

RICHARD M. FRANCO (CBN 170970)  
LAW OFFICE OF RICHARD M. FRANCO  
6500 Estates Drive  
Oakland, CA 94611  
Ph: 510-684-1022  
Email: rick@rfrancolaw.com

Attorney for Plaintiff  
ENVIRONMENTAL RESEARCH CENTER, INC.

STACY E. DON (CBN 226737)  
LAW OFFICE OF STACY E. DON  
3007 Douglas Boulevard, Suite 100  
Roseville, CA 95661  
Ph: 916-749-4851  
Email: sdon@sdonlaw.com

Attorney for Defendant  
GAMMA ENTERPRISES, LLC, individually  
and doing business as GAMMA LABS

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

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

Plaintiff,

vs.

GAMMA ENTERPRISES, LLC, individually  
and doing business as GAMMA LABS, a New  
York limited liability company,

Defendant.

CASE NO. RG17881989

**STIPULATED CONSENT  
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 13, 2017  
Trial Date: None set

**1. INTRODUCTION**

**1.1** On November 13, 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 Relief and Civil Penalties (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),

1 against GAMMA ENTERPRISES, LLC, individually and doing business as GAMMA LABS  
2 (“GAMMA LABS”). In this action, ERC alleges that a number of products manufactured,  
3 distributed, or sold by GAMMA LABS and/or its successors and assigns contain lead, a chemical  
4 listed under Proposition 65, and expose consumers to this chemical at a level requiring a  
5 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered  
6 Product” or collectively as “Covered Products”) are:

- 7 1) Gamma Labs 24K Strength Formula Mixed Berry
- 8 2) Gamma Labs G Fuel Energy Formula Peach Mango
- 9 3) Gamma Labs G Fuel Energy Formula Blue Ice
- 10 4) Gamma Labs G Fuel Energy Formula Watermelon
- 11 5) Gamma Labs G Fuel Energy Formula Fazeberry
- 12 6) Gamma Labs G Fuel Energy Formula Blood Orange
- 13 7) Gamma Labs G Fuel Energy Formula Kiwi Strawberry
- 14 8) Gamma Labs G Fuel Energy Formula Caffeine Free Orange
- 15 9) Gamma Labs G Fuel Energy Formula Coconut
- 16 10) Gamma Labs G Fuel Energy Formula Green Apple
- 17 11) Gamma Labs G Fuel Energy Formula Pink Lemonade
- 18 12) Gamma Labs G Fuel Energy Formula Lemon Lime
- 19 13) Gamma Labs G Fuel Energy Formula Pineapple
- 20 14) Gamma Labs G Fuel Energy Formula Tropical Rain
- 21 15) Gamma Labs G Fuel Energy Formula Mystery Flavor
- 22 16) Gamma Labs G Fuel Energy Formula Fruit Punch
- 23 17) Gamma Labs G Fuel Energy Formula Grape
- 24 18) Gamma Labs G Fuel Energy Formula Lemonade

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

27 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
28 causes, helping safeguard the public from health hazards by reducing the use and misuse of

1 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
2 and encouraging corporate responsibility.

3       **1.4** For purposes of this Consent Judgment, the Parties agree that GAMMA LABS is a  
4 business entity that has employed ten or more persons at all times relevant to this action, and  
5 qualifies as a "person in the course of business" within the meaning of Proposition 65. GAMMA  
6 LABS manufactures, distributes, and/or sells the Covered Products.

7       **1.5** The Complaint is based on allegations contained in ERC's Notice of Violation  
8 dated August 25, 2017 that was served on the California Attorney General, other public  
9 enforcers, and GAMMA LABS ("Notice"). A true and correct copy of the 60-Day Notice dated  
10 August 25, 2017 is attached hereto as **Exhibit A** and incorporated herein by reference. More  
11 than 60 days have passed since the Notice was served on the Attorney General, public  
12 enforcers, and GAMMA LABS and no designated governmental entity has filed a complaint  
13 against GAMMA LABS with regard to the Covered Products or the alleged violations.

