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

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

26 Plaintiff,

27 v.

28 NESTED NATURALS INC., a Canadian
corporation and DOES 1 – 25,

Defendants.

CASE NO. **RG18905646**

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 21, 2018
Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On May 21, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
4 filing a Complaint for Permanent Injunction, Civil Penalties and Other Relief (the
5 “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5
6 *et seq.* (“Proposition 65”), against NESTED NATURALS INC. (“NESTED NATURALS”) and
7 DOES 1-25. In this action, ERC alleges that a number of products manufactured, distributed,
8 or sold by NESTED NATURALS contain lead, a chemical listed under Proposition 65 as a
9 carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring a
10 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered
11 Product” or collectively as “Covered Products”) are:

- 12 • **Nested Naturals Turmeric 95% Curcuminoids + Bioperine**
- 13 • **Nested Naturals Super Greens**
- 14 • **Nested Naturals Cinnamon 100% Ceylon**

15 **1.2** ERC and NESTED NATURALS are hereinafter referred to individually as a
16 “Party” or collectively as the “Parties.”

17 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
18 causes, helping safeguard the public from health hazards by reducing the use and misuse of
19 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
20 and encouraging corporate responsibility.

21 **1.4** For purposes of this Consent Judgment, the Parties agree that NESTED
22 NATURALS is a business entity that has employed ten or more persons since July 19, 2017 and
23 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
24 NESTED NATURALS manufactures, distributes, and/or sells the Covered Products.

25 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
26 dated February 28, 2018 that was served on the California Attorney General, other public
27 enforcers, and NESTED NATURALS (“Notice”). A true and correct copy of the 60-Day
28

1 Notice dated February 28, 2018 is attached hereto as **Exhibit A** and is incorporated herein by
2 reference. More than 60 days have passed since the Notice was served on the Attorney
3 General, public enforcers, and NESTED NATURALS and no designated governmental entity
4 has filed a complaint against NESTED NATURALS with regard to the Covered Products or the
5 alleged violations.

6 **1.6** ERC's Notice and Complaint allege that use of the Covered Products exposes
7 persons in California to lead without first providing clear and reasonable warnings in violation
8 of California Health and Safety Code section 25249.6. NESTED NATURALS denies all
9 material allegations contained in the Notice and Complaint.

10 **1.7** The Parties have entered into this Consent Judgment in order to settle,
11 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
12 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
13 be construed as an admission by any of the Parties or by any of their respective officers,
14 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
15 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
16 violation of law.

17 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
18 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
19 current or future legal proceeding unrelated to these proceedings.

20 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
21 a Judgment by this Court.

22 **2. JURISDICTION AND VENUE**

23 For purposes of this Consent Judgment and any further court action that may become
24 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
25 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
26 over NESTED NATURALS as to the acts alleged in the Complaint, that venue is proper in
27 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and

1 final resolution of all claims up through and including the Effective Date which were or could
2 have been asserted in this action based on the facts alleged in the Notice and Complaint.

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

4 **3.1** Beginning within three months of the Effective Date (the “Compliance Date”),
5 NESTED NATURALS shall be permanently enjoined from manufacturing for sale in the State
6 of California, “Distributing into the State of California,” or directly selling in the State of
7 California, any Covered Products which expose a person to a “Daily Lead Exposure Level” of
8 more than 0.5 micrograms of lead per day unless it meets the warning requirements under
9 Section 3.2.

10 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
11 of California” shall mean to directly ship a Covered Product into California for sale in
12 California or to sell a Covered Product to a distributor that NESTED NATURALS knows or
13 has reason to know will sell the Covered Product in California.

14 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
15 Level” shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of lead per gram of product, multiplied by grams of product per serving of the
17 product (using the largest serving size appearing on the product label), multiplied by servings
18 of the product per day (using the largest number of recommended daily servings appearing on
19 the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section
20 3.1.3, amounts of allowances of lead in the ingredients listed in **Table 1** below. If the label
21 contains no recommended daily servings, then the number of recommended daily servings shall
22 be one.

