



COURTESY COPY

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ENDORSED
FILED
ALAMEDA COUNTY
2018 FEB 22 P 3:20
CLERK OF THE SUPERIOR COURT
M. CARREIRA, DEPUTY

5 Attorneys for Plaintiff
6 ENVIRONMENTAL RESEARCH CENTER, INC.

FILED
ALAMEDA COUNTY
MAY 04 2018

CLERK OF THE SUPERIOR COURT
by [Signature] Deputy

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

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

14 Plaintiff,

15 v.

16 EVLUTION NUTRITION LLC, a Florida
17 limited liability company, and DOES 1 – 25,

18 Defendants.

CASE NO. RG18887635

19
20 **STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 2, 2018
Trial Date: None set

21 **1. INTRODUCTION**

22 **1.1** On January 2, 2018, Plaintiff Environmental Research Center, Inc. (“ERC”), a
23 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
24 filing a Complaint for Permanent Injunction, Civil Penalties, and Other Relief (the
25 “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5
26 *et seq.* (“Proposition 65”), against Evlution Nutrition LLC (“Evlution Nutrition”) and Does 1-
27 25. ERC and Evlution Nutrition are hereinafter referred to individually as a “Party” or
28 collectively as the “Parties.”

1 **1.2** In this action, ERC alleges that a number of products manufactured, distributed,
2 or sold by Evlution Nutrition contain lead and/or cadmium, chemicals listed under Proposition
3 65 as carcinogens and reproductive toxins, and expose consumers to these chemicals at a level
4 requiring a Proposition 65 warning. These products (referred to hereinafter individually as a
5 “Covered Product” or collectively as “Covered Products”) are:

- 6 1. Evlution Nutrition EVL Stacked Protein Gainer Vanilla Ice Cream
7 (lead)
- 8 2. Evlution Nutrition EVL Stacked Protein Birthday Cake (lead)
- 9 3. Evlution Nutrition EVL Stacked Protein Vanilla Ice Cream (lead)
- 10 4. Evlution Nutrition EVL Pump Mode Non-Stimulant Pump
11 Accelerator (lead)
- 12 5. Evlution Nutrition EVL Stacked Protein Natural Chocolate
13 Chocolate Decadence (lead)
- 14 6. Evlution Nutrition EVL Leanmode Stimulant Free (lead)
- 15 7. Evlution Nutrition EVL LeanMode Stimulant Free Fruit Punch
16 (lead)
- 17 8. Evlution Nutrition EVL LeanMode Stimulant Free Peach Tea (lead)
- 18 9. Evlution Nutrition EVL Stacked Protein Gainer Chocolate
19 Decadence (lead, cadmium)
- 20 10. Evlution Nutrition EVL Stacked Protein Chocolate Decadence (lead)
- 21 11. Evlution Nutrition EVL Stacked Protein Lean Chocolate Decadence
22 (lead)
- 23 12. Evlution Nutrition EVL LeanMode Stimulant Free Furious Grape
24 (lead)
- 25 13. Evlution Nutrition EVL LeanMode Stimulant Free Pink Lemonade
26 (lead)
- 27 14. Evlution Nutrition EVL EVLTest (lead)

1 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
2 causes, helping safeguard the public from health hazards by reducing the use and misuse of
3 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
4 and encouraging corporate responsibility.

5 **1.4** For purposes of this Consent Judgment, the Parties agree that Evlution Nutrition is
6 a business entity that has employed ten or more persons at all times relevant to this action, and
7 qualifies as a “person in the course of business” within the meaning of Proposition 65. Evlution
8 Nutrition manufactures, distributes, and/or sells the Covered Products.

9 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
10 dated October 20, 2017 that was served on the California Attorney General, other public
11 enforcers, and Evlution Nutrition (“Notice”). A true and correct copy of the 60-Day Notice
12 dated October 20, 2017 is attached hereto as **Exhibit A** and incorporated herein by reference.
13 More than 60 days have passed since the Notice was served on the Attorney General, public
14 enforcers, and Evlution Nutrition and no designated governmental entity has filed a complaint
15 against Evlution Nutrition with regard to the Covered Products or the alleged violations.

16 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
17 persons in California to lead and/or cadmium without first providing clear and reasonable
18 warnings in violation of California Health and Safety Code section 25249.6. Evlution Nutrition
19 expressly denies all allegations contained in the Notice and Complaint.

20 **1.7** 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 or
23 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, franchisees,
25 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
26 violation of law.

27 ///

28 ///

1 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
2 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
3 current or future legal proceeding unrelated to these proceedings.

4 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
5 a Judgment by this Court.

