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18 IQ FORMULATIONS, LLC. dba METABOLIC
19 NUTRITION

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF ALAMEDA

22 ENVIRONMENTAL RESEARCH
23 CENTER, INC. a California non-profit
24 corporation,

25 Plaintiff,

26 v.

27 IQ FORMULATIONS, LLC.; IQ
28 FORMULATIONS, LLC. DBA
METABOLIC NUTRITION; and DOES 1-
50, inclusive,

Defendants.

CASE NO. RG16818883

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 9, 2016

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On June 9, 2016, Plaintiff Environmental Research Center, Inc. (“ERC”), a
3 non-profit corporation, as a private enforcer, and in the public interest, initiated this action by
4 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the
5 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
6 against IQ FORMULATIONS, LLC., IQ FORMULATIONS, LLC. dba METABOLIC
7 NUTRITION (collectively “IQ FORMULATIONS”), and DOES 1-50. In this action, ERC
8 alleges that a number of products manufactured, distributed or sold by IQ FORMULATIONS
9 contain lead and/or cadmium, chemicals listed under Proposition 65 as carcinogens and
10 reproductive toxins, and expose consumers to these chemicals at a level requiring a Proposition
11 65 warning. These products (referred to hereinafter individually as a “Covered Product” or
12 collectively as “Covered Products”) are:

- 13 1) Metabolic Nutrition P.S.P. Pre-Workout Blue Raspberry - Lead
- 14 2) Metabolic Nutrition P.S.P. Pre-Workout Watermelon - Lead
- 15 3) Metabolic Nutrition P.S.P. Pre-Workout Fruit Punch - Lead
- 16 4) Metabolic Nutrition ProtiZyme Butter Pecan Cookie - Lead
- 17 5) Metabolic Nutrition ProtiZyme Banana Creme - Lead
- 18 6) Metabolic Nutrition ProtiZyme Peanut Butter Cookie - Lead
- 19 7) Metabolic Nutrition ProtiZyme Chocolate Cake – Lead, Cadmium
- 20 8) Metabolic Nutrition ProtiZyme Strawberry Creme - Lead
- 21 9) Metabolic Nutrition MuscLean Chocolate Milkshake – Lead, Cadmium
- 22 10) Metabolic Nutrition MuscLean Strawberry Milkshake - Lead
- 23 11) Metabolic Nutrition MuscLean Peanut Butter Milkshake - Lead
- 24 12) Metabolic Nutrition MuscLean Vanilla Milkshake – Lead

25 **1.2** ERC and IQ FORMULATIONS are hereinafter referred to individually as a
26 “Party” or collectively as the “Parties.”

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

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

9 **1.5** The Complaint is based on allegations contained in ERC's Notice of Violation
10 dated March 30, 2016, that was served on the California Attorney General, other public
11 enforcers, and IQ FORMULATIONS ("Notice"). A true and correct copy of the Notice is
12 attached as Exhibit A and is hereby incorporated by reference. More than 60 days have passed
13 since the Notice was mailed and uploaded to the Attorney General's website, and no designated
14 governmental entity has filed a complaint against IQ FORMULATIONS with regard to the
15 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. IQ
19 FORMULATIONS denies all material 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 shall constitute or be construed as an admission by any of
23 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
24 parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,
25 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
26 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
27 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
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1 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
2 purpose.

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

6 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
7 a Judgment by this Court. The Compliance Date is one hundred fifty (150) days after the
8 Effective Date.

9 **2. JURISDICTION AND VENUE**

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

17 **3. INJUNCTIVE RELIEF AND WARNINGS**

18 **3.1** Beginning on the Compliance Date, IQ FORMULATIONS shall be permanently
19 enjoined from manufacturing for sale in the State of California, "Distributing into the State of
20 California", or directly selling in the State of California, any Covered Product which exposes a
21 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms per day of lead or
22 "Daily Cadmium Exposure Level" of more than 4.10 micrograms per day of cadmium when
23 the maximum suggested dose is taken as directed on the Covered Product's label, unless it
24 meets the warning requirements under Section 3.2. This Section shall not apply to any IQ
25 FORMULATIONS' product that was distributed into the State of California prior to the
26 Compliance Date.

