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

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

19 Plaintiff,

20 vs.

21 YOUR SUPERFOODS, INC., a California
22 corporation and YOUR SUPER, INC., a
23 Delaware corporation,

24 Defendants.

CASE NO. RG 20065719

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 22, 2020

Trial Date: None set

25 **1. INTRODUCTION**

26 **1.1** On June 22, 2020, 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 Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 (“Proposition 65”), against Your Superfoods, Inc. and Your Super, Inc. (collectively, “Your
2 Superfoods”). In this action, ERC alleges that a number of products manufactured, distributed,
3 or sold by Your Superfoods contain lead, a chemical listed under Proposition 65 as a
4 carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring
5 a Proposition 65 warning. These products (referred to hereinafter individually as a “Covered
6 Product” or collectively as “Covered Products”), which are included in the First Notice and
7 Second Notice referenced in Sections 1.5 and 1.6, are: (1) Your Super.com Mellow Yellow
8 Organic Superfood Mix, (2) Your Super.com Forever Beautiful Organic Superfood Mix, (3)
9 Your Super.com Muscle Power Superfood Protein Mix, (4) Your Super.com Power Matcha
10 Organic Superfood Mix, (5) Your Super.com Energy Bomb Organic Superfood Mix, (6) Your
11 Super.com Super Green Organic Superfood Mix, (6) Your Super.com Skinny Protein
12 Superfood Protein Mix, (7) Your Super.com Chocolate Lover Organic Superfood Mix and (8)
13 Your Super.com Magic Mushroom Organic Superfood Mix.

14 **1.2** ERC and Your Superfoods are hereinafter referred to individually as a “Party”
15 or collectively as the “Parties.”

16 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
17 causes, helping safeguard the public from health hazards by reducing the use and misuse of
18 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
19 and encouraging corporate responsibility.

20 **1.4** For purposes of this Consent Judgment, the Parties agree that Your Superfoods,
21 Inc. and Your Super, Inc. are business entities that have employed ten or more persons at all times
22 relevant to this action, and qualify as “persons in the course of doing business” within the
23 meaning of Proposition 65. Your Superfood, Inc. and Your Super, Inc. manufacture, distribute,
24 and/or sell the Covered Products.

25 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
26 dated February 27, 2020 that was served on the California Attorney General, other public
27 enforcers, and Your Superfoods (“First Notice”). A true and correct copy of the First Notice
28 dated February 27, 2020 is attached hereto as **Exhibit A** and incorporated herein by reference.

1 More than 60 days have passed since the First Notice was served on the Attorney General,
2 public enforcers, and Your Superfoods and no designated governmental entity has filed a
3 Complaint against Your Superfoods with regard to the Covered Products or the alleged
4 violations.

5 **1.6** On July 9, 2020, ERC served a second Notice of Violation on the California
6 Attorney General, other public enforcers, and Your Superfoods (the "Second Notice"). A true
7 and correct copy of the Second Notice is attached hereto as **Exhibit B** and incorporated by
8 reference. The parties stipulate that the Complaint be deemed amended as of September 18,
9 2020 to include the products set forth in ERC's Second Notice. This Consent Judgment shall
10 apply to all Covered Products set forth in Paragraph 1.1, effective 60 days after July 9, 2020,
11 provided no public enforcer is diligently pursuing the allegations set forth in ERC's Second
12 Notice. On September 18, 2020 more than 60 days will have passed since ERC's Second
13 Notice was served on the Attorney General, public enforcers, and Your Superfoods. The First
14 Notice and Second Notice are collectively referred to as "Notices." All further references to
15 the "Complaint" shall include the Complaint as deemed amended on September 18, 2020.

16 **1.7** ERC's Notices and Complaint allege that use of the Covered Products exposes
17 persons in California to lead without first providing clear and reasonable warnings in violation
18 of California Health and Safety Code section 25249.6. Your Superfoods denies all material
19 allegations contained in the Notices and Complaint.

20 **1.8** The Parties have entered into this Consent Judgment in order to settle,
21 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
22 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
23 or be construed as an admission by any of the Parties or by any of their respective officers,
24 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
25 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
26 issue of law, or violation of law.

27 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
28 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in

any current or future legal proceeding unrelated to these proceedings.

