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15 HUMAN POWER OF N COMPANY, individually and doing  
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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **COUNTY OF ALAMEDA**

19 **ENVIRONMENTAL RESEARCH**  
20 **CENTER, INC., a California non-profit**  
21 **corporation**

22 **Plaintiff,**

23 **vs.**

24 **HUMAN POWER OF N COMPANY,**  
25 **individually and doing business as**  
26 **HUMANN, and DOES 1-100**

27 **Defendants.**

28 **CASE NO. RG17880810**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 31, 2017

Trial Date: None set

**1. INTRODUCTION**

1.1 On October 31, 2017, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against Human Power of N Company, individually and doing business as  
2 HumanN (“HumanN”) and Does 1-100. In this action, ERC alleges that a number of products  
3 manufactured, distributed, or sold by HumanN contain lead and/or cadmium, chemicals listed  
4 under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these  
5 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter  
6 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Humann  
7 Protein40 Chocolate Flavor (lead) and (2) Humann Heartgreens Lemon Flavor (lead, cadmium).

8       **1.2**     ERC and HumanN are hereinafter referred to individually as a “Party” or  
9 collectively as the “Parties.”

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

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

18       **1.5**     The Complaint is based on allegations contained in ERC’s Notice of Violation  
19 dated July 28, 2017 that was served on the California Attorney General, other public enforcers,  
20 and HumanN (“Notice”). A true and correct copy of the 60-Day Notice dated July 28, 2017 is  
21 attached hereto as **Exhibit A** and incorporated herein by reference. More than 60 days have  
22 passed since the Notice was served on the Attorney General, public enforcers, and HumanN  
23 and no designated governmental entity has filed a complaint against HumanN with regard to the  
24 Covered Products or the alleged violations.

25       **1.6**     ERC’s Notice and Complaint allege that use of the Covered Products exposes  
26 persons in California to lead and/or cadmium without first providing clear and reasonable  
27 warnings in violation of California Health and Safety Code section 25249.6. HumanN denies  
28 all material 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 it is entered as  
12 a Judgment by this Court.

## 13    **2.    JURISDICTION AND VENUE**

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

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

22           **3.1**    Beginning on the Effective Date, HumanN shall be permanently enjoined from  
23 manufacturing for sale in the State of California, “Distributing into the State of California”, or  
24 directly selling in the State of California, any Covered Products which expose a person to a  
25 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day, excluding the  
26 allowances set forth in the table below and/or “Daily Cadmium Exposure Level” of more than  
27 4.1 micrograms of cadmium per day unless it meets the warning requirements under Section  
28 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 HumanN knows or has reason to  
4 know will sell the Covered Product in California.

5           **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
6 Level” and “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be  
7 calculated using the following formula: micrograms of lead or cadmium per gram of product,  
8 multiplied by grams of product per serving of the product (using the largest serving size  
9 appearing on the product label), multiplied by servings of the product per day (using the largest  
10 number of servings in a recommended dosage appearing on the product label), which equals  
11 micrograms of lead or cadmium exposure per day excluding the amount of allowance of lead in  
12 the ingredients listed in the table below. If no recommended daily serving size is provided on  
13 the label, then the daily serving size shall equal one.

14 Table 3.1.2

<b>Ingredient</b>	<b>Amount of Lead per Gram of Ingredient Deemed Naturally Occurring for Purposes of this Consent Judgment Only</b>
Cocoa powder	1.0 µg/g
Chocolate liquor	1.0 µg/g
Cocoa butter	0.1 µg/g

20           If, at any time after the Effective Date, ERC tests a Covered Product that does not contain  
21 a warning described in Section 3.2, and the test results indicate that the Daily Lead Exposure  
22 Level is greater than 0.5 micrograms per day, HumanN agrees to confidentially supply to ERC,  
23 within 30 days of ERC’s written request, a list of ingredients, including the percentage of each  
24 ingredient (“Ingredient List”), of that particular covered product so that ERC may be able to  
25 calculate the daily exposure based on the allowances in the table above.