1 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
2 of California” shall mean to directly ship a Covered Product into California for sale in
3 California or to sell a Covered Product to a distributor that IQ FORMULATIONS knows will
4 sell the Covered Product in California.

5 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
6 Level” and “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be
7 calculated using the following formula: micrograms of lead or cadmium per gram of product
8 minus the amounts of lead listed in Table 3.1.2 below (for lead test results only), multiplied by
9 grams of product per serving of the product (using the largest serving size appearing on the
10 product label), multiplied by servings of the product per day (using the largest number of
11 servings in a recommended dosage appearing on the product label), which equals micrograms
12 of lead or cadmium exposure per day.

13 **TABLE 3.1.2**

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium (Elemental)	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram
Cocoa-powder	1.0 microgram/gram

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25 If, at any time after the Compliance Date, ERC tests a Covered Product that does not
26 contain a warning described in Section 3.2, and the test results indicate that the Daily Lead
27 Exposure Level is greater than 0.5 micrograms per day, IQ FORMULATIONS agrees to
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1 confidentially supply to ERC, within 30 days of ERC's written request, a list of ingredients,
2 including the percentage of each ingredient ("Ingredient List"), of that particular covered product
3 so that ERC may be able to calculate the daily exposure based on the allowances in the table
4 above.

5 In the event that a dispute arises with respect to compliance with the terms of this
6 Consent Judgment as to any contribution from naturally occurring lead levels under this Section,
7 the Parties shall meet and confer as set forth in Section 15.

8 **3.2 Clear and Reasonable Warnings**

9 IF IQ FORMULATIONS is required to provide a warning pursuant to Section 3.1, one of the
10 following warnings must be utilized ("Warning"):

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

13 or

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

17 IQ FORMULATIONS shall use the phrase "cancer and" in the Warning only if the maximum daily
18 dose recommended on the label contains more than 15 micrograms of lead as determined pursuant
19 to the quality control methodology set forth in Section 3.4. As identified in the brackets, the warning
20 shall appropriately reflect whether there is lead, cadmium, or both chemicals present in each of the
21 Covered Products.

22 The Warning shall be securely affixed to or printed upon the container or label of each
23 Covered Product. In addition, for Covered Products sold over IQ FORMULATIONS' website,
24 the Warning or a hyperlink using the word "WARNING" that links to the warning, shall appear
25 in one of the following locations:

- 26 (i) the checkout page when a California delivery address is indicated for any purchase of
27 any Covered Product, or
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1 (ii) the product display page.

2 The Warning shall be at least the same size as the largest of any other health or safety
3 warnings also appearing on its website or on the label or container of IQ FORMULATIONS'
4 product packaging and the word "WARNING" shall be in all capital letters and in bold print. No
5 statements contradicting or conflicting with the Warning shall accompany the Warning.

6 IQ FORMULATIONS must display the above Warning with such conspicuousness, as
7 compared with other words, statements, design of the label, container, or on its website, as
8 applicable, to render the Warning likely to be read and understood by an ordinary individual under
9 customary conditions of purchase or use of the product.

10 **4. SETTLEMENT PAYMENT**

11 4.1 IQ FORMULATIONS is experiencing severe financial hardship and is entering
12 into this Consent Judgment to avoid prolonged and costly litigation. In order to be able to resolve
13 the litigation, due to its severe financial hardship, IQ FORMULATIONS requires that the
14 settlement payment be made over eight (8) months. To that end, in full satisfaction of all potential
15 civil penalties, payment in lieu of civil penalties, attorney's fees, and costs, IQ FORMULATIONS
16 shall make a total payment of \$60,000.00 ("Total Settlement Amount") according to the following
17 payment schedule ("Due Dates"):

