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

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

19 **Plaintiff,**

20 **v.**

21 **1 UP NUTRITION LLC, a Florida limited**  
22 **liability company; and DOES 1 – 25,**

23 **Defendants**

**CASE NO. RG19010228**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: March 8, 2019

Trial Date: None set

24  
25 **1. INTRODUCTION**

26 **1.1** On March 8, 2019, Plaintiff Environmental Research Center, Inc. (“ERC”), a  
27 non-profit corporation, as a private enforcer and in the public interest, initiated this action by  
28 filing a Complaint for Permanent Injunction, Civil Penalties and Other Relief (the

1 “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5  
2 *et seq.* (“Proposition 65”), against 1 UP NUTRITION LLC (“1 UP NUTRITION”) and DOES  
3 1-25. In this action, ERC alleges that a number of products manufactured, distributed, or sold  
4 by 1 UP NUTRITION contain lead and/or cadmium, chemicals listed under Proposition 65 as  
5 carcinogens and reproductive toxins, and expose consumers to these chemicals at a level  
6 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a  
7 “Covered Product” or collectively as “Covered Products”) are: (1) 1Up Nutrition 1Up Natural  
8 Organic Vegan Protein Chocolate (lead, cadmium), (2) 1Up Nutrition 1Up Natural Organic  
9 Vegan Protein Vanilla (lead, cadmium), (3) 1Up Nutrition 1Up Natural Organic Vegan Greens  
10 & Reds Superfoods (lead), (4) 1Up Nutrition 1Up All In One Pre-Workout Blue Raspberry  
11 (lead), (5) 1Up Nutrition 1Up All In One Pre-Workout Green Apple (lead), (6) 1Up Nutrition  
12 Make Her Lean Max (lead), (7) 1Up Nutrition Pure Rebuild Lean Muscle Builder Watermelon  
13 (lead), (8) 1Up Nutrition Pro Test Max (lead), (9) 1Up Nutrition BCAA's Glutamine & Joint  
14 Support Plus Hydration Complex Original Cola (lead), (10) 1Up Nutrition Pure Rebuild Lean  
15 Muscle Builder Pineapple (lead), (11) 1Up Nutrition BCAA's Glutamine & Collagen Plus  
16 Hydration Complex Pineapple (lead), and (12) 1Up Nutrition BCAA's Glutamine & Collagen  
17 Plus Hydration Complex Original Cola (lead).

18 **1.2** ERC and 1 UP NUTRITION are hereinafter referred to individually as a “Party”  
19 or collectively as the “Parties.”

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

24 **1.4** For purposes of this Consent Judgment, the Parties agree that 1 UP NUTRITION is  
25 a business entity that has employed ten or more persons at all times relevant to this action, and  
26 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. 1 UP  
27 NUTRITION manufactures, distributes, and/or sells the Covered Products.

28 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation

1 dated December 27, 2018 that was served on the California Attorney General, other public  
2 enforcers, and 1 UP NUTRITION (“Notice”). A true and correct copy of the 60-Day Notice  
3 dated December 27, 2018 is attached hereto as **Exhibit A** and incorporated herein by reference.  
4 More than 60 days have passed since the Notice was served on the Attorney General, public  
5 enforcers, and 1 UP NUTRITION and no designated governmental entity has filed a Complaint  
6 against 1 UP NUTRITION with regard to the Covered Products or the alleged violations.

7 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes  
8 persons in California to lead and/or cadmium without first providing clear and reasonable  
9 warnings in violation of California Health and Safety Code section 25249.6. 1 UP  
10 NUTRITION denies all material allegations contained in the Notice and Complaint.

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

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

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

23 **2. JURISDICTION AND VENUE**

24 For purposes of this Consent Judgment and any further court action that may become  
25 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
26 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
27 over 1 UP NUTRITION as to the acts alleged in the Complaint, that venue is proper in Alameda  
28 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final

1 resolution of all claims up through and including the Effective Date which were or could have  
2 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 on the Effective Date, 1 UP NUTRITION shall be permanently  
5 enjoined from manufacturing for sale in the State of California, “Distributing into the State of  
6 California,” or directly selling in the State of California, any Covered Products which expose a  
7 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or  
8 “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day unless it  
9 meets the warning requirements under Section 3.2.

