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13 OLYMPIAN LABS, INC.

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

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

18 Plaintiff,

19 v.

20 OLYMPIAN LABS, INC., an Arizona
21 corporation; and DOES 1 – 25,

22 Defendants.

CASE NO. RG18919525

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 5, 2018

Trial Date: None set

23
24 **1. INTRODUCTION**

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

- 8 • **Olympian Labs Inc. OL Lean & Healthy Psyllium Husk With Chia Seed**
- 9 • **Olympian Labs Inc. OL Premium Echinacea**
- 10 • **Olympian Labs Inc. OL Pea Protein Vanilla 756 g**
- 11 • **Olympian Labs Inc. OL Pea Protein Vanilla 494 g**
- 12 • **Olympian Labs Inc. OL Pea Protein Delicious Chocolate Flavor**
- 13 • **Olympian Labs Inc. OL Pea Protein Chocolate**
- 14 • **Olympian Labs Inc. OL Origanox**
- 15 • **Olympian Labs Inc. OL Breathe-EZ**
- 16 • **Olympian Labs Inc. OL VRL-X Immune Boosting Support**
- 17 • **Olympian Labs Inc. OL Inflamericzyme**
- 18 • **OL Olympian Labs Inc. Shark Cartilage 2250 mg per serving**
- 19 • **OL Olympian Labs Inc. Coral Calcium**

20 **1.2** ERC and OLYMPIAN LABS are hereinafter referred to individually as a
21 “Party” or collectively as the “Parties.”

22 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
23 causes, helping safeguard the public from health hazards by reducing the use and misuse of
24 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
25 and encouraging corporate responsibility.

26 **1.4** For purposes of this Consent Judgment, the Parties agree that OLYMPIAN LABS
27 is a business entity that has employed ten or more persons at all times relevant to this action, and
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1 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
2 OLYMPIAN LABS manufactures, distributes, and/or sells the Covered Products.

3 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
4 dated April 20, 2018 that was served on the California Attorney General, other public
5 enforcers, and OLYMPIAN LABS (“Notice”). A true and correct copy of the 60-Day Notice
6 dated April 20, 2018 is attached hereto as **Exhibit A** and incorporated herein by reference.
7 More than 60 days have passed since the Notice was served on the Attorney General, public
8 enforcers, and OLYMPIAN LABS and no designated governmental entity has filed a complaint
9 against OLYMPIAN LABS with regard to the Covered Products or the alleged violations.

10 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
11 persons in California to lead without first providing clear and reasonable warnings in violation
12 of California Health and Safety Code section 25249.6. OLYMPIAN LABS denies all material
13 allegations contained in the Notice and Complaint.

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

21 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
22 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
23 current or future legal proceeding unrelated to these proceedings.

24 **1.9** The Effective Date of this Consent Judgment is the date on which ERC serves
25 Notice on OLYMPIAN LABS that it has been entered as a Judgment by this Court.

26 **2. JURISDICTION AND VENUE**

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

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

8 **3.1** Beginning on the Effective Date, OLYMPIAN LABS shall be permanently
9 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
10 California,” or directly selling in the State of California, any Covered Products which expose a
11 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it
12 meets the warning requirements under Section 3.2, provided, however, that in the event
13 OLYMPIAN LABS can document that a Covered Product was manufactured before the
14 Effective Date, sale of such Covered Product by any person after the Effective Date shall not
15 constitute a violation of the this Consent Judgment.