6 **2. JURISDICTION AND VENUE**

7 For purposes of this Consent Judgment and enforcement of this Consent Judgment only, ,
8 the Parties stipulate that this Court has subject matter jurisdiction over the allegations of violations
9 contained in the Complaint, personal jurisdiction over Evlution Nutrition as to the acts alleged in
10 the Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to
11 enter this Consent Judgment as a full and final resolution of all claims up through and including
12 the Effective Date which were or could have been asserted in this action based on the facts alleged
13 in the Notice and Complaint.

14 **3. INJUNCTIVE RELIEF, REFORMULATION, RELABELING, TESTING AND**
15 **WARNINGS**

16 **3.1** Beginning six (6) months from the date the Consent Judgment is fully executed
17 by the Parties (“Compliance Date”), Evlution Nutrition shall be permanently enjoined from
18 manufacturing for sale in the State of California, “Distributing into the State of California,” or
19 directly selling in the State of California any Covered Products which expose a person to a
20 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day excluding the
21 allowance provided in Table 1 below and/or “Daily Cadmium Exposure Level” of more than
22 4.1 micrograms of cadmium per day unless it meets the warning requirements under Section
23 3.3.

24 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State of
25 California” shall mean to directly ship a Covered Product into California for sale in California or
26 to sell a Covered Product to a distributor that Evlution Nutrition knows or has reason to know
27 will sell the Covered Product in California.

28 ///

1 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
2 Level” and “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be
3 calculated using the following formula: micrograms of lead or cadmium per gram of product,
4 multiplied by grams of product per serving of the product (using the largest serving size
5 appearing on the product label), multiplied by servings of the product per day (using the largest
6 number of servings in a recommended dosage appearing on the product label), which equals
7 micrograms of lead or cadmium exposure per day, excluding amounts of allowances of lead as
8 provided in Section 3.2. If no recommended daily serving size is provided on the label, then
9 the daily serving size shall equal one.

10 **3.2 Calculation of Lead Levels**

11 For purposes of calculating lead content, Evlution Nutrition may exclude the sum of the
12 amount of lead supplied by the quantity of each ingredient listed in Table 1 that is present in the
13 maximum daily serving recommended on the label of the Covered Product. For each ingredient,
14 the amount of lead that may be excluded for each Covered Product is set forth in Table 1:

15 **TABLE 1**

Ingredient	Amount of lead (Pb) per gram of ingredient deemed naturally occurring
Cocoa	1.0 mcg Pb per gram of Cocoa

18
19 If, at any time after the Compliance Date, ERC tests a Covered Product that does not
20 contain a warning described in Section 3.3, and, based on the usage instructions contained on
21 the label, the test results indicate that the Daily Lead Exposure Level is greater than 0.5
22 micrograms per day, Evlution Nutrition agrees to confidentially supply to ERC, within 30 days
23 of ERC’s written request, a list of ingredients, including the percentage of each ingredient
24 (“Ingredient List”), of that particular Covered Product so that ERC may be able to calculate the
25 daily exposure based on the allowances in the table above.

26 **3.3 Clear and Reasonable Warnings**

27 If Evlution Nutrition is required to provide a warning pursuant to Section 3.1, the
28 following warning must be utilized (“Warning”):

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

5 Evlution Nutrition shall use the phrase “cancer and” in the Warning if Evlution Nutrition
6 has reason to believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of
7 lead as determined pursuant to the quality control methodology set forth in Section 3.6 or if
8 Evlution Nutrition has reason to believe that another Proposition 65 chemical is present which
9 may require a cancer warning. As identified in the brackets, the warning shall appropriately
10 reflect whether there is lead, cadmium, or both chemicals present in each of the Covered Products.

11 The Warning shall be securely affixed to or printed upon the container or label of each
12 Covered Product. If the Warning is provided on the label, it must be set off from other
13 surrounding information and enclosed in a box. In addition, for any Covered Product sold over
14 the internet, the Warning shall appear on the checkout page when a California delivery address is
15 indicated for any purchase of any Covered Product. An asterisk or other identifying method
16 must be utilized to identify which products on the checkout page are subject to the Warning.

17 The Warning shall be at least the same size as the largest of any other health or safety
18 warnings also appearing on its website or on the label or container of Evlution Nutrition’s product
19 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No
20 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
21 average lay person shall accompany the Warning. Further no statements may accompany the
22 Warning that state or imply that the source of the listed chemical has an impact on or results in a
23 less harmful effect of the listed chemical.

