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5
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ENVIRONMENTAL RESEARCH CENTER, INC.

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12 Attorneys for Defendant
13 APRICOT POWER, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA

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

19 Plaintiff,

20 v.

21 APRICOT POWER, INC., a Nevada
22 corporation, and DOES 1-25,

23 Defendants.
24

CASE NO. RG16822787

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: July 11, 2016

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On July 11, 2016, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
27 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
28

1 Complaint for Permanent Injunction, Civil Penalties, and Other Relief (the “Complaint”)
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
3 (“Proposition 65”), against APRICOT POWER, INC. (“APRICOT POWER”) and DOES 1-25.
4 In this action, ERC alleges that a number of products manufactured, distributed, or sold by
5 APRICOT POWER contain lead and/or cadmium, chemicals listed under Proposition 65 as
6 carcinogens and reproductive toxins, and expose consumers to these chemicals at a level
7 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a
8 “Covered Product” or collectively as “Covered Products”) are:

- 9 • Apricot Power Probiotic Shield - Lead
- 10 • Only Natural Inc. Yeast Therapy - Lead
- 11 • Apricot Power Ground SuperFood Mix Chocolate Brownie – Lead,
12 Cadmium
- 13 • Apricot Power Green Phytofoods - Lead
- 14 • Apricot Power Chlorella - Lead
- 15 • Apricot Power Megazyme Forte 1018 mg - Lead
- 16 • Diamond Interest USA Ganoderma Chocolate Instant Chocolate Mixture
17 with Ganoderma Powder – Lead, Cadmium
- 18 • Apricot Power Valerian Root 500 mg - Lead
- 19 • Apricot Power Coral Calcium - Cadmium

20 **1.2** ERC and APRICOT POWER are hereinafter referred to individually as a
21 “Party” or collectively as the “Parties.”

22 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
23 causes, helping safeguard the public from health hazards by reducing the use and misuse of
24 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
25 and encouraging corporate responsibility.

26 **1.4** For purposes of this Consent Judgment, the Parties agree that APRICOT POWER
27 is a business entity that has employed ten or more persons at all times relevant to this action, and
28

1 qualifies as a “person in the course of business” within the meaning of Proposition 65. APRICOT
2 POWER manufactures, distributes, and/or sells the Covered Products.

3 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
4 dated April 29, 2016, that was served on the California Attorney General, other public
5 enforcers, and APRICOT POWER (“Notice”). A true and correct copy of the Notice is attached
6 as **Exhibit A** and is hereby incorporated by reference. More than 60 days have passed since the
7 Notice was served on the Attorney General, public enforcers, and APRICOT POWER and no
8 designated governmental entity has filed a complaint against APRICOT POWER with regard to
9 the Covered Products or the alleged violations.

10 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
11 persons in California to lead and/or cadmium without first providing clear and reasonable
12 warnings in violation of California Health and Safety Code section 25249.6. APRICOT
13 POWER denies all material allegations contained in the Notice and Complaint.

14 **1.7** The Parties have entered into this Consent Judgment in order to settle,
15 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
16 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
17 be construed as an admission by any of the Parties or by any of their respective officers,
18 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
19 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
20 violation of law.

21 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
22 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
23 current or future legal proceeding unrelated to these proceedings.

24 **1.9** The Effective Date of this Consent Judgment is the date on which ERC gives
25 Notice of Entry of Judgment to Defendant.

26 **2. JURISDICTION AND VENUE**

27 For purposes of this Consent Judgment and any further court action that may become
28 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter

1 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
2 over APRICOT POWER as to the acts alleged in the Complaint, that venue is proper in Alameda
3 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
4 resolution of all claims up through and including the Effective Date which were or could have
5 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

7 **3.1** Beginning on the Effective Date, APRICOT POWER shall be permanently
8 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
9 California”, or directly selling in the State of California, any Covered Products which exposes a
10 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or
11 “Daily Cadmium Exposure Level” of more than 4.10 micrograms of cadmium per day unless it
12 meets the warning requirements under Section 3.2.

13 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
14 of California” shall mean to directly ship a Covered Product into California for sale in
15 California or to sell a Covered Product to a distributor that APRICOT POWER knows or has
16 reason to know will sell the Covered Product in California.