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

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

25       **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall  
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
27 current or future legal proceeding unrelated to these proceedings.  
28

1       **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered as  
2 a Judgment by this Court.

3       **2.     JURISDICTION AND VENUE**

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

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

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

17               **3.1.1**   As used in this Consent Judgment, the term "Distributing into the State  
18 of California" shall mean to directly ship a Covered Product into California for sale in  
19 California or to sell a Covered Product to a distributor that GAMMA LABS knows or has  
20 reason to know will sell the Covered Product in California.

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

### 3.2 Clear and Reasonable Warnings

If GAMMA LABS is required to provide a warning pursuant to Section 3.1, the following warning must be utilized ("Warning"):

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

GAMMA LABS shall use the phrase "cancer and" in the Warning if GAMMA LABS has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if GAMMA LABS has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

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

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on its website or on the label or container of GAMMA LABS' 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, or reducing the clarity of, the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

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

### 3.3 Reformulated Covered Products

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

### 4 **3.4 Testing and Quality Control Methodology**

5 **3.4.1** Beginning within one year of the Effective Date, GAMMA LABS shall  
6 arrange for lead testing of the Covered Products at least once a year for a minimum of five  
7 consecutive years by arranging for testing of five randomly selected samples of each of the  
8 Covered Products, in the form intended for sale to the end-user, which GAMMA LABS intends  
9 to sell or is manufacturing for sale in California, directly selling to a consumer in California or  
10 "Distributing into the State of California." If tests conducted pursuant to this Section  
11 demonstrate that no Warning is required for a Covered Product during each of five consecutive  
12 years, then the testing requirements of this Section will no longer be required as to that Covered  
13 Product. However, if during or after the five-year testing period, GAMMA LABS changes  
14 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered  
15 Products, GAMMA LABS shall test that Covered Product annually for at least four (4)  
16 consecutive years after such change is made.

17 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the highest  
18 lead detection result of the five (5) randomly selected samples of the Covered Products will be  
19 controlling.

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

27 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
28 independent third party laboratory certified by the California Environmental Laboratory



1 Accreditation Program or an independent third-party laboratory that is registered with the  
2 United States Food & Drug Administration.

3           **3.4.5** Nothing in this Consent Judgment shall limit GAMMA LABS' ability to  
4 conduct, or require that others conduct, additional testing of the Covered Products, including  
5 the raw materials used in their manufacture.

6           **3.4.6** Within sixty (60) days of ERC's written request, GAMMA LABS shall  
7 deliver lab reports obtained pursuant to Section 3.4 to ERC. GAMMA LABS shall retain all  
8 test results and documentation for a period of five years from the date of each test.

#### 9       **4. SETTLEMENT PAYMENT**

10           **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
11 attorney's fees, and costs, GAMMA LABS shall make a total payment of \$118,500 ("Total  
12 Settlement Amount") to ERC in six (6) equal monthly payments of \$19,750, with the first  
13 payment due within 5 business days of the Effective Date ("Due Date"). GAMMA LABS shall  
14 make these payments by wire transfer to ERC's escrow account, for which ERC will give  
15 GAMMA LABS the necessary account information. The Total Settlement Amount shall be  
16 apportioned as follows:

17           **4.2** \$21,226.18 shall be considered a civil penalty pursuant to California Health and  
18 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$15,919.63) of the civil penalty to  
19 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
20 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
21 Code section 25249.12(c). ERC will retain the remaining 25% (\$5,306.55) of the civil penalty.

22           **4.3** \$5,991.31 shall be distributed to ERC as reimbursement to ERC for reasonable  
23 costs incurred in bringing this action.

24           **4.4** \$15,919.61 shall be distributed to ERC as an Additional Settlement Payment  
25 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and  
26 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
27 caused by GAMMA LABS in this matter. These activities are detailed below and support ERC's  
28 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary

1 supplement products in California. ERC's activities have had, and will continue to have, a direct  
2 and primary effect within the State of California because California consumers will be benefitted  
3 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by  
4 providing clear and reasonable warnings to California consumers prior to ingestion of the  
5 products.

