

1 Michael Freund SBN 99687
Ryan Hoffman SBN 283297
2 Michael Freund & Associates
1919 Addison Street, Suite 105
3 Berkeley, CA 94704
4 Telephone: (510) 540-1992
Facsimile: (510) 540-5543
5

6 Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER, INC

7 Anthony Cortez SBN 251743
8 Greg Sperla SBN 278062
Greenberg Traurig LLP
9 1201 K Street, Suite 1100
Sacramento, CA 95814-3938
10 Telephone: (916) 442-1111
11 Facsimile: (916) 448-1709

12 Attorney for Defendants
HARD EIGHT NUTRITION LLC, HARD EIGHT
13 NUTRITION LLC dba BULKSUPPLEMENTS.COM
14

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

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

20 **Plaintiff,**

21 **vs.**

22 **HARD EIGHT NUTRITION LLC, HARD**
23 **EIGHT NUTRITION LLC dba**
24 **BULKSUPPLEMENTS.COM, and DOES**
25 **1-100**

26 **Defendants.**

CASE NO. RG17847182

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 26, 2017

Trial Date: None set

27 **1. INTRODUCTION**

28 **1.1** On January 26, 2017, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
3 (“Proposition 65”), against Hard Eight Nutrition, LLC, Hard Eight Nutrition LLC dba
4 BulkSupplements.com (“Hard Eight Nutrition”) and Does 1-100¹. In this action, ERC alleges
5 that a number of products manufactured, distributed, or sold by Hard Eight Nutrition contain
6 lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
7 consumers to this chemical at a level requiring a Proposition 65 warning. These products
8 (referred to hereinafter individually as a “Covered Product” or collectively as “Covered
9 Products”) are:

- 10 (1) BulkSupplements.com Butcher's Broom Extract
- 11 (2) BulkSupplements.com Dandelion Root
- 12 (3) BulkSupplements.com Fenugreek
- 13 (4) BulkSupplements.com Holy Basil
- 14 (5) BulkSupplements.com Garcinia Cambogia
- 15 (6) BulkSupplements.com Ginger Root Extract
- 16 (7) BulkSupplements.com Psyllium Husk 500 mg.
- 17 (8) BulkSupplements.com Casein Protein
- 18 (9) BulkSupplements.com Spirulina Powder
- 19 (10) BulkSupplements.com Spirulina Powder (Organic)
- 20 (11) BulkSupplements.com Beet Root
- 21 (12) BulkSupplements.com Moringa Leaf
- 22 (13) BulkSupplements.com Pomegranate Extract 40% Ellagic Acid
- 23 (14) BulkSupplements.com Psyllium Husk
- 24 (15) BulkSupplements.com Pea Protein
- 25 (16) BulkSupplements.com Bee Pollen

27 ¹ Defendant “Hard Eight Nutrition LLC” was dismissed by Plaintiff on April 3, 2017.
28 “Hard Eight Nutrition LLC dba Bulksupplements.com” is one entity.

1 (17) BulkSupplements.com Garcinia Cambogia 60% HCA

2 (18) BulkSupplements.com Garcinia Cambogia (60% HCA) 500 mg.

3 (19) BulkSupplements.com Barley Extract

4 (20) BulkSupplements.com Star Anise

5 (21) BulkSupplements.com Glucosamine Sulfate Potassium

6 **1.2** ERC and Hard Eight Nutrition are hereinafter referred to individually as a
7 “Party” or collectively as the “Parties.”

8 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
9 causes, helping safeguard the public from health hazards by reducing the use and misuse of
10 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
11 and encouraging corporate responsibility.

12 **1.4** For purposes of this Consent Judgment, the Parties agree that Hard Eight Nutrition
13 is a business entity that has employed ten or more persons at all times relevant to this action, and
14 qualifies as a “person in the course of business” within the meaning of Proposition 65. Hard Eight
15 Nutrition manufactures, distributes, and/or sells the Covered Products.