26           **3.2 Clear and Reasonable Warnings**

27           If HumanN is required to provide a warning pursuant to Section 3.1 for any Covered  
28 Product manufactured prior to the Effective Date, either of the following warnings may be utilized

1 (“Warning”):

2 WARNING consuming this product can expose you to chemicals including lead, which are  
3 known to the state of California to cause cancer and birth defects or other reproductive harm.  
4 For more information go to: [www.P65warning/ca/food](http://www.P65warning/ca/food)

5 If HumanN is required to provide a warning pursuant to Section 3.1 for any Covered  
6 Product manufactured after the Effective Date, the following warning must be utilized

7 (“Warning”):

8 **WARNING:** Consuming this product can expose you to chemicals including [lead] [and]  
9 [cadmium] which is [are] known to the State of California to cause [cancer and] birth  
10 defects or other reproductive harm. For more information go to  
11 [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

12 For Warnings for product manufactured after the Effective Date, HumanN shall use the  
13 phrase “cancer and” in the Warning if HumanN has reason to believe that the the “Daily Lead  
14 Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality  
15 control methodology set forth in Section 3.4 or if HumanN has reason to believe that another  
16 Proposition 65 chemical is present which may require a cancer warning. As identified in the  
17 brackets, the warning shall appropriately reflect whether there is lead, cadmium, or both chemicals  
18 present in each of the Covered Products.

19 For any Covered Product HumanN is Distributing into the State of California, the  
20 Warning shall be securely affixed to or printed upon the container or label of each Covered  
21 Product. For any Covered Product HumanN directly sells to a customer in California over the  
22 internet, including through any online marketplace, the Warning must be provided by including  
23 either the Warning or a clearly marked hyperlink using the word “warning” on the product  
24 display page, or by otherwise prominently displaying the Warning to a purchaser with a  
25 California delivery address prior to completing the purchase. Methods of providing the warning  
26 other than on the product display page must identify which products are subject to the Warning.

27 The Warning shall be at least the same size as the largest of any other health or safety  
28 warnings also appearing on its website or on the label or container of HumanN’s product  
packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No  
statements intended to or likely to have the effect of diminishing the impact of the Warning on the

1 average lay person shall accompany the Warning. Further no statements may accompany the  
2 Warning that state or imply that the source of the listed chemical has an impact on or results in a  
3 less harmful effect of the listed chemical.

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

### 8 **3.3 Reformulated Covered Products**

9 A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” is no  
10 greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” is no more  
11 than 4.1 micrograms of cadmium per day as determined by the quality control methodology  
12 described in Section 3.4, excluding the allowances set forth in Table 3.1.2.

### 13 **3.4 Testing and Quality Control Methodology**

14 **3.4.1** Beginning within one year of the Effective Date, HumanN shall arrange  
15 for lead testing for the Humann Protein40 Chocolate Flavor Covered Product and lead and  
16 cadmium testing for the Humann Heartgreens Lemon Flavor Covered Product for at least once  
17 a year for a minimum of three consecutive years by arranging for testing of five randomly  
18 selected samples of each of the Covered Products, in the form intended for sale to the end-user,  
19 which HumanN intends to sell or is manufacturing for sale in California, directly selling to a  
20 consumer in California or “Distributing into the State of California.” If tests conducted  
21 pursuant to this Section demonstrate that no Warning is required for a Covered Product during  
22 each of three consecutive years, then the testing requirements of this Section will no longer be  
23 required as to that Covered Product. However, if during or after the three-year testing period,  
24 HumanN changes ingredient suppliers for any of the Covered Products and/or reformulates any  
25 of the Covered Products, HumanN shall test that Covered Product annually for at least three  
26 consecutive years after such change is made.

1           **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or  
2 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the five  
3 (5) randomly selected samples of the Covered Products will be controlling.