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

26 ERC shall be fully accountable in that it will maintain adequate records to document and  
27 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are  
28 being spent only for the proper, designated purposes described in this Consent Judgment. ERC



1 shall provide the Attorney General, within thirty days of any request, copies of documentation  
2 demonstrating how such funds have been spent.

3       **4.5**     \$27,000 shall be distributed to the Law Office of Richard M. Franco as  
4 reimbursement of ERC's attorney's fees, while \$48,362.90 shall be distributed to ERC for its  
5 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and  
6 costs.

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

## 16     **5. MODIFICATION OF CONSENT JUDGMENT**

17       **5.1**     This Consent Judgment may be modified only as to injunctive terms (i) by  
18 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or  
19 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
20 modified consent judgment.

21       **5.2**     If GAMMA LABS seeks to modify this Consent Judgment under Section 5.1,  
22 then GAMMA LABS must provide written notice to ERC of its intent ("Notice of Intent"). If  
23 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then  
24 ERC must provide written notice to GAMMA LABS within thirty (30) days of receiving the  
25 Notice of Intent. If ERC notifies GAMMA LABS in a timely manner of ERC's intent to meet  
26 and confer, then the Parties shall meet and confer in good faith as required in this Section. The  
27 Parties shall meet in person or via telephone within thirty (30) days of ERC's notification of its  
28 intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the

1 proposed modification, ERC shall provide to GAMMA LABS a written basis for its position.  
2 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to  
3 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing  
4 to different deadlines for the meet-and-confer period.

5 **5.3** In the event that GAMMA LABS initiates or otherwise requests a modification  
6 under Section 5.1, and the meet and confer process leads to a joint motion or application of the  
7 Consent Judgment, GAMMA LABS shall reimburse ERC its costs and reasonable attorney's  
8 fees for the time spent in the meet-and-confer process and filing and arguing the motion or  
9 application.

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

15 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
16 **JUDGMENT**

17 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
18 this Consent Judgment.

19 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated  
20 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
21 inform GAMMA LABS in a reasonably prompt manner of its test results, including information  
22 sufficient to permit GAMMA LABS to identify the Covered Products at issue. GAMMA LABS  
23 shall, within sixty (60) days following such notice, provide ERC with testing information, from  
24 an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
25 demonstrating GAMMA LABS' compliance with the Consent Judgment, if warranted. The  
26 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

27 **7. APPLICATION OF CONSENT JUDGMENT**

28 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their

1 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
2 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
3 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
4 application to any Covered Product which is distributed or sold exclusively outside the State of  
5 California and which is not used by California consumers.

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

7 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
8 on behalf of itself and in the public interest, and GAMMA LABS and its respective officers,  
9 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
10 franchisees, licensees, customers (not including private label customers of GAMMA LABS),  
11 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
12 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
13 of them, including but not limited to G Fuel, LLC (collectively, "Released Parties"). ERC, on  
14 behalf of itself and in the public interest, hereby fully releases and discharges the Released  
15 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
16 penalties, fees, costs, and expenses asserted, or that could have been asserted from the  
17 handling, use, or consumption of the Covered Products, as to any alleged violation of  
18 Proposition 65 or its implementing regulations arising from the failure to provide Proposition  
19 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

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

26 **8.3** It is possible that other claims not known to the Parties, arising out of the facts  
27 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
28 discovered. ERC on behalf of itself only, and GAMMA LABS on behalf of itself only,

1 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
2 claims up through and including the Effective Date, including all rights of action therefore.  
3 ERC and GAMMA LABS acknowledge that the claims released in Sections 8.1 and 8.2 above  
4 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to  
5 any such unknown claims. California Civil Code section 1542 reads as follows:

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

11 ERC on behalf of itself only, and GAMMA LABS on behalf of itself only, acknowledge and  
12 understand the significance and consequences of this specific waiver of California Civil Code  
13 section 1542.

14 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
15 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
16 in the Covered Products as set forth in the Notice and Complaint.

