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16 Attorney for Defendant
17 DIRECT DIGITAL, LLC, individually and doing
18 business as NUGENIX

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF ALAMEDA**

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

23 Plaintiff,

24 vs.

25 DIRECT DIGITAL, LLC, individually and
26 doing business as NUGENIX, a Delaware
27 corporation,

28 Defendant.

CASE NO. RG 17859418

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 8, 2017

Trial Date: None set

1. INTRODUCTION

1.1 On May 8, 2017, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the

1 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
2 against DIRECT DIGITAL, LLC, individually and doing business as NUGENIX (“DIRECT
3 DIGITAL”). In this action, ERC alleges that one of the products manufactured, distributed, or
4 sold by DIRECT DIGITAL contains lead, a chemical listed under Proposition 65, and which
5 product exposes consumers to this chemical at a level requiring a Proposition 65 warning. This
6 product (referred to hereinafter as the “Covered Product”) is: Nugenix Ultimate Testosterone
7 Advanced Free Testosterone Complex.

8 **1.2** ERC and DIRECT DIGITAL are hereinafter referred to individually as a
9 “Party” or collectively as the “Parties.”

10 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
11 causes, helping safeguard the public from health hazards by reducing the use and misuse of
12 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
13 and encouraging corporate responsibility.

14 **1.4** For purposes of this Consent Judgment, the Parties agree that DIRECT DIGITAL
15 is a business entity that has employed ten or more persons at all times relevant to this action, and
16 qualifies as a “person in the course of business” within the meaning of Proposition 65. DIRECT
17 DIGITAL manufactures, distributes, and/or sells the Covered Product.

18 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
19 dated February 24, 2017 that was served on the California Attorney General, other public
20 enforcers, and DIRECT DIGITAL (“Notice”). A true and correct copy of the 60-Day Notice
21 dated February 24, 2017 is attached hereto as **Exhibit A** and is incorporated herein by
22 reference.

23 **1.6** ERC’s Notice and Complaint allege that use of the Covered Product exposes
24 persons in California to lead without first providing clear and reasonable warnings in violation
25 of California Health and Safety Code section 25249.6. DIRECT DIGITAL denies all material
26 allegations contained in the Notice and Complaint, and maintains that it has complied with
27 Proposition 65 with respect to the Covered Product.

1 **1.7** The Parties have entered into this Consent Judgment in order to settle,
2 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
3 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
4 be construed as an admission by any of the Parties or by any of their respective officers,
5 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
6 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
7 violation of law.

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

11 **1.9** The Execution Date is the date on which this Consent Judgment is fully signed
12 by the Parties. The Effective Date is the date on which this Consent Judgment is entered by
13 this Court. The Compliance Date is one hundred twenty (120) days after the Effective Date.

14 **2. JURISDICTION AND VENUE**

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

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

23 **3.1** Beginning on the Compliance Date, DIRECT DIGITAL shall be permanently
24 enjoined from manufacturing for sale in the State of California, "Distributing into the State of
25 California", or directly selling in the State of California, any Covered Product which exposes a
26 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it
27 meets the warning requirements under Section 3.2 or the reformulation requirements under
28

1 Section 3.3. This Section shall not apply to any Covered Product that was Distributed into the
2 State of California prior to the Compliance Date.

3 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
4 of California” shall mean to directly ship a Covered Product into California for sale in
5 California or to sell a Covered Product to a distributor that DIRECT DIGITAL knows or has
6 reason to know will sell the Covered Product in California.

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

13 **3.2 Clear and Reasonable Warnings**

14 If DIRECT DIGITAL is required to provide a warning pursuant to Section 3.1, one of the
15 following warnings must be utilized (“Warning”):

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

18 **or**

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

21 DIRECT DIGITAL shall use the phrase “cancer and” in the Warning only if the “Daily Lead
22 Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality
23 control methodology set forth in Section 3.4.

24 The Warning shall be securely affixed to or printed upon the container or label of each
25 Covered Product. In addition, for any Covered Product sold by DIRECT DIGITAL over the
26 internet, the Warning, or a hyperlink using the word “**WARNING**” that links to the warning,
27 shall appear in one of the following locations: (i) the checkout page when a California delivery
28 address is indicated for any purchase of any Covered Product, or (ii) the product display page.

1 An asterisk or other identifying method must be utilized to identify which products on the
2 checkout page are subject to the Warning.

3 The Warning shall be at least the same size as the largest of any other health or safety
4 warnings also appearing on its website or on the label or container of DIRECT DIGITAL's
5 product packaging and the word "WARNING" shall be in all capital letters and in bold print. No
6 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
7 clarity of, the Warning on the average lay person shall accompany the Warning. Further, no
8 statements may accompany the Warning that state or imply that the source of the listed chemical
9 has an impact on or results in a less harmful effect of the listed chemical.