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

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

15           **3.4.5** Nothing in this Consent Judgment shall limit HumanN’s ability to  
16 conduct, or require that others conduct, additional testing of the Covered Products, including  
17 the raw materials used in their manufacture.

18           **3.4.6** Within thirty (30) days of ERC’s written request, HumanN shall deliver  
19 lab reports obtained pursuant to Section 3.4 to ERC. HumanN shall retain all test results and  
20 documentation for a period of five years from the date of each test.

21    **4. SETTLEMENT PAYMENT**

22           **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
23 attorney’s fees, and costs, HumanN shall make a total payment of \$70,000.00 (“Total  
24 Settlement Amount”) to ERC within 5 business days of the Effective Date (“Due Date”).  
25 HumanN shall make this payment by wire transfer to ERC’s escrow account, for which ERC  
26 will give HumanN the necessary account information. The Total Settlement Amount shall be  
27 apportioned as follows:  
28

1           **4.2**     \$23,349.20 shall be considered a civil penalty pursuant to California Health and  
2 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$17,511.90) of the civil penalty to  
3 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe  
4 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
5 Code section 25249.12(c). ERC will retain the remaining 25% (\$5,837.30) of the civil penalty.

6           **4.3**     \$2,363.49 shall be distributed to ERC as reimbursement to ERC for reasonable  
7 costs incurred in bringing this action.

8           **4.4**     \$17,511.87 shall be distributed to ERC as an Additional Settlement Payment  
9 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and  
10 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
11 caused by Defendant in this matter. These activities are detailed below and support ERC’s  
12 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
13 supplement products in California. ERC’s activities have had, and will continue to have, a direct  
14 and primary effect within the State of California because California consumers will be benefitted  
15 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements  
16 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of  
17 the products.

18           Based on a review of past years’ actual budgets, ERC is providing the following list of  
19 activities ERC engages in to protect California consumers through Proposition 65 citizen  
20 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those  
21 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary  
22 supplement products that may contain lead and/or cadmium and are sold to California  
23 consumers. This work includes continued monitoring and enforcement of past consent judgments  
24 and settlements to ensure companies are in compliance with their obligations thereunder, with a  
25 specific focus on those judgments and settlements concerning lead and/or cadmium. This work  
26 also includes investigation of new companies that ERC does not obtain any recovery through  
27 settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining  
28 ERC’s Voluntary Compliance Program by acquiring products from companies, developing and



1 maintaining a case file, testing products from these companies, providing the test results and  
2 supporting documentation to the companies, and offering guidance in warning or implementing a  
3 self-testing program for lead and/or cadmium in dietary supplement products; and (3) "GOT  
4 LEAD" PROGRAM (up to 5%): maintaining ERC's "Got Lead?" Program which reduces the  
5 numbers of contaminated products that reach California consumers by providing access to free  
6 testing for lead in dietary supplement products (Products submitted to the program are screened  
7 for ingredients which are suspected to be contaminated, and then may be purchased by ERC,  
8 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer  
9 that submitted the product).

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

15 **4.5** \$1,755.00 shall be distributed to Michael Freund as reimbursement of ERC's  
16 attorney's fees, \$8,690.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's  
17 attorney's fees, while \$16,330.44 shall be distributed to ERC for its in-house legal fees. Except  
18 as explicitly provided herein, each Party shall bear its own fees and costs.

19 **4.6** In the event that HumanN fails to remit the Total Settlement Amount owed  
20 under Section 4 of this Consent Judgment on or before the Due Date, HumanN shall be deemed  
21 to be in material breach of its obligations under this Consent Judgment. ERC shall provide  
22 written notice of the delinquency to HumanN via electronic mail. If HumanN fails to deliver  
23 the Total Settlement Amount due within ten (10) business days from the written notice, the  
24 Total Settlement Amount shall accrue interest at the statutory judgment interest rate provided in  
25 the California Code of Civil Procedure section 685.010. Additionally, HumanN agrees to pay  
26 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under this  
27 Consent Judgment.

