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ENVIRONMENTAL RESEARCH CENTER

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12 Attorney for Defendant,
XYMOGEN, INC.
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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF ALAMEDA

17 ENVIRONMENTAL RESEARCH
CENTER, a California non-profit
18 corporation,
19 Plaintiff,
20 vs.
21 ATLANTIC PRO-NUTRIENTS, INC. dba
XYMOGEN, a Florida Corporation,
22 XYMOGEN, INC.
23 Defendant.

Case No. RG14722249

[PROPOSED] STIPULATED
CONSENT JUDGMENT

ASSIGNED FOR ALL PURPOSES TO:
JUDGE WYNNE CARVILL
DEPARTMENT 21

Case Filed: April 27, 2014
Trial Date: Aug. 31, 2015

1 I. INTRODUCTION

2 1.1 This Action arises out of the alleged violations of California's Safe Drinking Water
3 and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 *et seq.* (also
4 known as and herein after referred to as "Proposition 65") regarding the following products
5 (hereinafter collectively the "Covered Products" or "Covered Product" to refer to a single product):

- 6 1) XYMOGEN Exclusive Professional Formulas i5 Creamy Chocolate
- 7 2) XYMOGEN Exclusive Professional Formulas FitFood Vegan Creamy Chocolate
- 8 3) XYMOGEN Exclusive Professional Formulas FitFood Vegan Vanilla Delight
- 9 4) XYMOGEN Exclusive Professional Formulas TestoPlex
- 10 5) XYMOGEN Exclusive Professional Formulas Viragraphis
- 11 6) XYMOGEN Exclusive Professional Formulas SerenX
- 12 7) XYMOGEN Exclusive Professional Formulas LipotropiX
- 13 8) XYMOGEN Exclusive Professional Formulas MedCaps DPO
- 14 9) XYMOGEN Exclusive Professional Formulas OrganiX Greens
- 15 10) XYMOGEN Exclusive Professional Formulas XYMOGEN EP BrainSustain Creamy
16 Chocolate
- 17 11) XYMOGEN Exclusive Professional Formulas XYMOGEN EP BrainSustain Vanilla
18 Delight
- 19 12) XYMOGEN Exclusive Professional Formulas XYMOGEN EP i5 Chai
- 20 13) XYMOGEN Exclusive Professional Formulas OptiCleanse GHI Original
- 21 14) XYMOGEN Exclusive Professional Formulas XYMOGEN EP ImmunoBar Chocolate
22 Fudge
- 23 15) XYMOGEN Exclusive Professional Formulas DJD Factors
- 24 16) XYMOGEN Exclusive Professional Formulas FitFood Lite Vegan Vanilla Delight
- 25 17) XYMOGEN Exclusive Professional Formulas i5 Energize Vanilla Latte
- 26 18) XYMOGEN Exclusive Professional Formulas i5 Chocolate Mint
- 27 19) XYMOGEN Exclusive Professional Formulas i5 Vanilla Delight
- 28 20) XYMOGEN Exclusive Professional Formulas OptiCleanse GHI Chocolate Mint

1 21) XYMOGEN Exclusive Professional Formulas OptiCleanse GHI Chai

2 1.2 Plaintiff Environmental Research Center, Inc. ("ERC") is a California non-profit
3 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other causes,
4 helping safeguard the public from health hazards by reducing the use and misuse of hazardous and
5 toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging
6 corporate responsibility. ERC brings this Action in the public interest pursuant to California Health
7 and Safety Code Section 25249.7.

8 1.3 Defendants Xymogen, Inc and Atlantic Pro-Nutrients, Inc dba Xymogen are referred
9 to herein as "XYMOGEN" or "Defendants". XYMOGEN is a California Corporation that is a person
10 within the meaning of H&S Code §25249.11(a) and has, at all material times, employed ten or more
11 persons. XYMOGEN designs, distributes and sells the Covered Products.

12 1.4 ERC and XYMOGEN are hereinafter referred to individually as a "Party" or
13 collectively as the "Parties."

