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8 Attorneys for Plaintiff
9 ENVIRONMENTAL RESEARCH CENTER, INC.

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

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

15 **Plaintiff,**

16 **v.**

17 **QIVANA, LLC, and DOES 1-100**

18 **Defendants.**

CASE NO. RG16817735

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 31, 2016

Trial Date: None set

19 **1. INTRODUCTION**

20 **1.1** On May 31, 2016, Plaintiff Environmental Research Center, Inc. (“ERC”), a
21 non-profit corporation and as a private enforcer, initiated this action by filing a Complaint for
22 Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the
23 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
24 against Qivana, LLC (“Qivana”) and Does 1-100. In this action, ERC alleges that a number of
25 products manufactured, distributed or sold by Qivana contain lead, a chemical listed under
26 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical
27 at a level requiring a Proposition 65 warning. These products (referred to hereinafter
28 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Qivana

1 LLC Metaboliq Shake Vanilla, (2) Qivana LLC Metaboliq Shake Chocolate, (3) Qivana LLC
2 Metaboliq Infusions Mocha, (4) Qivana LLC Qore Detox, and (5) Qivana LLC Qore Defense.

3 **1.2** ERC and Qivana are hereinafter referred to individually as a “Party” or
4 collectively as the “Parties.”

5 **1.3** ERC is a California non-profit corporation that, it alleges, is dedicated to, among
6 other causes, helping safeguard the public from health hazards by reducing the use and misuse
7 of hazardous and toxic chemicals, facilitating a safe environment for consumers and
8 employees, and encouraging corporate responsibility.

9 **1.4** For purposes of this Consent Judgment, the Parties agree that Qivana contends that
10 it is a business entity that employed ten or more persons at certain, but not all times relevant to this
11 action, and, to the extent it had ten or more employees at a given time, qualified as a “person in the
12 course of business” within the meaning of Proposition 65. Qivana manufactures, distributes and
13 sells the Covered Products.

14 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
15 dated November 5, 2015, that was served on the California Attorney General, other public
16 enforcers, and Qivana (“Notice”). A true and correct copy of the Notice is attached as Exhibit
17 A and is hereby incorporated by reference. More than 60 days have passed since the Notice
18 was mailed and uploaded to the Attorney General’s website, and no designated governmental
19 entity has filed a complaint against Qivana with regard to the Covered Products or the alleged
20 violations.

21 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
22 persons in California to lead without first providing clear and reasonable warnings in violation
23 of California Health and Safety Code section 25249.6. Qivana denies all material allegations
24 contained in the Notice and Complaint.

25 **1.7** The Parties have entered into this Consent Judgment in order to settle,
26 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
27 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
28 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,

1 parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,
2 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
3 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
4 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
5 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
6 purpose.

7 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
8 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
9 other or future legal proceeding unrelated to these proceedings.

10 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
11 a Judgment by this Court.

12 **2. JURISDICTION AND VENUE**

13 For purposes of this Consent Judgment and any further court action that may become
14 necessary to enforce this Consent Judgment, the Parties stipulate that (1) this Court has subject
15 matter jurisdiction over the allegations of violations contained in the Complaint and personal
16 jurisdiction over Qivana as to the acts alleged in the Complaint, (2) venue is proper in Alameda
17 County, and (3) this Court has jurisdiction to enter this Consent Judgment as a full and final
18 resolution of all claims up through and including the Effective Date which were or could have
19 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

21 **3.1** At any time that Qivana has 10 or more employees and qualifies as a “person in
22 the course of business” within the meaning of Proposition 65, Qivana shall be permanently
23 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
24 California”, or directly selling in the State of California, any Covered Product which exposes a
25 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms per day of lead when
26 the maximum suggested dose is taken as directed on the Covered Product’s label, unless it
27 meets the warning requirements under Section 3.2.

28 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State

1 of California” shall mean to directly ship a Covered Product into California for sale in
2 California or to sell a Covered Product to a distributor that Qivana knows will sell the Covered
3 Product in California.

4 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
5 Level” shall be measured in micrograms, and shall be calculated using the following formula:
6 micrograms of lead per gram of product, multiplied by grams of product per serving of the
7 product (using the largest serving size appearing on the product label), multiplied by servings
8 of the product per day (using the largest number of servings in a recommended dosage
9 appearing on the product label), which equals micrograms of lead exposure per day.