16 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
17 dated November 14, 2016 that was served on the California Attorney General, other public
18 enforcers, and Hard Eight Nutrition (“Notice”). A true and correct copy of the 60-Day Notice
19 dated November 14, 2016 is attached hereto as **Exhibit A** and is incorporated herein by
20 reference. More than 60 days have passed since the Notice was served on the Attorney
21 General, public enforcers, and Hard Eight Nutrition and no designated governmental entity has
22 filed a complaint against Hard Eight Nutrition with regard to the Covered Products or the
23 alleged violations.

24 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
25 persons in California to lead without first providing clear and reasonable warnings in violation
26 of California Health and Safety Code section 25249.6. Hard Eight Nutrition denies all material
27 allegations contained in the Notice and Complaint.

1 **1.7** The Parties have entered into this Consent Judgment in order to settle,
2 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
3 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
4 be construed as an admission by any of the Parties or by any of their respective officers,
5 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
6 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
7 violation of law.

8 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
10 current or future legal proceeding unrelated to these proceedings.

11 **1.9** The Effective Date of this Consent Judgment is the date on which the Notice of
12 Entry of Judgment is served by Plaintiff. Electronic service of the Notice via e-mail to Counsel
13 shall be deemed sufficient service.

14 **2. JURISDICTION AND VENUE**

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

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

23 **3.1** Beginning six months from the Effective Date, Hard Eight Nutrition shall be
24 permanently enjoined from manufacturing for sale in the State of California, “Distributing into
25 the State of California”, or directly selling in the State of California, any Covered Products
26 which exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead
27 per day unless it meets the warning requirements under Section 3.2.

1 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
2 of California” shall mean to directly ship a Covered Product into California for sale in
3 California or to sell a Covered Product to a distributor that Hard Eight Nutrition knows or has
4 reason to know will sell the Covered Product in California.

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

11 **3.2 Clear and Reasonable Warnings**

12 If Hard Eight Nutrition is required to provide a warning pursuant to Section 3.1, one of the
13 warnings methods set forth in sections 3.2.1 or 3.2.2 must be utilized in compliance with section
14 3.2.3.

15 **3.2.1 Label or packaging warning**

16 The following warning language may be utilized on a Covered Product’s labeling or packaging:

17 **WARNING:** Consuming this product can expose you to chemicals including lead which is
18 [are] known to the State of California to cause [cancer and] birth defects or other
19 reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

20 **Or**

21 **WARNING:** This product contains chemicals known to the State of California to cause
22 [cancer and] birth defects or other reproductive harm.

23 The Warning shall be securely affixed to or printed upon the container or label of each Covered
24 Product.

25 **3.2.2 Internet warning**

26 The following warning language may be displayed for products sold over the internet:

27 [CALIFORNIA PROPOSITION 65] **WARNING:** this product contains chemicals known
28 to be linked to [cancer and] birth defects or other reproductive harm.

The above warning language, or a link to a separate page containing the above warning language,

1 shall be displayed to the customer before the purchase of any Covered Product on Hard Eight's
2 Website (BulkSupplements.com).

3 **3.2.3 General Requirements for Warnings**

4 Hard Eight Nutrition must display the above Warnings with such conspicuousness, as
5 compared with other words, statements, design of the label, container, or on its website, as
6 applicable, to render the Warning likely to be read and understood by an ordinary individual
7 under customary conditions of purchase or use of the product. Hard Eight Nutrition shall use the
8 phrase "cancer and" in the Warning only if the "Daily Lead Exposure Level" is greater than 15
9 micrograms of lead as determined pursuant to the quality control methodology set forth in
10 Section 3.4. The Warning shall be at least the same size as the largest of any other health or
11 safety warnings also appearing on its website or on the label or container of Hard Eight
12 Nutrition's product packaging and the word "WARNING" shall be in all capital letters. No
13 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
14 clarity of, the Warning on the average lay person shall accompany the Warning.