17 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
18 environmental exposures arising under Proposition 65, nor shall it apply to any of GAMMA  
19 LABS' products other than the Covered Products.

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

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

## 23 **10. GOVERNING LAW**

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

## 26 **11. PROVISION OF NOTICE**

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

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

1 Chris Heptinstall, Executive Director, Environmental Research Center  
2 3111 Camino Del Rio North, Suite 400  
3 San Diego, CA 92108  
4 Tel: (619) 500-3090  
5 Email: chris\_erc501c3@yahoo.com

6 With a copy to:

7 RICHARD M. FRANCO  
8 LAW OFFICE OF RICHARD M. FRANCO  
9 6500 Estates Drive  
10 Oakland, CA 94611  
11 Ph: 510-684-1022  
12 Email: rick@rfrancolaw.com

13 GAMMA ENTERPRISES, LLC, individually  
14 and doing business as GAMMA LABS  
15 Raquel Colby  
16 Gamma Enterprises, LLC  
17 113 Alder Street  
18 West Babylon, NY 11704  
19 Ph: 631-755-1080  
20 Email: [legal@gfuel.com](mailto:legal@gfuel.com)

21 With a copy to:

22 STACY E. DON  
23 LAW OFFICE OF STACY E. DON  
24 3007 Douglas Boulevard, Suite 100  
25 Roseville, CA 95661  
26 Ph: 916-749-4851  
27 Email: sdon@sdonlaw.com

## 28 **12. COURT APPROVAL**

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

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

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

1     **13. EXECUTION AND COUNTERPARTS**

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

5     **14. DRAFTING**

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

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

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

19     **16. ENFORCEMENT**

20             ERC may, by motion or order to show cause before the Superior Court of Alameda  
21 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
22 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
23 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
24 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
25 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,  
26 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by  
27 law for failure to comply with Proposition 65 or other laws.  
28



1 **17. ENTIRE AGREEMENT, AUTHORIZATION**

2 **17.1** This Consent Judgment contains the sole and entire agreement and  
3 understanding of the Parties with respect to the entire subject matter herein, and any and all  
4 prior discussions, negotiations, commitments, and understandings related hereto. No  
5 representations, oral or otherwise, express or implied, other than those contained herein have  
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
7 herein, shall be deemed to exist or to bind any Party.

8 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

10 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
11 **CONSENT JUDGMENT**

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

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

18 (2) Make the findings pursuant to California Health and Safety Code section  
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

20 **IT IS SO STIPULATED:**

21 Dated: March 29, 2018

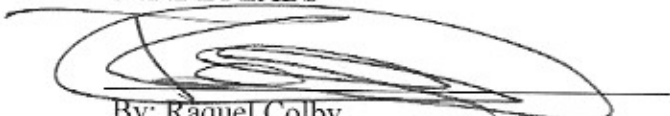
22 ENVIRONMENTAL RESEARCH  
23 CENTER, INC.

24 By: 

25 Chris Hepinstall, Executive Director  
26  
27  
28

1 Dated: March 29, 2018

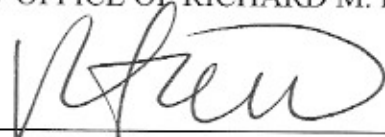
GAMMA ENTERPRISES, LLC,  
individually and doing business as  
GAMMA LABS

By:   
Its: General Counsel

9 **APPROVED AS TO FORM:**


10 Dated: March 29, 2018

LAW OFFICE OF RICHARD M. FRANCO

11 By:   
12 Richard M. Franco  
13 Attorney for Plaintiff Environmental  
14 Research Center, Inc.

15 Dated: March 29, 2018

LAW OFFICE OF STACY E. DON

16 By:   
17 Stacy E. Don  
18 Attorney for Defendant Gamma  
19 Enterprises, LLC, individually and doing  
20 business as Gamma Labs

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 Dated: \_\_\_\_\_, 2017

26 \_\_\_\_\_  
27 Judge of the Superior Court  
28