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9 Attorneys for Plaintiff
10 ENVIRONMENTAL RESEARCH
11 CENTER, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

vs.

ABSONUTRIX, LLC. and DOES 1-100

Defendants.

CASE NO. RG18892239

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: February 6, 2018

Trial Date: None set

1. INTRODUCTION

1.1 On February 6, 2018, 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 and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against Absonutrix, LLC. (“Absonutrix”) and Does 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or sold by Absonutrix contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65 warning. These products (referred to hereinafter individually as a “Covered Product” or collectively as “Covered

1 Products”) are: (1) Absonutrix Parasite Detox•X•Treme, (2) Absonutrix Hoodia 2000•Pure, and
2 (3) Absonutrix Men Booster X•Treme.

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

5 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
6 causes, helping safeguard the public from health hazards by reducing the use and misuse of
7 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
8 and encouraging corporate responsibility.

9 **1.4** For purposes of this Consent Judgment, the Parties agree that Absonutrix is a
10 business entity that qualifies as a “person in the course of business” within the meaning of
11 Proposition 65. Absonutrix manufactures, distributes, and/or sells the Covered Products.

12 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
13 dated November 27, 2017 that was served on the California Attorney General, other public
14 enforcers, and Absonutrix (“Notice”). A true and correct copy of the 60-Day Notice dated
15 November 27, 2017 is attached hereto as **Exhibit A** and incorporated herein by reference.
16 More than 60 days have passed since the Notice was served on the Attorney General, public
17 enforcers, and Absonutrix and no designated governmental entity has filed a complaint against
18 Absonutrix with regard to the Covered Products or the alleged violations.

19 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
20 persons in California to lead without first providing clear and reasonable warnings in violation
21 of California Health and Safety Code section 25249.6. Absonutrix denies all material
22 allegations contained in the Notice and Complaint.

23 **1.7** The Parties have entered into this Consent Judgment in order to settle,
24 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
25 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
26 be construed as an admission by any of the Parties or by any of their respective officers,
27 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
28

1 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
2 violation of law.

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 current 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.

8 **2. JURISDICTION AND VENUE**

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

16 **3. INJUNCTIVE RELIEF**

17 **3.1** Absonutrix shall be permanently enjoined from manufacturing for sale in the
18 State of California, "Distributing into the State of California," or directly selling in the State of
19 California, any of the Covered Products.

20 **3.2** As used in this Consent Judgment, the term "Distributed into the State of
21 California" shall mean directly shipping Covered Products into California for sale in California
22 or selling Covered Products to a distributor that Absonutrix knew or had reason to know did or
23 would sell the Covered Product in California.

24 **4. SETTLEMENT PAYMENT**

25 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
26 attorney's fees, and costs, Absonutrix shall make a total payment of \$29,477.47 ("Total
27 Settlement Amount") to ERC. The Total Settlement Amount shall be made in monthly
28 payments as follows ("Due Dates"):

1 \$9,825.82 within 5 days of the Effective Date

2 \$9,825.82 within 35 days of the Effective Date

3 \$9,825.83 within 65 day of the Effective Date

4 Absonutrix shall make these payments by wire transfer to ERC's account, for which
5 ERC will give Absonutrix the necessary account information. The Total Settlement Amount
6 shall be apportioned as follows:

7 **4.2** \$3,000.00 shall be considered a civil penalty pursuant to California Health and
8 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$2,250.00) of the civil penalty to the
9 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
10 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
11 Code section 25249.12(c). ERC will retain the remaining 25% (\$750.00) of the civil penalty.

12 **4.3** \$4,146.49 shall be distributed to ERC as reimbursement to ERC for reasonable
13 costs incurred in bringing this action.

14 **4.4** \$1,665.00 shall be distributed to Michael Freund as reimbursement of ERC's
15 attorney's fees, \$7,280.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
16 attorney's fees, while \$13,385.88 shall be distributed to ERC for its in-house legal fees. Except
17 as explicitly provided herein, each Party shall bear its own fees and costs.

