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6 ENVIRONMENTAL RESEARCH CENTER, INC.

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9600 Toledo Way
10 Irvine, CA 92618

11 Attorney for Defendants
12 NUTRAWISE CORPORATION, individually and
doing business as YOUTHEORY and NUTRAWISE
13 HEALTH & BEAUTY CORPORATION,
individually and doing business as YOUTHEORY
14

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

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

19 Plaintiff,

20 v.

21 NUTRAWISE CORPORATION, individually
and doing business as YOUTHEORY, a
22 California corporation; NUTRAWISE
HEALTH & BEAUTY CORPORATION,
23 individually and doing business as
24 YOUTHEORY, a California corporation; and
DOES 1 – 25,

26 Defendants.

CASE NO. RG 17863290

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 8, 2017

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On June 8, 2017, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-
3 profit corporation, as a private enforcer and in the public interest, initiated this action by filing a
4 Complaint for Permanent Injunction, Civil Penalties, and Other Relief (the “Complaint”)
5 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
6 (“Proposition 65”), against NUTRAWISE CORPORATION, individually and doing business
7 as YOUTHEORY and NUTRAWISE HEALTH & BEAUTY CORPORATION, individually
8 and doing business as YOUTHEORY (collectively “NUTRAWISE”) and DOES 1-25
9 (hereinafter individually referred to as “DEFENDANT” or collectively as “DEFENDANTS”).
10 In this action, ERC alleges that a number of products manufactured, distributed, or sold by
11 NUTRAWISE contain lead, a chemical listed under Proposition 65 as a carcinogen and
12 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
13 warning. These products (referred to hereinafter individually as a “Covered Product” or
14 collectively as “Covered Products”) are:

- 15 • Youtheory Anti-Aging Collagen Protein Shake Vanilla
- 16 • Youtheory Hyaluronic Acid Advanced Formula
- 17 • Youtheory Marine Collagen Advanced Formula
- 18 • Youtheory Maca Root
- 19 • Youtheory Mens Collagen Protein Shake Vanilla
- 20 • Youtheory Mens Collagen Advanced Formula
- 21 • Youtheory Mens Collagen
- 22 • Youtheory Turmeric
- 23 • Youtheory Mens Maca

24 **1.2** ERC and NUTRAWISE are hereinafter referred to individually as a “Party” or
25 collectively as the “Parties.”

26 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
27 causes, helping safeguard the public from health hazards by reducing the use and misuse of
28 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,

1 and encouraging corporate responsibility.

2 **1.4** For purposes of this Consent Judgment, the Parties agree that each defendant is a
3 business entity each of which has employed ten or more persons at all times relevant to this action,
4 and qualifies as a “person in the course of business” within the meaning of Proposition 65.

5 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
6 dated February 24, 2017 that was served on the California Attorney General, other public
7 enforcers, and NUTRAWISE (“Notice”). A true and correct copy of the 60-Day Notice dated
8 February 24, 2017 is attached hereto as **Exhibit A** and is incorporated herein by reference.
9 More than 60 days have passed since the Notice was served on the Attorney General, public
10 enforcers, and NUTRAWISE and no designated governmental entity has filed a complaint
11 against NUTRAWISE with regard to the Covered Products or the alleged violations.

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

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

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

26 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
27 a Judgment by this Court.

28

1 **2. JURISDICTION AND VENUE**

2 For purposes of this Consent Judgment and any further court action that may become
3 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
4 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
5 over NUTRAWISE as to the acts alleged in the Complaint, that venue is proper in Alameda
6 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
7 resolution of all claims up through and including the Effective Date which were or could have
8 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

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

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

19 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
20 Level” shall be measured in micrograms, and shall be calculated using the following formula:
21 micrograms of lead per gram of product, multiplied by grams of product per serving of the
22 product (using the largest serving size appearing on the product label), multiplied by servings
23 of the product per day (using the largest number of servings in a recommended dosage
24 appearing on the product label), which equals micrograms of lead exposure per day. If no
25 recommended daily serving size is provided on the label, then the daily serving size shall equal
26 one.

