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BARIATRICFUSION LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH CENTER, INC., a non-profit California corporation, Plaintiff, v. BARIATRICFUSION LLC, a Delaware limited liability company, and DOES 1 – 25, Defendants.	**Case No. RG18896392** **STIPULATED CONSENT JUDGMENT** Health & Safety Code § 25249.5 *et seq.* Action Filed: March 12, 2018 Trial Date: None set

1. INTRODUCTION

1.1 On March 12, 2018, 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 Permanent Injunction, Civil Penalties, and Other Relief (the "Complaint") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"), against BARIATRICFUSION LLC ("BARIATRIC FUSION") and Does 1-25. In this action, ERC alleges that thirteen (13) products manufactured, distributed, or sold by BARIATRIC FUSION contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter individually as a "Covered Product" or collectively as "Covered Products") are:

- Bariatric Fusion Meal Replacement Fuel 4 Life Unflavored - Lead
- Bariatric Fusion Meal Replacement Fuel 4 Life Chocolate Peanut Butter - Lead
- Bariatric Fusion Meal Replacement Fuel 4 Life Cinnamon Bun - Lead
- Bariatric Fusion Meal Replacement Fuel 4 Life Chocolate Mousse[1] - Lead
- Bariatric Fusion Meal Replacement Fuel 4 Life Mint Chocolate Ice Cream[2] - Lead
- Bariatric Fusion Meal Replacement Fuel 4 Life Orange Cream - Lead
- Bariatric Fusion Meal Replacement Fuel 4 Life Chicken Soup - Lead
- Bariatric Fusion Meal Replacement Fuel 4 Life French Vanilla - Lead
- Bariatric Fusion Meal Replacement Fuel 4 Life Strawberry Shortcake[3] – Lead
- Bariatric Fusion Protein Bar Chocolate Fudge – Lead, Cadmium
- Bariatric Fusion Protein Bar Chocolate Peanut Butter – Lead, Cadmium
- Bariatric Fusion Fuel 4 Life Soft Chews Tropical Flavor Sugar-Free - Lead
- Bariatric Fusion Fuel 4 Life Soft Chews Mixed Berry Flavor Sugar-Free - Lead

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[1] This product is now called "Bariatric Fusion Meal Replacement Fuel 4 Life Chocolate."
[2] This product is now called "Bariatric Fusion Meal Replacement Fuel 4 Life Mint Chocolate."
[3] This product is now called "Bariatric Fusion Meal Replacement Fuel 4 Life Strawberry."

1.2 ERC and BARIATRIC FUSION are hereinafter referred to individually as a "Party" or collectively as the "Parties."

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

1.4 For purposes of this Consent Judgment, the Parties agree that BARIATRIC FUSION is a business entity that currently employs ten or more persons, and qualifies as a "person in the course of business" within the meaning of Proposition 65. BARIATRIC FUSION distributes and sells the Covered Products.

1.5 The Complaint is based on allegations contained in ERC's Notice of Violation dated December 5, 2017 that was served on the California Attorney General, other public enforcers, and BARIATRIC FUSION ("Notice"). A true and correct copy of the 60-Day Notice dated December 5, 2017 is attached hereto as **Exhibit A** and incorporated herein by reference. More than sixty (60) days have passed since the Notice was served on the Attorney General, public enforcers, and BARIATRIC FUSION and no designated governmental entity has filed a complaint against BARIATRIC FUSION with regard to the Covered Products or the alleged violations.

1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes persons in California to lead and/or cadmium without first providing clear and reasonable warnings in violation of California Health and Safety Code section 25249.6. BARIATRIC FUSION denies all material allegations contained in the Notice and Complaint.

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

violation of law.

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

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

2. JURISDICTION AND VENUE

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

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

3.1 Beginning ninety (90) days after the Effective Date (hereafter referred to as the "Compliance Date"), BARIATRIC FUSION shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Products which expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it meets the warning requirements under Section 3.2.

3.1.1 As used in this Consent Judgment, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that BARIATRIC FUSION knows will sell the Covered Product in California.

3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure Level" and "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be

calculated using the following formula: micrograms of lead or cadmium per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals micrograms of lead or cadmium exposure per day. If no recommended daily serving size is provided on the label, then the daily serving size shall equal one.

3.2 Clear and Reasonable Warnings

If BARIATRIC FUSION 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 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.

BARIATRIC FUSION shall use the phrase "cancer and" in the Warning if the the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined using the testing methodology set forth in Section 3.4 or if BARIATRIC FUSION has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. In lieu of the preceding warning, BARIATRIC FUSION may use any warning language that complies with Title 27, California Code of Regulations, section 25600 *et seq.*, as amended August 30, 2016 and subsequently thereafter.

The Warning shall be securely affixed to or printed upon the container or label of each Covered Product. If the Warning is provided on the label, it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet, 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. Alternatively, for internet sales on its own website, BARIATRIC FUSION may use any warning method that complies with Title 27, California Code of Regulations, section 25602(b), as amended August 30, 2016 and subsequently thereafter.

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 BARIATRIC FUSION'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 average lay person shall accompany the Warning. Statements supplemental to the Warning which are immediately proximate thereto are allowed only to the extent they identify the source of the exposure or provide information on how consumers of the Covered Product may avoid or reduce exposure to the identified chemical or chemicals. No statements may accompany the Warning on the label or the website 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.

BARIATRIC FUSION must display the above Warning with such conspicuousness, as compared with other words, statements, and 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

A Reformulated Covered Product is a Covered Product for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level" is no more than 4.1 micrograms of cadmium per day using the testing methodology described in Section 3.4.