24 Evlution Nutrition must display the above Warning with such conspicuousness, as
25 compared with other words, statements, design of the label, container, or on its website, as
26 applicable, to render the Warning likely to be read and understood by an ordinary individual under
27 customary conditions of purchase or use of the product.

28 **3.4 Reformulated Covered Products**

 A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” is no

1 greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” is no more
2 than 4.1 micrograms of cadmium per day, based on the usage instructions contained on the label,
3 as determined by the quality control methodology described in Section 3.6.

4 **3.5 Relabeled Covered Products**

5 A Relabeled Covered Product is one for which the dosage has been reduced and the
6 “Daily Lead Exposure Level” of the relabeled product is no greater than 0.5 micrograms of lead
7 per day and/or “Daily Cadmium Exposure Level” of the relabeled product is no more than 4.1
8 micrograms of cadmium per day, based on the usage instructions contained on the label, as
9 determined by the quality control methodology described in Section 3.6.

10 **3.6 Testing and Quality Control Methodology**

11 **3.6.1** Beginning within one year of the Effective Date, Evlution Nutrition shall
12 arrange for lead and/or cadmium testing of the Covered Products at least once a year for a
13 minimum of three consecutive years by arranging for testing of three randomly selected
14 samples of each of the Covered Products, in the form intended for sale to the end-user, which
15 Evlution Nutrition intends to sell or is manufacturing for sale in California, directly selling to a
16 consumer in California or “Distributing into the State of California.” If tests conducted
17 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
18 each of three consecutive years, then the testing requirements of this Section will no longer be
19 required as to that Covered Product.

20 **3.6.2** In addition, should a Covered Product that previously required a
21 Warning be reformulated at any point in the future and such reformulation causes the “Daily
22 Lead Exposure Level” and/or “Daily Cadmium Exposure Level” to fall within the range
23 permitted under Proposition 65 based on the testing methodologies set forth in this Section,
24 Evlution Nutrition shall no longer be required to place a Warning on those products.

25 **3.6.3** For purposes of measuring the “Daily Lead Exposure Level” and/or
26 “Daily Cadmium Exposure Level,” the highest lead and/or cadmium detection result of the
27 three (3) randomly selected samples of the Covered Products will be controlling.

28 **3.6.4** All testing pursuant to this Consent Judgment shall be performed using a

1 laboratory method that complies with the performance and quality control factors appropriate
2 for the method used, including limit of detection, qualification, accuracy, and precision that
3 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
4 achieving a limit of quantification of less than or equal to 0.010 mg/kg by an independent third-
5 party laboratory certified by the California Environmental Laboratory Accreditation Program
6 for the analysis of lead and cadmium or an independent third-party laboratory that is registered
7 with the United States Food & Drug Administration (“FDA”) for the analysis of lead and
8 cadmium. Evlution Nutrition may perform this testing itself or with a third party laboratory if
9 it provides proof that the laboratory meets these requirements. Nothing in this Consent
10 Judgment shall limit Evlution Nutrition’s availability to conduct, or require that others conduct,
11 additional testing of Covered Products, including the raw materials used in their manufacture.

12 **3.6.5** Within thirty (30) days of ERC’s written request, Evlution Nutrition
13 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. Evlution Nutrition shall retain
14 all test results and documentation for a period of three years from the date of each test.

15 **4. SETTLEMENT PAYMENT**

16 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
17 attorney’s fees, and costs, Evlution Nutrition shall make a total payment of \$92,500.00 (“Total
18 Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). Evlution
19 Nutrition shall make this payment by wire transfer to ERC’s escrow account, for which ERC
20 will give Evlution Nutrition the necessary account information. The Total Settlement Amount
21 shall be apportioned as follows:

22 **4.2** \$25,847.80 shall be considered a civil penalty pursuant to California Health and
23 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$19,385.85) 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% (\$6,461.95) of the civil penalty.

27 **4.3** \$4,429.12 shall be distributed to ERC as reimbursement to ERC for reasonable
28 costs incurred in bringing this action.

1 4.4 \$19,385.84 shall be distributed to ERC as an Additional Settlement Payment
2 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
3 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
4 caused by Defendant in this matter. These activities are detailed below and support ERC’s
5 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
6 supplement products in California. ERC contends that its activities have had, and will continue
7 to have, a direct and primary effect within the State of California because California consumers
8 will be benefitted by the reduction and/or elimination of exposure to lead and/or cadmium in
9 dietary supplements and/or by providing clear and reasonable warnings to California consumers
10 prior to ingestion of the products.

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

1 catalogued, sent to a qualified laboratory for testing, and the results shared with the consumer
2 that submitted the product).

