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Attorneys for Defendant
XYNGULAR CORPORATION

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

v.

XYNGULAR CORPORATION, a Delaware
corporation, and DOES 1 – 25,

Defendants.

CASE NO. RG17874563

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: September 8, 2017

Trial Date: None set



1 **1. INTRODUCTION**

2 **1.1** On September 8, 2017, Plaintiff Environmental Research Center, Inc.
3 ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this
4 action by filing a Complaint for Permanent Injunction, Civil Penalties, and Other Relief pursuant
5 to the provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition
6 65"), against Xyngular Corporation ("Xyngular") and Does 1-25. Subsequently, an Amended
7 Complaint was filed (the operative Complaint referred to hereinafter as the "Complaint"). In this
8 action, ERC alleges that a number of products manufactured, distributed, or sold by Xyngular
9 contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and
10 expose consumers to this chemical at a level requiring a Proposition 65 warning. These products
11 (referred to hereinafter individually as a "Covered Product" or collectively as "Covered
12 Products") are:

- 13 • Xyngular Lean Vanilla Shake
- 14 • Xyngular Global Blend Xypstix
- 15 • Xyngular Hormone Optimizer Women's Shine
- 16 • Xyngular Lean Meal Chocolate

17 **1.2** ERC and Xyngular are hereinafter referred to individually as a "Party" or
18 collectively as the "Parties."

19 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
20 causes, helping safeguard the public from health hazards by reducing the use and misuse of
21 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
22 and encouraging corporate responsibility.

23 **1.4** For purposes of this Consent Judgment, the Parties agree that Xyngular is a
24 business entity that has employed ten or more persons at all times relevant to this action, and
25 qualifies as a "person in the course of business" within the meaning of Proposition 65. Xyngular
26 manufactures, distributes, and/or sells the Covered Products.

27 **1.5** The Complaint is based on allegations contained in ERC's Notices of Violation
28

1 dated June 15, 2017 and September 29, 2017 that were served on the California Attorney
2 General, other public enforcers, and Xyngular ("Notices"). True and correct copies of the 60-
3 Day Notices dated June 15, 2017 and September 29, 2017 are attached hereto as **Exhibits A**
4 and **B** respectively and each is incorporated herein by reference. By the time the Motion to
5 Approve is heard, more than 60 days will have passed since the Notices were served.

6 **1.6** ERC's Notices and Complaint allege that use of the Covered Products exposes
7 persons in California to lead without first providing clear and reasonable warnings in violation
8 of California Health and Safety Code section 25249.6. Xyngular denies all material allegations
9 contained in the Notices and Complaint.

10 **1.7** The Parties have entered into this Consent Judgment in order to settle,
11 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
12 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
13 be construed as an admission by any of the Parties or by any of their respective officers,
14 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
15 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
16 violation of law.

17 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
18 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
19 current or future legal proceeding unrelated to these proceedings.

20 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
21 a Judgment by this Court.

22 **2. JURISDICTION AND VENUE**

23 For purposes of this Consent Judgment and any further court action that may become
24 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
25 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
26 over Xyngular as to the acts alleged in the Complaint, that venue is proper in Alameda County,
27 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
28



all claims up through and including the Effective Date which were or could have been asserted in this action based on the facts alleged in the Notices and Complaint.

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

3.1 Beginning on the Effective Date, Xyngular shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California", or directly selling in the State of California, any Covered Products which expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the warning requirements under Section 3.2.

3.1.1 As used in this Consent Judgment, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Xyngular knows or has reason to know will sell the Covered Product in California.

3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals micrograms of lead exposure per day, excluding amounts of allowances of lead in the ingredients listed in the table below. If no recommended daily serving size is provided on the label, then the daily serving size shall equal one.

INGREDIENT	ALLOWANCES OF 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 micrograms/gram

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

3.2 Clear and Reasonable Warnings

If Xyngular is required to provide a warning pursuant to Section 3.1, the following warning must be utilized ("Warning"):

⚠ WARNING: Consuming this product can expose you to chemicals including lead which is [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.

