Covered Products it elects to provide warnings; and
  - 16 b. indicate the timing for the implementation of the required warnings.

17 Except as otherwise set forth herein, Grass Advantage will implement the Compliance Plan  
18 as part of its obligation to comply with this Consent Judgment.

19 9.5.2.3 Within 30 days following delivery of the Audit Report, either Grass Advantage or  
20 the Attorney General may object to the Audit Report required by Section 9.5.2.2 and to the  
21 Naturally Occurring Lead Allowance determined by the Audit, on the grounds that: (1) the Audit  
22 Report is arbitrary or inaccurate in its material terms; (2) the Naturally Occurring Lead Allowance  
23 was not derived in accordance with the requirements of this Consent Judgment or Proposition 65;  
24 or (3) the daily serving used by the Auditor in calculating the Naturally Occurring Lead Allowance  
25 is not consistent with the provisions of section 25821 of title 27 of the California Code of  
26 Regulations. Objections must be transmitted to the parties in accordance with Section 12. The  
27 parties will meet and confer regarding any such objection, and this process shall include a meeting  
28 attended by the Auditor and representatives of the People and Grass Advantage. During this

1 process, the parties may stipulate to a Naturally Occurring Lead Allowance different from the  
2 Allowance set by the Auditor. If this meet-and-confer process is unsuccessful, either party may  
3 submit the dispute to this Court pursuant to Section 18. In any such proceeding, the burden remains  
4 on Grass Advantage to demonstrate that lead in its product is “naturally occurring” consistent with  
5 the process set forth above.

6 **9.6. Warnings on Lead Exposures In Accordance With Proposition 65.**

7 Except as otherwise set forth herein, within sixty (60) days following the conclusion of the  
8 process outlined in section 9.5, Grass Advantage shall provide warnings consistent with Sections  
9 9.3 - 9.4 of this Consent Judgment as required by Proposition 65, taking into account (i) the 0.5  
10 microgram Maximum Allowable Dose Level for lead, and (ii) the Naturally Occurring Lead  
11 Allowances for that Covered Product as determined in accordance with this Consent Judgment.

12 **9.7. Prohibition on Sale of Products with Lead Exposures Above 5.0 Micrograms.**

13 Notwithstanding the provisions above, beginning on the Effective Date, Grass Advantage  
14 shall be permanently enjoined and restrained from distributing for sale into California, or directly  
15 selling to a consumer, wholesaler, distributor, or retailer in California, any Covered Product which  
16 any recommended serving size on the label (whether minimum, average, maximum, or any other  
17 recommendation) contains more than 5.0 µg of lead, whether from Naturally Occurring lead or not.  
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1           **9.8. Advertising.**

2 Grass Advantage shall refrain from making any affirmative statement materially similar to the  
3 following statements concerning lead and heavy metals in the Products, which have been removed  
4 from Amazing Grass’s website: (1) “Amazing Meal does not contain high levels of lead[.]” and  
5 (2) Amazing Meal and Amazing Grass Raw Reserve Chocolate “are known to detoxify and actually  
6 aid in removing heavy metals from our body.” Nothing in this section shall constitute approval of  
7 other statements on Amazing Grass’s website or shall prevent the People or any other entity from  
8 objecting to other statements on Amazing Grass’s website posted after entry of this Consent  
9 Judgment.

10           **10. MONETARY SETTLEMENT REQUIREMENTS.**

11           10.1.       The total settlement amount to be paid by Grass Advantage shall be \$213,167,  
12 allocated more specifically as follows:

13                   **10.1.1. Civil Penalty.**

14                   Within 30 days of the Effective Date, Defendant shall pay a civil penalty of \$146,000  
15 pursuant to California Health & Safety Code section 25249.7, subdivision (b). This payment shall  
16 be divided in accordance with Health & Safety Code section 25249.12, subdivisions (c) and (d),  
17 with \$109,500 (75 percent of the penalty) to be sent to the Office of Environmental Health Hazard  
18 Assessment (OEHHA) to be deposited in the Safe Drinking Water and Toxic Enforcement Fund,  
19 and \$36,500 (25 percent of the penalty) to be paid to the People.

20                   **10.1.2. Attorneys’ Fees and Costs.**

21                   Within 10 days of the Effective Date, Defendant shall pay \$54,000 as reimbursement for the  
22 People costs of investigating and prosecuting this action. With 10 days of receiving notice of entry  
23 of this Consent Judgment, Defendant shall pay \$13,166.90 as reimbursement for the Environmental  
24 Research Center’s cost of investigating and testing the ten products identified in the January 29,  
25 2016 Proposition 65 Notice served on Grass Advantage by ERC.

26                   **10.1.3. Delivery of Payment.**

27                   The Payments required by this Consent Judgment shall be made as follows:

28                           10.1.3.1.   Payment to OEHHA.

