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8 Attorneys for Plaintiff
9 ENVIRONMENTAL RESEARCH CENTER, INC.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

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

14 Plaintiff,

15 vs.

16 NUTRITIONAL FRONTIERS, LLC, a
17 Pennsylvania limited liability company, and
18 DOES 1-25,

19 Defendants.

CASE NO. **RG18916713**

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: August 15, 2018

Trial Date: None set

20 **1. INTRODUCTION**

21 **1.1** On August 15, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”),
22 a non-profit corporation, as a private enforcer and in the public interest, initiated this action by
23 filing a Complaint for Permanent Injunction, Civil Penalties, and Other Relief (the “Complaint”)
24 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
25 (“Proposition 65”), against NUTRITIONAL FRONTIERS, LLC (“NUTRITIONAL
26 FRONTIERS”) and DOES 1-25. In this action, ERC alleges that a number of products
27 manufactured, distributed, or sold by NUTRITIONAL FRONTIERS contain lead, a chemical
28 listed under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this
chemical at a level requiring a Proposition 65 warning. These products (referred to hereinafter
individually as a “Covered Product” or collectively as “Covered Products”) are:

- 1 • **No Whey José! Vegan Protein Shake Chocolate**
- 2 • **Defranco's Clean Greens**
- 3 • **Defranco's Detox**
- 4 • **No Whey José Vegan Protein Shake Pumpkin Spice**
- 5 • **No Whey José! Vegan Protein Shake Vanilla**
- 6 • **Defranco's Lean Kreatine**
- 7 • **Badass BCAA's Raspberry Lemonade Powdered Drink Mix**

8 1.2 ERC and NUTRITIONAL FRONTIERS are hereinafter referred to individually
9 as a "Party" or collectively as the "Parties."

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

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

19 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
20 dated June 5, 2018 that was served on the California Attorney General, other public enforcers,
21 and NUTRITIONAL FRONTIERS ("Notice"). A true and correct copy of the 60-Day Notice
22 dated June 5, 2018 is attached hereto as **Exhibit A** and is incorporated herein by reference.
23 More than 60 days will have passed since the Notice was served on the Attorney General,
24 public enforcers, and NUTRITIONAL FRONTIERS and no designated governmental entity
25 has filed a complaint against NUTRITIONAL FRONTIERS with regard to the Covered
26 Products or the alleged violations.

27 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes
28 persons in California to lead without first providing clear and reasonable warnings in violation

1 of California Health and Safety Code section 25249.6. NUTRITIONAL FRONTIERS denies
2 all material allegations contained in the Notice and Complaint.

3 1.7 The Parties have entered into this Consent Judgment in order to settle,
4 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
5 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
6 be construed as an admission by any of the Parties or by any of their respective officers,
7 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
8 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
9 violation of law.

10 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
11 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
12 current or future legal proceeding unrelated to these proceedings.

13 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
14 a Judgment by this Court.

15 2. **JURISDICTION AND VENUE**

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

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

24 3.1 Beginning on the Effective Date, NUTRITIONAL FRONTIERS shall be
25 permanently enjoined from manufacturing for sale in the State of California, "Distributing into
26 the State of California," or directly selling in the State of California, any Covered Products
27 which expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead
28 per day unless it meets the warning requirements under Section 3.2.

1 3.1.1 As used in this Consent Judgment, the term “Distributing into the State
2 of California” shall mean to directly ship a Covered Product into California for sale in
3 California or to sell a Covered Product to a distributor that NUTRITIONAL FRONTIERS
4 knows or has reason to know will sell the Covered Product in California.

5 3.1.2 For purposes of this Consent Judgment, the “Daily Lead Exposure
6 Level” shall be measured in micrograms, and shall be calculated using the following formula:
7 micrograms of lead per gram of product, multiplied by grams of product per serving of the
8 product (using the largest serving size appearing on the product label), multiplied by servings
9 of the product per day (using the largest number of recommended daily servings appearing on
10 the label), which equals micrograms of lead exposure per day. If the label contains no
11 recommended daily servings, then the number of recommended daily servings shall be one.

12 3.2 Clear and Reasonable Warnings

13 If NUTRITIONAL FRONTIERS is required to provide a warning pursuant to Section 3.1,
14 the following warning must be utilized (“Warning”):

15 **WARNING:** Consuming this product can expose you to chemicals including lead which is
16 [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.

17 NUTRITIONAL FRONTIERS shall use the phrase “cancer and” in the Warning if
18 NUTRITIONAL FRONTIERS has reason to believe that the “Daily Lead Exposure Level” is
19 greater than 15 micrograms of lead as determined pursuant to the quality control methodology set
20 forth in Section 3.4 or if NUTRITIONAL FRONTIERS has reason to believe that another
21 Proposition 65 chemical is present which may require a cancer warning.

22 The Warning shall be securely affixed to or printed upon the container or label of each
23 Covered Product. If the Warning is provided on the label, it must be set off from other
24 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
25 the internet, the Warning shall appear on the checkout page when a California delivery address is
26 indicated for any purchase of any Covered Product. An asterisk or other identifying method
27 must be utilized to identify which products on the checkout page are subject to the Warning. In
28 no event shall any internet or website Warning be contained in or made through a link.