15 **3.3 Reformulated Covered Products**

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

19 **3.4 Quality Control Methodology**

20 For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be
21 measured in micrograms, and shall be calculated using the following formula: micrograms of
22 lead per gram of product, multiplied by grams of product per serving of the product (using the
23 largest serving size appearing on the product label), multiplied by servings of the product per
24 day (using the largest number of servings in a recommended dosage appearing on the product
25 label), which equals micrograms of lead exposure per day, excluding amounts of allowances of
26 lead in the ingredients listed in the table below.

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (Elemental)	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

If at any time six months from the Effective Date, ERC tests a Covered Product and the test results indicate that the Daily Lead Exposure Level is greater than 0.5 micrograms per day, Hard Eight Nutrition agrees to confidentially supply to ERC within 30 days a list of ingredients, including the percentage of each ingredient (“Ingredient List”), of that particular Covered Product so that ERC may be able to calculate the daily exposure based on the allowances contained in the table above.

3.5 Testing & Recordkeeping

3.5.1 Beginning within one year of the Effective Date, Hard Eight Nutrition shall arrange for lead testing of the Covered Products at least once a year for a minimum of three consecutive years by arranging for testing of three randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which Hard Eight Nutrition intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or “Distributing into the State of California.” If tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered Product during each of three consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the three-year testing period, Hard Eight

1 Nutrition changes ingredient suppliers for any of the Covered Products and/or reformulates any
2 of the Covered Products, Hard Eight Nutrition shall test that Covered Product annually for at
3 least three (3) consecutive years after such change is made.

4 **3.5.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
5 lead detection result of the three (3) randomly selected samples of the Covered Products will be
6 controlling.

7 **3.5.3** All testing pursuant to this Consent Judgment shall be performed using a
8 laboratory method that complies with the performance and quality control factors appropriate
9 for the method used, including limit of detection, qualification, accuracy, and precision that
10 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
11 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
12 method subsequently agreed to in writing by the Parties and approved by the Court through
13 entry of a modified consent judgment.

14 **3.5.4** All testing pursuant to this Consent Judgment shall be performed by an
15 independent third party laboratory certified by the California Environmental Laboratory
16 Accreditation Program or an independent third-party laboratory that is registered with the
17 United States Food & Drug Administration.

18 **3.5.5** Nothing in this Consent Judgment shall limit Hard Eight Nutrition’s
19 ability to conduct, or require that others conduct, additional testing of the Covered Products,
20 including the raw materials used in their manufacture.

21 **3.5.6** Within thirty (30) days of a written letter from ERC showing that one or
22 more Covered Products is above the Daily Lead Exposure Level, Hard Eight Nutrition shall
23 deliver lab reports of the relevant Covered Products obtained pursuant to Section 3.4 to ERC.
24 Hard Eight Nutrition shall retain all test results and documentation for a period of three years
25 from the date of each test.

1 **3.5.7** Notwithstanding any of the foregoing, this section shall not apply with
2 respect to any Covered Product for which Hard Eight is providing a warning pursuant to
3 Section 3.2 of this Consent Judgment.

4 **4. SETTLEMENT PAYMENT**

5 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
6 attorney’s fees, and costs, Hard Eight Nutrition shall make a total payment of \$60,000.00
7 (“Total Settlement Amount”) to ERC within 5 business days of the Effective Date (“Due
8 Date”). Hard Eight Nutrition shall make this payment by wire transfer to ERC’s escrow
9 account, for which ERC will give Hard Eight Nutrition the necessary account information. The
10 Total Settlement Amount shall be apportioned as follows:

11 **4.2** \$15,055.29 shall be considered a civil penalty pursuant to California Health and
12 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$11,291.47) of the civil penalty to
13 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
14 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
15 Code section 25249.12(c). ERC will retain the remaining 25% (\$3,763.82) of the civil penalty.

16 **4.3** \$6,817.67 shall be distributed to ERC as reimbursement to ERC for reasonable
17 costs incurred in bringing this action.