Xyngular shall use the phrase "cancer and" in the Warning only if the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if Xyngular has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

The Warning shall be securely affixed to or printed upon the container or label of each Covered Product. In the alternative, for any Covered Product sold over the internet, the Warning shall be displayed prior to completing the purchase when a California delivery address is indicated for any purchase of any Covered Product. An asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on its website or on the label or container of Xyngular's product packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No

1 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
2 clarity of, the Warning on the average lay person shall accompany the Warning. Further, no
3 statements may accompany the Warning shall state or imply that the source of the listed chemical
4 has an impact on or results in a less harmful effect of the listed chemical.

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

9 In the event that Proposition 65 is amended or its implementing regulations are modified
10 as to the safe harbor language currently set forth in California Code of Regulations 25603.2 or the
11 No Significant Risk Levels and Specific Regulatory Levels set forth in California Code of
12 Regulations Sections 25705 and 25805, Xyngular's compliance with the successor language
13 constitutes compliance with this Consent Judgment.

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** Beginning within one year of the Effective Date, Xyngular shall arrange
20 for lead testing of the Covered Products at least once a year for a minimum of three consecutive
21 years by arranging for testing of three randomly selected samples of each of the Covered
22 Products, in the form intended for sale to the end-user, which Xyngular intends to sell or is
23 manufacturing for sale in California, directly selling to a consumer in California or
24 "Distributing into the State of California." If tests conducted pursuant to this Section
25 demonstrate that no Warning is required for a Covered Product during each of five consecutive
26 years, then the testing requirements of this Section will no longer be required as to that Covered
27 Product. However, if during or after the five-year testing period, Xyngular changes ingredient
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1 suppliers for any of the Covered Products and/or reformulates any of the Covered Products,
2 Xyngular shall test that Covered Product annually for at least two (2) consecutive years after
3 such change is made.

4 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the
5 arithmetic mean lead detection result of the three (3) randomly selected samples of the Covered
6 Products will be controlling.

7 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
8 laboratory method that complies with the performance and quality control factors appropriate
9 for the method used, including limit of detection, qualification, accuracy, and precision that
10 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
11 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
12 method subsequently agreed to in writing by the Parties and approved by the Court through
13 entry of a modified consent judgment.

14 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
15 independent third party laboratory certified by the California Environmental Laboratory
16 Accreditation Program or an independent third-party laboratory that is registered with the
17 United States Food & Drug Administration.

18 **3.4.5** Nothing in this Consent Judgment shall limit Xyngular’s ability to
19 conduct, or require that others conduct, additional testing of the Covered Products, including
20 the raw materials used in their manufacture.

21 **3.4.6** Within thirty (30) days of ERC’s written request, Xyngular shall deliver
22 lab reports obtained pursuant to Section 3.4 to ERC. Xyngular shall retain all test results and
23 documentation for a period of three years from the date of each test.

24 **4. SETTLEMENT PAYMENT**

25 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
26 attorney’s fees, and costs, Xyngular shall make a total payment of \$90,000.00 (“Total
27 Settlement Amount”) to ERC within 10 business days of the Effective Date (“Due Date”).
28

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

4 **4.2** \$35,522.97 shall be considered a civil penalty pursuant to California Health and
5 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$26,642.23) 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% (\$8,880.74) of the civil penalty.

9 **4.3** \$3,270.10 shall be distributed to ERC as reimbursement to ERC for reasonable
10 costs incurred in bringing this action.

11 **4.4** \$26,642.19 shall be distributed to ERC as an Additional Settlement Payment
12 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
13 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
14 caused by Xyngular in this matter. These activities are detailed below and support ERC's
15 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
16 supplement products in California. ERC's activities have had, and will continue to have, a direct
17 and primary effect within the State of California because California consumers will be benefitted
18 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
19 providing clear and reasonable warnings to California consumers prior to ingestion of the
20 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
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1 those judgments and settlements concerning lead. This work also includes investigation of new
2 companies that ERC does not obtain any recovery through settlement or judgment; (2)
3 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
4 Compliance Program by acquiring products from companies, developing and maintaining a case
5 file, testing products from these companies, providing the test results and supporting
6 documentation to the companies, and offering guidance in warning or implementing a self-
7 testing program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up
8 to 5%): maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated
9 products that reach California consumers by providing access to free testing for lead in dietary
10 supplement products (Products submitted to the program are screened for ingredients which are
11 suspected to be contaminated, and then may be purchased by ERC, catalogued, sent to a
12 qualified laboratory for testing, and the results shared with the consumer that submitted the
13 product).