1 The Warning shall be at least the same size as the largest of any other health or safety
2 warnings also appearing on its website or on the label or container of NUTRITIONAL
3 FRONTIERS' product packaging and the word "WARNING" shall be in all capital letters and in
4 bold print. No statements intended to or likely to have the effect of diminishing the impact of, or
5 reducing the clarity of, the Warning on the average lay person shall accompany the Warning.
6 Further, no statements may accompany the Warning that state or imply that the source of the listed
7 chemical has an impact on or results in a less harmful effect of the listed chemical.

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

12 3.3 Reformulated Covered Products

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

16 3.4 Testing and Quality Control Methodology

17 3.4.1 Beginning within one year of the Effective Date, NUTRITIONAL
18 FRONTIERS shall arrange for lead testing of the Covered Products at least once a year for a
19 minimum of five consecutive years by arranging for testing of five randomly selected samples
20 of each of the Covered Products, in the form intended for sale to the end-user, which
21 NUTRITIONAL FRONTIERS intends to sell or is manufacturing for sale in California,
22 directly selling to a consumer in California or "Distributing into the State of California." If
23 tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered
24 Product during each of five consecutive years, then the testing requirements of this Section will
25 no longer be required as to that Covered Product. However, if during or after the five-year
26 testing period, NUTRITIONAL FRONTIERS changes ingredient suppliers for any of the
27 Covered Products and/or reformulates any of the Covered Products, NUTRITIONAL
28 FRONTIERS shall test that Covered Product annually for at least four (4) consecutive years

1 after such change is made.

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

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

10 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
11 independent third party laboratory certified by the California Environmental Laboratory
12 Accreditation Program or an independent third-party laboratory that is registered with the
13 United States Food & Drug Administration.

14 **3.4.5** Nothing in this Consent Judgment shall limit NUTRITIONAL
15 FRONTIERS’ ability to conduct, or require that others conduct, additional testing of the
16 Covered Products, including the raw materials used in their manufacture.

17 **3.4.6** Within thirty (30) days of ERC’s written request, NUTRITIONAL
18 FRONTIERS shall deliver lab reports obtained pursuant to Section 3.4 to ERC.
19 NUTRITIONAL FRONTIERS shall retain all test results and documentation for a period of
20 five years from the date of each test.

21 **4. SETTLEMENT PAYMENT**

22 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
23 attorney’s fees, and costs, NUTRITIONAL FRONTIERS shall make a total payment of
24 \$45,000.00 (“Total Settlement Amount”) in two equal monthly payments, according to the
25 following payment schedule (“Due Dates”):

- 26 • Payment 1 -- \$22,500.00 within 5 days of the Effective Date
- 27 • Payment 2 -- \$22,500.00 within 35 days of the Effective Date

28 NUTRITIONAL FRONTIERS shall make these payments by wire transfer to ERC’s account,

1 for which ERC will give NUTRITIONAL FRONTIERS the necessary account information.

2 The Total Settlement Amount shall be apportioned as follows:

3 **4.2** \$10,978.86 shall be considered a civil penalty pursuant to California Health and
4 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$8,234.14) of the civil penalty to the
5 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
6 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
7 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,744.72) of the civil penalty.

8 **4.3** \$2,780.50 shall be distributed to ERC as reimbursement to ERC for reasonable
9 costs incurred in bringing this action.

10 **4.4** \$8,234.13 shall be distributed to ERC as an Additional Settlement Payment
11 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
12 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
13 caused by NUTRITIONAL FRONTIERS in this matter. These activities are detailed below and
14 support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in
15 dietary supplement products in California. ERC’s activities have had, and will continue to have,
16 a direct and primary effect within the State of California because California consumers will be
17 benefitted by the reduction and/or elimination of exposure to lead in dietary supplements and/or
18 by providing clear and reasonable warnings to California consumers prior to ingestion of the
19 products.

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

1 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
2 Compliance Program by acquiring products from companies, developing and maintaining a case
3 file, testing products from these companies, providing the test results and supporting
4 documentation to the companies, and offering guidance in warning or implementing a self-
5 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up
6 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
7 products that reach California consumers by providing access to free testing for lead in dietary
8 supplement products (Products submitted to the program are screened for ingredients which are
9 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
10 qualified laboratory for testing, and the results shared with the consumer that submitted the
11 product).

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

17 **4.5** \$6,435.00 shall be distributed to Aqua Terra Aeris Law Group as reimbursement
18 of ERC's attorney's fees, while \$16,571.51 shall be distributed to ERC for its in-house legal
19 fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

20 **4.6** In the event that NUTRITIONAL FRONTIERS fails to remit a payment
21 pursuant to Section 4.1 on or before the respective Due Date, NUTRITIONAL FRONTIERS
22 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
23 shall provide written notice of the delinquency to DEFENDANT via electronic mail. If
24 NUTRITIONAL FRONTIERS fails to deliver the delinquent payment within five (5) days
25 from the written notice, the Total Settlement Amount, less any amounts previously paid
26 pursuant to Section 4.1, shall be immediately due and owing and shall accrue interest at the
27 statutory judgment interest rate provided in the Code of Civil Procedure section 685.010.
28 Additionally, NUTRITIONAL FRONTIERS agrees to pay ERC's reasonable attorney's fees

1 and costs for any efforts to collect the payment due under this Consent Judgment.