- 18 • Payment 1 - \$7,500.00 within 5 days of the effective date
- 19 • Payment 2 - \$7,500.00 within 35 days of the effective date
- 20 • Payment 3 - \$7,500.00 within 65 days of the effective date
- 21 • Payment 4 - \$7,500.00 within 95 days of the effective date
- 22 • Payment 5 - \$7,500.00 within 125 days of the effective date
- 23 • Payment 6 - \$7,500.00 within 155 days of the effective date
- 24 • Payment 7 - \$7,500.00 within 185 days of the effective date
- 25 • Payment 8 - \$7,500.00 within 215 days of the effective date

26 4.2 IQ FORMULATIONS shall make these payments by wire transfer to ERC's
27 escrow account, for which ERC will give IQ FORMULATIONS the necessary account
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1 information. The Total Settlement Amount shall be apportioned as follows:

2 4.3 \$7,342.75 shall be considered a civil penalty pursuant to California Health and
3 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$5,507.06) of the civil penalty to the
4 Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe
5 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
6 Code §25249.12(c). ERC will retain the remaining 25% (\$1,835.69) of the civil penalty.

7 4.4 \$5,609.48 shall be distributed to ERC as reimbursement to ERC for reasonable
8 costs incurred in bringing this action.

9 4.5 \$5,507.06 shall be distributed to ERC as an Additional Settlement Payment
10 (“ASP”), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
11 and 3204. ERC will utilize the ASP for activities that address Proposition 65 enforcement and
12 monitoring in other matters. These activities are detailed below and support ERC’s
13 overarching goal of reducing and/or eliminating Proposition 65-listed chemicals in dietary
14 supplement products in California. ERC’s activities have had, and will continue to have, a
15 direct and primary effect within the State of California because California consumers will be
16 benefitted by the reduction and/or elimination of exposure to lead and/or cadmium in dietary
17 supplements and/or by providing clear and reasonable warnings to California consumers prior
18 to ingestion of the products.

19 4.6 Based on a review of past years’ actual budgets, ERC is providing the following
20 list of activities ERC engages in to protect California consumers through Proposition 65 citizen
21 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
22 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
23 supplement products that may contain lead [and/or cadmium] [and/or arsenic] and are sold to
24 California consumers. This work includes continued monitoring and enforcement of past
25 consent judgments and settlements to ensure companies are in compliance with their
26 obligations thereunder, with a specific focus on those judgments and settlements concerning
27 lead and/or cadmium. This work also includes investigation of new companies that ERC does
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1 not obtain any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE
2 PROGRAM (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring
3 products from companies, developing and maintaining a case file, testing products from these
4 companies, providing the test results and supporting documentation to the companies, and
5 offering guidance in warning or implementing a self-testing program for lead and/or cadmium
6 in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining
7 ERC's "Got Lead?" Program which reduces the numbers of contaminated products that reach
8 California consumers by providing access to free testing for lead in dietary supplement
9 products (Products submitted to the program are screened for ingredients which are suspected
10 to be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified
11 laboratory for testing, and the results shared with the consumer that submitted the product).

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

17 4.7 \$18,637.50 shall be distributed to the Law Office of Philip T. Emmons as
18 reimbursement of ERC's attorney's fees, while \$22,903.21 shall be distributed to ERC for its
19 in-house legal fees.

20 4.8 In the event that IQ FORMULATIONS fails to remit any of the payments owed
21 under Section 4 of this Consent Judgment on or before their respective Due Dates, IQ
22 FORMULATIONS shall be deemed to be in material breach of its obligations under this
23 Consent Judgment. ERC shall provide written notice of the delinquency to IQ
24 FORMULATIONS via electronic mail. If IQ FORMULATIONS fails to deliver the delinquent
25 payment within fifteen (15) days from the written notice, the Total Settlement Amount shall
26 become immediately due and payable and shall accrue interest at the statutory judgment
27 interest rate provided in the Code of Civil Procedure section 685.010. Additionally, IQ
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1 FORMULATIONS agrees to pay ERC's reasonable attorney's fees and costs for any efforts to
2 collect the payment due under this Consent Judgment.

3 **5. MODIFICATION OF CONSENT JUDGMENT**

4 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
5 written stipulation of the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a
6 modified consent judgment.