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

8 **4.5** \$14,038.00 shall be distributed to Aqua Terra Aeris Law Group as
9 reimbursement of ERC's attorney's fees, while \$28,799.24 shall be distributed to ERC for its
10 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
11 costs.

12 **4.6** In the event that Evlution Nutrition fails to remit the Total Settlement Amount
13 owed under Section 4 of this Consent Judgment on or before the Due Date, Evlution Nutrition
14 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
15 shall provide written notice of the delinquency to Evlution Nutrition via electronic mail. If
16 Evlution Nutrition fails to deliver the Total Settlement Amount within five (5) days from the
17 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment
18 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,
19 the prevailing party may seek attorney's fees and costs pursuant to California Code of Civil
20 Procedure section 1021.5 in any future efforts to enforce this Consent Judgment, including but
21 not limited to, collecting payment.

22 **5. MODIFICATION OF CONSENT JUDGMENT**

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

27 **5.2** If Evlution Nutrition seeks to modify this Consent Judgment under Section 5.1,
28 then Evlution Nutrition must provide written notice to ERC of its intent ("Notice of Intent"). If

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

11 **5.3** In the event that Evlution Nutrition initiates or otherwise requests a modification
12 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
13 modification of the Consent Judgment, Evlution Nutrition shall reimburse ERC its reasonable
14 costs and attorney's fees for the time spent in the meet-and-confer process and filing and
15 arguing the motion or application.

16 **5.4** Where the meet-and-confer process does not lead to a joint motion or
17 application in support of a modification of the Consent Judgment, then either Party may seek
18 judicial relief on its own. In any such contested court proceeding, the prevailing party may
19 seek costs and any attorney's fees incurred in bringing or opposing the motion pursuant to
20 California Code of Civil Procedure section 1021.5.

21 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
22 **JUDGMENT**

23 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
24 this Consent Judgment pursuant to California Code of Civil Procedure 664.6.

25 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
26 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
27 inform Evlution Nutrition in a reasonably prompt manner of its test results, including
28 information sufficient to permit Evlution Nutrition to identify the Covered Products at issue.

1 Evlution Nutrition shall, within thirty (30) days following such notice, provide ERC with testing
2 information, from an independent third-party laboratory meeting the requirements of Section
3 3.6.4, demonstrating Evlution Nutrition's compliance with the Consent Judgment, if warranted.
4 The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

5 **7. APPLICATION OF CONSENT JUDGMENT**

6 This Consent Judgment shall apply to, be binding upon, and benefit the parties and
7 their respective officers, directors, shareholders, parent companies, subsidiaries, divisions,
8 successors, and assigns. This Consent Judgment shall apply only to Covered Products that are
9 distributed or sold in the State of California and only to the extent that such products are
10 distributed or sold in the State of California.

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

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

25 **8.2** ERC on its own behalf only, and Evlution Nutrition on its own behalf only,
26 further waive and release any and all claims they may have against each other for all actions or
27 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
28 65 in connection with the Notice and Complaint up through and including the Effective Date,

1 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
2 enforce the terms of this Consent Judgment.

3 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
4 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
5 discovered. ERC on behalf of itself only, and Evlution Nutrition on behalf of itself only,
6 acknowledge that this Consent Judgment is expressly intended to cover and include all such
7 claims up through and including the Effective Date, including all rights of action therefor. ERC
8 and Evlution Nutrition acknowledge that the claims released in Sections 8.1 and 8.2 above may
9 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any
10 such unknown claims. California Civil Code section 1542 reads as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
13 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
14 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
15 OR HER SETTLEMENT WITH THE DEBTOR.

16 ERC on behalf of itself only, and Evlution Nutrition on behalf of itself only, acknowledge and
17 understand the significance and consequences of this specific waiver of California Civil Code
18 section 1542.

19 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
20 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
21 and/or cadmium in the Covered Products as set forth in the Notice and Complaint.

22 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
23 environmental exposures arising under Proposition 65, nor shall it apply to any of Evlution
24 Nutrition's products other than the Covered Products.