1     **5.    MODIFICATION OF CONSENT JUDGMENT**

2           **5.1**    This Consent Judgment may be modified only as to injunctive terms (i) by  
3 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or  
4 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
5 modified consent judgment.

6           **5.2**    If HumanN seeks to modify this Consent Judgment under Section 5.1, then  
7 HumanN must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks to  
8 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must  
9 provide written notice to HumanN within thirty (30) days of receiving the Notice of Intent. If  
10 ERC notifies HumanN in a timely manner of ERC’s intent to meet and confer, then the Parties  
11 shall meet and confer in good faith as required in this Section. The Parties shall meet in person  
12 or via telephone within thirty (30) days of ERC’s notification of its intent to meet and confer.  
13 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall  
14 provide to HumanN a written basis for its position. The Parties shall continue to meet and  
15 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should  
16 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-  
17 confer period.

18           **5.3**    Where the meet-and-confer process does not lead to a joint motion or  
19 application in support of a modification of the Consent Judgment, then either Party may seek  
20 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any  
21 attorney’s fees incurred in opposing the motion pursuant to California Code of Civil Procedure  
22 section 1021.5.

23     **6.    RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
24     **JUDGMENT**

25           **6.1**    This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
26 this Consent Judgment.

27           **6.2**    If ERC alleges that any Covered Product fails to qualify as a Reformulated  
28 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall

1 inform HumanN in a reasonably prompt manner of its test results, including information  
2 sufficient to permit HumanN to identify the Covered Products at issue. HumanN shall, within  
3 thirty (30) days following such notice, provide ERC with testing information, from an  
4 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
5 demonstrating HumanN's compliance with the Consent Judgment, if warranted. The Parties  
6 shall first attempt to resolve the matter prior to ERC taking any further legal action.

## 7 **7. APPLICATION OF CONSENT JUDGMENT**

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

## 14 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

15 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
16 on behalf of itself and in the public interest, and HumanN and its respective officers, directors,  
17 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
18 franchisees, licensees, customers (not including private label customers of HumanN),  
19 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
20 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
21 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,  
22 hereby fully releases and discharges the Released Parties from any and all claims, actions,  
23 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses  
24 asserted, or that could have been asserted from the handling, use, or consumption of the  
25 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations  
26 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding  
27 lead and/or cadmium up to and including the Effective Date.

28 **8.2** ERC on its own behalf only, and HumanN on its own behalf only, further

1 waive and release any and all claims they may have against each other for all actions or  
2 statements made or undertaken in the course of seeking or opposing enforcement of Proposition  
3 65 in connection with the Notice and Complaint up through and including the Effective Date,  
4 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to  
5 enforce the terms of this Consent Judgment.

6 **8.3** It is possible that other claims not known to the Parties, arising out of the facts  
7 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
8 discovered. ERC on behalf of itself only, and HumanN on behalf of itself only, acknowledge  
9 that this Consent Judgment is expressly intended to cover and include all such claims up  
10 through and including the Effective Date, including all rights of action therefore. ERC and  
11 HumanN acknowledge that the claims released in Sections 8.1 and 8.2 above may include  
12 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
13 unknown claims. California Civil Code section 1542 reads as follows:

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

19 ERC on behalf of itself only, and HumanN on behalf of itself only, acknowledge and  
20 understand the significance and consequences of this specific waiver of California Civil Code  
21 section 1542.

22 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
23 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
24 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

25 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
26 environmental exposures arising under Proposition 65, nor shall it apply to any of HumanN's  
27 products other than the Covered Products.