23 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
24 NESTED NATURALS shall be allowed to deduct the amount of lead which is deemed
25 “naturally occurring” in any ingredient listed in **Table 1** that is contained in that Covered
26 Product under the following conditions: For each year that NESTED NATURALS claims
27 entitlement to a “naturally occurring” allowance, NESTED NATURALS shall provide ERC with

1 the following information: (a) NESTED NATURALS must produce to ERC a list of each
 2 ingredient in the Covered Product for which a “naturally occurring” allowance is claimed; (b)
 3 NESTED NATURALS must provide ERC with documentation of laboratory testing that
 4 complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in
 5 any ingredient listed in **Table 1** that is contained in the Covered Product and for which NESTED
 6 NATURALS intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals the
 7 presence of lead in any ingredient listed in **Table 1** that is contained in the Covered Product,
 8 NESTED NATURALS shall be entitled to deduct up to the full amount of the allowance for that
 9 ingredient, as listed in **Table 1**, but not to exceed the total amount of lead actually contained in
 10 that ingredient in the Covered Product; and (d) If the Covered Product does not contain an
 11 ingredient listed in **Table 1**, NESTED NATURALS shall not be entitled to a deduction for
 12 “naturally occurring” lead in the Covered Product for that ingredient. The information required
 13 by Sections 3.1.3 (a) and (b) shall be provided to ERC within thirty (30) days of the Effective
 14 Date or anniversary thereof for any year that NESTED NATURALS shall claim entitlement to
 15 the “naturally occurring” allowance.

16 **TABLE 1**

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (Elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram
Cocoa-powder	Up to 1.0 micrograms/gram

1 **3.2 Clear and Reasonable Warnings**

2 If NESTED NATURALS is required to provide a warning pursuant to Section 3.1, the
3 following warning must be utilized (“Warning”):

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

7 NESTED NATURALS shall use the phrase “cancer and” in the Warning if NESTED
8 NATURALS has reason to believe that the “Daily Lead Exposure Level” is greater than 15
9 micrograms of lead as determined pursuant to the quality control methodology set forth in Section
10 3.4 or if NESTED NATURALS has reason to believe that another Proposition 65 chemical is
11 present which may require a cancer warning.

12 The Warning shall be provided to consumers prior to the purchase of each Covered
13 Product, whether it be online or on label. If the Warning is provided on the label, it must be set
14 off from other surrounding information and enclosed in a box. In addition, for any Covered
15 Product sold over the internet where a California delivery address is indicated, the Warning shall
16 be provided either by including the Warning on the product display page, by otherwise
17 prominently displaying the Warning to the purchaser on the checkout page prior to completing
18 the purchase, or by any other means authorized under Section 25602 of Title 27 of the California
19 Code of Regulations. An asterisk or other identifying method must be utilized to identify which
20 products on the checkout page are subject to the Warning. In light of NESTED NATURALS’
21 inability to control third-party websites, the online warning requirements expressed in this
22 Section will apply only to Covered Products sold through NESTED NATURALS’ website;
23 however, NESTED NATURALS shall advise, in writing, third-parties who sell the Covered
24 Products online to provide Warnings in compliance with Proposition 65 for any Covered
25 Products sold via such third-parties’ websites.

26 The Warning shall be at least the same size as the largest of any other health or safety
27 warnings also appearing on its website or on the label or container of NESTED NATURALS’
28 product packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No

1 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
2 clarity of, the Warning on the average lay person shall accompany the Warning. Further, no
3 statements may accompany the Warning that state or imply that the source of the listed chemical
4 has an impact on or results in a less harmful effect of the listed chemical.

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

9 **3.3 Reformulated Covered Products**

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

13 **3.4 Testing and Quality Control Methodology**

14 **3.4.1** Beginning within one year of the Effective Date, NESTED NATURALS
15 shall arrange for lead testing of the Covered Products at least once a year for a minimum of
16 three consecutive years by arranging for testing of three randomly selected samples of each of
17 the Covered Products, in the form intended for sale to the end-user, which NESTED
18 NATURALS intends to sell or is manufacturing for sale in California, directly selling to a
19 consumer in California or “Distributing into the State of California.” If tests conducted
20 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
21 each of three consecutive years, then the testing requirements of this Section will no longer be
22 required as to that Covered Product. However, if during or after the three-year testing period,
23 NESTED NATURALS changes ingredient suppliers for any of the Covered Products and/or
24 reformulates any of the Covered Products, NESTED NATURALS shall test that Covered
25 Product annually for at least three (3) consecutive years after such change is made.