17 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
18 Level” and “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be
19 calculated using the following formula: micrograms of lead or cadmium per gram of product,
20 multiplied by grams of product per serving of the product (using the largest serving size
21 appearing on the product label), multiplied by servings of the product per day (using the largest
22 number of servings in a recommended dosage appearing on the product label), which equals
23 micrograms of lead or cadmium exposure per day.

24 If APRICOT POWER seeks to subtract out any amounts of naturally occurring
25 lead listed in Table 3.1.2, APRICOT POWER shall provide ERC with the name of the Covered
26 Product that APRICOT POWER contends contains naturally occurring lead, and a complete list
27 showing all the ingredients in that Covered Product including the ingredients from Table 3.1.2
28 that are contained in the Covered Product, as well as the amount in grams per serving of each

ingredient in the Covered Product. APRICOT POWER may update this information from time to time and will be entitled to submit this information to ERC confidentially

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 APRICOT POWER 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] [and] [cadmium] which is [are] 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.

APRICOT POWER 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. As identified in the brackets, the warning shall appropriately reflect whether there is lead, cadmium, or both chemicals present in each of the Covered Products.

1 The Warning shall be securely affixed to or printed upon the container or label of each
2 Covered Product. In addition, for any Covered Product sold over APRICOT POWER's website,
3 the Warning shall appear on the checkout page when a California delivery address is indicated
4 for any purchase of any Covered Product. An asterisk or other identifying method must be
5 utilized to identify which products on the checkout page are subject to the Warning.

6 The Warning shall be at least the same size as the largest of any other health or safety
7 warnings also appearing on its website or on the label or container of APRICOT POWER's
8 product packaging and the word "WARNING" shall be in all capital letters and in bold print. No
9 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
10 average lay person shall accompany the Warning. Further, no statements may accompany the
11 Warning that state or imply that the source of the listed chemical has an impact on or results in a
12 less harmful effect of the listed chemical.

13 APRICOT POWER must display the above Warning with such conspicuousness, as
14 compared with other words, statements, design of the label, container, or on its website, as
15 applicable, to render the Warning likely to be read and understood by an ordinary individual under
16 customary conditions of purchase or use of the product.

17 **3.3 Reformulated Covered Products**

18 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no
19 greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" is no more
20 than 4.10 micrograms of cadmium per day as determined by the quality control methodology
21 described in Section 3.4.

22 **3.4 Testing and Quality Control Methodology**

23 **3.4.1** Beginning within one year of the Effective Date, APRICOT POWER
24 shall arrange for lead and/or cadmium testing of the Covered Products at least once a year for a
25 minimum of five consecutive years by arranging for testing of five randomly selected samples
26 of each of the Covered Products, in the form intended for sale to the end-user, which APRICOT
27 POWER intends to sell or is manufacturing for sale in California, directly selling to a
28 consumer in California or "Distributing into the State of California." If tests conducted

1 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
2 each of five consecutive years, then the testing requirements of this Section will no longer be
3 required as to that Covered Product. However, if during or after the five-year testing period,
4 APRICOT POWER changes ingredient suppliers for any of the Covered Products and/or
5 reformulates any of the Covered Products, APRICOT POWER shall test that Covered Product
6 annually for at least four (4) consecutive years after such change is made.

7 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or
8 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the five
9 (5) randomly selected samples of the Covered Products will be controlling.

10 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
11 laboratory method that complies with the performance and quality control factors appropriate
12 for the method used, including limit of detection, qualification, accuracy, and precision that
13 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
14 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
15 method subsequently agreed to in writing by the Parties and approved by the Court through
16 entry of a modified consent judgment.

17 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
18 independent third party laboratory certified by the California Environmental Laboratory
19 Accreditation Program or an independent third-party laboratory that is registered with the
20 United States Food & Drug Administration.

21 **3.4.5** Nothing in this Consent Judgment shall limit APRICOT POWER’s
22 ability to conduct, or require that others conduct, additional testing of the Covered Products,
23 including the raw materials used in their manufacture.

24 **3.4.6** Within thirty (30) days of ERC’s written request, APRICOT POWER
25 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. APRICOT POWER shall
26 retain all test results and documentation for a period of five years from the date of each test.