7 **5.2** If either party seeks to modify this Consent Judgment under Section 5.1
8 ("noticing party"), then the noticing party must provide written notice to the other party
9 ("receiving party") of its intent ("Notice of Intent"). If the receiving party seeks to meet and
10 confer regarding the proposed modification in the Notice of Intent, then it must provide written
11 notice to the noticing party within thirty (30) days of receiving the Notice of Intent. If the
12 receiving party notifies the noticing party in a timely manner of its intent to meet and confer,
13 then the Parties shall meet and confer in good faith as required in this Section 5.2. If the
14 receiving party does not provide timely notice to the noticing party of its intent to meet and
15 confer under this Section 5.2, then the noticing party shall be entitled to seek Court approval of
16 the modification requested in its Notice of Intent and the receiving Party shall not be entitled to
17 object to the requested modification. If the receiving party does provide timely notice to the
18 noticing party of its intent to meet and confer under this Section 5.2, the Parties shall meet in
19 person or via telephone within thirty (30) days of the receiving party's notification of its intent
20 to meet and confer. Within thirty days of such meeting, if the receiving party disputes the
21 proposed modification, the receiving party shall provide to the noticing party a written basis for
22 its position. The Parties shall continue to meet and confer for an additional thirty (30) days in
23 an effort to resolve any remaining disputes. Should it become necessary, the Parties may agree
24 in writing to different deadlines for the meet-and-confer period.

25 **5.3** In the event that IQ FORMULATIONS initiates or otherwise requests a
26 modification under Section 5.1, and the meet and confer process leads to a joint motion or
27 application of the Consent Judgment, IQ FORMULATIONS shall reimburse ERC its costs and
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1 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
2 arguing the motion or application.

3 **5.4** If the meet-and-confer process does not lead to a joint motion or application in
4 support of a modification of the Consent Judgment, or if the receiving party does not agree to
5 the noticing party's requested modification under section 5.1, then either Party may seek
6 judicial relief on its own. In that event, the party seeking judicial relief shall bear the burden of
7 proving, by a preponderance of the evidence, that it meets the grounds for the requested relief.

8 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
9 **JUDGMENT**

10 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
11 this Consent Judgment.

12 **6.2** If ERC alleges IQ FORMULATIONS is not complying with this Consent
13 Judgment, then ERC shall inform IQ FORMULATIONS in a reasonably prompt manner of its
14 test results, including information sufficient to permit IQ FORMULATIONS to identify the
15 Covered Products at issue. IQ FORMULATIONS shall, within thirty days following such
16 notice, provide ERC with testing information demonstrating IQ FORMULATIONS' compliance
17 with the Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter
18 prior to ERC taking any further legal action.

19 **7. APPLICATION OF CONSENT JUDGMENT**

20 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
21 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
22 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
23 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
24 application to Covered Products which are distributed or sold exclusively outside the State of
25 California and which are not used by California consumers.

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

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
3 on behalf of itself and in the public interest, and IQ FORMULATIONS and its respective
4 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
5 suppliers, franchisees, licensees, customers (not including private label customers of IQ
6 FORMULATIONS), distributors, wholesalers, retailers, and all other upstream and
7 downstream entities in the distribution chain of any Covered Product, and the predecessors,
8 successors and assigns of any of them (collectively, "Released Parties"). ERC, on behalf of
9 itself and its respective owners, principals, shareholders, officers, directors, employees, agents,
10 affiliates, partners, subsidiaries, servants, administrators, successors, assigns, and attorneys
11 (collectively "ERC Releasees"), and on behalf of the general in the public interest, hereby fully
12 releases and discharges the Released Parties from any and all claims, actions, causes of action,
13 suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could
14 have been asserted from the handling, use, or consumption of the Covered Products, as to any
15 alleged violation of Proposition 65 or its implementing regulations arising from the failure to
16 provide Proposition 65 warnings on the Covered Products regarding lead and/or cadmium up to
17 and including the Compliance Date. Compliance with the terms of this Consent Judgment shall
18 be deemed to constitute compliance with Proposition 65 by any Released Parties regarding
19 alleged exposures to lead or cadmium in the Covered Products manufactured on or after the
20 Compliance Date.