14 1.5 On January 14, 2014, pursuant to California Health and Safety Code
15 Section 25249.7(d)(1), ERC served a Notice of Violation of Proposition 65 ("NOV I") on the
16 California Attorney General, other public enforcers, and Atlantic Pro-Nutrients Inc. dba Xymogen. A
17 true and correct copy of the Notice of Violation is attached hereto as Exhibit A.

18 1.6 On July 1, 2014, a second Notice of Violation of Proposition 65 ("NOV II") was
19 served on the California Attorney General, other public enforcers, Atlantic Pro-Nutrients, Inc dba
20 Xymogen and Xymogen, Inc. A true and correct copy of the Notice of Violation is attached hereto as
21 Exhibit B. NOV I and NOV II shall hereinafter be referred to collectively as the "Notices of
22 Violation".

23 1.7 After more than sixty (60) days passed since service of the Notices of Violation, and
24 no designated governmental agency filed a complaint against XYMOGEN with regard to the Covered
25 Products or the alleged violations, ERC filed its First Amended Complaint in this Action for
26 injunctive relief and civil penalties. The Complaint is based on the allegations in NOV I and NOV II.

27 1.8 The Complaint and the Notices of Violation each allege that XYMOGEN
28 manufactured, distributed, and/or sold in California the Covered Products, which contain lead, a

1 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers
2 at a level requiring a Proposition 65 warning. Further, the Complaint and Notices of Violation allege
3 that use of the Covered Products exposes persons in California to lead without first providing clear
4 and reasonable warnings, in violation of California Health and Safety Code Section 25249.6.
5 XYMOGEN denies all material allegations of the Notices of Violation and the Complaint.

6 **1.9** The Parties enter into this Consent Judgment in order to settle, compromise and
7 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent Judgment,
8 nor compliance with its terms, shall constitute or be construed as an admission by any of the Parties,
9 or by any of their respective officers, directors, shareholders, employees, agents, parent companies,
10 subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors, wholesalers, or
11 retailers, of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or liability,
12 including without limitation, any admission concerning any alleged violation of Proposition 65.
13 Except as expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive, or
14 impair any right, remedy, argument, or defense the Parties may have in any other or future legal
15 proceeding unrelated to these proceedings. However, nothing in this Section shall affect the
16 enforceability of this Consent Judgment.

17 **1.10** The "Effective Date" of this Consent Judgment shall be the date this Consent
18 Judgment is entered as a judgment by the Court.

19 **2. JURISDICTION AND VENUE**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that
22 venue is proper in this Court, and that this Court has jurisdiction to enter this Consent Judgment
23 pursuant to the terms set forth herein.

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

25 **3.1 Clear and Reasonable Warnings**

26 On and after the Effective Date of this Consent Judgment, XYMOGEN shall be permanently
27 enjoined from Distributing into California, manufacturing for sale in California, and/or directly
28 selling to a consumer in the State of California any Covered Product for which the maximum dose

1 recommended on the label contains more than 0.5 micrograms (mcg) of lead, as calculated in
2 accordance with the formula set forth in Section 3.7, unless Defendant complies with the required
3 warning methods set forth in Section 3.1 through Section 3.6. The term "Distributing into
4 California" means to ship any of the Covered Products into California for sale in California, or to sell
5 or provide any of the Covered Products to any person or entity that Defendant knows will sell or
6 intends to sell any of the Covered Products in California.

7 In all warning methods contained in Section 3.1 through Section 3.6 below, the Warning shall
8 be provided with such conspicuousness, as compared with other words, statements, designs, or
9 devices on the container, labeling, webpage, catalog page, invoice, insert, or in the store as to render
10 it likely to be read and understood by an ordinary individual under customary conditions of purchase
11 or use. In all warning methods, no other statements about Proposition 65 or lead may accompany the
12 Warning, except that Defendant may refer consumers to a single website for further information. The
13 Warning shall be at least the same size as the largest of any other health or safety warnings on the
14 container, labeling, webpage, catalog page, invoice, or insert, as applicable, and the word
15 "WARNING" shall be in all capital letters and in bold print. The Warning shall be contained in the
16 same section of the container, labeling, webpage, catalog page, invoice, or insert, as applicable,
17 which states other safety warnings concerning the use of the Covered Product.