10 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
11 of California” shall mean for 1 UP NUTRITION to directly ship a Covered Product into  
12 California for sale in California or to sell a Covered Product to a distributor that 1 UP  
13 NUTRITION knows or 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, the amount of lead in the ingredients listed in **Table 1** below, if applicable. 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, 1 UP  
24 NUTRITION shall be allowed to deduct the amount of lead which is deemed “naturally  
25 occurring” in the ingredients listed in **Table 1** that are contained in that Covered Product under  
26 the following conditions: For each year that 1 UP NUTRITION claims entitlement to a  
27 “naturally occurring” allowance, 1 UP NUTRITION shall provide ERC with the following  
28 information: (a) 1 UP NUTRITION must produce to ERC a written list of each ingredient in the

1 Covered Product for which a “naturally occurring” allowance is claimed; (b) 1 UP NUTRITION  
 2 must provide ERC with documentation of laboratory testing, conducted during the year for  
 3 which the “naturally occurring” allowance is claimed, that complies with Sections 3.4.3 and  
 4 3.4.4 and that shows the amount of lead, if any, contained in each ingredient listed in **Table 1**  
 5 that is contained in the Covered Product and for which 1 UP NUTRITION intends to deduct  
 6 “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in any of the  
 7 ingredients listed in **Table 1** that are contained in the Covered Product, 1 UP NUTRITION shall  
 8 be entitled to deduct up to the full amount of the allowance for those ingredients, as listed in  
 9 **Table 1**, but not to exceed the total amount of lead actually contained in those ingredients that  
 10 are in the Covered Product; and (d) If the Covered Product does not contain any of the  
 11 ingredients listed in **Table 1**, 1 UP NUTRITION shall not be entitled to a deduction for  
 12 “naturally occurring” lead in the Covered Product for those ingredients. The information  
 13 required by Sections 3.1.3 (a) and (b) shall be provided to ERC within thirty (30) days of the  
 14 Effective Date, or anniversary thereof, for any year that 1 UP NUTRITION shall claim  
 15 entitlement to 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           **3.1.4** For purposes of this Consent Judgment, the “Daily Cadmium Exposure  
2 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
3 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the  
4 product (using the largest serving size appearing on the product label), multiplied by servings  
5 of the product per day (using the largest number of recommended daily servings appearing on  
6 the label), which equals micrograms of cadmium exposure per day. If the label contains no  
7 recommended daily servings, then the number of recommended daily servings shall be one.


8           **3.2 Clear and Reasonable Warnings**

9           If 1 UP NUTRITION is required to provide a warning pursuant to Section 3.1, the  
10 following warning (“Long-form Warning”) must be utilized (“Warning”):

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

14           1 UP NUTRITION may elect to use the one of the following short form warnings (“Short-  
15 form Warning”) as well:  **WARNING:** Cancer – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

16            **WARNING:** Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

17            **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

18           1 UP NUTRITION shall use the phrase “cancer and” in the Warning if 1 UP NUTRITION  
19 has reason to believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of  
20 lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if 1 UP  
21 NUTRITION has reason to believe that another Proposition 65 chemical is present which may  
22 require a cancer warning. As identified in the brackets, if the Long-form Warning is used, the  
23 warning shall appropriately reflect whether there is lead, cadmium, or both chemicals present in  
24 each of the Covered Products. If the Short-form Warning is used, a symbol consisting of a black  
25 exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the  
26 left of the text of the Warning, in a size no smaller than the height of the word “**WARNING.**”