18 **4.4** \$11,291.45 shall be distributed to ERC as an Additional Settlement Payment
19 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
20 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
21 caused by Hard Eight Nutrition in this matter. These activities are detailed below and support
22 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
23 supplement products in California. ERC’s activities have had, and will continue to have, a direct
24 and primary effect within the State of California because California consumers will be benefitted
25 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
26 providing clear and reasonable warnings to California consumers prior to ingestion of the
27 products.

1 Based on a review of past years' actual budgets, ERC is providing the following list of
2 activities ERC engages in to protect California consumers through Proposition 65 citizen
3 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
4 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
5 supplement products that may contain lead and are sold to California consumers. This work
6 includes continued monitoring and enforcement of past consent judgments and settlements to
7 ensure companies are in compliance with their obligations thereunder, with a specific focus on
8 those judgments and settlements concerning lead. This work also includes investigation of new
9 companies that ERC does not obtain any recovery through settlement or judgment; (2)
10 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
11 Compliance Program by acquiring products from companies, developing and maintaining a case
12 file, testing products from these companies, providing the test results and supporting
13 documentation to the companies, and offering guidance in warning or implementing a self-
14 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up
15 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
16 products that reach California consumers by providing access to free testing for lead in dietary
17 supplement products (Products submitted to the program are screened for ingredients which are
18 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
19 qualified laboratory for testing, and the results shared with the consumer that submitted the
20 product).

21 ERC shall be fully accountable in that it will maintain adequate records to document and
22 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
23 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
24 shall provide the Attorney General, within thirty days of any request, copies of documentation
25 demonstrating how such funds have been spent.

26 **4.5** \$1,305.00 shall be distributed to Michael Freund as reimbursement of ERC's
27 attorney's fees, \$6,022.50 shall be distributed to Ryan Hoffman as reimbursement of ERC's
28

1 attorney's fees, while \$19,508.09 shall be distributed to ERC for its in-house legal fees. Except
2 as explicitly provided herein, each Party shall bear its own fees and costs.

3 **4.6** In the event that Hard Eight Nutrition fails to remit the Total Settlement Amount
4 owed under Section 4 of this Consent Judgment on or before the Due Date, Hard Eight
5 Nutrition shall be deemed to be in material breach of its obligations under this Consent
6 Judgment. ERC shall provide written notice of the delinquency to Hard Eight Nutrition via
7 electronic mail. If Hard Eight Nutrition fails to deliver the Total Settlement Amount within
8 five (5) business days from the written notice, the Total Settlement Amount shall accrue
9 interest at the statutory judgment interest rate provided in the California Code of Civil
10 Procedure section 685.010. Additionally, Hard Eight Nutrition agrees to pay ERC's reasonable
11 attorney's fees and costs for any efforts to collect the payment due under this Consent
12 Judgment.

13 **5. MODIFICATION OF CONSENT JUDGMENT**

14 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
15 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a
16 modified consent judgment.

17 **5.2** If Hard Eight Nutrition seeks to modify this Consent Judgment under Section
18 5.1, then Hard Eight Nutrition must provide written notice to ERC of its intent ("Notice of
19 Intent"). If ERC seeks to meet and confer regarding the proposed modification in the Notice of
20 Intent, then ERC must provide written notice to Hard Eight Nutrition within thirty (30) days of
21 receiving the Notice of Intent. If notice of ERC's intent to meet and confer is given in a timely
22 manner, then the Parties shall meet and confer in good faith as required in this Section. The
23 Parties shall meet in person or via telephone within thirty (30) days of notification of an intent
24 to meet and confer. Within thirty (30) days of such meeting, if either party disputes the
25 proposed modification, a written basis of such dispute shall be provided. The Parties shall
26 continue to meet and confer for an additional thirty (30) days in an effort to resolve any
27
28

1 remaining disputes. Should it become necessary, the Parties may agree in writing to different
2 deadlines for the meet-and-confer period.

3 **5.3** Where the meet-and-confer process does not lead to a joint motion or
4 application in support of a modification of the Consent Judgment, then either Party may seek
5 judicial relief on its own.