18 No Warning will be required for Reformulated Covered Products.

19 3.2 The Warning Language.

20 The warning language shall be provided as follows:

21 **[California Proposition 65] WARNING [(California Proposition 65)] These [This]**
22 **product[s] contain[s] [lead,] [a] [and other] chemical[s] known to the State of California to**
23 **cause [cancer and] birth defects or other reproductive harm.**

24 The text in brackets in the warnings above is optional. The words "cancer and" shall be
25 included in the warning only if the maximum recommended dose stated on the Covered Product's
26 label contains more than 15 micrograms (mcg) of lead as calculated in accordance with the formula
27 set forth in Section 3.6 below. The words "and other" shall be included only if Xymogen has
28 knowledge that there is another Proposition 65 chemical present in the Covered Products.

1 **3.3 Warning Method (Product Container)**

2 In all cases, the Warning may be provided in the product label or by a sticker or label affixed
3 to the cap, shoulder or side of the container of a Covered Product. The Warning shall appear in font
4 at least as large as the font used to provide any other health or safety warning on the product label,
5 and if no health or safety warning is provided on the product label, then at least as large as smallest
6 font used elsewhere on the label.

7 **3.4 Warning Method No. 2 (Website Warning)**

8 If not provided as set forth in Section 3.3, the Warning stated in Section 3.2 shall be given in
9 conjunction with all sales of the Covered Products by XYMOGEN via the Internet, and such
10 Warning shall appear in one of the following ways: (a) on the same web page as the order form for
11 the Covered Product or as a pop-up warning that appears prior to checkout which requires the
12 consumer to click on a tab labeled "approved" before purchase; (b) an "Insert Warning" as defined
13 below; or (c) an "Invoice Warning" as defined below. The Warning stated in Section 3.2 shall be
14 used and shall appear in any of the above instances adjacent to or immediately following the display,
15 description, or price of the Covered Product for which it is given, in the same type size or larger than
16 the text of the Covered Product's description.

17 Insert Warning: Where the Covered Product is being shipped to a consumer in California and
18 may be returned by the consumer for a full refund with no extra charge or shipping or handling fee,
19 the warning stated in Section 3.2 may be displayed on the invoice or other package insert that
20 accompanies each box of Covered Products going to a consumer in California. The insert warning
21 shall be a minimum of 5 inches x 7 inches and shall be substantially identical to the insert warning
22 attached as Exhibit C. The Insert Warning shall state the name(s) of the products subject to the
23 Warning, or a list of all of the Covered Products, unless the shipment contains only products with a
24 daily exposure level of more than 0.5 micrograms (mcg) of lead. No other statements about
25 Proposition 65 or lead may accompany the Warning on the package insert, except that Defendant
26 may refer consumers to a single website for further information.

27 Invoice Warning: Where the Covered Product may be returned by the consumer for a full
28 refund with no extra charge or shipping or handling fee, the Warning may alternatively be displayed

1 on an invoice that accompanies the shipment of the Covered Product. The Warning shall be
2 displayed on the front page of the invoice with such conspicuousness, as compared with other words,
3 statements, designs, or devices on the invoice, as to render it likely to be read and understood by an
4 ordinary individual prior to use. The word "WARNING" shall be in all capital letters and in bold
5 print. No other statements about Proposition 65 or lead may accompany the warning. A Warning
6 printed on an invoice must be in a type size that is 1) at least as tall as the largest letter or numeral in
7 the name of the Covered Product printed on the invoice, or 2) at least as tall as the largest of any
8 other health or safety warnings on the invoice, whichever is larger.