1 The payment of \$109,500 to OEHHA, comprising 75 percent of the civil penalty as set forth  
2 above, shall be paid by check payable to the “Office of Environmental Health Hazard Assessment,”  
3 and the check shall bear the notation “Proposition 65 – AG Matter ID SD2015950011.” The check  
4 shall be sent by certified or express mail to the attention of:

5 Senior Accounting Officer – MS 19-B  
6 Office of Environmental Health Hazard Assessment  
7 P.O. Box 4010  
8 Sacramento, CA 95812-0410

8 A copy of the check and cover letter shall be sent to:

9 Dennis A. Ragen  
10 John W. Everett  
11 California Department of Justice  
12 600 West Broadway, Suite 1800  
13 San Diego, CA 92101

13 10.1.3.2 Payment to the People.

14 The payment to the People of \$36,500, comprising 25 percent of the civil penalty and \$54,000  
15 in attorneys’ fees and costs incurred by the Office of the Attorney General in investigating and  
16 prosecuting this action, shall be paid by check payable to the “California Department of Justice –  
17 Litigation Deposit Fund.” The check shall bear on its face the Attorney General’s internal  
18 reference number for this matter, which is SD2015950011. The money paid to the Attorney  
19 General’s Office pursuant to this paragraph shall be administered by the California Department of  
20 Justice and shall be used by the Environment Section of the Public Rights Division of the Attorney  
21 General’s Office, until all funds are exhausted, for any of the following purposes: (1)  
22 implementation of the Attorney General’s authority to protect the environment and natural  
23 resources of the State pursuant to Government Code section 12600 et seq. and as Chief Law Officer  
24 of the State of California pursuant to Article V, section 13 of the California Constitution; (2)  
25 enforcement of laws related to environmental protection, including, but not limited to, Chapters 6.5  
26 and 6.95, Division 20, of the California Health & Safety Code; (3) enforcement of the Unfair  
27 Competition Law, Business & Professions Code section 17200 et seq. as it relates to protection of  
28 the environment and natural resources of the State of California; and (4) other environmental

1 actions that benefit the State and its citizens as determined by the Attorney General. Such funding  
2 may be used for the costs of the Attorney General's investigation, filing fees and other court costs,  
3 payment to expert witnesses and technical consultants, purchase of equipment, laboratory analyses,  
4 personnel costs, travel costs, and other costs necessary to pursue environmental actions  
5 investigated or initiated by the Attorney General for the benefit of the State of California and its  
6 citizens. The check shall be sent by certified or express mail to the attention of:

7 Robert Thomas  
8 Legal Analyst  
9 1515 Clay St., 20<sup>th</sup> Floor  
P.O. Box 70550  
Oakland, CA 94612-0550

10 A copy of the check and cover letter shall be sent to:

11 Dennis A. Ragen  
12 John W. Everett  
13 California Department of Justice  
600 West Broadway, Suite 1800  
San Diego, CA 92101

14 10.1.3.3 Payment to ERC.

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16 The payment of \$13,166.90 to ERC shall be made by wire transfer to ERC's escrow account,  
17 for which ERC will give Grass Advantage the necessary account and tax identification information.

18 **11. ENFORCEMENT.**

19 The People have the exclusive right, by motion or order to show cause before the Superior  
20 Court of Alameda County, to enforce the terms and conditions contained in this Consent Judgment.  
21 In any action brought by the People to enforce this Consent Judgment, the People may seek  
22 whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with the  
23 Consent Judgment. To the extent the failure to comply with the Consent Judgment constitutes a  
24 violation of Proposition 65 or other laws, the People shall not be limited to enforcement of this  
25 Consent Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as  
26 are provided by law for failure to comply with Proposition 65 or other laws.

1 **12. NOTICES.**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to  
3 this Consent Judgment shall be in writing and personally delivered or sent to the Parties, or any of  
4 them, at the following addresses via certified or express mail:

5 To the Defendant:

6 ATTN Legal Department  
7 Grass Advantage LLC (dba Amazing Grass)  
8 230 Newport Dr., Ste. 300  
9 Newport Beach, CA 92660

9 With a copy to:

10 William F. Tarantino  
11 Morrison & Foerster LLP  
12 425 Market St., Suite 3300  
13 San Francisco, CA 94105

13 To the People:

14 Dennis A. Ragen  
15 John W. Everett  
16 California Department of Justice  
17 600 West Broadway, Suite 1800  
18 San Diego, CA 92101

18 Courtesy copies of correspondence and notices must also be sent via email.

19 **13. NO WAIVER OF THE RIGHT TO ENFORCE.**

20 The failure of the People to enforce any provision of the Consent Judgment shall neither be  
21 deemed a waiver of such provision, nor in any way affect the validity of the Consent Judgment or  
22 the People's enforcement authority. The failure of the People to enforce any such provision in this  
23 Consent Judgment shall not preclude them from later enforcing the same or other provisions. No  
24 oral advice, guidance, suggestions, or comments by the People or Grass Advantage, or by people or  
25 entities acting on behalf of any of them, regarding matters covered in this Consent Judgment, shall  
26 be construed to relieve Grass Advantage of its obligations under this Consent Judgment.