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

19 **4.5** \$7,959.00 shall be distributed to Aqua Terra Aeris Law Group as reimbursement
20 of ERC's attorney's fees, while \$16,605.74 shall be distributed to ERC for its in-house legal
21 fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

22 **4.6** In the event that Xyngular fails to remit the Total Settlement Amount owed
23 under Section 4 of this Consent Judgment on or before the Due Date, Xyngular shall be deemed
24 to be in material breach of its obligations under this Consent Judgment. ERC shall provide
25 written notice of the delinquency to Xyngular via electronic mail. If Xyngular fails to deliver
26 the Total Settlement Amount within five (5) days from the written notice, the Total Settlement
27 Amount shall accrue interest at the statutory judgment interest rate provided in the California
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1 Code of Civil Procedure section 685.010. Additionally, Xyngular agrees to pay ERC's
2 reasonable attorneys fees and costs for any efforts to collect the payment due under this
3 Consent Judgment.

4 **5. MODIFICATION OF CONSENT JUDGMENT**

5 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
6 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
7 (ii) by motion of either party pursuant to Section 5.3 or Section 5.4 and upon entry by the Court
8 of a modified consent judgment.

9 **5.2** If Xyngular seeks to modify this Consent Judgment under Section 5.1, then
10 Xyngular must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to
11 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
12 provide written notice to Xyngular within thirty (30) days of receiving the Notice of Intent. If
13 ERC notifies Xyngular in a timely manner of ERC's intent to meet and confer, then the Parties
14 shall meet and confer in good faith as required in this Section. The Parties shall meet in person
15 or via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.
16 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall
17 provide to Xyngular a written basis for its position. The Parties shall continue to meet and
18 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
19 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
20 confer period.

21 **5.3** In the event that Xyngular initiates or otherwise requests a modification under
22 Section 5.1, and the meet and confer process leads to a joint motion or application of the
23 Consent Judgment, Xyngular shall reimburse ERC its costs and reasonable attorney's fees for
24 the time spent in the meet-and-confer process and filing and 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 costs and any
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1 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure
2 section 1021.5.

3 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
4 **JUDGMENT**

5 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
6 this Consent Judgment.

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

15 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

23 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
24 on behalf of itself and in the public interest, and Xyngular and its respective officers, directors,
25 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
26 franchisees, licensees, customers (not including private label customers of Xyngular), insurers
27 that may be implicated in this action, claims representatives of insurers that may be implicated
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1 in this action, distributors, wholesalers, retailers, and all other upstream and downstream
2 entities in the distribution chain of any Covered Product, and the predecessors, successors, and
3 assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the
4 public interest, hereby fully releases and discharges the Released Parties from any and all
5 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
6 expenses asserted, or that could have been asserted from the handling, use, or consumption of
7 the Covered Products, as to any alleged violation of Proposition 65 or its implementing
8 regulations arising from the failure to provide Proposition 65 warnings on the Covered
9 Products regarding lead up to and including the Effective Date.

10 **8.2** ERC on its own behalf only, and Xyngular on its own behalf only, further
11 waive and release any and all claims they may have against each other for all actions or
12 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
13 65 in connection with the Notices and Complaint up through and including the Effective Date,
14 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
15 enforce the terms of this Consent Judgment.

16 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
17 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
18 discovered. ERC on behalf of itself only, and Xyngular on behalf of itself only, acknowledge
19 that this Consent Judgment is expressly intended to cover and include all such claims up
20 through and including the Effective Date, including all rights of action therefore. ERC and
21 Xyngular acknowledge that the claims released in Sections 8.1 and 8.2 above may include
22 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
23 unknown claims. California Civil Code section 1542 reads as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
26 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
27 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
28 OR HER SETTLEMENT WITH THE DEBTOR.