9 **3.5 Warning Method No. 3 (Printed Catalog)**

10 For Covered Products sold to California consumers through a printed catalog, and if the
11 Warning is not being provided as set forth in Section 3.3, the Warning shall be prominently displayed
12 on each catalog page that contains a description of the ingredients or attributes of the Covered
13 Product. Where the Covered Product may be returned by the consumer for a full refund with no extra
14 charge or shipping or handling fee, the Warning may alternatively be displayed on the invoice or
15 other package insert as pursuant to Section 3.4 and as attached in Exhibit D.

16 **3.6 Calculation of Lead Levels**

17 As used in this Consent Judgment, lead levels are calculated pursuant to the testing protocol
18 described in Section 3.8. For purposes of measuring the lead, the highest lead detection result of the
19 three (3) randomly selected samples of the Covered Products will be controlling. For purposes of this
20 Consent Judgment, daily lead exposure levels shall be measured in micrograms, and shall be
21 calculated using the following formula: Micrograms of lead per gram of product, multiplied by
22 grams per serving of the product (using the largest serving size appearing on the Covered Product's
23 label), multiplied by servings of the product per day (using the largest number of servings in the
24 recommended dosage appearing on the Covered Product's label), which equals micrograms of lead
25 exposure per day, excluding, for purposes of this consent judgment only, the amounts of "naturally
26 occurring" lead in the ingredients listed in the table as well as the Cocoa powder allowance listed in
27 the table below. If XYMOGEN wishes to exclude the naturally occurring lead set forth in this
28 section, it must, prior to the Effective Date, provide ERC with a list of all ingredients including the

1 percentage and weight of each ingredient for all Covered Products for which it is requesting that the
2 exclusion be applied. In the event that a dispute arises with respect to compliance with the terms of
3 this Consent Judgment as to any contribution from naturally occurring lead levels under the Section,
4 the Parties shall employ good faith efforts to seek entry of a protective order that governs access to
5 and disclosure of the Confidential Information Provided. Should a dispute arise, this Section is
6 subject to the meet and confer requirements and attorney's fees provisions set forth in Section 6.2 and
7 6.3 below.

8 INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
9 Calcium	0.8 micrograms/gram
10 Ferrous Fumarate	0.4 micrograms/gram
11 Zinc Oxide	8.0 micrograms/gram
12 Magnesium Oxide	0.4 micrograms/gram
13 Magnesium Carbonate	0.332 micrograms/gram
14 Magnesium Hydroxide	0.4 micrograms/gram
15 Zinc Gluconate	0.8 micrograms/gram
16 Potassium Chloride	1.1 micrograms/gram
17 Cocoa-powder	1.0 microgram/gram

18
19 **3.7 Reformulated Covered Products**

20 A Reformulated Covered Product is one for which the maximum recommended daily serving
21 on the label contains no more than 0.5 micrograms of lead per day.

22 **3.8 Testing and Quality Control Methodology**

23 (a) Beginning within one year of the Effective Date, XYMOGEN shall test three (3)
24 randomly selected samples of each of the Covered Products (in the form intended for sale to the end-
25 user) for lead content. The testing requirement does not apply to any of the Covered Products for
26 which XYMOGEN has provided the warning specified in Section 3.2.
27
28

1 (b) Testing for lead shall be performed using Inductively Coupled Plasma-Mass
2 Spectrometry ("ICP-MS") or any other testing method subsequently agreed to in writing by the
3 Parties.

4 (c) All testing pursuant to this Consent Judgment shall be performed by an independent
5 third-party laboratory certified by the California Environmental Laboratory Accreditation Program or
6 a laboratory that is registered with the United States Food & Drug Administration.

7 (d) XYMOGEN shall retain all test results and documentation for a period of three (3)
8 years from the date of each test. XYMOGEN shall arrange for the laboratory conducting these tests
9 to send the test results to ERC within 10 days of conducting each test.

10 (e) XYMOGEN shall test each of the Covered Products at least once a year for a
11 minimum of three (3) consecutive years by testing three (3) randomly selected samples of each
12 Covered Product which XYMOGEN intends to sell or is manufacturing for sale in California, directly
13 selling to a consumer in California, or Distributing into California.