10 DIRECT DIGITAL must display the above Warning with such conspicuousness, as
11 compared with other words, statements, design of the label, container, or on its website, as
12 applicable, to render the Warning likely to be read and understood by an ordinary individual under
13 customary conditions of purchase or use of the product.

14 **3.3 Reformulated Covered Products**

15 A Reformulated Covered Product is one for which the "Daily Lead Exposure Level" is no
16 greater than 0.5 micrograms of lead per day as determined by the quality control methodology
17 described in Section 3.4.

18 **3.4 Testing and Quality Control Methodology**

19 **3.4.1** Prior to DIRECT DIGITAL's first distribution or sale of the Covered
20 Product manufactured after the Compliance Date, and at least once a year thereafter for three
21 (3) consecutive years, DIRECT DIGITAL shall arrange for lead testing of three (3) randomly
22 selected samples of the Covered Product, in the form intended for sale to the end-user, which
23 DIRECT DIGITAL intends to sell or is manufacturing for sale in California, directly selling to
24 a consumer in California or "Distributing into the State of California." The testing requirement
25 does not apply to Covered Products for which DIRECT DIGITAL has provided the Warning
26 specified in Section 3.2. If tests conducted pursuant to this Section demonstrate that no
27 Warning is required for a Covered Product during each of three (3) consecutive years, then the
28 testing requirements of this Section will no longer be required as to that Covered Product.

1 However, if during or after the three-year testing period, DIRECT DIGITAL changes
2 ingredient suppliers for the Covered Product and/or reformulates the Covered Product,
3 DIRECT DIGITAL shall test that Covered Product annually for at least two (2) consecutive
4 years after such change is made.

5 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
6 lead detection result of the five (5) randomly selected samples of the Covered Product will be
7 controlling.

8 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
9 laboratory method that complies with the performance and quality control factors appropriate
10 for the method used, including limit of detection, qualification, accuracy, and precision that
11 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
12 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
13 method subsequently agreed to in writing by the Parties and approved by the Court through
14 entry of a modified consent judgment.

15 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
16 independent third party laboratory certified by the California Environmental Laboratory
17 Accreditation Program or an independent third-party laboratory that is registered with the
18 United States Food & Drug Administration.

19 **3.4.5** Nothing in this Consent Judgment shall limit DIRECT DIGITAL’s
20 ability to conduct, or require that others conduct, additional testing of the Covered Product,
21 including the raw materials used in their manufacture.

22 **3.4.6** Within thirty (30) days of ERC’s written request, DIRECT DIGITAL
23 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. DIRECT DIGITAL shall
24 retain all test results and documentation for a period of five years from the date of each test.

25 **4. SETTLEMENT PAYMENT**

26 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
27 attorney’s fees, and costs, DIRECT DIGITAL shall make a total payment of \$100,000.00
28 (“Total Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”).

1 DIRECT DIGITAL shall make this payment by wire transfer to ERC's escrow account, for
2 which ERC will give DIRECT DIGITAL the necessary account information. The Total
3 Settlement Amount shall be apportioned as follows:

4 **4.2** \$48,086.54 shall be considered a civil penalty pursuant to California Health and
5 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$36,064.90) of the civil penalty to
6 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
7 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
8 Code section 25249.12(c). ERC will retain the remaining 25% (\$12,021.64) of the civil
9 penalty.

10 **4.3** \$1,582.85 shall be distributed to ERC as reimbursement to ERC for reasonable
11 costs incurred in bringing this action.

12 **4.4** \$36,064.85 shall be distributed to ERC as an Additional Settlement Payment
13 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
14 3204. ERC will utilize the ASP for activities that address Proposition 65 enforcement and
15 monitoring in other matters. These activities are detailed below and support ERC's overarching
16 goal of reducing and/or eliminating Proposition 65-listed chemicals in dietary supplement
17 products in California. ERC's activities have had, and will continue to have, a direct and
18 primary effect within the State of California because California consumers will be benefitted by
19 the reduction and/or elimination of exposure to lead in dietary supplements and/or by providing
20 clear and reasonable warnings to California consumers prior to ingestion of the products.