27           The Warning shall be securely affixed to or printed upon the container or label of each  
28 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 the  
2 internet on 1 UP NUTRITION's website, the Warning shall appear on the checkout page when a  
3 California delivery address is indicated for any purchase of any Covered Product. An asterisk or  
4 other identifying method must be utilized to identify which products on the checkout page are  
5 subject to the Warning. The Warning on 1 UP NUTRITION's website may be made through a  
6 clearly marked hyperlink using the word "WARNING" in all capital and bold letters on the  
7 checkout page so long as the hyperlink goes directly to a page prominently displaying the Long-  
8 form Warning without content that detracts from the Warning. The Warning shall be at least the  
9 same size as the largest of any other health or safety warnings also appearing on 1 UP  
10 NUTRITION's website or on the label or container of 1 UP NUTRITION's product packaging  
11 and the word "WARNING" shall be in all capital letters and in bold print. No statements  
12 intended to or likely to have the effect of diminishing the impact of the Warning on the average  
13 lay person shall accompany the Warning. Further no statements may accompany the Warning that  
14 state or imply that the source of the listed chemical has an impact on or results in a less harmful  
15 effect of the listed chemical.

16 1 UP NUTRITION must display the above Warning with such conspicuousness, as  
17 compared with other words, statements or designs on the label or container, or on the website, if  
18 applicable, to render the Warning likely to be read and understood by an ordinary individual under  
19 customary conditions of purchase or use of the product.

### 20 **3.3 Conforming Covered Products**

21 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure  
22 Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure Level"  
23 is no more than 4.1 micrograms of cadmium per day as determined by the quality control  
24 methodology described in Section 3.4.

### 25 **3.4 Testing and Quality Control Methodology**

26 **3.4.1** Beginning within one year of the Effective Date, 1 UP NUTRITION shall  
27 arrange for lead and cadmium testing of the Covered Products at least once a year for a minimum  
28 of five consecutive years by arranging for testing of five randomly selected samples of each of

1 the Covered Products, in the form intended for sale to the end-user, which 1 UP NUTRITION  
2 intends to sell or is manufacturing for sale in California, directly selling to a consumer in  
3 California or “Distributing into the State of California.” If tests conducted pursuant to this  
4 Section demonstrate that no Warning is required for a Covered Product during each of five  
5 consecutive years, then the testing requirements of this Section will no longer be required as to  
6 that Covered Product. However, if during or after the five-year testing period, 1 UP  
7 NUTRITION changes ingredient suppliers for any of the Covered Products and/or reformulates  
8 any of the Covered Products, 1 UP NUTRITION shall test that Covered Product annually for at  
9 least four (4) consecutive years after such change is made.

10 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or  
11 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the five  
12 (5) randomly selected samples of the Covered Products will be controlling.

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

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

22 **3.4.5** Nothing in this Consent Judgment shall limit 1 UP NUTRITION’s  
23 ability to conduct, or require that others conduct, additional testing of the Covered Products,  
24 including the raw materials used in their manufacture.

25 **3.4.6** Within thirty (30) days of ERC’s written request, 1 UP NUTRITION shall  
26 deliver lab reports obtained pursuant to Section 3.4 to ERC. 1 UP NUTRITION shall retain all  
27 test results and documentation for a period of five years from the date of each test.

28 **3.4.7** Except for the requirements of Section 3.1.3, as applicable, the



1 requirements of Section 3.4.1 of this Consent Judgment shall not apply to any Covered Product  
2 for which a Warning is provided, continuously and without interruption from the Effective  
3 Date, in accordance with Section 3. In the event a Warning is provided after the Effective Date  
4 but 1 UP NUTRITION thereafter ceases to provide the Warning, the requirements of Section  
5 3.4.1 of this Consent Judgment shall apply beginning one year after the date the Warning  
6 ceases to be provided, unless 1 UP NUTRITION can show to the satisfaction of ERC that the  
7 cessation in providing the Warning was a temporary error that was resolved when discovered.

#### 8 **4. SETTLEMENT PAYMENT**

9 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,  
10 attorney's fees, and costs, 1 UP NUTRITION shall make a total payment of \$110,000.00  
11 ("Total Settlement Amount") to ERC in four periodic payments (the "Periodic Payments")  
12 according to the following payment schedule ("Due Dates"):

- 13 • Payment 1 -- \$27,500.00 within 5 days of the Effective Date
- 14 • Payment 2 -- \$27,500.00 within 35 days of the Effective Date
- 15 • Payment 3 -- \$27,500.00 within 65 days of the Effective Date
- 16 • Payment 4 -- \$27,500.00 within 95 days of the Effective Date

17 1 UP NUTRITION shall make these payment by wire transfer to ERC's account, for  
18 which ERC will give 1 UP NUTRITION the necessary account information. The Total  
19 Settlement Amount shall be apportioned as follows:

20 **4.2** \$33,245.72 shall be considered a civil penalty pursuant to California Health and  
21 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$24,934.29) of the civil penalty to  
22 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
23 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
24 Code section 25249.12(c). ERC will retain the remaining 25% (\$8,311.43) of the civil penalty.