27 **3.2 Clear and Reasonable Warnings**

28 If NUTRAWISE is required to provide a warning pursuant to Section 3.1, the following

1 warning must be utilized (“Warning”):

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

5 NUTRAWISE shall use the phrase “cancer and” in the Warning only if the “Daily Lead Exposure
6 Level” is greater than 15 micrograms of lead as determined pursuant to the quality control
7 methodology set forth in Section 3.4.

8 The Warning shall be securely affixed to or printed upon the container or label of each
9 Covered Product. In addition, for any Covered Product sold over the internet, the Warning shall
10 appear on the checkout page when a California delivery address is indicated for any purchase of
11 any Covered Product. An asterisk or other identifying method must be utilized to identify which
12 products on the checkout page are subject to the Warning.

13 The Warning shall be at least the same size as the largest of any other health or safety
14 warnings also appearing on its website or on the label or container of NUTRAWISE’s product
15 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No
16 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
17 clarity of, the Warning on the average lay person shall accompany the Warning. Further, no
18 statements may accompany the Warning that state or imply that the source of the listed chemical
19 has an impact on or results in a less harmful effect of the listed chemical.

20 NUTRAWISE must display the above Warning with such conspicuousness, as compared
21 with other words, statements, design of the label, container, or on its website, as applicable, to
22 render the Warning likely to be read and understood by an ordinary individual under customary
23 conditions of purchase or use of the product.

24 **3.3 Reformulated Covered Products**

25 A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” is no
26 greater than 0.5 micrograms of lead per day as determined by the quality control methodology
27 described in Section 3.4.

28 **3.4 Testing and Quality Control Methodology**

3.4.1 Beginning within one year of the Effective Date, NUTRAWISE shall

1 arrange for lead testing of the Reformulated Covered Products at least once a year for a
2 minimum of five consecutive years by arranging for testing of five randomly selected samples
3 of each of the Reformulated Covered Products, in the form intended for sale to the end-user,
4 which NUTRAWISE intends to sell or is manufacturing for sale in California, directly selling
5 to a consumer in California or “Distributing into the State of California.” If tests conducted
6 pursuant to this Section demonstrate that no Warning is required for a Reformulated Covered
7 Product during each of five consecutive years, then the testing requirements of this Section will
8 no longer be required as to that Reformulated Covered Product. However, if during or after the
9 five-year testing period, NUTRAWISE changes ingredient suppliers for any of the
10 Reformulated Covered Products and/or reformulates any of the Reformulated Covered
11 Products, NUTRAWISE shall test that Covered Product annually for at least four (4)
12 consecutive years after such change is made.

13 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
14 lead detection result of the five (5) randomly selected samples of the Covered Products will be
15 controlling.

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

23 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
24 independent third party laboratory certified by the California Environmental Laboratory
25 Accreditation Program or an independent third-party laboratory that is registered with the
26 United States Food & Drug Administration.

27 **3.4.5** Nothing in this Consent Judgment shall limit NUTRAWISE’s ability to
28 conduct, or require that others conduct, additional testing of the Covered Products, including

1 the raw materials used in their manufacture.

2 **3.4.6** Within thirty (30) days of ERC’s written request, NUTRAWISE shall
3 deliver lab reports obtained pursuant to Section 3.4 to ERC. NUTRAWISE shall retain all test
4 results and documentation for a period of five years from the date of each test.

5 **4. SETTLEMENT PAYMENT**

6 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
7 attorney’s fees, and costs, NUTRAWISE shall make a total payment of \$140,000.00 (“Total
8 Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). NUTRAWISE
9 shall make this payment by wire transfer to ERC’s escrow account, for which ERC will give
10 NUTRAWISE the necessary account information. The Total Settlement Amount shall be
11 apportioned as follows:

12 **4.2** \$62,062.46 shall be considered a civil penalty pursuant to California Health and
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$46,546.85) of the civil penalty to
14 the 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% (\$15,515.61) of the civil
17 penalty.

18 **4.3** \$3,168.08 shall be distributed to ERC as reimbursement to ERC for reasonable
19 costs incurred in bringing this action.

20 **4.4** \$46,546.77 shall be distributed to ERC as an Additional Settlement Payment
21 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
22 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
23 caused by NUTRAWISE in this matter. These activities are detailed below and support ERC’s
24 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
25 supplement products in California. ERC’s activities have had, and will continue to have, a direct
26 and primary effect within the State of California because California consumers will be benefitted
27 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
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1 providing clear and reasonable warnings to California consumers prior to ingestion of the
2 products.