10 **3.2 Clear and Reasonable Warnings**

11 If Qivana is required to provide a warning pursuant to Section 3.1, the following warning
12 must be utilized:

13 **WARNING: This product contains a chemical known to the State of California to**
14 **cause [cancer and] birth defects or other reproductive harm.**

15 Qivana shall use the phrase “cancer and” in the warning only if the maximum daily dose
16 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
17 the quality control methodology set forth in Section 3.4.

18 The warning shall be securely affixed to or printed upon the container or label of each
19 Covered Product. In addition, for Covered Products sold over Qivana’s website, the warning
20 shall appear on Qivana’s checkout page on its website for California consumers identifying any
21 Covered Product, and also appear prior to completing checkout on Qivana’s website when a
22 California delivery address is indicated for any purchase of any Covered Product.

23 The warning shall be at least the same size as the largest of any other health or safety
24 warnings also appearing on its website or on the label or container of Qivana’s product packaging
25 and the word “**WARNING**” shall be in all capital letters and in bold print. No other statements
26 about Proposition 65 or lead may accompany the warning.

27 Qivana must display the above warnings with such conspicuousness, as compared with
28 other words, statements, design of the label, container, or on its website, as applicable, to render

1 the warning likely to be read and understood by an ordinary individual under customary conditions
2 of purchase or use of the product.

3 **3.3 Reformulated Covered Products**

4 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when
5 the maximum suggested dose is taken as directed on the Reformulated Covered Product's label,
6 contains no more than 0.5 micrograms of lead per day as determined by the quality control
7 methodology described in Section 3.4.

8 **3.4 Testing and Quality Control Methodology**

9 **3.4.1** Beginning within one year of the Effective Date, and any time that
10 Qivana has 10 or more employees and qualifies as a "person in the course of business" within
11 them meaning of Proposition 65, Qivana shall arrange for lead testing of the Covered Products
12 at least once a year for a minimum of five consecutive years by arranging for testing of five
13 randomly selected samples of each of the Covered Products, in the form intended for sale to the
14 end-user, which Qivana intends to sell or is manufacturing for sale in California, directly
15 selling to a consumer in California or "Distributing into California." The testing requirement
16 does not apply to any of the Covered Products for which Qivana has provided the warning
17 specified in Section 3.2. If tests conducted pursuant to this Section demonstrate that no warning
18 is required for a Covered Product during each of five consecutive years, then the testing
19 requirements of this Section will no longer be required as to that Covered Product.

20 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level",
21 the arithmetic mean of the lead detection results of the five (5) randomly selected samples of the
22 Covered Products will be controlling.

23 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
24 laboratory method that complies with the performance and quality control factors appropriate
25 for the method used, including limit of detection, qualification, accuracy, and precision that
26 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
27 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
28 method subsequently agreed to in writing by the Parties.

1 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
2 independent third party laboratory certified by the California Environmental Laboratory
3 Accreditation Program or an independent third-party laboratory that is registered with the
4 United States Food & Drug Administration or possesses nationally-recognized 3rd party
5 accreditation.

6 **3.4.5** Nothing in this Consent Judgment shall limit Qivana’s ability to conduct,
7 or require that others conduct, additional testing of the Covered Products, including the raw
8 materials used in their manufacture.

9 **3.4.6** Beginning on the Effective Date and continuing for a period of five years
10 when the obligations of this Section 3 are applicable, Qivana shall arrange for copies of all
11 laboratory reports with results of testing for lead content under Section 3.4.1 to be
12 automatically sent by the testing laboratory directly to ERC within ten days after completion of
13 the testing. This reporting requirement shall expire five years from the Effective Date. Qivana
14 shall retain all test results and documentation for a period of five years from the date of each
15 test.

16 **4. SETTLEMENT PAYMENT**

17 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
18 penalties, attorney’s fees, and costs, Qivana shall make a total payment of \$70,000.00 (“Total
19 Settlement Amount”) in ten consecutive equal monthly payments (“Settlement Payments” by
20 wire transfer to ERC’s escrow account, for which ERC will give Qivana the necessary account
21 information. The first payment of \$7,000.00 shall be made within 5 business days of the
22 Effective Date and the remaining nine payments of \$7,000.00 shall follow in 30 day increments
23 thereafter (“Due Dates”). The Total Settlement Amount shall be apportioned as follows:

24 **4.2** \$22,066.00 shall be considered a civil penalty pursuant to California Health and
25 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$16,549.50) of the civil penalty to the
26 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
27 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
28 Code §25249.12(c). ERC will retain the remaining 25% (\$5,516.50) of the civil penalty.