6 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
7 **JUDGMENT**

8 This Court shall retain jurisdiction of this matter for all purposes, including to enforce,
9 modify, or terminate this Consent Judgment.

10 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

18 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
19 on behalf of itself and in the public interest, and Hard Eight Nutrition and its respective
20 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
21 suppliers, franchisees, licensees, customers (not including private label customers of Hard
22 Eight Nutrition), distributors, wholesalers, retailers, and all other upstream and downstream
23 entities in the distribution chain of any Covered Product, and the predecessors, successors, and
24 assigns of any of them (collectively, "Released Parties"). ERC hereby fully releases and
25 discharges the Released Parties from any and all claims, actions, causes of action, suits,
26 demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have
27 been asserted from the handling, use, or consumption of the Covered Products, as to any
28

1 alleged violation of Proposition 65 or its implementing regulations arising from the failure to
2 provide Proposition 65 warnings on the Covered Products regarding lead up to and including
3 the Effective Date.

4 **8.2** ERC on its own behalf only, and Hard Eight Nutrition on its own behalf
5 only, further waive and release any and all claims they may have against each other for all
6 actions or statements made or undertaken in the course of seeking or opposing enforcement of
7 Proposition 65 in connection with the Notice and Complaint up through and including the
8 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
9 right to seek to enforce the terms of this Consent Judgment.

10 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
11 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
12 discovered. ERC on behalf of itself only, and Hard Eight Nutrition on behalf of itself only,
13 acknowledge that this Consent Judgment is expressly intended to cover and include all such
14 claims up through and including the Effective Date, including all rights of action therefore.
15 ERC and Hard Eight Nutrition acknowledge that the claims released in Sections 8.1 and 8.2
16 above may include unknown claims, and nevertheless waive California Civil Code section
17 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

22 ERC on behalf of itself only, and Hard Eight Nutrition on behalf of itself only, acknowledge
23 and understand the significance and consequences of this specific waiver of California Civil
24 Code section 1542.

25 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
26 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
27 in the Covered Products as set forth in the Notice and Complaint.

1 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
2 environmental exposures arising under Proposition 65, nor shall it apply to any of Hard Eight
3 Nutrition’s products other than the Covered Products.

4 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7 **10. GOVERNING LAW**

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

10 **11. PROVISION OF NOTICE**

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

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

15 Chris Heptinstall, Executive Director, Environmental Research Center
16 3111 Camino Del Rio North, Suite 400
17 San Diego, CA 92108
18 Tel: (619) 500-3090
19 Email: chris_erc501c3@yahoo.com

20 With a copy to:
21 Michael Freund
22 Ryan Hoffman
23 Michael Freund & Associates
24 1919 Addison Street, Suite 105
25 Berkeley, CA 94704
26 Telephone: (510) 540-1992
27 Facsimile: (510) 540-5543

28 **HARD EIGHT NUTRITION LLC dba BULKSUPPLEMENTS.COM**

Kevin Baronowsky
Hard Eight Nutrition LLC
7511 Eastgate Road
Henderson, NV 89011
Telephone: (702) 343-0708
kevin@bulksupplements.com

1 With a copy to:
2 Anthony Cortez
3 Greg Sperla
4 GREENBERG TRAUIG LLP
5 1201 K Street, Suite 1100
6 Sacramento, CA 95814-3938
7 Telephone: (916) 442-1111
8 Facsimile: (916) 448-1709
9 cortezan@gtlaw.com
10 sperlag@gtlaw.com

11 **12. COURT APPROVAL**

12 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
13 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
14 Consent Judgment.

15 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
16 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
17 prior to the hearing on the motion.

18 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
19 void and have no force or effect.

20 **13. EXECUTION AND COUNTERPARTS**

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

24 **14. DRAFTING**

25 The terms of this Consent Judgment have been reviewed by the respective counsel for each
26 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
27 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
28 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
and no provision of this Consent Judgment shall be construed against any Party, based on the fact
that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any

1 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
2 equally in the preparation and drafting of this Consent Judgment.