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

23 ERC shall be fully accountable in that it will maintain adequate records to document and
24 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
25 being spent only for the proper, designated purposes described in this Consent Judgment. ERC
26 shall provide the Attorney General, within thirty days of any request, copies of documentation
27 demonstrating how such funds have been spent.
28

1 **4.5** \$13,890.00 shall be distributed to Aqua Terra Aeris Law Group as
2 reimbursement of ERC’s attorney’s fees, while \$14,332.69 shall be distributed to ERC for its
3 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
4 costs.

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

14 **5. MODIFICATION OF CONSENT JUDGMENT**

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

18 **5.2** If NUTRAWISE seeks to modify this Consent Judgment under Section 5.1, then
19 NUTRAWISE must provide written notice to ERC of its intent (“Notice of Intent”). If ERC
20 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
21 must provide written notice to NUTRAWISE within thirty (30) days of receiving the Notice of
22 Intent. If ERC notifies NUTRAWISE in a timely manner of ERC’s intent to meet and confer,
23 then the Parties shall meet and confer in good faith as required in this Section. The Parties
24 shall meet in person or via telephone within thirty (30) days of ERC’s notification of its intent
25 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
26 modification, ERC shall provide to NUTRAWISE a written basis for its position. The Parties
27 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
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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** In the event that NUTRAWISE initiates or otherwise requests a modification
4 under Section 5.1, and the meet and confer process leads to a joint motion or application of the
5 Consent Judgment, ERC may seek its costs and reasonable attorney's fees for the time spent in
6 the meet-and-confer process and filing and arguing the motion or application.

7 **5.4** Where the meet-and-confer process does not lead to a joint motion or
8 application in support of a modification of the Consent Judgment, then either Party may seek
9 judicial relief on its own. In any such contested court proceeding, ERC may seek any
10 attorney's fees and costs incurred in opposing the motion pursuant to 1021.5.

11 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
12 **JUDGMENT**

13 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
14 this Consent Judgment.

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

23 **7. APPLICATION OF CONSENT JUDGMENT**

24 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
25 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
26 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
27 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
28 application to any Covered Product which is distributed or sold exclusively outside the State of

1 California and which is not used by California consumers.

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

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

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

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

1 any such unknown claims. California Civil Code section 1542 reads as follows:

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

7 ERC on behalf of itself only, and NUTRAWISE on behalf of itself only, acknowledge and
8 understand the significance and consequences of this specific waiver of California Civil Code
9 section 1542.

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

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

16 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

19 **10. GOVERNING LAW**

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

22 **11. PROVISION OF NOTICE**

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

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

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

1 With a copy to:
2 MATTHEW C. MACLEAR
3 ANTHONY M. BARNES
4 AQUA TERRA AERIS LAW GROUP
5 828 San Pablo Ave, Suite 115B
6 Albany, CA 94706
7 Ph: 415-568-5200
8 Email: mcm@atalawgroup.com

9 Darren Rude
10 NUTRAWISE CORPORATION, individually and doing business as
11 YOUTHEORY and NUTRAWISE HEALTH & BEAUTY
12 CORPORATION, individually and doing business as YOUTHEORY
13 9600 Toledo Way
14 Irvine, CA 92618

15 With a copy to:
16 TARA L. MARTIN
17 GENERAL COUNSEL, NUTRAWISE CORPORATION &
18 NUTRAWISE HEALTH & BEAUTY CORPORATION
19 9600 Toledo Way
20 Irvine, CA 92618

21 12. COURT APPROVAL

22 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
23 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
24 Consent Judgment.

25 12.2 If the California Attorney General objects to any term in this Consent Judgment,
26 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
27 prior to the hearing on the motion.

28 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
void and have no force or effect.

13. EXECUTION AND COUNTERPARTS

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

1 **14. DRAFTING**

2 The terms of this Consent Judgment have been reviewed by the respective counsel for each
3 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
4 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
5 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
6 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
7 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
8 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
9 equally in the preparation and drafting of this Consent Judgment.

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

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

15 **16. ENFORCEMENT**

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

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 representations, oral or otherwise, express or implied, other than those contained herein have

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
2 herein, shall be deemed to exist or to bind any Party.