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1 **4. SETTLEMENT PAYMENT**

2 **4.1** In full satisfaction of all potential civil penalties, additional settlement
3 payments, attorney’s fees, and costs, APRICOT POWER shall make a total payment of
4 \$40,000.00 (“Total Settlement Amount”) plus eight percent (8%) interest per annum on the
5 balance of \$20,000.00 that remains after the first payment is made to ERC. The Total Settlement
6 Amount including interest shall be paid according to the following schedule (“Due Dates”):

- 7 a. \$20,000.00 shall be paid within five (5) days of the Effective Date
- 8 b. \$20,400.00 shall be paid within ninety (90) days of the Effective Date

9 APRICOT POWER shall make this payment by wire transfer to ERC’s escrow account, for
10 which ERC will give APRICOT POWER the necessary account information. The Total
11 Settlement Amount shall be apportioned as follows:

12 **4.2** \$2,985.52 shall be considered a civil penalty pursuant to California Health and
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$2,239.14) of the civil penalty to the
14 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
16 Code section 25249.12(c). ERC will retain the remaining 25% (\$746.38) of the civil penalty.

17 **4.3** \$5,186.96 shall be distributed to ERC as reimbursement to ERC for reasonable
18 costs incurred in bringing this action.

19 **4.4** \$11,265.66 shall be distributed to Aqua Terra Aeris Law Group as
20 reimbursement of ERC’s attorney’s fees, while \$20,561.86 shall be distributed to ERC for its
21 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
22 costs.

23 **4.5** In the event that APRICOT POWER fails to remit any of the settlement
24 payments owed under Section 4 of this Consent Judgment on or before the Due Dates,
25 APRICOT POWER shall be deemed to be in material breach of its obligations under this
26 Consent Judgment. ERC shall provide written notice of the delinquency to APRICOT POWER
27 via electronic mail. If APRICOT POWER fails to deliver the past due settlement
28 payment within five (5) days from the written notice, the Total Settlement Payment shall be

1 immediately due and owing and shall accrue interest at the statutory judgment interest rate
2 provided in the California Code of Civil Procedure section 685.010. Additionally, APRICOT
3 POWER agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the
4 payment due under this Consent Judgment.

5 **5. MODIFICATION OF CONSENT JUDGMENT**

6 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
7 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a
8 modified consent judgment.

9 **5.2** If APRICOT POWER seeks to modify this Consent Judgment under Section 5.1,
10 then APRICOT POWER must provide written notice to ERC of its intent ("Notice of Intent").
11 If ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent,
12 then ERC must provide written notice to APRICOT POWER within thirty (30) days of
13 receiving the Notice of Intent. If ERC notifies APRICOT POWER in a timely manner of
14 ERC's intent to meet and confer, then the Parties shall meet and confer in good faith as
15 required in this Section. The Parties shall meet in person or via telephone within thirty (30)
16 days of ERC's notification of its intent to meet and confer. Within thirty (30) days of such
17 meeting, if ERC disputes the proposed modification, ERC shall provide to APRICOT POWER
18 a written basis for its position. The Parties shall continue to meet and confer for an additional
19 thirty (30) days in an effort to resolve any remaining disputes. Should it become necessary, the
20 Parties may agree in writing to different deadlines for the meet-and-confer period.

21 **5.3** In the event that APRICOT POWER initiates or otherwise requests a
22 modification under Section 5.1, and the meet and confer process leads to a joint motion or
23 application of the Consent Judgment, APRICOT POWER shall reimburse ERC its costs and
24 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
25 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 judicial relief on its own.

1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
2 **JUDGMENT**

3 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
4 this Consent Judgment.

5 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
7 inform APRICOT POWER in a reasonably prompt manner of its test results, including
8 information sufficient to permit APRICOT POWER to identify the Covered Products at issue.
9 APRICOT POWER shall, within thirty (30) days following such notice, provide ERC with
10 testing information, from an independent third-party laboratory meeting the requirements of
11 Sections 3.4.3 and 3.4.4, demonstrating APRICOT POWER's compliance with the Consent
12 Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to ERC taking
13 any further legal action.