25 **4.3** \$6,499.86 shall be distributed to ERC as reimbursement to ERC for reasonable  
26 costs incurred in bringing this action.

27 **4.4** \$24,934.25 shall be distributed to ERC as an Additional Settlement Payment  
28 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and

1 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly  
2 caused by Defendant in this matter. These activities are detailed below and support ERC's  
3 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary  
4 supplement products in California. ERC's activities have had, and will continue to have, a direct  
5 and primary effect within the State of California because California consumers will be benefitted  
6 by the reduction and/or elimination of exposure to lead and/or cadmium in dietary supplements  
7 and/or by providing clear and reasonable warnings to California consumers prior to ingestion of  
8 the products.

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

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

6 **4.5** \$17,294.70 shall be distributed to Aqua Terra Aeris Law Group as reimbursement  
7 of ERC's attorney's fees, while \$28,025.47 shall be distributed to ERC for its in-house legal  
8 fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

9 **4.6** In the event that 1 UP NUTRITION fails to remit the Periodic Payments owed  
10 pursuant to Section 4.1 of this Consent Judgment on or before the applicable Due Date, 1 UP  
11 NUTRITION shall be deemed to be in material breach of its obligations under this Consent  
12 Judgment. ERC shall provide written notice of the delinquency to 1 UP NUTRITION and its  
13 attorney, Charles C. Weller, via electronic mail and certified mail. If 1 UP NUTRITION fails  
14 to deliver the delinquent payment within ten (10) days of the certified mailing or seven (7)  
15 days from receipt of the certified mailing, whichever date is later, the Total Settlement Amount,  
16 less any amounts previously paid pursuant to Section 4.1, shall be immediately due and owing  
17 and shall accrue interest at the statutory judgment interest rate provided in the California Code  
18 of Civil Procedure section 685.010. Additionally, 1 UP NUTRITION agrees to pay ERC's  
19 reasonable attorney's fees and costs for any efforts to collect the payment(s) due under this  
20 Consent Judgment.

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

22 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
23 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or  
24 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
25 modified consent judgment.

26 **5.2** If 1 UP NUTRITION seeks to modify this Consent Judgment under Section 5.1,  
27 then 1 UP NUTRITION must provide written notice to ERC of its intent ("Notice of Intent"). If  
28 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then

1 ERC must provide written notice to 1 UP NUTRITION within thirty (30) days of receiving the  
2 Notice of Intent. If ERC notifies 1 UP NUTRITION in a timely manner of ERC's intent to  
3 meet and confer, then the Parties shall meet and confer in good faith as required in this Section.  
4 The Parties shall meet in person or via telephone within thirty (30) days of ERC's notification  
5 of its intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the  
6 proposed modification, ERC shall provide to 1 UP NUTRITION a written basis for its position.  
7 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to  
8 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing  
9 to different deadlines for the meet-and-confer period.

10 **5.3** Where the meet-and-confer process does not lead to a joint motion or  
11 application in support of a modification of the Consent Judgment, then either Party may seek  
12 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any  
13 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure  
14 section 1021.5.

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

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

19 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
20 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
21 inform 1 UP NUTRITION in a reasonably prompt manner of its test results, including  
22 information sufficient to permit 1 UP NUTRITION to identify the Covered Products at issue. 1  
23 UP NUTRITION shall, within thirty (30) days following such notice, provide ERC with testing  
24 information, from an independent third-party laboratory meeting the requirements of Sections  
25 3.4.3 and 3.4.4, demonstrating 1 UP NUTRITION's compliance with the Consent Judgment.  
26 The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

27 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

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

20 **8.2** ERC on its own behalf only, and 1 UP NUTRITION on its own behalf only,  
21 further waive and release any and all claims they may have against each other for all actions or  
22 statements made or undertaken in the course of seeking or opposing enforcement of Proposition  
23 65 in connection with the Notice and Complaint up through and including the Effective Date,  
24 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to  
25 enforce the terms of this Consent Judgment.