3.4 Testing

3.4.1 Beginning within one year of the Effective Date, BARIATRIC FUSION shall arrange for lead and/or cadmium testing of the Covered Products at least once a year for a minimum of five (5) consecutive years by arranging for testing of three (3) randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which BARIATRIC FUSION intends to sell or is directly selling to a consumer in California or "Distributing into the State of California." If tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered Product during each of five (5) consecutive years, then the testing requirements of this Section will no longer be required as to

that Covered Product. However, if during or after the five-year testing period, BARIATRIC FUSION changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, BARIATRIC FUSION shall test that Covered Product annually for at least four (4) consecutive years after such change is made. This testing requirement set forth in this Paragraph 3.4.1 does not apply to any Covered Product for which BARIATRIC FUSION continually has provided a Warning for sales made to California consumers during the preceding year.

3.4.2 For purposes of measuring the "Daily Lead Exposure Level" and/or "Daily Cadmium Exposure Level," the arithmetic mean (average) of the lead and/or cadmium detection results of the three (3) randomly selected samples of the Covered Products will be controlling.

3.4.3 All testing pursuant to this Consent Judgment shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, qualification, accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010 mg/kg.

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

3.4.5 Nothing in this Consent Judgment shall limit BARIATRIC FUSION's ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

3.4.6 ERC is limited to requesting test data from BARIATRIC FUSION no more than once per year. Within thirty (30) days of ERC's written request, BARIATRIC FUSION shall deliver lab reports obtained pursuant to Section 3.4 to ERC only in years when testing is required pursuant to Section 3.4.1. BARIATRIC FUSION shall retain all test results and documentation for a period of five years from the date of each test.

4. SETTLEMENT PAYMENT

4.1 In full satisfaction of all potential civil penalties, additional settlement payments, attorney's fees, and costs, BARIATRIC FUSION shall make a total payment of $100,000.00 ("Total Settlement Amount") to ERC. The first installment of $50,000.00 shall be paid to ERC within ten (10) business days of the Effective Date. The second installment of $50,000.00 shall be paid to ERC within sixty (60) days of the Effective Date. BARIATRIC FUSION shall make this payment by wire transfer to ERC's account, for which ERC will give BARIATRIC FUSION the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.2 $14,088.66 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% ($10,566.49) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% ($3,522.17) of the civil penalty.

4.3 $7,132.59 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 $10,566.49 shall be distributed to ERC as an Additional Settlement Payment ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly caused by Defendant in this matter. These activities are detailed below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC alleged that its activities have had, and will continue to have, a direct and primary effect within the State of California because California consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements and/or by providing clear and reasonable warnings to California consumers prior to ingestion of the products.

Based on a review of past years' actual budgets, ERC is providing the following list of activities ERC engages in to protect California consumers through Proposition 65 citizen

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

ERC shall be fully accountable in that it will maintain adequate records to document and will be able to demonstrate how the ASP funds will be spent and can assure that the funds are being spent only for the proper, designated purposes described in this Consent Judgment. ERC shall provide the Attorney General, within thirty (30) days of any request, copies of documentation demonstrating how such funds have been spent.

4.5 $25,008.08 shall be distributed to Aqua Terra Aeris Law Group as reimbursement of ERC's attorney's fees, while $43,204.18 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

4.6 In the event that BARIATRIC FUSION fails to remit the Total Settlement

Amount owed under Section 4 of this Consent Judgment on or before the date each installment is due, BARIATRIC FUSION shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC shall provide written notice of the delinquency to BARIATRIC FUSION via electronic mail. If BARIATRIC FUSION fails to deliver the delinquient amount within five (5) days from the written notice, the delinquent amount shall accrue interest at the statutory judgment interest rate provided in the California Code of Civil Procedure section 685.010.

5. MODIFICATION OF CONSENT JUDGMENT

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

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

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

6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT

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

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

7. APPLICATION OF CONSENT JUDGMENT

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

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself and in the public interest, and BARIATRIC FUSION and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of BARIATRIC FUSION), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Product, and the predecessors,

successors, and assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or consumption of the Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Products regarding lead and/or cadmium up to and including the Effective Date.

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

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

ERC on behalf of itself only, and BARIATRIC FUSION on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

8.3 BARIATRIC FUSION'S compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65 by any Released Party regarding alleged exposures to lead and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

8.4 Nothing in this Consent Judgment is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of BARIATRIC FUSION's products other than the Covered Products.

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.

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

All notices required to be given to either Party to this Consent Judgment by the other shall 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.:

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

With a copy to:
MATTHEW C. MACLEAR
ANTHONY M. BARNES
AQUA TERRA AERIS LAW GROUP
490 43rd Street
Suite 108
Oakland, CA 94609
Ph: 415-568-5200
Email: mcm@atalawgroup.com

FOR BARIATRICFUSION LLC

Peg Carew Toledo
PEG CAREW TOLEDO, LAW CORPORATION
3001 Douglas Boulevard, Suite 340
Roseville, CA 95661
Ph: (916) 462-8950
Email: peg@toledolawcorp.com

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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 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.

14. DRAFTING

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

15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

filed in the absence of such a good faith attempt to resolve the dispute beforehand.

16. ENFORCEMENT

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

17. ENTIRE AGREEMENT, AUTHORIZATION

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

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

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

This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, to make the findings pursuant to California Health and Safety Code section 25249.7(f)(4) and approve this Consent Judgment.

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IT IS SO STIPULATED:

Dated: 7/20/, 2018

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

Dated: 7/23, 2018

BARIATRICFUSION LLC

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Marc McCabe, Chief Executive Officer

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APPROVED AS TO FORM:

Dated: July 20, 2018

AQUA TERRA AERIS LAW GROUP

By: _____

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

Dated: July 20, 2018

PEG CAREW TOLEDO, LAW CORPORATION

By: _____

Peg Carew Toledo
Attorney for Defendant BariatricFusion LLC

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

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Judge of the Superior Court