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

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

8 **16. ENFORCEMENT**

9 **16.1** If ERC alleges that any Covered Product fails to qualify as a Reformulated
10 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
11 inform Hard Eight Nutrition in a reasonably prompt manner of its test results, including
12 information sufficient to permit Hard Eight Nutrition to identify the Covered Products at issue.
13 Hard Eight Nutrition shall, within thirty (30) days following such notice, provide ERC with
14 testing information, from an independent third-party laboratory meeting the requirements of
15 Sections 3.4.3 and 3.4.4, demonstrating Hard Eight Nutrition's compliance with the Consent
16 Judgment, if warranted. If compliance is promptly demonstrated by Hard Eight, ERC shall
17 take no further action. The Parties shall first attempt to resolve the matter prior to ERC taking
18 any further legal action.

19 **16.2** ERC may, by motion or order to show cause before the Superior Court of
20 Alameda County, enforce the terms and conditions contained in this Consent Judgment if
21 compliance is not demonstrated pursuant to 16.1. In any action brought by ERC to enforce this
22 Consent Judgment, ERC may seek whatever fines, costs, penalties, or remedies as are provided
23 by law for failure to comply with the Consent Judgment.

24 **17. ENTIRE AGREEMENT, AUTHORIZATION**

25 **17.1** This Consent Judgment contains the sole and entire agreement and
26 understanding of the Parties with respect to the entire subject matter herein, and any and all
27 prior discussions, negotiations, commitments, and understandings related hereto. No
28

1 representations, oral or otherwise, express or implied, other than those contained herein have
2 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
3 herein, shall be deemed to exist or to bind any Party.

4 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
5 authorized by the Party he or she represents to stipulate to this Consent Judgment.

6 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
7 **CONSENT JUDGMENT**

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

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

14 (2) Make the findings pursuant to California Health and Safety Code section
15 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28

1 **IT IS SO STIPULATED:**

2 Dated: 6/6, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

3
4 By: 
Chris Hopmstead, Executive Director

5
6 Dated: _____, 2017


HARD EIGHT NUTRITION LLC dba
BULKSUPPLEMENTS.COM

7
8
9 By: Kevin Baronowsky
Its:

10
11 **APPROVED AS TO FORM:**

12 Dated: 6/6, 2017

MICHAEL FREUND & ASSOCIATES

13
14 By: 
15 Michael Freund
16 Ryan Hoffman
17 Attorneys for Plaintiff Environmental
Research Center, Inc.

18 Dated: _____, 2017

GREENBERG TRAUER LLP

19
20 By: _____
21 Anthony Cortez
22 Attorney for Defendant Hard Eight
Nutrition LLC dba Bulksupplements.com

23 **ORDER AND JUDGMENT**

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

26 IT IS SO ORDERED, ADJUDGED AND DECREED.

27 Dated: _____, 2017

Judge of the Superior Court

1 **IT IS SO STIPULATED:**

2 Dated: _____, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

3

4

By: _____
Chris Heptinstall, Executive Director

5

6

Dated: June 6, 2017

HARD EIGHT NUTRITION LLC dba
BULKSUPPLEMENTS.COM

7

8



9

By: Kevin Baronowsky
Its: MANAGING MEMBER

10

11 **APPROVED AS TO FORM:**

12 Dated: _____, 2017

MICHAEL FREUND & ASSOCIATES

13

14

By: _____
Michael Freund
Ryan Hoffman
Attorneys for Plaintiff Environmental
Research Center, Inc.

15

16


17

18 Dated: June 6, 2017

GREENBERG TRAUIG LLP

19

20

By: 
_____ Anthony Cortez
Attorney for Defendant Hard Eight
Nutrition LLC dba Bulksupplements.com

21

22

23 **ORDER AND JUDGMENT**

24

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

25

26

IT IS SO ORDERED, ADJUDGED AND DECREED.

27

Dated: _____, 2017

Judge of the Superior Court

28