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

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

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1 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
2 OLYMPIAN LABS shall be allowed to deduct the amount of lead which is deemed to be
3 Naturally Occurring Lead in any ingredient listed in **Table 1** (“Lead Ingredient”) that is
4 contained in that Covered Product under the following conditions: (a) OLYMPIAN LABS itself
5 or from its Lead Ingredient supplier shall obtain either (i) a valid test result showing lead is
6 present in the Lead Ingredient at a specific concentration or in a range; or (ii) a certificate of
7 analysis or certificate of compliance that shows lead is present in the Lead Ingredient at a
8 specific concentration or in a range; and (b) OLYMPIAN LABS shall obtain the documentation
9 in Section 3.1.3(a) (i) or (ii) for at least two delivered lots of a Lead Ingredient listed in **Table 1**,
10 if up to four (4) lots of that Lead Ingredient are delivered within twelve (12) months after the
11 Effective Date (or its anniversary date as applicable), and documentation for at least three (3) lots
12 of a Lead Ingredient if up to eight (8) lots of that Lead Ingredient are delivered within twelve
13 (12) months after the Effective Date (or its anniversary date as applicable), and documentation
14 for at least four (4) lots of a Lead Ingredient if nine (9) or more lots of that Lead Ingredient are
15 delivered within twelve (12) months after the Effective Date (or its anniversary date as
16 applicable); and (c) OLYMPIAN LABS shall document the total amount (in grams) of each Lead
17 Ingredient contained in the Covered Product. If the documentation obtained pursuant to Section
18 3.1.3(a) and (b) documents the presence of lead in any Lead Ingredient in **Table 1**, OLYMPIAN
19 LABS shall be entitled to deduct the amount of the Naturally Occurring Lead for that Lead
20 Ingredient, as listed in **Table 1**. If the Covered Product does not contain a Lead Ingredient listed
21 in **Table 1**, OLYMPIAN LABS shall not be entitled to deduction for the Naturally Occurring
22 Lead in **Table 1** for that Covered Product.

23 To deduct the Naturally Occurring Lead in any Covered Product for purposes of
24 determining the Daily Lead Exposure Level under this Consent Judgment, as provided in this
25 Section 3.1.3, OLYMPIAN LABS shall provide to ERC, within thirty (30) days after the first
26 anniversary of the Effective Date, the documentation required under Section 3.1.3(a)-(c). No
27 deduction for Naturally Occurring Lead shall be permitted until after OLYMPIAN LABS
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1 provides to ERC the documentation required under Section 3.1.3(a)-(c) as indicated in the
 2 preceding sentence. Thereafter, for three (3) additional consecutive anniversaries after the
 3 Effective Date, if OLYMPIAN LABS deducts Naturally Occurring Lead in a Lead Ingredient in
 4 calculating the Daily Lead Exposure Level, OLYMPIAN LABS shall provide to ERC, within
 5 thirty (30) days after each such anniversary date, the documentation for each Lead Ingredient
 6 required under Section 3.1.3(a)-(c) for each such applicable twelve month period preceding the
 7 applicable anniversary of the Effective Date.

8 **TABLE 1**

INGREDIENT	NATURALLY OCCURRING AMOUNTS OF LEAD
Calcium (Elemental)	0.8 micrograms/gram (up to a maximum amount of 1.2 micrograms of lead if there are 1.5 grams or more of elemental calcium in the Covered Product)
Cocoa-powder	1.0 micrograms/gram
Chocolate Liquor	1.0 micrograms/gram
Cocoa Butter	0.1 micrograms/gram

17 **3.2 Clear and Reasonable Warnings**

18 If OLYMPIAN LABS is required to provide a warning pursuant to Section 3.1, the
 19 following warning must be utilized (“Warning”):

20 **WARNING:** Consuming this product can expose you to chemicals including lead which is
 21 [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.

22 OLYMPIAN LABS shall use the phrase “cancer and” in the Warning if OLYMPIAN LABS has
 23 documented or is in possession of representative test results indicating that the “Daily Lead
 24 Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality
 25 control methodology set forth in Section 3.4.

26 The Warning shall be securely affixed to or printed upon the container or label of each
 27 Covered Product. If the Warning is provided on the label, it must be set off from other

1 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
2 the internet, the Warning shall either appear on the checkout page when a California delivery
3 address is indicated for any purchase of any Covered Product or appear on the product display
4 page of any Covered Product at issue. An asterisk or other identifying method must be utilized
5 to identify which products on the checkout page are subject to the Warning. In no event shall
6 any internet or website Warning be contained in or made through a link.