14 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

22 **8.1** This Consent Judgment is a full, final, and binding resolution between
23 ERC, on behalf of itself and in the public interest, and APRICOT POWER and its respective
24 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
25 suppliers, franchisees, licensees, customers (not including private label customers of APRICOT
26 POWER), distributors, wholesalers, retailers, and all other upstream and downstream entities in
27 the distribution chain of any Covered Product, and the predecessors, successors, and assigns of
28 any of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the

1 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
2 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from
3 the handling, use, or consumption of the Covered Products, as to any alleged violation of
4 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
5 65 warnings on the Covered Products regarding lead and/or cadmium up to and including the
6 Effective Date.

7 **8.2** ERC on its own behalf only, and APRICOT POWER on its own behalf
8 only, further waive and release any and all claims they may have against each other for all
9 actions or statements made or undertaken in the course of seeking or opposing enforcement of
10 Proposition 65 in connection with the Notice and Complaint up through and including the
11 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
12 right to seek to enforce the terms of this Consent Judgment.

13 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
14 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
15 discovered. ERC on behalf of itself only, and APRICOT POWER on behalf of itself only,
16 acknowledge that this Consent Judgment is expressly intended to cover and include all such
17 claims up through and including the Effective Date, including all rights of action therefore.
18 ERC and APRICOT POWER acknowledge that the claims released in Sections 8.1 and 8.2
19 above may include unknown claims, and nevertheless waive California Civil Code section
20 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

26 ERC on behalf of itself only, and APRICOT POWER on behalf of itself only, acknowledge and
27 understand the significance and consequences of this specific waiver of California Civil Code
28 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 and/or cadmium in the Covered Products as set forth in the Notice and 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 APRICOT
6 POWER'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 MATTHEW C. MACLEAR
25 ANTHONY M. BARNES
26 AQUA TERRA AERIS LAW GROUP
27 7425 Fairmount Ave.
28 El Cerrito, CA 94530
Ph: 415-568-5200
Email: mcm@atalawgroup.com
Facsimile: (510) 540-5543

1 **APRICOT POWER, INC.**
John Richardson
2 720 South Main Street
3 Lakeport, CA 94553
4 Ph: (707) 262-1394
5 Email: john@apricotpower.com

6 With a copy to:
7 R. MORGAN GILHULY
8 DAVID M. METRES
9 BARG COFFIN LEWIS & TRAPP, LLP
10 350 California Street, 22nd Floor
11 San Francisco, CA 94104
12 Ph: 415-228-5400
13 Email: mgilhuy@bargcoffin.com
14 dmetres@bargcoffin.com
15 Facsimile: 415-228-5450

16 **12. COURT APPROVAL**

17 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
18 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
19 Consent Judgment.

20 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
21 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
22 prior to the hearing on the motion.

23 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
24 void and have no force or effect.

25 **13. EXECUTION AND COUNTERPARTS**

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

14. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each
Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
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:**

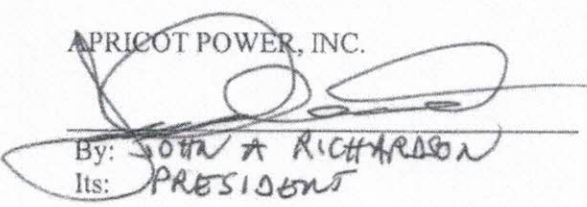
12 Dated: 1/19/, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

13 By: 
14 Christopher J. Epstein, Executive Director

15
16 Dated: 1/23, 2017


APRICOT POWER, INC.

17
18 By: 
19 John A. Richardson
Its: PRESIDENT

20 **APPROVED AS TO FORM:**


21 Dated: 1/23, 2017

AQUA TERRA AERIS LAW GROUP

22 By: 
23 Matthew C. Maclear
24 Anthony M. Barnes
25 Attorneys for Plaintiff Environmental
26 Research Center, Inc.
27
28

1 Dated: January 24, 2017

BARG COFFIN LEWIS & TRAPP, LLP

2
3 By: 
4 R. Morgan Gilhuly
5 David M. Metres
6 Attorneys for Defendant Apricot Power,
7 Inc.

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: _____, 2017

13 _____
14 Judge of the Superior Court