14 4. SETTLEMENT PAYMENT

15 4.1 XYMOGEN shall remit a total payment of \$170,000.00 (one hundred and seventy
16 thousand dollars) ("Payment"), which shall be in full and final satisfaction of all civil penalties,
17 payment in lieu of civil penalties, and attorney's fees and costs. ERC shall allocate payment as
18 follows:

19 4.2 \$58,100.00 as civil penalties pursuant to California Health and Safety Code
20 Section 25249.7(b)(1). Of this amount, \$43,575.00 shall be payable to the Office of Environmental
21 Health Hazard Assessment ("OEHHA"), and \$14,525.00 shall be payable to ERC. (Cal. Health &
22 Safety Code § 25249.12(e)(1) & (d)). ERC will forward the civil penalty to OEHHA.

23 4.3 \$3,834.95 shall serve as reimbursement to ERC for its actual costs associated with the
24 enforcement of this Proposition 65 action.

25 4.4 \$43,830.36 shall be payable to ERC in lieu of further civil penalties, for the day-to-
26 day business activities such as (1) continued enforcement of Proposition 65, which includes work,
27 analysis and testing of consumer products that may contain Proposition 65 chemicals, focusing on the
28 same or similar type of ingestible products that are the subject matter of the current action; (2) the

1 continued monitoring of past consent judgments and settlements to ensure companies are complying
2 with Proposition 65; and (3) giving a donation of \$2,191.00 to Natural Resources Defense Council to
3 address reducing toxic chemical exposures in California

4 4.5 \$45,420.00 shall serve as reimbursement to Lozeau Drury LLP for ERC's attorney's
5 fee and costs and \$18,814.69 shall serve as reimbursement to ERC for its in-house legal fees.

6 4.6. Providing that no opposition to a motion to approve this Consent Judgment has been
7 filed, XYMOGEN shall make the required payments to ERC within ten (10) days of the Effective
8 Date. In the event that opposition to the Consent Judgment has been filed, then XYMOGEN shall
9 make the required payment to ERC within ten (10) following the earlier of (1) expiration of the time
10 within which to appeal, if no appeal is filed, or (2) exhaustion of any appeals, if an appeal is filed.
11 XYMOGEN shall make this payment by wire transfer to ERC's escrow account, for which ERC will
12 give XYMOGEN the necessary account information. If an appeal challenging approval of this
13 Consent Judgment is filed, no payment will be owed unless the order approving the Consent
14 Judgment is affirmed on appeal.

15 4.7. XYMOGEN's failure to remit payment before or on the due date shall be deemed a
16 material breach of this Agreement.

17 5. MODIFICATION OF CONSENT JUDGMENT

18 5.1 This Consent Judgment may be modified only (i) by written agreement and stipulation
19 of the Parties and (ii) upon entry by the Court of a modified consent judgment.

20 6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT

21 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
22 Consent Judgment.

23 6.2 Any Party may, by motion or application for an order to show cause filed with this
24 Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing party in
25 any such motion or application may request that the Court award its reasonable attorneys' fees and
26 costs associated with such motion or application.

27 6.3 Prior to filing any motion or application as described in paragraph 6.2, any Party who
28 contends that any other Party is violating any term(s) or condition(s) of this Consent Judgment shall

1 meet and confer with the other Part(ies) to attempt to informally resolve any dispute. At least 30 days
2 prior to filing any motion or application with the Court the Party alleging a violation shall provide
3 written notice to the Party alleged to be in violation, providing a description of the nature of the
4 alleged violation(s). After providing written notice, the Parties shall make a good faith effort to
5 resolve any dispute(s). Any motion or application filed with the Court shall describe the good faith
6 efforts made to resolve the dispute. If any Party fails to engage in the required informal resolution
7 process described in this paragraph, then that Party shall not be entitled to recover attorneys' fees or
8 costs, even if successful in any enforcement motion or application.