1 (“Total Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”).

2 NESTED NATURALS shall make this payment by wire transfer to ERC’s account, for which
3 ERC will give NESTED NATURALS the necessary account information. The Total
4 Settlement Amount shall be apportioned as follows:

5 **4.2** \$36,144.48 shall be considered a civil penalty pursuant to California Health and
6 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$27,108.36) of the civil penalty to
7 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
8 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
9 Code section 25249.12(c). ERC will retain the remaining 25% (\$9,036.12) of the civil penalty.

10 **4.3** \$3,529.10 shall be distributed to ERC as reimbursement to ERC for reasonable
11 costs incurred in bringing this action.

12 **4.4** \$27,108.31 shall be distributed to ERC as an Additional Settlement Payment
13 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
14 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
15 caused by NESTED NATURALS in this matter. These activities are detailed below and support
16 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
17 supplement products in California. ERC’s activities have had, and will continue to have, a direct
18 and primary effect within the State of California because California consumers will be benefitted
19 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
20 providing clear and reasonable warnings to California consumers prior to ingestion of the
21 products.

22 Based on a review of past years’ actual budgets, ERC is providing the following list of
23 activities ERC engages in to protect California consumers through Proposition 65 citizen
24 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
25 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
26 supplement products that may contain lead and are sold to California consumers. This work
27 includes continued monitoring and enforcement of past consent judgments and settlements to

1 ensure companies are in compliance with their obligations thereunder, with a specific focus on
2 those judgments and settlements concerning lead. This work also includes investigation of new
3 companies that ERC does not obtain any recovery through settlement or judgment; (2)
4 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
5 Compliance Program by acquiring products from companies, developing and maintaining a case
6 file, testing products from these companies, providing the test results and supporting
7 documentation to the companies, and offering guidance in warning or implementing a self-
8 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up
9 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
10 products that reach California consumers by providing access to free testing for lead in dietary
11 supplement products (Products submitted to the program are screened for ingredients which are
12 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
13 qualified laboratory for testing, and the results shared with the consumer that submitted the
14 product).

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

20 **4.5** \$18,439.37 shall be distributed to Aqua Terra Aeris Law Group as
21 reimbursement of ERC's attorney's fees, while \$24,778.74 shall be distributed to ERC for its
22 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
23 costs.

24 **4.6** In the event that NESTED NATURALS fails to remit the Total Settlement
25 Amount owed under Section 4 of this Consent Judgment on or before the Due Date, NESTED
26 NATURALS shall be deemed to be in material breach of its obligations under this Consent
27 Judgment. ERC shall provide written notice of the delinquency to NESTED NATURALS via
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1 electronic mail. If NESTED NATURALS fails to deliver the Total Settlement Amount within
2 five (5) days from the written notice, the Total Settlement Amount shall accrue interest at the
3 statutory judgment interest rate provided in the California Code of Civil Procedure section
4 685.010. Additionally, NESTED NATURALS agrees to pay ERC's reasonable attorney's fees
5 and costs for any efforts to collect the payment due under this Consent Judgment.

6 **5. MODIFICATION OF CONSENT JUDGMENT**

7 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
8 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
9 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
10 modified consent judgment.

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

24 **5.3** In the event that NESTED NATURALS initiates or otherwise requests a
25 modification under Section 5.1, and the meet and confer process leads to a joint motion or
26 application for a modification of the Consent Judgment, NESTED NATURALS shall
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1 reimburse ERC its costs and reasonable attorney's fees for the time spent in the meet-and-
2 confer process and filing and arguing the motion or application.

3 **5.4** Where the meet-and-confer process does not lead to a joint motion or
4 application in support of a modification of the Consent Judgment, then either Party may seek
5 judicial relief on its own.

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

8 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
9 this Consent Judgment.

10 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
11 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
12 inform NESTED NATURALS in a reasonably prompt manner of its test results, including
13 information sufficient to permit NESTED NATURALS to identify the Covered Products at
14 issue. NESTED NATURALS shall, within thirty (30) days following such notice, provide ERC
15 with testing information, from an independent third-party laboratory meeting the requirements
16 of Sections 3.4.3 and 3.4.4, demonstrating NESTED NATURALS' compliance with the
17 Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to
18 ERC taking any further legal action.