## 28 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

1     **10. GOVERNING LAW**

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

4     **11. PROVISION OF NOTICE**

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

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

9 Chris Heptinstall, Executive Director, Environmental Research Center  
10 3111 Camino Del Rio North, Suite 400  
11 San Diego, CA 92108  
12 Tel: (619) 500-3090  
13 Email: chris\_erc501c3@yahoo.com

14 With a copy to:  
15 Michael Freund  
16 Ryan Hoffman  
17 Michael Freund & Associates  
18 1919 Addison Street, Suite 105  
19 Berkeley, CA 94704  
20 Telephone: (510) 540-1992  
21 Facsimile: (510) 540-5543

22     **FOR HUMAN POWER OF N COMPANY, individually and doing  
23 business as HUMANN**

24 President  
25 1122 S. Capital of Texas Highway  
26 Suite 300  
27 Austin, TX 78746

28 With a copy to:  
William L. Troutman  
Norton Rose Fulbright US LLP  
555 S Flower Street, Fl 41  
Los Angeles, CA 90071  
Telephone: (213) 892-9200

1     **12. COURT APPROVAL**

2             **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
4 Consent Judgment.

1           **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
2 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
3 prior to the hearing on the motion.

4           **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
5 void and have no force or effect.

6           **13. EXECUTION AND COUNTERPARTS**

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

10          **14. DRAFTING**

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

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

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

24          **16. ENFORCEMENT**

25          ERC may, by motion or order to show cause before the Superior Court of Alameda  
26 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
27 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
28 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

1 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
2 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,  
3 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by  
4 law for failure to comply with Proposition 65 or other laws.

5 **17. ENTIRE AGREEMENT, AUTHORIZATION**

6 **17.1** This Consent Judgment contains the sole and entire agreement and  
7 understanding of the Parties with respect to the entire subject matter herein, and any and all  
8 prior discussions, negotiations, commitments, and understandings related hereto. No  
9 representations, oral or otherwise, express or implied, other than those contained herein have  
10 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
11 herein, shall be deemed to exist or to bind any Party.

12 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
13 authorized by the Party he or she represents to stipulate to this Consent Judgment.

14 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
15 **CONSENT JUDGMENT**

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

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

22 (2) Make the findings pursuant to California Health and Safety Code section  
23 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

24 **IT IS SO STIPULATED:**  
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1 Dated: 1/5/, 2018

ENVIRONMENTAL RESEARCH  
CENTER, INC.

2  
3 By:   
Chris Heptinstall, Executive Director

4  
5  
6 Dated: \_\_\_\_\_, 2018

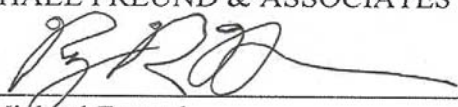
HUMAN POWER OF N COMPANY,  
individually and doing business as HUMANN

7  
8  
9 By: \_\_\_\_\_  
Its: \_\_\_\_\_

10 **APPROVED AS TO FORM:**

11 Dated: 1/5, 2018

MICHAEL FREUND & ASSOCIATES

12  
13 By:   
Michael Freund  
Ryan Hoffman  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

14  
15  
16 Dated: \_\_\_\_\_, 2018

NORTON ROSE FULBRIGHT US LLP

17  
18 By: \_\_\_\_\_  
William L. Troutman  
Attorney for Defendant Human Power of  
N Company, individually and doing  
business as HumanN

19  
20  
21 **ORDER AND JUDGMENT**

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

24 IT IS SO ORDERED, ADJUDGED AND DECREED.

25  
26 Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Judge of the Superior Court



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Dated: \_\_\_\_\_, 2018

ENVIRONMENTAL RESEARCH  
CENTER, INC.

By: \_\_\_\_\_  
Chris Heptinstall, Executive Director

Dated: January 8, 2018

HUMAN POWER OF N COMPANY,  
individually and doing business as HUMANN

  
By: Bril Flint  
Its: Chief Supply Chain Officer

**APPROVED AS TO FORM:**

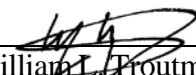
Dated: \_\_\_\_\_, 2018

MICHAEL FREUND & ASSOCIATES

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

Dated: January 8, 2018

NORTON ROSE FULBRIGHT US LLP

By:   
William L. Proutman  
Attorney for Defendant Human Power of  
N Company, individually and doing  
business as HumanN

**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2018

\_\_\_\_\_  
Judge of the Superior Court