1 **4.3** \$4,154.31 shall be distributed to ERC as reimbursement to ERC for costs
2 incurred in bringing this action.

3 **4.4** \$22,068.70 shall be distributed to ERC in lieu of further civil penalties, for day-
4 to-day business activities such as (1) continued enforcement of Proposition 65, which includes
5 analyzing, researching and testing consumer products that may contain Proposition 65
6 chemicals, focusing on the same or similar type of ingestible products that are the subject
7 matter of the current action; (2) the continued monitoring of past consent judgments and
8 settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
9 donation of \$1,100.00 to the Center For Environmental Health to address reducing toxic
10 chemical exposures in California.

11 **4.5** \$1,530.00 shall be distributed to Michael Freund as reimbursement of ERC's
12 attorney's fees, \$5,725.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
13 attorney's fees, while \$14,455.99 shall be distributed to ERC for its in-house legal fees.

14 **4.6** In the event that Qivana fails to remit the Total Settlement Payment owed under
15 Section 4 of this Consent Judgment on or before the Due Date, Qivana shall be deemed to be in
16 material breach of its obligations under this Consent Judgment. ERC shall provide written
17 notice of the delinquency to Qivana via electronic mail. If Qivana fails to deliver the Total
18 Settlement Payment within five (5) days from the written notice, the Total Settlement Payment
19 shall become immediately due and payable and shall accrue interest at the statutory judgment
20 interest rate provided in the Code of Civil Procedure section 685.010. Additionally, Qivana
21 agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment
22 due under this Consent Judgment.

23 **5. MODIFICATION OF CONSENT JUDGMENT**

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

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

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

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

15 **5.4** Where the meet-and-confer process does not lead to a joint motion or
16 application in support of a modification of the Consent Judgment, then either Party may seek
17 judicial relief on its own.

18 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
19 **JUDGMENT**

20 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
21 this Consent Judgment.

22 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
23 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
24 inform Qivana in a reasonably prompt manner of its test results, including information
25 sufficient to permit Qivana to identify the Covered Products at issue. Qivana shall, within thirty
26 days following such notice, provide ERC with testing information, from an independent third-
27 party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating Qivana's
28 compliance with the Consent Judgment, if warranted. The Parties shall first make a good-faith

1 effort to resolve the matter prior to ERC taking any further legal action.

2 **7. APPLICATION OF CONSENT JUDGMENT**

3 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
4 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
5 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
6 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
7 application to Covered Products which are distributed, sold, or consumed exclusively outside the
8 State of California..

9 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASE**

10 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
11 on behalf of itself and in the public interest, and Qivana and its respective officers, directors,
12 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
13 franchisees, licensees, customers (not including private label customers of Qivana),
14 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
15 distribution chain of any Covered Product, and the predecessors, successors and assigns of any
16 of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the
17 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
18 damages, penalties, fees, costs and expenses asserted, or that could have been asserted from the
19 handling, use, or consumption of the Covered Products, as to any alleged violation of
20 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
21 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

22 **8.2** ERC on its own behalf only, on one hand, and Qivana on its own behalf
23 only, on the other, further waive and release any and all claims they may have against each
24 other for all actions or statements made or undertaken in the course of seeking or opposing
25 enforcement of Proposition 65 in connection with the Notice or Complaint up through and
26 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit
27 any Party's right to seek to enforce the terms of this Consent Judgment.

28 **8.3** It is possible that other claims not known to the Parties arising out of the facts

1 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
2 discovered. ERC on behalf of itself only, on one hand, and Qivana, on the other hand,
3 acknowledge that this Consent Judgment is expressly intended to cover and include all such
4 claims up through the Effective Date, including all rights of action therefor. ERC and Qivana
5 acknowledge that the claims released in Section 8 may include unknown claims, and
6 nevertheless waive California Civil Code section 1542 as to any such unknown claims.

7 California Civil Code section 1542 reads as follows:

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

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

16 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
17 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
18 in the Covered Products as set forth in the Notice and the Complaint.

19 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
20 environmental exposures arising under Proposition 65, nor shall it apply to any of Qivana's
21 products other than the Covered Products.

22 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

25 **10. GOVERNING LAW**

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

28 **11. PROVISION OF NOTICE**

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

1 email may also be sent.