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

2. JURISDICTION AND VENUE

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

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

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

3.1.1 As used in this Consent Judgment, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Your Superfoods knows or has reason to know will sell the Covered Product in California.

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

3.2 Clear and Reasonable Warnings

If Your Superfoods is required to provide a warning pursuant to Section 3.1, the following warning must be utilized ("Warning"):

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

Your Superfoods shall use the phrase "cancer and" in the Warning if Your Superfoods has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if Your Superfoods has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

Your Superfoods shall provide an interim Warning up to and including sixty (60) days after the Effective Date via a postcard, measuring no less than 5 inches by 7 inches, that shall be included with the Covered Product(s) in each package containing the Covered Product(s) that is delivered to a customer in California. The postcard content shall consist of only the Warning and an identification of the associated Covered Product(s) (a representation on the postcard that all products in a shipment are associated with the Warning is compliant with this Consent Judgment so long as all products in the shipment would require a Warning). Commencing sixty-one (61) days after the Effective Date, Your Superfoods shall, if the "Daily Lead Exposure Level" continues to be greater than 0.5 micrograms of lead per day, ensure that the Warning shall be securely affixed to or printed upon the label of each Covered Product. The warning on the label must be set off from other surrounding information and enclosed in a box. Your Superfoods may also continue to provide the postcard Warning. In addition, beginning on the Effective Date, for any Covered Product sold over the internet, the Warning shall appear either (a) prior to checkout on the primary product page, (b) as a pop-up when a California zip code is input into the shipping instructions, or (c) on the checkout page when a California delivery address is indicated for any purchase of any Covered Product. An asterisk or other identifying method must be utilized to identify which products on the checkout page

1 are subject to the Warning. The Warning may be provided with a conspicuous hyperlink stating
2 “WARNING” in all capital and bold letters so long as the hyperlink goes directly to a page
3 prominently displaying the Warning without content that detracts from the Warning. Given
4 Your Superfoods’s lack of control over third-party websites, the online warning requirements
5 expressed in this Section apply only to Covered Products sold through Your Superfoods’s
6 website so long as Your Superfoods complies with the requirements of 27 CCR 25600.2 (in
7 effect on the date of entry of this Consent Judgment).

8 The Warning shall be at least the same size as the largest of any other health or safety
9 warnings also appearing on the website or on the label of the Covered Product, and the word
10 “WARNING” shall be in all capital letters and in bold print. No statements intended to or likely
11 to have the effect of diminishing the impact of the Warning on the average lay person shall
12 accompany the Warning. Further, no statements may accompany the Warning that state or imply
13 that the source of the listed chemical has an impact on or results in a less harmful effect of the
14 listed chemical.

15 Your Superfoods must display the above Warning with such conspicuousness, as
16 compared with other words, statements or designs on the label, or on its website, if applicable, to
17 render the Warning likely to be read and understood by an ordinary individual under customary
18 conditions of purchase or use of the product. If subsequently enacted changes to Proposition 65 or
19 its implementing regulations require the use of additional or different information on any warning
20 specifically applicable to the Covered Products, the Parties agree that the new safe harbor warning
21 may be utilized in place of or in addition to the warnings set forth in this Section.

22 For purposes of this Consent Judgment, the term “label” means a display of written,
23 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
24 container or wrapper.

25 **3.3 Conforming Covered Products**

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

1 **3.4 Testing and Quality Control Methodology**

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

14 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
15 lead detection result of the three (3) randomly selected samples of the Covered Products will
16 be controlling.

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

22 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
23 independent third party laboratory certified by the California Environmental Laboratory
24 Accreditation Program or an independent third-party laboratory that is registered with the
25 United States Food & Drug Administration.

26 **3.4.5** Nothing in this Consent Judgment shall limit Your Superfoods’s ability
27 to conduct, or require that others conduct, additional testing of the Covered Products, including
28 the raw materials used in their manufacture.

1 **3.4.6** Within thirty (30) days of ERC's written request, Your Superfoods shall
2 deliver lab reports obtained pursuant to Section 3.4 to ERC. Your Superfoods shall retain all
3 test results and documentation for a period of three years from the date of each test.

4 **3.4.7** The testing requirements of Section 3.4 do not apply to any Covered
5 Product for which Your Superfoods has provided the Warning specified in Section 3.2
6 continuously and uninterrupted after the Effective Date; however, in the event Your
7 Superfoods ceases to provide the Warning specified in Section 3.2, Your Superfoods shall be
8 required to comply with the testing requirements of this section beginning immediately after
9 the date the Warning ceases to be provided or one year after the Effective Date, whichever date
10 is later.