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1 **14. GOVERNING LAW AND FUTURE REGULATORY CHANGES.**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California  
3 and they shall apply within the State of California. Nothing in this Consent Judgment shall excuse  
4 Grass Advantage from compliance with any more stringent requirements that may be imposed by  
5 any applicable law or by changes in the applicable law other than Proposition 65's warning  
6 requirement or exemptions thereto. To the extent future statutory and regulatory changes make  
7 Grass Advantage's obligations under Proposition 65 more or less stringent than those provided for  
8 in this Consent Judgment, either party may (a) stipulate with the other party to modify Grass  
9 Advantage's future obligations and submit such stipulation to this Court for review and approval,  
10 or (b) apply to this Court by noticed motion to modify Grass Advantage's obligations.

11 **15. EQUAL AUTHORSHIP.**

12 This Consent Judgment shall be deemed to have been drafted equally by the Parties hereto.  
13 The Parties agree that the rule of construction holding that ambiguity is construed against the  
14 drafting party shall not apply to the interpretation of this Consent Judgment.

15 **16. SEVERABILITY.**

16 If, subsequent to the entry of this Consent Judgment, any of the provisions of this Consent  
17 Judgment are held by a Court to be unenforceable, the validity of the enforceable provisions  
18 remaining shall not be adversely affected.

19 **17. AMENDMENTS TO THIS CONSENT JUDGMENT.**

20 This Consent Judgment may be modified only by (1) the express written agreement or  
21 stipulation of the Parties with the approval of the Court, or (2) by an Order of this Court upon a  
22 noticed motion by one or more of the Parties. Before filing a motion in this Court for a  
23 modification of the Consent Judgment, the Parties shall meet and confer with each other to  
24 determine whether each will consent to the proposed modification. If a proposed modification is  
25 agreed upon, then the Parties will present the modification to the Court by means of a stipulated  
26 modification to the Consent Judgment. Grounds for considering modification shall include any that  
27 are permitted by law.

28 **18. RETENTION OF JURISDICTION AND DISPUTE RESOLUTION.**

1           The Parties agree that the Court has continuing jurisdiction to interpret and enforce the  
2 provisions of this Consent Judgment and to resolve any disputes that may arise under this Consent  
3 Judgment. Should a dispute arise as to the implementation of this Consent Judgment, the Parties  
4 shall meet and confer in an attempt to resolve the dispute. If the meet and confer process proves  
5 unsuccessful, any Party may, by noticed motion, request that the Court resolve the dispute.

6 **AUTHORITY TO ENTER STIPULATION.**

7           Each signatory below certifies that he or she is fully authorized by the Party he or she  
8 represents to enter into this stipulation, to execute it on behalf of the party represented, and to  
9 legally bind that Party in consenting to the entry of the Consent Judgment.

10 **19. COUNTERPARTS.**

11           This stipulation may be executed in several counterpart originals, all of which taken together  
12 shall constitute an integrated document.

13 **20. COURT APPROVAL AND EFFECTIVE DATE.**

14           This Consent Judgment shall be submitted to the Court for entry by noticed motion or as  
15 otherwise may be required or permitted by law. The Consent Judgment shall not be effective until  
16 it is entered by the Court. The Effective Date of this Consent Judgment is the date that it is entered  
17 by the Court. If the Court does not enter this Consent Judgment in the form and substance  
18 proposed, it shall be of no force or effect and may not be used by the Parties, or any other person,  
19 for any purpose whatsoever.

20 **IT IS SO STIPULATED.**

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Dated: 8-8-19

XAVIER BECERRA  
Attorney General of California  
HARRISON POLLAK  
Supervising Deputy Attorney General  
DENNIS A. RAGEN  
Deputy Attorney General

JOHN W. EVERETT  
Deputy Attorney General  
*Attorneys for the People of the State of  
California, ex rel. Attorney General  
Xavier Becerra*

Dated:

GRASS ADVANTAGE LLC

BY: Neal Simons  
TITLE: Secretary

Dated: August 8, 2019

MORRISON & FOERSTER LLP

WILLIAM F. TARANTINO  
ATTORNEYS FOR GRASS ADVANTAGE LLC.  
D/B/A AMAZING GRASS

**IT IS SO ORDERED AND ADJUDGED.**

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

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JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