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

3 Chris Heptinstall, Executive Director, Environmental Research Center
4 3111 Camino Del Rio North, Suite 400
5 San Diego, CA 92108
6 Tel: (619) 500-3090
7 Email: chris_erc501c3@yahoo.com

8 With a copy to:
9 Michael Freund
10 Ryan Hoffman
11 Michael Freund & Associates
12 1919 Addison Street, Suite 105
13 Berkeley, CA 94704
14 Telephone: (510) 540-1992
15 Facsimile: (510) 540-5543

16 **QIVANA, LLC**
17 Derek H. Hall
18 Chief Executive Officer
19 Qivana
20 5255 Edgewood Drive
21 Provo, UT 84604
22 Telephone: 801-610-4602
23 Facsimile: 888-338-7222

24 With a copy to:
25 Maureen Gorsen
26 Paul Beard
27 Alston & Bird, LLP
28 1115 11th Street
Sacramento, CA 95814
Telephone: 916-498-3337
Facsimile: 213-576-2865

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.
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1 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
2 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
3 prior to the hearing on the motion.

4 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
5 void and have no force or effect, and the parties shall make good faith efforts to craft a
6 stipulated consent judgment that addresses the Court's objections.

7 **13. EXECUTION AND COUNTERPARTS**

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

11 **14. DRAFTING**

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

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

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

25 **16. ENFORCEMENT**

26 ERC may, by motion or order to show cause before the Superior Court of Alameda
27 County, enforce the terms and conditions contained in this Consent Judgment. In any action
28 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,

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

6 **17. ENTIRE AGREEMENT, AUTHORIZATION**

7 **17.1** This Consent Judgment contains the sole and entire agreement and
8 understanding of the Parties with respect to the entire subject matter herein, and any and all
9 prior discussions, negotiations, commitments and understandings related hereto. No
10 representations, oral or otherwise, express or implied, other than those contained herein have
11 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
12 herein, shall be deemed to exist or to bind any Party.

13 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
14 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
15 explicitly provided herein, each Party shall bear its own fees and costs.

16 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
17 **CONSENT JUDGMENT**

18 This Consent Judgment has come before the Court upon the request of the Parties. The
19 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 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
22 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
23 been diligently prosecuted, and that the public interest is served by such settlement; and

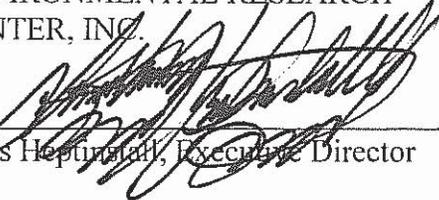
24 (2) Make the findings pursuant to California Health and Safety Code section
25 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

26 **IT IS SO STIPULATED:**
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Dated: 8/18, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hepburn, Executive Director

Dated: _____, 2016

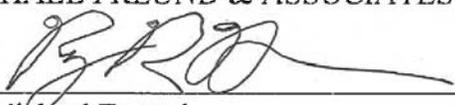
QIVANA, LLC

By:
Its:

APPROVED AS TO FORM:

Dated: 9/20, 2016

MICHAEL FREUND & ASSOCIATES

By: 
Michael Freund
Ryan Hoffman
Attorneys for Plaintiff Environmental
Research Center, Inc.

Dated: _____, 2016

ALSTON & BIRD, LLP

By: _____
Attorney for Defendant Qivana, LLC

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2016

Judge of the Superior Court

1 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

2 **IT IS SO STIPULATED:**

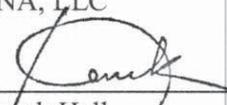
3 Dated: _____, 2016

ENVIRONMENTAL RESEARCH
CENTER, INC.

4
5 By: _____
Chris Heptinstall, Executive Director

6 Dated: 8/24, 2016

QIVANA, LLC

7 
8 By: Derek Hall
9 Its: CEO

10 **APPROVED AS TO FORM:**

11 Dated: _____, 2016

MICHAEL FREUND & ASSOCIATES

12
13 By: _____
14 Michael Freund
15 Ryan Hoffman
Attorneys for Plaintiff Environmental
Research Center, Inc.

16 Dated: 8/24, 2016

ALSTON & BIRD, LLP

17 
18
19 By: _____
20 Attorney for Defendant Qivana, LLC

21 **ORDER AND JUDGMENT**

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

24 IT IS SO ORDERED, ADJUDGED AND DECREED.

25
26 Dated: _____, 2016

Judge of the Superior Court