7 The Warning shall be at least the same size as the largest of any other health or safety
8 warnings also appearing on its website or on the label or container of OLYMPIAN LABS'
9 product packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No
10 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
11 clarity of, the Warning on the average lay person shall accompany the Warning. Further, no
12 statements may accompany the Warning that state or imply that the source of the listed chemical
13 has an impact on or results in a less harmful effect of the listed chemical. OLYMPIAN LABS must
14 display the above Warning with such conspicuousness, as compared with other words, statements
15 or designs on the label or container, or on its website, if applicable, to render the Warning likely to
16 be read and understood by an ordinary individual under customary conditions of purchase or use
17 of the product.

18 **3.3 Reformulated Covered Products**

19 A Reformulated Covered Product is a Covered Product for which the "Daily Lead
20 Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the quality
21 control methodology described in Section 3.4 and for which the Uniform Product Code (UPC)
22 remains the same.

23 **3.4 Testing and Quality Control Methodology**

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

9 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the
10 average (arithmetic mean) of the lead detection result of the three (3) randomly selected
11 samples of the Covered Products will be controlling.

12 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
13 laboratory method that complies with the performance and quality control factors appropriate
14 for the method used, including limit of detection, qualification, accuracy, and precision that
15 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
16 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

17 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
18 independent third party laboratory certified by the California Environmental Laboratory
19 Accreditation Program or an independent third-party laboratory that is registered with the
20 United States Food & Drug Administration.

21 **3.4.5** Nothing in this Consent Judgment shall limit OLYMPIAN LABS’
22 ability to conduct, or require that others conduct, additional testing of the Covered Products,
23 including the raw materials used in their manufacture.

24 **3.4.6** Within thirty (30) days of ERC’s written request, OLYMPIAN LABS
25 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. OLYMPIAN LABS shall
26 retain all test results and documentation for a period of five years from the date of each test.

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1 **4. SETTLEMENT PAYMENT**

2 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
3 attorney’s fees, and costs, OLYMPIAN LABS shall make a total payment of \$92,500.00
4 (“Total Settlement Amount”) in three equal periodic payments according to the following
5 payment schedule (“Due Dates”):

- 6 • Payment 1 -- \$30,833.33 within 7 days of the Effective Date
- 7 • Payment 2 -- \$30,833.33 within 37 days of the Effective Date
- 8 • Payment 3 -- \$30,833.34 within 67 days of the Effective Date

9 OLYMPIAN LABS shall make these payments by wire transfer to ERC’s account, for which
10 ERC will give OLYMPIAN LABS the necessary account information. The Total Settlement
11 Amount shall be apportioned as follows:

12 **4.2** \$28,908.20 shall be considered a civil penalty pursuant to California Health and
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$21,681.15) of the civil penalty to
14 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
16 Code section 25249.12(c). ERC will retain the remaining 25% (\$7,227.05) of the civil penalty.

17 **4.3** \$4,799.19 shall be distributed to ERC as reimbursement to ERC for reasonable
18 costs incurred in bringing this action.

19 **4.4** \$21,681.12 shall be distributed to ERC as an Additional Settlement Payment
20 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
21 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
22 caused by OLYMPIAN LABS in this matter. These activities are detailed below and support
23 ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
24 supplement products in California. ERC’s activities have had, and will continue to have, a direct
25 and primary effect within the State of California because California consumers will be benefitted
26 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by

1 providing clear and reasonable warnings to California consumers prior to ingestion of the
2 products.

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

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

1 **4.5** \$15,570.00 shall be distributed to Aqua Terra Aeris Law Group as
2 reimbursement of ERC's attorney's fees, while \$21,541.49 shall be distributed to ERC for its
3 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
4 costs.