9 **7. APPLICATION OF CONSENT JUDGMENT**

10 This Consent Judgment shall apply to, be binding upon, and benefit the Parties, and their
11 respective officers, employees, agents, wholly-owned subsidiaries and subdivisions, and the
12 successors and assigns of any of them. This Consent Judgment shall have no application to Covered
13 Products which are distributed or sold exclusively outside the State of California and which are not
14 used by California consumers

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

16 8.1 ERC on behalf of itself, its agents, officers, representatives, successors, and assigns,
17 and in the public interest releases (a) XYMOGEN and its past and present parent companies,
18 subsidiaries, affiliates, and divisions; (b) each of their respective licensors, licensees, franchisors,
19 franchisees, joint venturers, partners, vendors, manufacturers, packagers, contractors, and finished
20 product and ingredient suppliers; (c) each of their respective distributors, wholesalers, retailers, users,
21 packagers and all other entities in the distribution chain of the Covered Products; and (d) each of the
22 respective officers, directors, shareholders, employees, and agents of the persons and entities
23 described in (a) through (c) above (the persons and entities identified in (a), (b), (c), and (d), above,
24 including the predecessors and assigns of any of them, are collectively referred to as "the Released
25 Parties") from all claims for violations of Proposition 65 up through the Effective Date based on the
26 Covered Products as set forth in the Notices of Violation and the Complaint. Released Parties do not
27 include private label customers of XYMOGEN.

28

1 8.2 ERC, on behalf of itself only, and XYMOGEN on behalf of itself only, hereby release
2 and discharge all known and unknown claims for alleged violations of Proposition 65 arising from or
3 relating to the Covered Products as set forth in the Notices of Violation and the Complaint. It is
4 possible that other claims not known to the Parties arising out of the facts alleged in the Notices of
5 Violation or the Complaint and relating to lead in the Covered Products that were manufactured
6 before the Effective Date will develop or be discovered. ERC, on behalf of itself only and
7 XYMOGEN on behalf of itself only, waive California Civil Code Section 1542, which reads as
8 follows:

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

14 ERC, on behalf of itself only, and XYMOGEN on behalf of itself only acknowledge and understand
15 the significance and consequences of this specific waiver of California Civil Code section 1542.

16 8.3 Compliance with the terms of this Consent Judgment shall be deemed to constitute
17 compliance by any releasee with Proposition 65 regarding the Covered Products as set forth in the
18 Notices of Violation and the Complaint.

19 8.4 ERC, on one hand, and XYMOGEN, on the other hand, each release and waive all
20 claims they may have against each other for any statements or actions made or undertaken by them in
21 connection with the Notices of Violation or the Complaint. However, this shall not affect or limit any
22 Party's right to seek to enforce the terms of this Consent Judgment.

23 9. **CONSTRUCTION AND SEVERABILITY**

24 9.1 The terms and conditions of this Consent Judgment have been reviewed by the
25 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully
26 discuss the terms and conditions with its counsel. In any subsequent interpretation or construction of
27 this Consent Judgment, the terms and conditions shall not be construed against any Party

28 9.2 In the event that any of the provisions of this Consent Judgment is held by a court to
be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

1 **9.3** The terms and conditions of this Consent Judgment shall be governed by and
2 construed in accordance with the laws of the State of California.

3 **10. PROVISION OF NOTICE**

4 All notices required to be given to either Party to this Consent Judgment by the other shall be
5 in writing and sent to the following agents listed below by: (a) first-class, registered, (b) certified
6 mail, (b) overnight courier, or (c) personal delivery to the following

7 For Environmental Research Center

8 Chris Heptinstall, Executive Director
9 Environmental Research Center
10 3111 Camino Del Rio North, Suite 400
11 San Diego, CA 92108

12 With a copy to:

13 Richard Drury
14 Lozeau | Drury LLP
15 410 12th Street, Suite 250
16 Oakland, CA 94607

17 For XYMOGEN, Inc.

18 Brian Blackburn
19 XYMOGEN, Inc.
20 6900 Kingspointe Parkway
21 Orlando, FL 32819

22 With a copy to:

23 Edward P. Sangster
24 K&L Gates LLP
25 Four Embarcadero Center
26 Suite 1200
27 San Francisco, CA 94111

28 **11. COURT APPROVAL**

1 **11.1** Upon execution of this Consent Judgment by the Parties, ERC shall file a Motion for
2 Court Approval. The Parties shall use their best efforts to support entry of this Consent Judgment.