26 **8.3** It is possible that other claims not known to the Parties, arising out of the facts  
27 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be  
28 discovered. ERC on behalf of itself only, and 1 UP NUTRITION on behalf of itself only,

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

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

10 ERC on behalf of itself only, and 1 UP NUTRITION on behalf of itself only, acknowledge and  
11 understand the significance and consequences of this specific waiver of California Civil Code  
12 section 1542.

13 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
14 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
15 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

16 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
17 environmental exposures arising under Proposition 65, nor shall it apply to any of 1 UP  
18 NUTRITION's products other than the Covered Products.

19 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

22 **10. GOVERNING LAW**

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

25 **11. PROVISION OF NOTICE**

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

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

2 Chris Heptinstall, Executive Director, Environmental Research Center  
3 3111 Camino Del Rio North, Suite 400  
4 San Diego, CA 92108  
5 Ph: (619) 500-3090  
6 Email: chris.heptinstall@erc501c3.org

7 With a copy to:

8 MATTHEW C. MACLEAR  
9 ANTHONY M. BARNES  
10 AQUA TERRA AERIS LAW GROUP  
11 490 43<sup>rd</sup> Street, Suite 108  
12 Oakland, CA 94609  
13 Telephone: (415) 568-5200  
14 Email: mcm@atalawgroup.com

15 **FOR 1 UP NUTRITION LLC:**

16 Vadim Mordovin, CEO  
17 1 UP Nutrition, LLC  
18 7260 NW 58<sup>th</sup> St.  
19 Miami, Florida 33166

20 With a copy to:

21 CHARLES C. WELLER, ESQ.  
22 CHARLES C. WELLER, A.P.C.  
23 11412 Corley Ct.  
24 San Diego, CA 92126  
25 Email: legal@cweller.com

26 **12. COURT APPROVAL**

27 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
28 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
Consent Judgment.

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

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

29 **13. EXECUTION AND COUNTERPARTS**

This Consent Judgment may be executed in counterparts, which taken together shall be

1 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
2 as the original signature.

#### 3 **14. DRAFTING**

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

#### 12 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

#### 17 **16. ENFORCEMENT**

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

#### 26 **17. ENTIRE AGREEMENT, AUTHORIZATION**

27 **17.1** This Consent Judgment contains the sole and entire agreement and  
28 understanding of the Parties with respect to the entire subject matter herein, and any and all



1 prior discussions, negotiations, commitments, and understandings related hereto. No  
2 representations, oral or otherwise, express or implied, other than those contained herein have  
3 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
4 herein, shall be deemed to exist or to bind any Party.

5 17.2 Each signatory to this Consent Judgment certifies that he or she is fully  
6 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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


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

15 (2) Make the findings pursuant to California Health and Safety Code section  
16 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

17 **IT IS SO STIPULATED:**

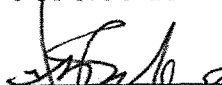
18 Dated: 4/26/, 2019

ENVIRONMENTAL RESEARCH  
CENTER, INC.

19  
20 By:   
21 Chris Heppins, Executive Director

22  
23 Dated: April 26, 2019

I UP NUTRITION LLC

24  
25 By:   
26 Its: President/Co-Founder  
27  
28

1 APPROVED AS TO FORM:

2 Dated: 4/26, 2019

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  
10 Dated: 4/26, 2019

CHARLES C. WELLER, A.P.C.

11 By: 

12 Charles C. Weller  
13 Attorney for Defendant 1 UP Nutrition  
14 LLC

15 **ORDER AND JUDGMENT**

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

18 IT IS SO ORDERED, ADJUDGED AND DECREED.

19 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
20 Judge of the Superior Court