5 **4.6** In the event that OLYMPIAN LABS fails to remit a payment pursuant to
6 Section 4.1 on or before the respective Due Date, OLYMPIAN LABS shall be deemed to be in
7 material breach of its obligations under this Consent Judgment. ERC shall provide written
8 notice of the delinquency to OLYMPIAN LABS via electronic mail. If OLYMPIAN LABS
9 fails to deliver the delinquent payment within five (5) days from the written notice, the Total
10 Settlement Amount, less any amounts previously paid pursuant to Section 4.1, shall be
11 immediately due and owing and shall accrue interest at the statutory judgment interest rate
12 provided in the California Code of Civil Procedure section 685.010. Additionally,
13 OLYMPIAN LABS agrees to pay ERC's reasonable attorney's fees and costs for any efforts to
14 collect the payment due under this Consent Judgment.

15 **5. MODIFICATION OF CONSENT JUDGMENT**

16 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
17 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
18 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
19 modified consent judgment.

20 **5.2** If any Party seeks to modify this Consent Judgment under Section 5.1, then that
21 Party must provide written notice to the other Party of its intent ("Notice of Intent"). The
22 Parties shall meet and confer in good faith regarding the proposed modification referenced in
23 the Notice of Intent within thirty (30) days of receiving the Notice of Intent. Within thirty (30)
24 days of such meeting, if there remains a dispute as to the proposed modification, the Party
25 disputing the modification shall provide the other Party a written basis for its position. The
26 Parties shall continue to meet and confer for an additional thirty (30) days in an effort to
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1 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing
2 to different deadlines for the meet-and-confer period.

3 **5.3** In the event that OLYMPIAN LABS initiates or otherwise requests a
4 modification under Section 5.1, and the meet and confer process leads to a joint motion or
5 application for a modification of the Consent Judgment, OLYMPIAN LABS shall reimburse
6 ERC its costs and reasonable attorney's fees for the time spent in the meet-and-confer process
7 and filing and arguing the motion or application. ERC shall not be be reimbursed for costs or
8 attorneys' fees for an uncontested motion, or for a ministerial motion (including, without
9 limitation, a change in name or contact information) or if ERC does not expend more than two
10 (2) hours of attorney time on the joint motion.

11 **5.4** Where the meet-and-confer process does not lead to a joint motion or
12 application in support of a modification of the Consent Judgment, then either Party may seek
13 judicial relief on its own.

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

16 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
17 this Consent Judgment. The Consent Judgment may be enforced solely by the Parties hereto,
18 including their respective successors or assigns, provided each Party identifies any such
19 successor or assign in writing to the other Party.

20 **6.2** If ERC alleges that any Covered Product fails to bear a Warning with respect to
21 lead and was manufactured for sale in the State of California, "Distributed into the State of
22 California," or directly sold in the State of California in violation of this Consent Judgment,
23 then ERC shall inform OLYMPIAN LABS in a reasonably prompt manner of its test results,
24 including information sufficient to permit OLYMPIAN LABS to identify the Covered Products
25 at issue and of ERC's calculation of the Daily Lead Exposure Level. OLYMPIAN LABS shall,
26 within thirty (30) days following such notice, provide ERC with testing information, from an
27 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, and
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1 other relevant information it may wish to present to ERC, if any, demonstrating OLYMPIAN
2 LABS' compliance with the Consent Judgment. The Parties shall first attempt to resolve the
3 matter prior to ERC taking any further legal action.

4 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

25 **8.2** ERC on its own behalf only, and OLYMPIAN LABS on its own behalf only,
26 further waive and release any and all claims they may have against each other for all actions or
27 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
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1 65 in connection with the Notice and Complaint up through and including the Effective Date,
2 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
3 enforce the terms of this Consent Judgment.

