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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ALAMEDA**

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

14 **Plaintiff,**

15 **vs.**

16 **MUSCLE FEAST, LLC and DOES 1-100**

17 **Defendants.**

CASE NO. RG19020603

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 28, 2019

Trial Date: None set

18
19 **1. INTRODUCTION**

20 **1.1** On May 28, 2019, Plaintiff Environmental Research Center, Inc. (“ERC”), a
21 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
22 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
23 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
24 (“Proposition 65”), against Muscle Feast, LLC (“Muscle Feast”) and Does 1-100. In this
25 action, ERC alleges that a number of products manufactured, distributed, or sold by Muscle
26 Feast contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive
27 toxin, and exposes consumers to this chemical at a level requiring a Proposition 65 warning.
28 These products (referred to hereinafter individually as a “Covered Product” or collectively as

1 “Covered Products”) are: (1) MuscleFeast Pumped 2.0 Sour Apple, (2) MuscleFeast Pumped
2 2.0 Grape, (3) MuscleFeast Grass Fed 100% Natural Ultimate Gainer Vanilla, (4) MuscleFeast
3 Grass Fed 100% Natural Ultimate Gainer Unflavored, (5) MuscleFeast Organic Spirulina, (6)
4 MuscleFeast Maltodextrin Unflavored, and (7) MuscleFeast Grass Fed 100% Natural Recover
5 Chocolate.

6 **1.2** ERC and Muscle Feast are hereinafter referred to individually as a “Party” or
7 collectively as the “Parties.”

8 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
9 causes, helping safeguard the public from health hazards by reducing the use and misuse of
10 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
11 and encouraging corporate responsibility.

12 **1.4** For purposes of this Consent Judgment, the Parties agree that Muscle Feast is a
13 business entity that has employed ten or more persons at all times relevant to this action, and
14 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
15 Muscle Feast manufactures, distributes, and/or sells the Covered Products.

16 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
17 dated February 28, 2019 that was served on the California Attorney General, other public
18 enforcers, and Muscle Feast (“Notice”). A true and correct copy of the 60-Day Notice dated
19 February 28, 2019 is attached hereto as **Exhibit A** and is incorporated herein by reference. More
20 than 60 days have passed since the Notice was served on the Attorney General, public enforcers,
21 and Muscle Feast, and no designated governmental entity has filed a Complaint against Muscle
22 Feast with regard to the Covered Products or the alleged violations.

23 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
24 persons in California to lead without first providing clear and reasonable warnings in violation
25 of California Health and Safety Code section 25249.6. Muscle Feast denies all material
26 allegations contained in the Notice and Complaint.

27 **1.7** The Parties have entered into this Consent Judgment in order to settle,
28 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.

1 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
2 or be construed as an admission by any of the Parties or by any of their respective officers,
3 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
4 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
5 issue of law, or violation of law. Synergy CHC denies all material allegations contained in the
6 Notice and Complaint and maintains that it has complied with Proposition 65 with respect to
7 the Covered Products.

8 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
9 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
10 any current or future legal proceeding unrelated to these proceedings.

11 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered
12 as a Judgment by this Court.

13 **2. JURISDICTION AND VENUE**

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

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

22 **3.1** Beginning on the Effective Date, Muscle Feast shall be permanently enjoined
23 from manufacturing for sale in the State of California, "Distributing into the State of
24 California," or directly selling in the State of California, any Covered Products which expose a
25 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it
26 meets the warning requirements under Section 3.2.

27 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State
28 of California" shall mean to directly ship a Covered Product into California for sale in

1 California or to sell a Covered Product to a distributor that Muscle Feast knows or has reason
2 to know will sell the Covered Product in California.

3 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
4 Level” shall be measured in micrograms, and shall be calculated using the following formula:
5 micrograms of lead per gram of product, multiplied by grams of product per serving of the
6 product (using the largest serving size appearing on the product label), multiplied by servings
7 of the product per day (using the largest number of recommended daily servings appearing on
8 the label), which equals micrograms of lead exposure per day. If the label contains no
9 recommended daily servings, then the number of recommended daily servings shall be one.

10 **3.2 Clear and Reasonable Warnings**

11 If Muscle Feast is required to provide a warning pursuant to Section 3.1, the following
12 warning must be utilized (“Warning”):

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

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

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

28 The Warning shall be at least the same size as the largest of any other health or safety

1 warnings also appearing on the website or on the label or container of Muscle Feast’s product
2 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No
3 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
4 average lay person shall accompany the Warning. Further no statements may accompany the
5 Warning that state or imply that the source of the listed chemical has an impact on or results in a
6 less harmful effect of the listed chemical.

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

11 **3.3 Conforming Covered Products**

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

15 **3.4 Testing and Quality Control Methodology**

16 **3.4.1** Beginning within one year of the Effective Date, Muscle Feast shall
17 arrange for lead testing of the Covered Products at least once a year for a minimum of five
18 consecutive years by arranging for testing of five randomly selected samples of each of the
19 Covered Products, in the form intended for sale to the end-user, which Muscle Feast intends to
20 sell or is manufacturing for sale in California, directly selling to a consumer in California or
21 “Distributing into the State of California.” If tests conducted pursuant to this Section
22 demonstrate that no Warning is required for a Covered Product during each of five consecutive
23 years, then the testing requirements of this Section will no longer be required as to that
24 Covered Product. However, if during or after the five-year testing period, Muscle Feast
25 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the
26 Covered Products, Muscle Feast shall test that Covered Product annually for at least four (4)
27 consecutive years after such change is made.

28 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest

1 lead detection result of the five (5) randomly selected samples of the Covered Products will be
2 controlling.

3 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
4 laboratory method that complies with the performance and quality control factors appropriate
5 for the method used, including limit of detection, qualification, accuracy, and precision that
6 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
7 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

8 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
9 independent third party laboratory certified by the California Environmental Laboratory
10 Accreditation Program or an independent third-party laboratory that is registered with the
11 United States Food & Drug Administration.

12 **3.4.5** Nothing in this Consent Judgment shall limit Muscle Feast’s ability to
13 conduct, or require that others conduct, additional testing of the Covered Products, including
14 the raw materials used in their manufacture.

15 **3.4.6** Within thirty (30) days of ERC’s written request, Muscle Feast shall
16 deliver lab reports obtained pursuant to Section 3.4 to ERC. Muscle Feast shall retain all test
17 results and documentation for a period of five years from the date of each test.

18 **4. SETTLEMENT PAYMENT**

19 **4.1** In full satisfaction of all potential civil penalties, additional settlement
20 payments, attorney’s fees, and costs, Muscle Feast shall make a total payment of \$55,000.00
21 (“Total Settlement Amount”) to ERC in three (3) consecutive monthly payments, according to
22 the following payment schedule (“Due Dates”):

- 23 • Payment 1 -- \$18,333.33 within 5 days of the Effective Date
- 24 • Payment 2 -- \$18,333.33 within 35 days of the Effective Date
- 25 • Payment 3 -- \$18,333.34 within 65 days of the Effective Date

26 Muscle Feast shall make these payments by wire transfer to ERC’s account, for which ERC
27 will give Muscle Feast the necessary account information. The Total Settlement Amount shall
28 be apportioned as follows:

1 **4.2** \$16,035.89 shall be considered a civil penalty pursuant to California Health and
2 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$12,026.91) of the civil penalty to
3 the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
4 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
5 Code section 25249.12(c). ERC will retain the remaining 25% (\$4,008.98) of the civil penalty.

6 **4.3** \$5,386.26 shall be distributed to ERC as reimbursement to ERC for reasonable
7 costs incurred in bringing this action.

8 **4.4** \$12,026.90 shall be distributed to ERC as an Additional Settlement Payment
9 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
10 and 3204. ERC will utilize the ASP for activities that address the same public harm as
11 allegedly caused by Defendant in this matter. These activities are detailed
12 below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic
13 chemicals in dietary supplement products in California. ERC’s activities have had, and will
14 continue to have, a direct and primary effect within the State of California because California
15 consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary
16 supplements and/or by providing clear and reasonable warnings to California consumers prior
17 to ingestion of the products.

18 Based on a review of past years’ actual budgets, ERC is providing the following list of
19 activities ERC engages in to protect California consumers through Proposition 65 citizen
20 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
21 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
22 supplement products that may contain lead and are sold to California consumers. This work
23 includes continued monitoring and enforcement of past consent judgments and settlements to
24 ensure companies are in compliance with their obligations thereunder, with a specific focus on
25 those judgments and settlements concerning lead. This work also includes investigation of new
26 companies that ERC does not obtain any recovery through settlement or judgment; (2)
27 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC’s Voluntary
28 Compliance Program by acquiring products from companies, developing and maintaining a

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

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

15 **4.5** \$21,550.95 shall be distributed to ERC for its in-house legal fees. Except as
16 explicitly provided herein, each Party shall bear its own fees and costs.

17 **4.6** In the event that Muscle Feast fails to remit a payment pursuant to Section 4.1
18 of this Consent Judgment on or before the respective Due Date, Muscle Feast shall be deemed
19 to be in material breach of its obligations under this Consent Judgment. ERC shall provide
20 written notice of the delinquency to Muscle Feast via electronic mail. If Muscle Feast fails to
21 deliver the delinquent payment within five (5) days from the written notice, the Total
22 Settlement Amount, less any amounts previously paid pursuant to Section 4.1, shall be
23 immediately due and owing and shall accrue interest at the statutory judgment interest rate
24 provided in the California Code of Civil Procedure section 685.010. Additionally, Muscle
25 Feast agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the
26 payment due under this Consent Judgment.

27 **5. MODIFICATION OF CONSENT JUDGMENT**

28 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by

1 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
2 or (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
3 modified consent judgment.

4 **5.2** If Muscle Feast seeks to modify this Consent Judgment under Section 5.1, then
5 Muscle Feast must provide written notice to ERC of its intent (“Notice of Intent”). If ERC
6 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC
7 must provide written notice to Muscle Feast within thirty (30) days of receiving the Notice of
8 Intent. If ERC notifies Muscle Feast in a timely manner of ERC’s intent to meet and confer,
9 then the Parties shall meet and confer in good faith as required in this Section. The Parties
10 shall meet in person or via telephone within thirty (30) days of ERC’s notification of its intent
11 to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
12 modification, ERC shall provide to Muscle Feast a written basis for its position. The Parties
13 shall continue to meet and confer for an additional thirty (30) days in an effort to resolve any
14 remaining disputes. Should it become necessary, the Parties may agree in writing to different
15 deadlines for the meet-and-confer period.

16 **5.3** In the event that Muscle Feast initiates or otherwise requests a modification
17 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
18 modification of the Consent Judgment, Muscle Feast shall reimburse ERC its costs and
19 reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and
20 arguing the motion or application.

21 **5.4** Where the meet-and-confer process does not lead to a joint motion or
22 application in support of a modification of the Consent Judgment, then either Party may seek
23 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
24 attorney’s fees incurred in opposing the motion pursuant to California Code of Civil Procedure
25 section 1021.5.

26 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
27 **JUDGMENT**

28 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or

1 terminate this Consent Judgment.

2 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
3 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
4 inform Muscle Feast in a reasonably prompt manner of its test results, including information
5 sufficient to permit Muscle Feast to identify the Covered Products at issue. Muscle Feast shall,
6 within thirty (30) days following such notice, provide ERC with testing information, from an
7 independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
8 demonstrating Muscle Feast's compliance with the Consent Judgment. The Parties shall first
9 attempt to resolve the matter prior to ERC taking any further legal action.

10 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

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

1 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
2 lead up to and including the Effective Date.

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

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

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

21 ERC on behalf of itself only, and Muscle Feast on behalf of itself only, acknowledge and
22 understand the significance and consequences of this specific waiver of California Civil Code
23 section 1542.

24 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
25 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
26 in the Covered Products as set forth in the Notice and Complaint.

27 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
28 environmental exposures arising under Proposition 65, nor shall it apply to any of Muscle

1 Feast's products other than the Covered Products.

2 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

6 **10. GOVERNING LAW**

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

9 **11. PROVISION OF NOTICE**

10 All notices required to be given to either Party to this Consent Judgment by the other shall
11 be in writing and sent to the following agents listed below via first-class mail or via electronic
12 mail where required. Courtesy copies via email may also be sent.

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

14 Chris Heptinstall, Executive Director, Environmental Research Center
15 3111 Camino Del Rio North, Suite 400
16 San Diego, CA 92108
17 Ph: (619) 500-3090
18 Email: chris.heptinstall@erc501c3.org

19 With a copy to:

20 Charles W. Poss
21 Environmental Research Center, Inc.
22 3111 Camino Del Rio North, Suite 400
23 San Diego, CA 92108
24 Ph: (619) 500-3090
25 Fax: (706) 858-0326

26 Sean Gillespie
27 Muscle Feast, LLC
28 1320 Boston Road
Nashport, OH. 43830
sean@musclefeast.com
888-734-3634

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
16 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
17 and 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
26 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may
27 be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

28 ///

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.
6 To the extent the failure to comply with the Consent Judgment constitutes a violation of
7 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
8 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
9 provided by law for failure to comply with Proposition 65 or other laws.

10 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

17 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

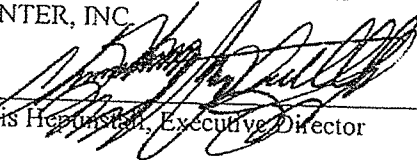
24 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
25 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
26 been diligently prosecuted, and that the public interest is served by such settlement; and

27 (2) Make the findings pursuant to California Health and Safety Code section
28 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

1 IT IS SO STIPULATED:


2
3 Dated: 6/31, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC

4
5 By: 
6 Chris Hepburn, Executive Director

7
8 Dated: 6/5, 2019

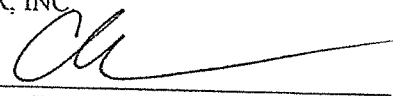
MUSCLE FEAST, LLC.

9
10 By: 
11 Sean Gillespie, President

12
13 APPROVED AS TO FORM:

14 Dated: 6/5, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC

15
16 By: 
17 Charles W. Poss
18 In-House Counsel

19
20
21 ORDER AND JUDGMENT

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

24 IT IS SO ORDERED, ADJUDGED AND DECREED.

25
26 Dated: _____, 2019

27 Judge of the Superior Court