19 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

27 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
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1 on behalf of itself and in the public interest, and NESTED NATURALS and its respective
2 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
3 suppliers, franchisees, licensees, customers (not including private label customers of NESTED
4 NATURALS), distributors, wholesalers, retailers, and all other upstream and downstream
5 entities in the distribution chain of any Covered Product, and the predecessors, successors, and
6 assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the
7 public interest, hereby fully releases and discharges the Released Parties from any and all
8 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
9 expenses asserted, or that could have been asserted from the handling, use, or consumption of
10 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
11 regulations arising from the failure to provide Proposition 65 warnings on the Covered
12 Products regarding lead up to and including the Effective Date.

13 **8.2** ERC on its own behalf only, and NESTED NATURALS on its own behalf
14 only, further waive and release any and all claims they may have against each other for all
15 actions or statements made or undertaken in the course of seeking or opposing enforcement of
16 Proposition 65 in connection with the Notice and Complaint up through and including the
17 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
18 right to seek to enforce the terms of this Consent Judgment.

19 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
20 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
21 discovered. ERC on behalf of itself only, and NESTED NATURALS on behalf of itself only,
22 acknowledge that this Consent Judgment is expressly intended to cover and include all such
23 claims up through and including the Effective Date, including all rights of action therefore.
24 ERC and NESTED NATURALS acknowledge that the claims released in Sections 8.1 and 8.2
25 above may include unknown claims, and nevertheless waive California Civil Code section
26 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
28 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

1 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
2 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR.

3 ERC on behalf of itself only, and NESTED NATURALS on behalf of itself only, acknowledge
4 and understand the significance and consequences of this specific waiver of California Civil
5 Code section 1542.

6 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
7 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
8 in the Covered Products as set forth in the Notice and Complaint.

9 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
10 environmental exposures arising under Proposition 65, nor shall it apply to any of NESTED
11 NATURALS' products other than the Covered Products.

12 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

15 **10. GOVERNING LAW**

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

18 **11. PROVISION OF NOTICE**

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

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

23 Chris Heptinstall, Executive Director, Environmental Research Center
24 3111 Camino Del Rio North, Suite 400
25 San Diego, CA 92108
26 Tel: (619) 500-3090
27 Email: chris_erc501c3@yahoo.com

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1 With a copy to:
2 MATTHEW C. MACLEAR
3 ANTHONY M. BARNES
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7 **FOR NESTED NATURALS INC.**

8 JEREMY SHERK
9 NESTED NATURAL INC.
10 301-525 Seymour Street
11 Vancouver, BC
12 V6B 3H7

12 With a copy to:
13 ANTHONY CORTEZ
14 SEAN NEWLAND
15 GREENBERG TRAUIG, LLP
16 1201 K Street, Suite 1100
17 Sacramento, CA 95814
18 Tel: (916) 442-1111
19 Fax: (916) 448-1709
20 Email: cortezan@gtlaw.com
21 Email: newlands@gtlaw.com

18 **12. COURT APPROVAL**

19 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
20 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
21 Consent Judgment.

22 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
23 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
24 prior to the hearing on the motion.

25 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
26 void and have no force or effect.
27

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.

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: 9/24/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC

22
23 By: 
24 Chris Hepburn, Executive Director

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

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

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

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

19 (2) Make the findings pursuant to California Health and Safety Code section
20 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

21 **IT IS SO STIPULATED:**

22 Dated: _____, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

24 By: _____
25 Chris Heptinstall, Executive Director

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Page 17 of 19

STIPULATED CONSENT JUDGMENT

Case No. RG18905646

DEV 99700930v1

1 Dated: September 19, 2018

NESTED NATURALS INC.

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4 By: Jeremy Sherk
5 Its: CEO

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8 **APPROVED AS TO FORM:**
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Dated: _____, 2018


NESTED NATURALS INC.

By: Jeremy Sherk
Its: CEO

APPROVED AS TO FORM:

Dated: September 24, 2018


AQUA TERRA AERIS LAW GROUP

By: 

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

Dated: SEPTEMBER 25, 2018

GREENBERG TRAUERIG, LLP

By: 

Anthony Cortez
Sean Newland
Attorney for Nested Naturals Inc.

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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