4 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
5 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
6 discovered. ERC on behalf of itself only, and OLYMPIAN LABS on behalf of itself only,
7 acknowledge that this Consent Judgment is expressly intended to cover and include all such
8 claims up through and including the Effective Date, including all rights of action therefore.
9 ERC and OLYMPIAN LABS acknowledge that the claims released in Sections 8.1 and 8.2
10 above may include unknown claims, and nevertheless waive California Civil Code section
11 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

15 ERC on behalf of itself only, and OLYMPIAN LABS on behalf of itself only, acknowledge
16 and understand the significance and consequences of this specific waiver of California Civil
17 Code section 1542.

18 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
19 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures
20 to lead in the Covered Products as set forth in the Notice and Complaint.

21 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
22 environmental exposures arising under Proposition 65, nor shall it apply to any of OLYMPIAN
23 LABS' products other than the Covered Products.

24 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

1 **10. GOVERNING LAW**

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

4 **11. PROVISION OF NOTICE**

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

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

9 Chris Heptinstall
10 Executive Director
11 Environmental Research Center
12 3111 Camino Del Rio North, Suite 400
13 San Diego, CA 92108
14 Telephone: (619) 500-3090
15 Email: chris_erc501c3@yahoo.com

16 With a copy to:
17 MATTHEW C. MACLEAR
18 ANTHONY M. BARNES
19 AQUA TERRA AERIS LAW GROUP
20 490 43rd Street
21 Suite 108
22 Oakland, CA 94609
23 Email: mcm@atalawgroup.com

24 **OLYMPIAN LABS, INC.**
25 George Demchak, CFO/COO
26 21410 North 15th Lane
27 Suite 114
28 Phoenix, AZ 85027

With a copy to:
MICHAEL J. STILES
STILESPOMEROY LLP
301 E. Colorado Blvd., Suite 600
Pasadena, CA 91101
Telephone: (626) 243-5599
Facsimile: (626) 389-0599
Email: mstiles@stilespomero.com

1 **12. COURT APPROVAL**

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

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

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

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

1 **16. ENFORCEMENT**

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

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8 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

15 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
16 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

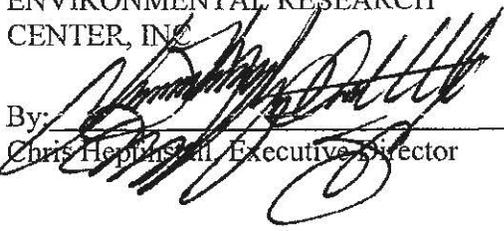
22 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
23 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
24 been diligently prosecuted, and that the public interest is served by such settlement; and

25 (2) Make the findings pursuant to California Health and Safety Code section
26 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

27 **IT IS SO STIPULATED:**

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Dated: 9/14/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC

By: _____
Chris Heppner, Executive Director

Dated: 9/20, 2018

OLYMPIAN LABS, INC.

George Demchak
CFO / COO

APPROVED AS TO FORM:

Dated: _____, 2018

AQUA TERRA AERIS LAW GROUP

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

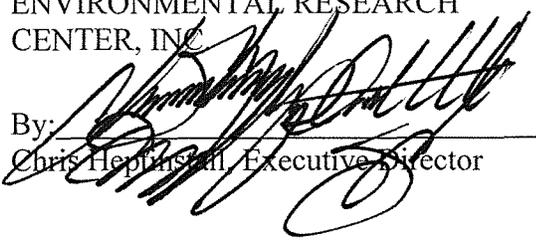
Dated: _____, 2018

STILESPOMEROY LLP

By: _____
Michael J. Stiles
Attorney for Defendant Olympian Labs,
Inc.

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Dated: 9/14/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC
By: 
Chris Heptinstall, Executive Director

Dated: _____, 2018

OLYMPIAN LABS, INC.

George Demchak
CFO / COO

APPROVED AS TO FORM:

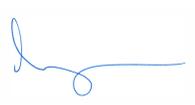
Dated: September 20, 2018

AQUA TERRA AERIS LAW GROUP


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

Dated: September 20, 2018

STILESPOMEROY LLP


By: _____
Michael J. Stiles
Attorney for Defendant Olympian Labs,
Inc.

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

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