3 **11.2** If the California Attorney General objects to any term in this Consent Judgment, the
4 Parties shall use their best efforts to resolve the concern in a timely manner, and, if possible, prior to
5 the hearing on the motion.

1 11.3 If the Court, despite the Parties' best efforts, does not approve this Stipulated Consent
2 Judgment, it shall be null and void and have no force or effect.

3 **12. EXECUTION AND COUNTERPARTS**

4 This Stipulated Consent Judgment may be executed in counterparts, which taken together
5 shall be deemed one document. A facsimile or pdf signature shall be construed as valid and as the
6 original signature.

7 **13. ENTIRE AGREEMENT, AUTHORIZATION**

8 13.1 This Consent Judgment contains the sole and entire agreement and understanding of
9 the Parties with respect to the entire subject matter herein, and any and all prior discussions,
10 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,
11 express or implied, other than those contained herein have been made by any Party. No other
12 agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or to
13 bind any Party.

14 13.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
15 the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly provided
16 herein, each Party shall bear its own fees and costs.

17 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

18 14.1 This Consent Judgment has come before the Court upon the request of the Parties.
19 The Parties request the Court to fully review this Consent Judgment and, being fully informed
20 regarding the matters which are the subject of this action, to:

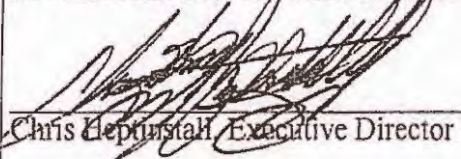
21 (a) Find that the terms and provisions of this Consent Judgment represent a good faith
22 settlement of all matters raised by the allegations of the Complaint, that the matter has been diligently
23 prosecuted, and that the public interest is served by such settlement; and

24 (b) Make the findings pursuant to California Health and Safety Code Section
25 25249.7(f)(4) and approve the Settlement, and this Consent Judgment.

26 **IT IS SO STIPULATED:**
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28

1 ENVIRONMENTAL RESEARCH CENTER

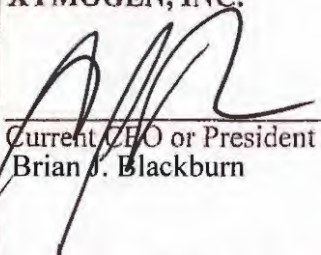
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Chris Heptinstall, Executive Director

Dated: 6/2/2015

5 XYMOGEN, INC.

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Current CEO or President
Brian J. Blackburn

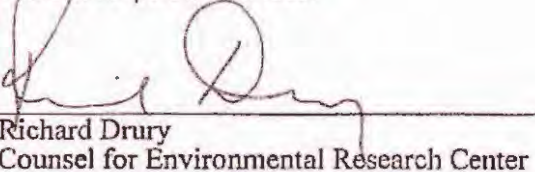
Dated: 6/9/2015

10 APPROVED AS TO FORM

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12 LOZEAU | DRURY LLP

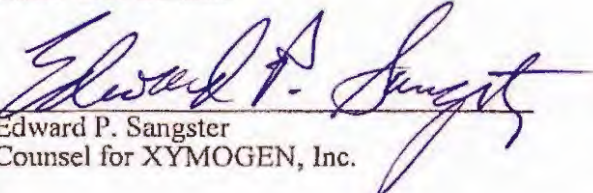
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Richard Drury
Counsel for Environmental Research Center

Dated: 6/2/2015

16 K&L GATES LLP

17
18
19
20


Edward P. Sangster
Counsel for XYMOGEN, Inc.

Dated: 6/4/2015

21 ORDER AND JUDGMENT

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

24 IT IS SO ORDERED, ADJUDGED, AND DECREED.

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Dated: _____

Judge, Superior Court of the State of California