1 ERC on behalf of itself only, and Xyngular on behalf of itself only, acknowledge and
2 understand the significance and consequences of this specific waiver of California Civil Code
3 section 1542.

4 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
5 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
6 in the Covered Products as set forth in the Notices and Complaint.

7 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
8 environmental exposures arising under Proposition 65, nor shall it apply to any of Xyngular's
9 products other than the Covered Products.

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13 **10. GOVERNING LAW**

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

16 **11. PROVISION OF NOTICE**

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

20 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**
21 Chris Heptinstall, Executive Director, Environmental Research Center
22 3111 Camino Del Rio North, Suite 400
23 San Diego, CA 92108
24 Tel: (619) 500-3090
25 Email: chris_erc501c3@yahoo.com
26 With a copy to:
27 MATTHEW C. MACLEAR
28 ANTHONY M. BARNES
AQUA TERRA AERIS LAW GROUP
828 San Pablo Ave, Suite 115B
Albany, CA 94706
Ph: 415-568-5200
Email: mcm@atalawgroup.com

1
2 **XYNGULAR CORPORATION**

3 With a copy to:
4 MELISSA A. JONES
5 BAO M. VU
6 STOEL RIVES LLP
7 Three Embarcadero Center, Suite 1120
8 San Francisco, CA 94111
9 Ph: 415-617-8900
10 Email: bao.vu@stoel.com

11 **12. COURT APPROVAL**

12 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
13 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
14 Consent Judgment.

15 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
16 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
17 prior to the hearing on the motion.

18 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
19 void and have no force or effect.

20 **13. EXECUTION AND COUNTERPARTS**

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

24 **14. DRAFTING**

25 The terms of this Consent Judgment have been reviewed by the respective counsel for each
26 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
27 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
28 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
and no provision of this Consent Judgment shall be construed against any Party, based on the fact

1 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
2 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
3 equally in the preparation and drafting of this Consent Judgment.

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

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

9 **16. ENFORCEMENT**

10 ERC may, by motion or order to show cause before the Superior Court of Alameda
11 County, enforce the terms and conditions contained in this Consent Judgment. In any action
12 brought by ERC to enforce this Consent Judgment, the prevailing party shall be entitled to
13 attorneys' fees and costs. ERC may seek whatever fines, costs, penalties, or remedies as are
14 provided by law for failure to comply with the Consent Judgment.

15 **17. ENTIRE AGREEMENT, AUTHORIZATION**

16 **17.1** This Consent Judgment contains the sole and entire agreement and
17 understanding of the Parties with respect to the entire subject matter herein, and any and all
18 prior discussions, negotiations, commitments, and understandings related hereto. No
19 representations, oral or otherwise, express or implied, other than those contained herein have
20 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
21 herein, shall be deemed to exist or to bind any Party.

22 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
23 authorized by the Party he or she represents to stipulate to this Consent Judgment.

24 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
25 **CONSENT JUDGMENT**

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

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

5 (2) Make the findings pursuant to California Health and Safety Code section
6 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

7 **IT IS SO STIPULATED:**

8 Dated: 9/26/, 2017

ENVIRONMENTAL RESEARCH
CENTER, INC.

9
10 By: 
11 Chris Hopinstall, Executive Director

12 Dated: 9/26/, 2017


XYNGULAR CORPORATION

13
14 
15 By: Steven Elder
16 Its: Chief Operating Officer

17
18
19 **APPROVED AS TO FORM:**

20 Dated: September 27, 2017

AQUA TERRA AERIS LAW GROUP

21 By: 
22 Matthew C. Maclear
23 Anthony M. Barnes
24 Attorneys for Plaintiff Environmental
25 Research Center, Inc.
26
27
28

1 Dated: 9/26, 2017

STOEL RIVES LLP

2 By: 

3 Melissa A. Jones

4 Bao M. Vu

5 Attorneys for Defendant Xyngular
Corporation

6 **ORDER AND JUDGMENT**

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

9 IT IS SO ORDERED, ADJUDGED AND DECREED.

10
11 Dated: _____, 2017

12 Judge of the Superior Court