25 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

28 **10. GOVERNING LAW**

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

1 **11. PROVISION OF NOTICE**

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

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

6 Chris Heptinstall, Executive Director, Environmental Research Center
7 3111 Camino Del Rio North, Suite 400
8 San Diego, CA 92108
9 Tel: (619) 500-3090
10 Email: chris_erc501c3@yahoo.com

11 With a copy to:

12 MATTHEW C. MACLEAR
13 ANTHONY M. BARNES
14 AQUA TERRA AERIS LAW GROUP
15 828 San Pablo Ave, Suite 115B
16 Albany, CA 94706
17 Ph: 415-568-5200
18 Email: mcm@atalawgroup.com

19 **EVLUTION NUTRITION LLC**
20 MIKE SPINNER, EVLUTION NUTRITION, LLC
21 4631 Johnson Road, Suite 1
22 Coconut Creek, FL 33073

23 With a copy to:

24 ERIC D. ISICOFF
25 CAROLINA A. LATOUR
26 ISICOFF RAGATZ
27 601 Brickell Key Drive, Suite 750
28 Miami, FL 33131
Ph: 305-373-3232
Email: isicoff@irlaw.com; latour@irlaw.com

29 **12. COURT APPROVAL**

30 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
31 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
32 Consent Judgment.

33 **12.2** If the California Attorney General objects to any term in this Consent Judgment,

1 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
2 prior to the hearing on the motion.

3 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
4 void and have no force or effect.

5 **13. EXECUTION AND COUNTERPARTS**

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

9 **14. DRAFTING**

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

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

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

23 **16. ENTIRE AGREEMENT, AUTHORIZATION**

24 **16.1** This Consent Judgment contains the sole and entire agreement and
25 understanding of the Parties with respect to the entire subject matter herein, and any and all
26 prior discussions, negotiations, commitments, and understandings related hereto. No
27 representations, oral or otherwise, express or implied, other than those contained herein have
28

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
2 herein, shall be deemed to exist or to bind any Party.

3 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the Party he or she represents to stipulate to this Consent Judgment.

5 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
6 **CONSENT JUDGMENT**

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

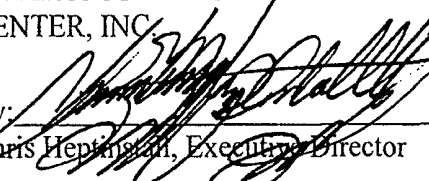
10 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
11 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
12 been diligently prosecuted, and that the public interest is served by such settlement; and

13 (2) Make the findings pursuant to California Health and Safety Code section
14 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

15
16 **IT IS SO STIPULATED:**

17 Dated: 2/7/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC

18
19 By: 
Chris Hentzen, Executive Director

20
21
22 Dated: _____, 2018

EVLUTION NUTRITION LLC

23
24 By: _____
25 Its: _____
26
27
28

1 APPROVED AS TO FORM:

2 Dated: February 7, 2018

AQUA TERRA AERIS LAW GROUP

3 By: 

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

8 Dated: _____, 2018

ISICOFF RAGATZ

9 By: _____

10 Eric D. Isicoff
11 Carolina A. Latour
12 Attorneys for Defendant Evlution
13 Nutrition LLC

14 **ORDER AND JUDGMENT**

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

17 IT IS SO ORDERED, ADJUDGED AND DECREED.

18 Dated: _____, 2018

19 _____
20 Judge of the Superior Court

1 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
2 herein, shall be deemed to exist or to bind any Party.

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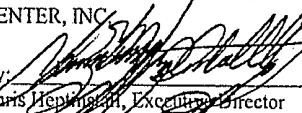
10 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
11 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
12 been diligently prosecuted, and that the public interest is served by such settlement; and

13 (2) Make the findings pursuant to California Health and Safety Code section
14 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

15
16 IT IS SO STIPULATED:

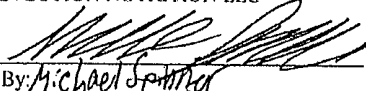
17 Dated: 2/7/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

18
19 By: 
Chris Henning, Executive Director

20
21 Dated: 2/15/2018
22 Dated: _____, 2018

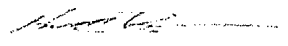
EVLUTION NUTRITION LLC

23
24 By: 
25 Its: President
26
27
28

1 APPROVED AS TO FORM:

2 Dated: February 7, 2018

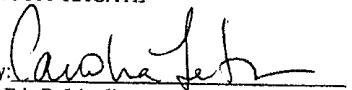
AQUA TERRA AERIS LAW GROUP

3 By: 

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

7 Dated: 2/15/18, 2018

ISICOFF RAGATZ

8 By: 

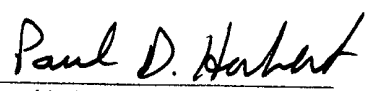
9 Eric D. Isicoff
10 Carolina A. Latour
11 Attorneys for Defendant Evlution
12 Nutrition LLC

13 ORDER AND JUDGMENT

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

16 IT IS SO ORDERED, ADJUDGED AND DECREED.

17 Dated: 5/4/18, 2018

18 
19 Judge of the Superior Court