11 **4. SETTLEMENT PAYMENT**

12 **4.1** In full satisfaction of all potential civil penalties, additional settlement
13 payments, attorney's fees, and costs, Your Superfoods shall make a total payment of
14 \$110,000.00 ("Total Settlement Amount") to ERC, with an initial payment of \$27,500.00
15 ("Initial Payment") to be paid within 5 days of the Effective Date, \$27,500.00 ("Second
16 Payment") to be paid within 35 days of the Effective Date, \$27,500.00 ("Third Payment") to be
17 paid within 65 days of the Effective Date, and \$27,500.00 ("Final Payment") to be paid within
18 95 days of the Effective Date (these payments are collectively referred to as "Periodic
19 Payments"). Your Superfoods shall make these Periodic Payments by wire transfer to ERC's
20 account, for which ERC will give Your Superfoods the necessary account information. The
21 Total Settlement Amount shall be apportioned as follows:

22 **4.2** \$50,000.00 shall be considered a civil penalty pursuant to California Health and
23 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$37,500.00) of the civil penalty to
24 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
25 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
26 Code section 25249.12(c). ERC will retain the remaining 25% (\$12,500.00) of the civil
27 penalty.

28 **4.3** \$1,633.90 shall be distributed to ERC as reimbursement to ERC for reasonable

costs incurred in bringing this action.

4.4 \$37,489.79 shall be distributed to ERC as an Additional Settlement Payment (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly caused by Defendant in this matter. These activities are detailed below and support ERC’s overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC’s activities have had, and will continue to have, a direct and primary effect within the State of California because California consumers will be benefitted by the reduction and/or elimination of exposure to lead in dietary supplements and/or by providing clear and reasonable warnings to California consumers prior to ingestion of the products.

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

1 ingredients which are suspected to be contaminated, and then may be purchased by ERC,
2 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
3 that submitted the product).

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

9 **4.5** \$13,050.00 shall be distributed to Law Office of Richard M. Franco as
10 reimbursement of ERC's attorney's fees, while \$7,826.31 shall be distributed to ERC for its in-
11 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
12 costs.

13 **4.6** In the event that Your Superfoods fails to remit, in full, any of the Periodic
14 Payments owed under Section 4 of this Consent Judgment on or before their applicable due
15 date, Your Superfoods shall be deemed to be in material breach of its obligations under this
16 Consent Judgment. ERC shall provide written notice of the delinquency to Your Superfoods
17 via electronic mail. If Your Superfoods fails to deliver the applicable delinquent payment (the
18 Initial Payment and/or the Second Payment and/or the Third Payment and/or the Final
19 Payment) within five (5) days from the written notice, the Total Settlement Amount, less any
20 amounts previously paid to ERC pursuant to Section 4.1, shall be immediately due and owing
21 and shall accrue interest at the statutory judgment interest rate provided in the California Code
22 of Civil Procedure section 685.010. Additionally, Your Superfoods agrees to pay ERC's
23 reasonable attorney's fees and costs for any efforts to collect the payment(s) due under this
24 Consent Judgment.

25 **5. MODIFICATION OF CONSENT JUDGMENT**

26 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
27 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
28 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a

1 modified consent judgment.

2 **5.2** If Your Superfoods seeks to modify this Consent Judgment under Section 5.1,
3 then Your Superfoods must provide written notice to ERC of its intent ("Notice of Intent"). If
4 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then
5 ERC must provide written notice to Your Superfoods within thirty (30) days of receiving the
6 Notice of Intent. If ERC notifies Your Superfoods in a timely manner of ERC's intent to meet
7 and confer, then the Parties shall meet and confer in good faith as required in this Section. The
8 Parties shall meet in person or via telephone within thirty (30) days of ERC's notification of its
9 intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the
10 proposed modification, ERC shall provide to Your Superfoods a written basis for its position.
11 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to
12 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing
13 to different deadlines for the meet and-confer period.