3 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

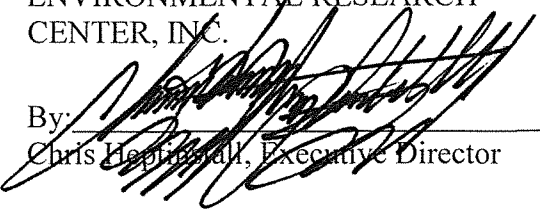
10 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
11 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
12 been diligently prosecuted, and that the public interest is served by such settlement; and

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

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IT IS SO STIPULATED:

Dated: 6/28/, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.
By: 
Chris Heppinstall, Executive Director

Dated: _____, 2017

NUTRAWISE CORPORATION, individually
and doing business as YOUTHEORY

By: Darren Rude
Its: Chief Executive Officer

Dated: _____, 2017

NUTRAWISE HEALTH & BEAUTY
CORPORATION, individually and doing
business as YOUTHEORY

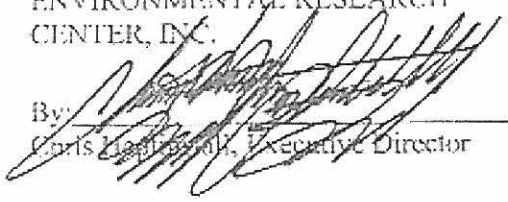
By: Patricia Terzo-Rude
Its: President

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IT IS SO STIPULATED:

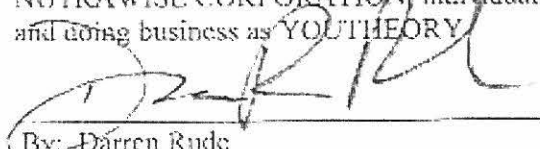
Dated: 6/28/, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Carl's [unclear], Executive Director

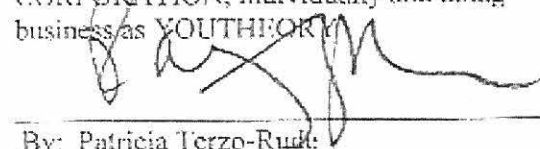
Dated: 6/29, 2017

NUTRAWISE CORPORATION, individually
and doing business as YOUTHEORY

By: 
Darren Rude
Its: Chief Executive Officer

Dated: 6/29, 2017

NUTRAWISE HEALTH & BEAUTY
CORPORATION, individually and doing
business as YOUTHEORY

By: 
Patricia Terzo-Rude
Its: President

1 APPROVED AS TO FORM:

2 Dated: June 29, 2017

AQUA TERRA AERIS LAW GROUP

3

4

By: 

Matthew C. Maclear
Anthony M. Barnes
Attorneys for Plaintiff Environmental
Research Center, Inc.

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7

8 Dated: 6/29, 2017

NUTRA WISE CORPORATION and
NUTRA WISE HEALTH & BEAUTY
CORPORATION

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10

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By: 

Tara L. Martin
General Counsel for Defendants Nutrawise
Corporation, individually and doing
business as Youtheory and Nutrawise
Health & Beauty Corporation, individually
and doing business as Youtheory

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ORDER AND JUDGMENT

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

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IT IS SO ORDERED, ADJUDGED AND DECREED.

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Dated: _____, 2017

Judge of the Superior Court

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1 **APPROVED AS TO FORM:**

2 Dated: June 29, 2017

AQUA TERRA AERIS LAW GROUP



3
4 By: _____
5 Matthew C. Maclear
6 Anthony M. Barnes
7 Attorneys for Plaintiff Environmental
8 Research Center, Inc.

9 Dated: _____, 2017

NUTRAWISE CORPORATION and
NUTRAWISE HEALTH & BEAUTY
CORPORATION

10
11 By: _____
12 Tara L. Martin
13 General Counsel for Defendants Nutrawise
14 Corporation, individually and doing
15 business as Youtheory and Nutrawise
16 Health & Beauty Corporation, individually
17 and doing business as Youtheory

18 **ORDER AND JUDGMENT**

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

21 IT IS SO ORDERED, ADJUDGED AND DECREED.

22 Dated: _____, 2017

23 _____
24 Judge of the Superior Court