21 Based on a review of past years' actual budgets, ERC is providing the following list of
22 activities ERC engages in to protect California consumers through Proposition 65 citizen
23 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
24 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
25 supplement products that may contain lead and are sold to California consumers. This work
26 includes continued monitoring and enforcement of past consent judgments and settlements to
27 ensure companies are in compliance with their obligations thereunder, with a specific focus on
28 those judgments and settlements concerning lead. This work also includes investigation of new

1 companies that ERC does not obtain any recovery through settlement or judgment; (2)
2 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
3 Compliance Program by acquiring products from companies, developing and maintaining a case
4 file, testing products from these companies, providing the test results and supporting
5 documentation to the companies, and offering guidance in warning or implementing a self-
6 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up
7 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
8 products that reach California consumers by providing access to free testing for lead in dietary
9 supplement products (Products submitted to the program are screened for ingredients which are
10 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
11 qualified laboratory for testing, and the results shared with the consumer that submitted the
12 product).

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

18 4.5 \$6,210.00 shall be distributed to the Law Office of Richard M. Franco as
19 reimbursement of ERC's attorney's fees, while \$8,055.76 shall be distributed to ERC for its in-
20 house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
21 costs.

22 4.6 In the event that DIRECT DIGITAL fails to remit the Total Settlement Amount
23 owed under Section 4 of this Consent Judgment on or before the Due Date, DIRECT DIGITAL
24 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
25 shall provide written notice of the delinquency to DIRECT DIGITAL via electronic mail. If
26 DIRECT DIGITAL fails to deliver the Total Settlement Amount within five (5) days from the
27 written notice, the Total Settlement Amount shall accrue interest at the statutory judgment
28 interest rate provided in the California Code of Civil Procedure section 685.010. Additionally,

1 DIRECT DIGITAL 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. The Parties
14 shall meet in person or via telephone within thirty (30) days of the Noticing Party's notification
15 of its intent to meet and confer. Within thirty (30) days of such meeting, if the Receiving Party
16 disputes the proposed modification, it shall provide to the Noticing Party a written basis for its
17 position. The Parties shall continue to meet and confer for an additional thirty (30) days in an
18 effort to resolve any remaining disputes. Should it become necessary, the Parties may agree in
19 writing to different deadlines for the meet-and-confer period.

20 **5.3** In the event that DIRECT DIGITAL initiates or otherwise requests a
21 modification under Section 5.1, and the meet and confer process leads to a joint motion or
22 application of the Consent Judgment, DIRECT DIGITAL shall reimburse ERC its costs and
23 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
24 arguing the motion or application.

25 **5.4** Where the meet-and-confer process does not lead to a joint motion or
26 application in support of a modification of the Consent Judgment, then either Party may seek
27 judicial relief on its own. In any such contested court proceeding, ERC may seek any
28 attorney's fees and costs incurred in opposing the motion that it may be legally entitled to.

1 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
2 **JUDGMENT**

3 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
4 this Consent Judgment.

5 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
6 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
7 inform DIRECT DIGITAL in a reasonably prompt manner of its test results, including
8 information sufficient to permit DIRECT DIGITAL to identify the Covered Product at issue.
9 DIRECT DIGITAL shall, within thirty (30) days following such notice, provide ERC with
10 testing information, from an independent third-party laboratory meeting the requirements of
11 Sections 3.4.3 and 3.4.4, demonstrating DIRECT DIGITAL's compliance with the Consent
12 Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to ERC taking
13 any further legal action.

14 **7. APPLICATION OF CONSENT JUDGMENT**

15 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
16 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
17 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
18 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
19 application to any Covered Product which is distributed or sold exclusively outside the State of
20 California and which is not used by California consumers.

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

22 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
23 on behalf of itself and in the public interest, and DIRECT DIGITAL and its respective officers,
24 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
25 franchisees, licensees, customers (not including private label customers of DIRECT
26 DIGITAL), distributors, wholesalers, retailers, and all other upstream and downstream entities
27 in the distribution chain of any Covered Product, and the predecessors, successors, and assigns
28 of any of them (collectively, "Released Parties"). ERC, on behalf of itself and its respective

1 owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents,
2 subsidiaries, servants, administrators, successors, assigns, and attorneys (collectively referred
3 as the "ERC Releasees"), and on behalf of the general public in the public interest, hereby
4 waives all rights to institute or participate in (directly or indirectly) any form of legal action,
5 and fully releases and discharges the Released Parties from any and all claims, actions, causes
6 of action, suits, demands, liabilities, damages, penalties, fees (including but not limited to
7 attorneys' fees, expert fees, and investigator fees), costs and expenses (collectively referred to
8 as the "Claims") for alleged violations of Proposition 65 asserted in the Notice arising from the
9 failure to provide warnings for alleged exposures to lead, or for causing alleged exposures to
10 lead, in Covered Product manufactured before the Compliance Date. Compliance with the
11 terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65
12 by any Released Parties regarding alleged exposures to lead in the Covered Product
13 manufactured on and after the Compliance Date.