21 **8.2** ERC on its own behalf only, on one hand, and IQ FORMULATIONS on its
22 own behalf only, on the other, further waive and release any and all claims they may have
23 against each other for all actions or statements made or undertaken in the course of seeking or
24 opposing enforcement of Proposition 65 in connection with the Notice or Complaint up through
25 and including the Effective Date, provided, however, that nothing in Section 8 shall affect or
26 limit any Party's right to seek to enforce the terms of this Consent Judgment.

1 **8.3** It is possible that other claims not known to the Parties arising out of or relating
2 to the Covered Products will develop or be discovered. ERC on behalf of itself only, on one
3 hand, and IQ FORMULATIONS, on the other hand, acknowledge that this Consent Judgment
4 is expressly intended to cover and include all such claims up through the Compliance Date,
5 including all rights of action therefor. ERC and IQ FORMULATIONS acknowledge that the
6 claims released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless
7 waive California Civil Code section 1542 as to any such unknown claims. California Civil
8 Code section 1542 reads as 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
11 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
12 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
13 OR HER SETTLEMENT WITH THE DEBTOR.

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

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

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

23 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

26 **10. GOVERNING LAW**

27 The terms and conditions of this Consent Judgment shall be governed by and construed in
28 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 Philip T. Emmons
13 Law Office of Philip T. Emmons
14 1990 N. California Blvd., 8th Floor
15 Walnut Creek, CA 94596
16 T: (925) 287-6436
17 F: (925) 287-6437

18 **IQ FORMULATIONS, LLC.**
19 **IQ FORMULATIONS, LLC. dba METABOLIC NUTRITION:**
20 Jay Cohen, CEO
21 10151 NW 67th Street
22 Tamarac, FL. 33321

23 With a copy to:
24 Daniel S. Silverman
25 Venable LLP
26 2049 Century Park East, Suite 2300
27 Los Angeles, CA 90067
28 Tel: (310) 229-0373
Fax: (310) 229-9901
Email: dssilverman@venable.com

1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

1 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
2 the Parties shall use reasonable, good faith efforts to resolve the concern in a timely manner,
3 and if possible 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.

6 **13. EXECUTION AND COUNTERPARTS**

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

10 **14. DRAFTING**

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

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

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

24 **16. ENFORCEMENT**

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

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IT IS SO STIPULATED:

Dated: 4/27, 2017

Dated: 4/28/17, 2017

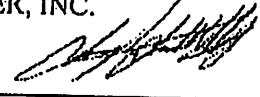
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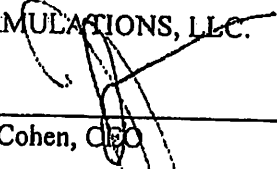
Dated: 4/28, 2017

Dated: 4/28, 2017

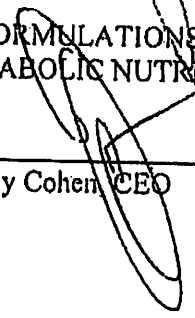
ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Heptinstall, Executive Director

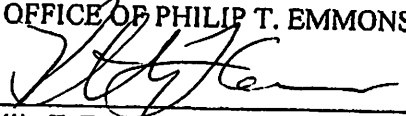
IQ FORMULATIONS, LLC.

By: 
Jay Cohen, CEO

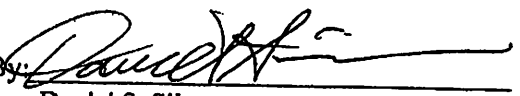
IQ FORMULATIONS, LLC. dba
METABOLIC NUTRITION

By: 
Jay Cohen, CEO

LAW OFFICE OF PHILIP T. EMMONS

By: 
Philip T. Emmons
Attorney for Plaintiff Environmental
Research Center, Inc.

VENABLE, LLP

By: 
Daniel S. Silverman
Attorney for Defendants
IQ Formulations, LLC. and
IQ Formulations, LLC. dba
Metabolic Nutrition

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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: _____, 2017

Judge of the Superior Court