1. Amazing Meal Chocolate Infusion
2. Amazing Grass Raw Reserve Chocolate (aka Amazing Grass Greens & Protein Raw Reserve - Chocolate)
3. Amazing Meal Pomegranate Mango Infusion
4. Amazing Grass Green Superfood Whole Food Nutrition Bar Café Mocha
5. Amazing Grass Green Superfood Whole Food Nutrition Lemon Coconut
6. Amazing Grass Green Superfood Whole Food Nutrition Bar Chocolate
7. Amazing Grass Green Superfood Whole Food Nutrition Bar Chocolate Chip Coconut
8. Amazing Grass Green Superfood Alkalize & Detox
9. Amazing Grass Green Superfood Tangerine Immunity Defense
10. Amazing Grass Organic Wheat Grass
11. Amazing Grass Green Superfood Pineapple Multivitamin Lemongrass
12. Amazing Grass Green Superfood Watermelon Energy
13. Amazing Grass Green Superfood Acai-Berry Antioxidant ORAC

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EXHIBIT B

1. Amazing Meal Chocolate Infusion
2. Amazing Grass Raw Reserve Chocolate (aka Amazing Grass Raw Reserve Greens & Protein – Chocolate
3. Amazing Meal Pomegranate Mango Infusion
4. Amazing Grass Green Superfood Whole Food Nutrition Bar Café Mocha
5. Amazing Grass Green Superfood Whole Food Nutrition Lemon Coconut
6. Amazing Grass Green Superfood Whole Food Nutrition Bar Chocolate
7. Amazing Grass Green Superfood Whole Food Nutrition Bar Chocolate Chip Coconut

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**EXHIBIT C**

The testing procedures are as follows:

1. Grass Advantage must ensure the homogeneity of the sample taken from each lot of the Covered Product by blending the sample in a food grade blender for at least twenty minutes (hereafter “Blended Ingredients”);
2. Grass Advantage must randomly select a 15-gram sample of the Blended Ingredients from each lot of the Covered Product and subject the sample to gas chromatographic analysis, or another appropriate analysis to be agreed upon by the Parties, and compare the sample with an existing Covered Product “identity sample” to ensure all ingredients are properly blended and present in the sample in the correct proportions;
3. Grass Advantage must randomly select four (4) 15-gram samples from the Blended Ingredients for each lot of the Covered Product. Two of the 15-gram samples will be sent to a qualified, third-party laboratory and tested for lead content in a manner consistent with paragraph 5 below. The other two remaining 15-gram samples will be retained by Grass Advantage or its contract manufacturer for a period of six-months from the date of analysis;
4. Grass Advantage shall calculate the average concentration in the test results by use of the arithmetic mean of the test results. If the rate of variability in those test results exceeds the reasonable rate of variability established by the Independent Auditor, Grass Advantage may subject the lot to re-analysis. In the event of such re-analysis, Grass Advantage must randomly select another two or more 15 gram samples from the Covered Product lot and send them to a third-party laboratory to be tested for lead in a manner consistent with paragraph 5. If the results of retesting again exceed the reasonable rate of variability established by the Independent Auditor, the lot may

1 only be sold without a warning if each of the two test results would permit sale  
2 without a warning consistent with paragraph 9.6 herein.

3 5. Analytical guidance for Laboratories:

4 a. Analyses must utilize a method that employs ICP-MS. Laboratories must  
5 have the capability of controlling lead contamination throughout the  
6 analytical process, including sample compositing, sample digestion, and the  
7 lead determination steps. In order to meet the analytical objectives, the use  
8 of high purity acids will be required as well the use of closed-vessel type  
9 sample digestion procedures. The conditions and procedures needed to  
10 successfully meet the analyses are described in the FDA Elemental Analysis  
11 Manual.

12 i. <http://www.fda.gov/downloads/Food/FoodScienceResearch/LaboratoryMethods/UCM377005.pdf>

13  
14 ii. <https://www.fda.gov/downloads/Food/FoodScienceResearch/LaboratoryMethods/UCM414001.pdf>

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16 b. Particular attention must be given to recovery information offered to  
17 attribute accuracy to these analyses. The levels of lead used to fortify  
18 products and ingredients for analyte recovery must be in the range of  
19 50-200% of the lead levels found in the product, if the levels of lead in the  
20 product are in a quantifiable range. As a measure of accuracy, laboratories  
21 are also encouraged to provide recovery information on certified reference  
22 materials with lead levels similar to these products or ingredients.

23 c. Participating laboratories must be accredited, preferably under ISO 17025 to  
24 conduct low level lead analyses in foods by ICP-MS.

25 d. The analytical objective for lead and cadmium analysis, i.e., the Limit of  
26 Quantification (LOQ), for finished products and for the major ingredients is  
27 0.010 mg/kg.  
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