2 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

20 **5.3** In the event that NUTRITIONAL FRONTIERS initiates or otherwise requests a
21 modification under Section 5.1, and the meet and confer process leads to a joint motion or
22 application for a modification of the Consent Judgment, NUTRITIONAL FRONTIERS shall
23 reimburse ERC its costs and reasonable attorney’s fees for the time spent in the meet-and-
24 confer process and filing and arguing the motion or application.

25 **5.4** Where the meet-and-confer process does not lead to a joint motion or
26 application in support of a modification of the Consent Judgment, then either Party may seek
27 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
28 attorney’s fees incurred in opposing the motion pursuant to California Code of Civil Procedure

1 section 1021.5.

2 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
3 **JUDGMENT**

4 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
5 this Consent Judgment.

6 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
7 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
8 inform NUTRITIONAL FRONTIERS in a reasonably prompt manner of its test results,
9 including information sufficient to permit NUTRITIONAL FRONTIERS to identify the
10 Covered Products at issue. NUTRITIONAL FRONTIERS shall, within thirty (30) days
11 following such notice, provide ERC with testing information, from an independent third-party
12 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating
13 NUTRITIONAL FRONTIERS' compliance with the Consent Judgment, if warranted. The
14 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

15 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

23 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
24 on behalf of itself and in the public interest, and NUTRITIONAL FRONTIERS and its
25 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
26 divisions, suppliers, franchisees, licensees, customers (not including private label customers of
27 NUTRITIONAL FRONTIERS), distributors, wholesalers, retailers, and all other upstream and
28 downstream entities in the distribution chain of any Covered Product, and the predecessors,

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

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

14 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
15 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
16 discovered. ERC on behalf of itself only, and NUTRITIONAL FRONTIERS on behalf of itself
17 only, acknowledge that this Consent Judgment is expressly intended to cover and include all
18 such claims up through and including the Effective Date, including all rights of action
19 therefore. ERC and NUTRITIONAL FRONTIERS acknowledge that the claims released in
20 Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waive California
21 Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542
22 reads as follows:

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

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

1 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
3 in the Covered Products as set forth in the Notice and Complaint.

4 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
5 environmental exposures arising under Proposition 65, nor shall it apply to any of
6 NUTRITIONAL FRONTIERS' products other than the Covered Products.

7 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10 **10. GOVERNING LAW**

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

13 **11. PROVISION OF NOTICE**

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

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

18 Chris Heptinstall, Executive Director, Environmental Research Center
19 3111 Camino Del Rio North, Suite 400
20 San Diego, CA 92108
21 Ph: (619) 500-3090
22 Email: chris_erc501c3@yahoo.com

23 With a copy to:
24 MATTHEW C. MACLEAR
25 ANTHONY M. BARNES
26 AQUA TERRA AERIS LAW GROUP
27 828 San Pablo Ave, Suite 115B
28 Albany, CA 94706
Ph: 415-568-5200
Email: mcm@atalawgroup.com

1 **FOR NUTRITIONAL FRONTIERS, LLC:**

2 3191 Washington Pike

3 Bridgeville, PA 15017

4 Ph: 412-922-2566

5 **12. COURT APPROVAL**

6 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
7 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
8 Consent Judgment.

9 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
10 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
11 prior to the hearing on the motion.

12 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
13 void and have no force or effect.

14 **13. EXECUTION AND COUNTERPARTS**

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

18 **14. DRAFTING**

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

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

28 If a dispute arises with respect to either Party's compliance with the terms of this Consent

1 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
2 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
3 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

4 **16. ENFORCEMENT**

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

13 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

20 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
21 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

27 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
28 equitable settlement of all matters raised by the allegations of the Complaint that the matter has

1 been diligently prosecuted, and that the public interest is served by such settlement; and

2 (2) Make the findings pursuant to California Health and Safety Code section
3 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

4 **IT IS SO STIPULATED:**

5 Dated: 6/28/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC

6
7 By: 
8 Chris Heppinstall, Executive Director

9 Dated: 7/18, 2018


NUTRITIONAL FRONTIERS, LLC

10
11 By: 
12 Its:

1 **APPROVED AS TO FORM:**

2 Dated: July 18, 2018

AQUA TERRA AERIS LAW GROUP

3
4 By: 

5 Matthew C. Maclear
6 Anthony M. Barnes
7 Attorneys for Plaintiff Environmental
8 Research Center, Inc.

9 **ORDER AND JUDGMENT**

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

12 IT IS SO ORDERED, ADJUDGED AND DECREED.

13
14 Dated: _____, 2018

15 Judge of the Superior Court