14 **8.2** ERC on its own behalf only, and DIRECT DIGITAL on its own behalf only,
15 further waive and release any and all claims they may have against each other for all actions or
16 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
17 65 in connection with the Notice and Complaint up through and including the Effective Date,
18 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
19 enforce the terms of this Consent Judgment.

20 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
21 alleged in the Notice and Complaint, and relating to the Covered Product, will develop or be
22 discovered. ERC on behalf of itself only, and DIRECT DIGITAL on behalf of itself only,
23 acknowledge that this Consent Judgment is expressly intended to cover and include all such
24 claims up through and including the Effective Date, including all rights of action therefor. ERC
25 and DIRECT DIGITAL acknowledge that the claims released in Sections 8.1 and 8.2 above
26 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
27 any such unknown claims. California Civil Code section 1542 reads as follows:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
4 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
5 OR HER SETTLEMENT WITH THE DEBTOR.

6 ERC on behalf of itself only, and DIRECT DIGITAL on behalf of itself only, acknowledge and
7 understand the significance and consequences of this specific waiver of California Civil Code
8 section 1542.

9 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
10 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
11 in the Covered Product as set forth in the Notice and Complaint.

12 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
13 environmental exposures arising under Proposition 65, nor shall it apply to any of DIRECT
14 DIGITAL's products other than the Covered Product.

15 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

18 **10. GOVERNING LAW**

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

21 **11. PROVISION OF NOTICE**

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

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

26 Chris Heptinstall, Executive Director, Environmental Research Center
27 3111 Camino Del Rio North, Suite 400
28 San Diego, CA 92108
Tel: (619) 500-3090
Email: chris_erc501c3@yahoo.com

1 With a copy to:
2 RICHARD M. FRANCO
3 LAW OFFICE OF RICHARD M. FRANCO
4 6500 Estates Drive
5 Oakland, CA 94611
6 Ph: 510-684-1022
7 Email: rick@rfrancolaw.com

8 **FOR DIRECT DIGITAL, LLC, individually and**
9 **doing business as NUGENIX:**

10 Brandon Adcock, CEO
11 Direct Digital, LLC
12 550 S. Caldwell Street, #700
13 Charlotte, NC 28202

14 With a copy to:
15 DANIEL S. SILVERMAN
16 VENABLE LLP
17 2049 Century Park East, Suite 2300
18 Los Angeles, CA 90067
19 Tel: (310) 229-0373
20 Fax: (310) 229-9901
21 Email: dssilverman@venable.com

22 **12. COURT APPROVAL**

23 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
24 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
25 Consent Judgment.

26 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
27 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
28 prior to the hearing on the motion.

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

13. EXECUTION AND COUNTERPARTS

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

1 **14. DRAFTING**

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

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

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

15 **16. ENFORCEMENT**

16 ERC may, by motion or order to show cause before the Superior Court of Alameda
17 County, enforce the terms and conditions contained in this Consent Judgment. In any action
18 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
19 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
20 To the extent the failure to comply with the Consent Judgment constitutes a violation of
21 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
22 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
23 law for failure to comply with Proposition 65 or other laws.

24 **17. ENTIRE AGREEMENT, AUTHORIZATION**

25 **17.1** This Consent Judgment contains the sole and entire agreement and
26 understanding of the Parties with respect to the entire subject matter herein, and any and all
27 prior discussions, negotiations, commitments, and understandings related hereto. No
28 representations, oral or otherwise, express or implied, other than those contained herein have

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

3 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

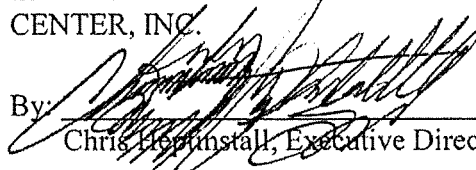
10 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
11 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
12 been diligently prosecuted, and that the public interest is served by such settlement; and

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

15 **IT IS SO STIPULATED:**

16 Dated: 3/31, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

17
18 By: 
Chris Herpin, Executive Director

19
20 Dated: 4/3, 2017

DIRECT DIGITAL, LLC, individually and
doing business as NUGENIX

21
22 By: 
Brandon Adcock, CEO

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APPROVED AS TO FORM:

Dated: March 31, 2017

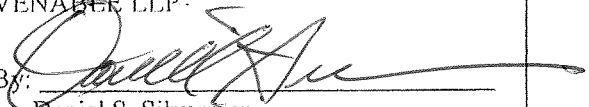
LAW OFFICE OF RICHARD M. FRANCO

By: 

Richard M. Franco
Attorney for Plaintiff Environmental
Research Center, Inc.

Dated: 4/3, 2017

VENABLE LLP

By: 

Daniel S. Silverman
Attorney for Defendant Direct Digital,
LLC, individually and doing business as
Nugenix

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