14 **5.3** In the event that Your Superfoods initiates or otherwise requests a modification
15 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
16 modification of the Consent Judgment, Your Superfoods shall reimburse ERC its costs and
17 reasonable attorney's fees for the time spent in the meet and confer process and filing and
18 arguing the motion or application. ERC shall not be reimbursed for costs or attorney's fees for
19 an uncontested motion, or for a ministerial motion (such as a change in name or contact
20 information) or if ERC does not expend more than two (2) hours of attorney time on the joint
21 motion.

22 **5.4** In the event that Proposition 65 is repealed or preempted as to food products,
23 then Your Superfoods shall have no further obligation pursuant to this Consent Judgment with
24 respect to the injunctive terms, but only to the extent that the Covered Products are affected by
25 the repeal or preemption.

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 Your Superfoods in a reasonably prompt manner of its test results, including
5 information sufficient to permit Your Superfoods to identify the Covered Products at issue.
6 Your Superfoods shall, within thirty (30) days following such notice, provide ERC with testing
7 information, from an independent third-party laboratory meeting the requirements of Sections
8 3.4.3 and 3.4.4, demonstrating Your Superfoods's compliance with the Consent Judgment. The
9 Parties shall first 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 that is distributed or sold exclusively outside the State of
16 California and that 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 Your Superfoods and its respective officers,
20 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
21 franchisees, licensees, customers (not including private label customers of Your Superfoods),
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 Your Superfoods 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 Notices 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 Notices and Complaint, and relating to the Covered Products, will develop or be
11 discovered. ERC on behalf of itself only, and Your Superfoods 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 Your Superfoods 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
21 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
22 PARTY.

23 ERC on behalf of itself only, and Your Superfoods on behalf of itself only, acknowledge and
24 understand the significance and consequences of this specific waiver of California Civil Code
25 section 1542.

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

29 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
30 environmental exposures arising under Proposition 65, nor shall it apply to any of Your

1 Superfoods'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 Richard M. Franco
21 Law Office of Richard M. Franco
22 6500 Estates Drive
23 Oakland, CA. 94611
24 Ph: (510) 684-1022
25 Email: rick@rfrancolaw.com

26 **FOR YOUR SUPERFOODS, INC and YOUR SUPER, INC.:**

27 Michael Kuech
28 Your Superfoods, Inc.
Your Super, Inc.
2100 Abbott Kinney Blvd, Unit F
Venice, CA 90291

///

1 With a copy to:

2 Abhishek K. Gurnani
3 Amin Talati Wasserman, LLP
4 100 S. Wacker Dr., Suite 2000
5 Chicago, IL 60606
6 Telephone: 312-327-3325
7 Email: abhishek@amintalati.com

7 **12. COURT APPROVAL**

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

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

14 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
15 void and have no force or effect.

16 **13. EXECUTION AND COUNTERPARTS**

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

20 **14. DRAFTING**

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

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

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

6 **16. ENFORCEMENT**

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

15 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

22 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
23 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

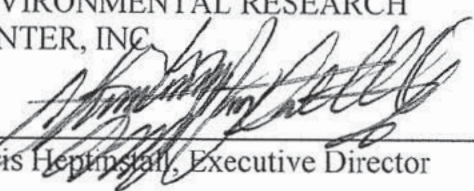
1 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
2 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
3 been diligently prosecuted, and that the public interest is served by such settlement; and

4 (2) Make the findings pursuant to California Health and Safety Code section
5 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

6 **IT IS SO STIPULATED:**

7
8 Dated: 7/17/, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.

9
10 By: 
Chris Hentinsall, Executive Director

11
12
13 Dated: 07/22/20, 2020

YOUR SUPERFOODS, INC

14
15 By: 
16 Its: CEO

17
18 Dated: 07/22/20, 2020


YOUR SUPER, INC

19
20 By: 
21 Its: CEO
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1 APPROVED AS TO FORM:

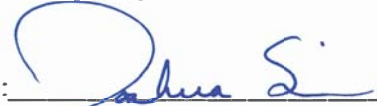
2
3 Dated: 7/20, 2020

LAW OFFICE OF RICHARD M.
FRANCO

4
5 By: 
6 Richard M. Franco
7 Attorney for Environmental Research
8 Center, Inc.

9
10 Dated: July 23, 2020

CALL & JENSEN

11 By: 
12 Joshua G. Simon
13 Attorney for Your Superfoods,
14 Inc. and Your Super, Inc.

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IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court