18 **4.6** In the event that Absonutrix fails to remit any payment owed under Section 4 of
19 this Consent Judgment on or before their respective Due Dates, Absonutrix shall be deemed to
20 be in material breach of its obligations under this Consent Judgment. ERC shall provide
21 written notice of the delinquency to Absonutrix via electronic mail. If Absonutrix fails to
22 deliver the delinquent payment within five (5) days from the written notice, the portion of the
23 Total Settlement Amount that remains unpaid shall be immediately due and owing and shall
24 accrue interest at the statutory judgment interest rate provided in the California Code of Civil
25 Procedure section 685.010. Additionally, Absonutrix agrees to pay ERC's reasonable
26 attorney's fees and costs for any efforts to collect the payment due under this Consent
27 Judgment.

1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
3 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
4 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
5 modified consent judgment.

6 **5.2** If Absonutrix seeks to modify this Consent Judgment under Section 5.1, then
7 Absonutrix must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks
8 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
9 provide written notice to Absonutrix within thirty (30) days of receiving the Notice of Intent. If
10 ERC notifies Absonutrix in a timely manner of ERC’s intent to meet and confer, then the
11 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
12 person or via telephone within thirty (30) days of ERC’s notification of its intent to meet and
13 confer. Within thirty (30) days of such meeting, if ERC disputes the proposed modification,
14 ERC shall provide to Absonutrix a written basis for its position. The Parties shall continue to
15 meet and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.
16 Should it become necessary, the Parties may agree in writing to different deadlines for the
17 meet-and-confer period.

18 **5.3** In the event that Absonutrix initiates or otherwise requests a modification under
19 Section 5.1, and the meet and confer process leads to a joint motion or application for a
20 modification of the Consent Judgment, Absonutrix shall reimburse ERC its costs and
21 reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and
22 arguing the motion or application.

23 **5.4** Where the meet-and-confer process does not lead to a joint motion or
24 application in support of a modification of the Consent Judgment, then either Party may seek
25 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
26 attorney’s fees incurred in opposing the motion pursuant to California Code of Civil Procedure
27 section 1021.5.
28

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 are being manufactured for sale in the
6 State of California, “Distributed into the State of California,” or directly sold in the State of
7 California, then ERC shall inform Absonutrix in a reasonably prompt manner of its findings,
8 including information sufficient to permit Absonutrix to identify the Covered Products at issue.
9 Absonutrix shall, within thirty (30) days following such notice, provide ERC with tangible
10 proof and written confirmation of Absonutrix’s compliance with the Consent Judgment, if
11 warranted. The Parties shall first attempt to resolve the matter prior to ERC taking any further
12 legal action.

13 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

21 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
22 on behalf of itself and in the public interest, and Absonutrix and its respective officers,
23 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
24 franchisees, licensees, customers (not including private label customers of Absonutrix),
25 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
26 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
27 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,
28 hereby fully releases and discharges the Released Parties from any and all claims, actions,

1 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
2 asserted, or that could have been asserted from the handling, use, or consumption of the
3 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
4 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
5 lead up to and including the Effective Date.

6 **8.2** ERC on its own behalf only, and Absonutrix on its own behalf only, further
7 waive and release any and all claims they may have against each other for all actions or
8 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
9 65 in connection with the Notice and Complaint up through and including the Effective Date,
10 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
11 enforce the terms of this Consent Judgment.

12 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
13 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
14 discovered. ERC on behalf of itself only, and Absonutrix on behalf of itself only, acknowledge
15 that this Consent Judgment is expressly intended to cover and include all such claims up
16 through and including the Effective Date, including all rights of action therefore. ERC and
17 Absonutrix acknowledge that the claims released in Sections 8.1 and 8.2 above may include
18 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
19 unknown claims. California Civil Code section 1542 reads as follows:

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

25 ERC on behalf of itself only, and Absonutrix on behalf of itself only, acknowledge and
26 understand the significance and consequences of this specific waiver of California Civil Code
27 section 1542.

28 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
in the Covered Products as set forth in the Notice and Complaint.

1 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
2 environmental exposures arising under Proposition 65, nor shall it apply to any of Absonutrix's
3 products other than the Covered Products.

4 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

7 **10. GOVERNING LAW**

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

10 **11. PROVISION OF NOTICE**

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

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

15 Chris Heptinstall, Executive Director, Environmental Research Center
16 3111 Camino Del Rio North, Suite 400
17 San Diego, CA 92108
18 Tel: (619) 500-3090
19 Email: chris_erc501c3@yahoo.com

20 With a copy to:

21 Michael Freund
22 Ryan Hoffman
23 Michael Freund & