

1 James R. Wheaton (SBN 115230)
Lowell Chow (SBN 273856)
2 Nathaniel Kane (SBN 279394)
ENVIRONMENTAL LAW FOUNDATION
3 1222 Preservation Park Way, Suite 200
Oakland, CA 94612
4 Telephone: (510) 208-4555
Email: wheaton@envirolaw.org
5 nkane@envirolaw.org

6 Attorneys for Plaintiff
ENVIRONMENTAL LAW FOUNDATION

7
8 Trenton H. Norris (SBN 164781)
SARAH ESMALI (SBN 206053)
ARNOLD & PORTER KAYE SCHOLER LLP
9 Three Embarcadero Center, 10th Floor
San Francisco, CA 94111
10 Telephone: (415) 471-3283
Email: trenton.norris@arnoldporter.com
11 sarah.esmaili@arnoldporter.com

12 Attorneys for Defendant
13 PROTEIN SUPPLEMENTS, LLC

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

17 ENVIRONMENTAL LAW FOUNDATION,
18 on behalf of the General Public

19 Plaintiff,

20 v.

21 PROTEIN SUPPLEMENTS, LLC

22 Defendant.

Case No.: RG19031319

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1** On May 30, 2019, Environmental Law Foundation (“ELF”) issued a 60-day
3 notice of violation (“Notice”) under Cal. Health & Safety Code §§ 25249.5 et seq.
4 (“Proposition 65”) that was served on Defendant Protein Supplements, LLC (“Defendant”)
5 and all required California public enforcers. In the Notice, ELF alleges that protein
6 supplement products including the non-exclusive exemplar, the Gold 50+ Shake Creamy
7 Cocoa, that have been manufactured, distributed, or sold by Defendant cause exposures to
8 lead and that such products require warnings under Proposition 65.

9 **1.2** On August 15, 2019, ELF individually and on behalf of the public interest,
10 initiated this action against Defendant. The Complaint asserted a cause of action under
11 Proposition 65 on the basis of the allegations contained in the Notice.

12 **1.3** In its Complaint, ELF alleges that Defendant has manufactured, packaged,
13 distributed, marketed and/or sold protein supplement products that require warnings for
14 alleged exposure to lead under Cal. Health & Safety Code §§ 25249.6 (“Proposition 65”)
15 and that such warnings were not provided to consumers. The protein supplement products
16 that are covered by this Consent Judgment are described in Exhibit A hereto (the “Covered
17 Products”). Upon entry of the Consent Judgment, the Complaint shall be deemed
18 amended *nunc pro tunc* to cover the Covered Products identified in Exhibit A. The term
19 “Settling Defendant” shall mean and include those entities set forth in Exhibit A.

20 **1.4** For purposes of this Consent Judgment only, ELF and Defendant (collectively
21 referred to as the “Parties” or individually as a “Party”), stipulate that this Court has
22 jurisdiction over allegations of violations contained in the Complaint and personal jurisdiction
23 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of
24 Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a resolution of
25 all claims which could have been raised in the Complaint based on the facts alleged in the
26 Complaint and the Notice.

27 **1.5** Court-approved consent judgments in *Environmental Law Foundation v.*
28 *Abbott Laboratories et al.*, San Francisco Superior Court Lead Case No. CGC-10-503002

1 (consent judgment filed February 18, 2014) (“*Abbott Labs*”) as to fourteen defendants set the
2 following warning thresholds for lead: 4.0 micrograms of lead per day (for chocolate and
3 gainer Covered Products) and 3.0 micrograms of lead per day (for all other Covered
4 Products). In addition, a later consent judgment incorporated the same *Abbott Labs* warning
5 thresholds standards for a defendant in a separate lawsuit filed by a different plaintiff. *As You*
6 *Sow v. Garden of Life, Inc.*, San Francisco County Superior Court No. 14-540621 (consent
7 judgment filed June 26, 2015) (“*Garden of Life*”). The Covered Products are similar to the
8 types of products covered in the *Abbott Labs* and *Garden of Life* consent judgments and
9 certain of those products covered in those consent judgments are competitor products.

10 1.6 This Consent Judgment resolves claims that Settling Defendant denies and
11 disputes and defenses that ELF denies and disputes. The Parties enter into this Consent
12 Judgment pursuant to a full and final settlement of any and all claims between the Parties for
13 the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall be
14 construed as an admission by the Parties of any material allegation in the Notices or the
15 Complaint, or of any fact, conclusion of law, issue of law, or violation of law of any kind,
16 including without limitation, any admission concerning any alleged or actual violation of
17 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine. Nothing
18 in this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
19 admission by the Parties, or give rise to any inference, of any fact, conclusion of law, issue of
20 law, or violation of law, or of fault, wrongdoing, or liability by Settling Defendant, its
21 officers, directors, employees, or parent, subsidiary, or affiliated corporations, or be offered or
22 admitted as evidence in any administrative or judicial proceeding or litigation in any court,
23 agency, or forum. However, this paragraph shall not diminish or affect the responsibilities
24 and duties of the Parties under this Consent Judgment

25 1.7 The “Effective Date” is the date on which this Consent Judgment is approved
26 by the Court.

1 **2. MONITORING**

2 **2.1** No later than one hundred and eighty (180) days after the Effective Date,
3 Settling Defendant will test or arrange for the testing for lead of each of its Covered
4 Products that it intends to distribute or sell in California. In establishing an initial data set
5 for purposes of this Consent Judgment, a Settling Defendant may rely on testing conducted
6 prior to the Effective Date if such testing documents lead levels in Covered Products either
7 already in the stream of commerce, in process, or which are ready for distribution or sale.

8 **2.1.1** A Settling Defendant may use a testing laboratory with
9 Environmental Laboratory Certification from the State of California, Department of Health
10 Services, Environmental Laboratory Accreditation Program; NSF International; American
11 Association for Laboratory Accreditation for Chemical Testing; International Standards
12 Organization/IEC via ANSI-ASQ; or an in-house laboratory or other facility experienced in
13 testing for lead levels in foods that complies with the Production and Process Control
14 System: Requirements for Laboratory Operations set forth in 21 C.F.R. Part 111, Subpart J,
15 including but not limited to the requirements for written procedures, requirements for
16 laboratory control processes, requirements for laboratory methods for testing and
17 examination, record retention policies, and other laboratory requirements.

18 **2.1.2** The lead concentrations must be measured using inductively coupled
19 plasma mass spectrometry (“ICP-MS”) utilizing scientifically appropriate adherence to the
20 protocols set forth in EPA Methods 6020, 6020a, isotope dilution. The laboratory must
21 digest at least 0.5 grams of each sample, analyze each sample undiluted by ICP-MS, and
22 use an instrument quantitation limit corresponding to less than three (3) micrograms lead
23 in the finished product.

24 **2.2** To fulfill its monitoring obligation under Section 2.1 and using a testing
25 method described therein, each Defendant must test or cause to be tested three (3) samples of
26 the final product which comprises each Covered Product, with samples randomly selected
27 from three (3) different lots (or from the maximum number of lots that are available for
28 testing if there are fewer than three (3) lots available). The testing required under this Section

1 2.2 will be repeated annually for two years following the compilation of the initial data set
2 described in Section 2.1. Notwithstanding any language to the contrary herein, if at any time
3 there is a material change in formula of a Covered Product that is reasonably likely to affect
4 the lead levels in the product, that product shall be tested pursuant to Sections 2.1 and 2.2 for
5 a minimum of two years. All laboratory test data and certifications (if applicable) must be
6 retained by Settling Defendant for a period of three years from the date of testing. However,
7 Settling Defendant is not required to test any Covered Products if they are providing a
8 warning for those products that complies with Section 3.2.

9 **2.2.1** On and after the Effective Date, any single test result which exceeds
10 5.75 ug/day lead as calculated under this Section 2 shall be deemed an outlier. On and after
11 the first anniversary of the Effective Date, any single test result which exceeds 5.0 ug/day lead
12 as calculated under this Section 2 shall be deemed an outlier. Any outlier result as described
13 in this Section 2.2.1 is referred to hereinafter as an "Outlier."

14 **2.2.2** At a Settling Defendant's option, any single Outlier test result may be
15 subject to validation before it is deemed a final Outlier result for purposes of this Consent
16 Judgment. The validation process shall consist of two steps.

17 **(a)** First, Settling Defendant shall check its equipment, test
18 processes, validation procedures, laboratory contamination, operator error and any other
19 factors which could have produced an erroneous result. If the result is determined erroneous
20 due to testing error or failure to satisfy quality assurance or quality control procedures, the
21 result shall be discarded and not used for any purpose under this Consent Judgment. The
22 Covered Product shall then be re-tested as if such test were the first test.

23 **(b)** Second, if a single Outlier test result is obtained and the steps in
24 2.2.2(a) have not invalidated the result, then Settling Defendant may collect up to three (3)
25 more samples from the same lot or batch and have those samples tested in accordance with
26 this Section 2. The arithmetic mean of the test results of all samples tested from the single lot
27 or batch (including the original Outlier test result) shall then be determined. That mean test
28 result shall be deemed the final result and shall constitute the applicable test result for

1 purposes of this Consent Judgment. If this validated test result is an Outlier as defined in
2 Section 2.2.1, then the terms of Section 3.3 shall apply to that Outlier test result.

3 **2.3** If there is an allegation that a Covered Product is in violation of Section 3.4,
4 ELF may make a written request to the Settling Defendant responsible for producing that
5 Covered Product, delivered to the address of the Settling Defendant as set forth in Section 14,
6 for data generated in compliance with Sections 2.1 and 2.2. In response to such a request,
7 Settling Defendant will provide to ELF the date the analysis was performed, the name of the
8 laboratory conducting the test, the test method used by the laboratory, the detection limit used
9 by the laboratory, the lot numbers of the samples tested, and the analytical results within thirty
10 (30) days of ELF's written request. ELF shall keep all such information and data confidential,
11 including from other Defendants. Settling Defendant shall provide to ELF within 45 days of
12 completing the initial testing of its Covered Products under Section 2.1, and annually
13 thereafter during the testing period set forth in Section 2.2, a list of all such products for
14 which the test results obtained pursuant to this Section II indicate a Proposition 65 warning is
15 required pursuant to Section III herein.

16 **3. CLEAR AND REASONABLE WARNINGS**

17 **3.1** Pursuant to this Consent Judgment, warnings are required under Proposition 65
18 only with respect to Covered Products a Settling Defendant sells to California consumers that
19 expose users to more than three (3.0) micrograms of lead in a Daily Serving, unless the
20 Covered Product is a Gainer Product or a Chocolate Product, as those terms are defined in this
21 paragraph and identified in Exhibit A for Settling Defendant. Warnings are required for
22 Gainer Products and Chocolate Products a Settling Defendant sells to California consumers
23 that expose users to more than four (4.0) micrograms of lead in a Daily Serving. "Gainer
24 Products" are Covered Products that are marketed primarily as "weight gainers," "mass
25 gainers," "extra calories" or any similar designation, to a sports nutrition/weight-
26 lifting/bodybuilding-oriented consumer, or to consumers seeking additional calories to
27 supplement their diets for purposes of gaining weight or for purposes of maximizing caloric
28 intake per consumption episode. "Chocolate Products" are Covered Products that contain any

1 variety or form of the ingredient generally referred to as “chocolate,” including without
2 limitation, the ingredients chocolate, chocolate liquor, cocoa, cocoa mass, cocoa butter, cocoa
3 powder, cacao, fudge, or any variation of, or substitute for, any of those ingredients.

4 **3.2** A “Daily Serving” for purposes of determining Proposition 65 compliance for
5 chemicals present in the Covered Products shall be defined as one of the following, as
6 applicable: (a) if the Covered Product label recommends a single serving, then the single
7 recommended serving size; (b) if the Covered Product label includes no recommended
8 number of servings, then the serving size set forth on the “Nutritional Facts” or “Supplement
9 Facts” portion of the label; or (c) the amount that constitutes the maximum number of
10 servings recommended on the label of the Covered Product if the label recommends more
11 than one serving, or a range of servings, per day.

12 **3.3** When calculating whether a Covered Product exceeds the warning threshold:
13 (1) Settling Defendant must compare the warning threshold value to the arithmetic mean of at
14 least three (3) samples tested in accordance with Section 2.1. However, a Settling Defendant
15 may, at its option, calculate the arithmetic mean using up to ten (10) samples; and (2) Settling
16 Defendant must base its calculation on the Daily Serving amount as defined in section 3.2.
17 Notwithstanding the foregoing, a Settling Defendant may not include an Outlier test result (as
18 defined in Section 2.2.1) in calculating the arithmetic mean, and if a Settling Defendant elects
19 to sell a Protein Supplement Product to California consumers for which an Outlier test result
20 is obtained and validated as provided for in Section 2.2.2, then that specific product lot or
21 batch from which the Outlier result was derived shall be subject to the warning obligations of
22 this Section 3. Settling Defendant shall have thirty (30) days from the date the relevant test
23 result mean is calculated to satisfy the applicable obligations of this Section 3 for Covered
24 Products manufactured, distributed or sold after that date.

25 **3.4** **Warning Standard.** No later than one year after the Effective Date, Settling
26 Defendant shall not manufacture for sale in the State of California, distribute into the State of
27 California, or sell in the State of California any Covered Product the ingestion of which
28 results in an exposure greater than the applicable warning threshold set forth in Section 3.1, as

1 calculated in accordance with Section 3.3, unless a warning is placed on the packaging,
2 labeling or directly to or on the Covered Product as set forth in this Section 3.4.

3 If Settling Defendant is required to provide a warning, one of the following two
4 warning statements must be utilized (“Warning”):

5 Option 1:

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

9 Option 2:

10  **WARNING:** [Cancer and] Reproductive Harm –www.P65Warnings.ca.gov.

11 The bracketed terms in the Warning are optional, provided that Settling Defendant shall use
12 the phrase “cancer and” in the Warning if the exposure level for lead exceeds 15 micrograms
13 per day as calculated in accordance with Section 3.3.

14 The Warning shall be securely affixed to or printed upon the container or label of the
15 Covered Product. The Warning shall be at least the same size as the largest of any other health
16 or safety warnings also appearing the label or container of Settling Defendant’s product
17 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. If the
18 Warning is provided on the label, it must be set off from other surrounding information and
19 enclosed in a box. For the Warning set forth under Option 2, the pictogram shall be in yellow
20 with a black exclamation mark; provided however, the pictogram may be in white instead of
21 yellow if the product label does not contain the color yellow. The pictogram shall be placed to
22 the left of the text of the Warning, in a size no smaller than the height of the word
23 “**WARNING.**”

24 In addition, for any Covered Products sold over the internet by Settling Defendant, the
25 Warning shall comply with the requirements of 27 Cal. Code Regs. § 25602(b), effective
26 August 30, 2018.

27 Settling Defendant must display the above Warning with such conspicuousness, as
28

1 compared with other words, statements or designs on the label or container, or on its website, if
2 applicable, to render the Warning likely to be read and understood by an ordinary individual
3 under customary conditions of purchase or use of the product

4 3.4.1 Mail Order Sales

5 For any mail order sales by a Settling Defendant to a consumer in California, the warning
6 language required under this Consent Judgment shall also be included in the mail order
7 catalogue, either on the same page as any order form, or on the same page upon which the
8 Covered Product is listed, in the same type size as the surrounding, non-heading text. If
9 necessary, the Product Warning shall be added in the first print run of the mail order catalogue
10 which occurs following one year after entry of this Consent Judgment.

11 3.5 Any changes to the language or format of the warnings required under Section
12 3.4 shall be made only after Court approval and following written notice to Plaintiff and to the
13 Attorney General

14 3.6 A Defendant may sell or distribute in California or ship to California a
15 Covered Product without any of the warnings required under Section 3.3 following one year
16 after the Effective Date only if that Settling Defendant has conducted testing in accordance
17 with the requirements referenced in Section 3.1 demonstrating that the Covered Product does
18 not expose users to more lead in a Daily Serving than allowed under Section 3.4 without a
19 warning, as determined using the calculation set forth in Section 3.3.

20 3.7 So long as a Settling Defendant complies and remains in compliance with the
21 requirements of Section 3.1 through 3.5 for each of its Covered Products, the Parties agree
22 that such Covered Products shall be deemed to comply with Proposition 65 with respect to
23 lead beginning immediately upon the Effective Date, and that compliance with this Consent
24 Judgment shall fully and completely satisfy such Settling Defendant's obligations under
25 Proposition 65 to provide warnings for such Covered Products with respect to the presence of
26 lead, regardless of when manufactured, distributed or sold.

27 3.8 At least sixty (60) days before any discontinuance of any warnings that any
28 Settling Defendant has issued pursuant to this Consent Judgment, the Settling Defendant shall

1 conduct the testing required to demonstrate that the Covered Products conform to Sections
2 3.1, using the analytical methods set forth in Section 2.1. If there is an allegation that a
3 Covered Product for which there has been a discontinued warning is in violation of Section
4 3.4, then ELF may, as provided for in Section 2.3, request all related data generated in
5 compliance with this Consent Judgment. ELF shall keep confidential all such information and
6 data received from Settling Defendant. This Section 3.8 shall not apply to a Covered Product
7 which is discontinued.

8 **3.9** Should ELF reach a settlement or be subject to a binding disposition (judicial,
9 contractual or otherwise) with or concerning any other defendant, person or entity in any
10 threatened, pending or future lawsuit involving claims of Proposition 65 violations and
11 protein supplement products, or with terms that set forth less stringent lead standards than
12 those herein defining when Proposition 65 warnings will not be required (“Alternative
13 Standards”), then ELF shall provide Settling Defendant with a copy of the settlement or
14 binding disposition (only in the case of a settlement or binding disposition entered into by, or
15 binding upon, ELF), and ELF agrees to join any Settling Defendant’s motion to modify this
16 Consent Judgment so that the Alternative Standards apply to any protein supplement products
17 that Settling Defendant manufacture for sale in California, distribute into California, or sell to
18 California consumers, with respect to any Settling Defendant that so moves.

19 **3.10** Should ELF reach a settlement or be subject to a binding disposition (judicial,
20 contractual or otherwise) with or concerning any other defendant, person or entity in any
21 threatened, pending or future lawsuits involving claims of Proposition 65 violations and
22 protein supplement products that permit warnings that are different in content, method or
23 appearance than is specified in Section 3.4 of this Consent Judgment, then ELF shall provide
24 Settling Defendant with a copy of the settlement, or binding disposition (only in the case of a
25 settlement or binding disposition entered into by, or binding upon, ELF), and ELF agrees to
26 join any Settling Defendant’s motion to modify this Consent Judgment to allow such Settling
27 Defendant to warn in the manner specified in such settlement or binding disposition, as to any
28

1 protein supplement products that the Settling Defendant sells, or distributes for sale, in
2 California, if that Settling Defendant so moves.

3 **4. MONETARY RELIEF**

4 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
5 additional settlement payments, attorney's fees and costs (including, but not limited to, fees
6 and costs incurred by attorneys, experts, and investigators), Settling Defendant shall make a
7 total payment of \$20,000 ("Total Settlement Amount") to ELF within fifteen (15) calendar
8 days of the Effective Date. Settling Defendant shall make this payment by a check made
9 payable to Environmental Law Foundation and delivered to ELF, 1222 Preservation Park
10 Way, Suite 200, Oakland, CA 94612. The Total Settlement Amount shall be apportioned by
11 ELF as set out in Sections 4.1.1 and 4.1.2.

12 **4.1.1 Civil Penalty.** \$2,500 shall be considered a civil penalty pursuant to
13 California Health and Safety Code section 25249.7(b)(1). ELF shall remit 75% (\$1,875) of the
14 civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit
15 in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health
16 and Safety Code section 25249.12(c). ELF will retain the remaining 25% (\$625) of the civil
17 penalty.

18 **4.1.2 Attorneys' Fees.** \$17,500 shall be distributed to ELF as reimbursement
19 of ELF's attorney's fees and reasonable costs in this action.

20 **4.2** The payment specified in Section 4.1 shall be the only monetary obligation of
21 Settling Defendant with respect to this Consent Judgment, including as to any fees, costs, or
22 expenses ELF has incurred in relation to this action.

23 **5. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

24 ELF agrees to comply with the reporting requirements referenced in California Health
25 & Safety Code § 25249.7(f). Pursuant to the regulations promulgated under that section, ELF
26 shall present this Consent Judgment to the California Attorney General's Office within two
27 (2) days after receipt of all necessary signatures. The Parties acknowledge that, pursuant to
28 Health & Safety Code § 25249.7, a noticed motion must be filed to obtain judicial approval of

1 the Consent Judgment. Accordingly, a motion for approval of the Consent Judgment shall be
2 prepared and filed by ELF within a reasonable period of time after the date this Consent
3 Judgment is signed by all Parties.

4 **6. MODIFICATION OF SETTLEMENT**

5 This Consent Judgment may be modified by: (1) written agreement among the Parties
6 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of ELF
7 or Settling Defendant as provided by law and upon entry of a modified Consent Judgment by
8 the Court thereon. All Parties and the California Attorney General's Office shall be served
9 with notice of any proposed modification to this Consent Judgment at least fifteen (15) days
10 in advance of its consideration by the Court.

11 **7. APPLICATION OF CONSENT JUDGMENT**

12 **7.1** Each signatory to this Consent Judgment certifies that he or she is fully
13 authorized by the Party that he or she represents to enter into and execute the Consent
14 Judgment on behalf of the Party represented and legally bind that Party.

15 **7.2** This Consent Judgment shall apply to and be binding upon ELF and Settling
16 Defendant, and their respective parent companies, affiliates under common ownership,
17 subsidiaries, shareholders, directors, members, managers, officers, owners, and employees
18 and the predecessors, successors or assigns of each of them.

19 **8. CLAIMS COVERED**

20 **8.1** This Consent Judgment is a full, final, and binding resolution between ELF,
21 on behalf of itself and in the public interest, and Settling Defendant, of any alleged violation
22 of Proposition 65 for failure to provide Proposition 65 warnings of exposure to lead in the
23 Covered Products up through and including the Effective Date. ELF, on behalf of itself and its
24 respective owners, principals, shareholders, officers, directors, employees, agents, parents,
25 subsidiaries, successors, assigns, and legal representatives (collectively referred to as "ELF
26 Releasers"), and in the public interest, fully releases and discharges (i) Settling Defendant and
27 its parent companies, affiliates under common ownership, subsidiaries, shareholders,
28 directors, members, managers, officers, owners, and employees (collectively referred to as

1 “Settling Defendant Releasees”) and (ii) Settling Defendant’s customers, distributors,
2 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain
3 of any Covered Product, and (iii) the predecessors, successors, and assigns of any of them (the
4 entities referred to in subsections (i) through (iii) are referred to as “Releasees”) from all
5 claims, actions, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
6 (collectively referred to as “Claims”) that were asserted, or that could have been asserted, for
7 any alleged violation of Proposition 65 or its implementing regulations arising from alleged
8 exposures to lead in the Covered Products manufactured, distributed, or sold by Settling
9 Defendant before the Effective Date. Compliance with the terms of this Consent Judgment
10 shall be deemed to constitute compliance by any Releasees regarding alleged exposures to
11 lead in the Covered Products.

12 **8.2** ELF, on behalf of itself and the ELF Releasors, suing “in the public interest”
13 pursuant to Health and Safety Code section 25249.7(d), hereby releases and discharges the
14 Releasees from any and all Claims that were asserted, or that could have been asserted, for
15 any alleged violations of any other statutory or common law arising from alleged exposures to
16 lead in the Covered Products manufactured, distributed, or sold by Settling Defendant before
17 the Effective Date.

18 **8.3** ELF on behalf of itself and the ELF Releasors, on the one hand, and Settling
19 Defendant on behalf of itself and the Settling Defendant Releasees, on the other hand, waive
20 and release any and all Claims they may have against each other for all actions or statements
21 made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in
22 connection with the Notice and Complaint up through and including the Effective Date.
23 However, nothing in Section 8 shall affect or limit any Party’s right to seek to enforce the
24 terms of this Consent Judgment.

25 **8.4** It is possible that other claims not known to the Parties arising out of the facts
26 alleged in the Notice and Complaint, and relating to the Covered Products will develop or be
27 discovered. ELF on behalf of itself and the ELF Releasors, on the one hand, and Settling
28 Defendant, on behalf of itself and the Settling Defendant Releasees, on the other hand,

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 and further acknowledge that the claims released in Section 8 may include unknown claims,
4 and nevertheless waive California Civil Code section 1542 as to any such unknown claims.

5 California Civil Code section 1542 reads as follows:

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

12 ELF on behalf of itself only, on the one hand, and Settling Defendant, on the other hand,
13 acknowledge and understand the significance and consequences of this specific waiver of
14 California Civil Code section 1542.

15 **9. RETENTION OF JURISDICTION**

16 This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

17 **10. COURT APPROVAL**

18 If this Consent Judgment is not approved by this Court, it shall be of no force or effect
19 and cannot be used in any proceeding for any purpose.

20 **11. ENFORCEMENT**

21 In the event that a dispute arises with respect to any provisions of this Consent
22 Judgment, the Parties shall meet and confer in good faith within thirty (30) days of receiving
23 written notice of the alleged violation from another party. In the event that the Parties are
24 unable to resolve their dispute through the meet and confer process, this Consent Judgment
25 may be enforced using any available provision of law. This Consent Judgment may be
26 enforceable by the Parties hereto and the Attorney General. Notwithstanding any language to
27 the contrary in Section 2.3, 3.8, or otherwise herein, ELF and/or the Attorney General may
28 disclose Settling Defendants' test results in a court filing in support of any motion to enforce
this Consent Judgment provided that ELF and/or the Attorney General first provides such

1 Settling Defendant an opportunity to a make a motion to seal such data or for a protective
2 order.

3 **12. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable
6 by reason of law generally, or as to the Covered Products specifically, then Settling Defendant
7 shall have no further obligations pursuant to this Consent Judgment with respect to those
8 Covered Products that are so affected.

9 **13. EXCHANGE IN COUNTERPARTS**

10 Stipulations to this Consent Judgment may be executed in counterparts and by
11 facsimile, each of which shall be deemed an original, and all of which, when taken together,
12 shall be deemed to constitute one document.

13 **14. NOTICES**

14 All correspondence and notices required to be provided pursuant to this Consent
15 Judgment shall be in writing and personally delivered or sent by: (a) first-class, registered,
16 certified return receipt requested, or (b) by overnight courier on ELF or a Settling Defendant
17 by the others at the addresses set forth below. Either ELF or a Settling Defendant may specify
18 in writing to the other Parties a change of address to which all notices and other
19 communications shall be sent.

20 Whenever notice or a document is required to be sent to ELF, it shall be sent to:

21 Nathaniel Kane
22 Environmental Law Foundation
23 1222 Preservation Park Way, Suite 200
Oakland, CA 94612

24 Whenever notice or a document is required to be sent to a Settling Defendant,
25 it shall be sent to the following:

26 Trenton H. Norris
27 Sarah Esmaili
28 Arnold & Porter Kaye Scholer LLP
3 Embarcadero Center, Suite 1000
San Francisco, CA 94111

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. SEVERABILITY

If, subsequent to court approval of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

16. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

APPROVED:

Dated: 9-12-19

Richard Hall
PROTEIN SUPPLEMENTS, LLC

Print name: Richard Hall

Title: Manager

Dated: 9/4/19

[Signature]
ENVIRONMENTAL LAW FOUNDATION

Print name: James W. [unclear]

Title: President

IT IS SO ORDERED:

Dated: _____

Judge of the Superior Court

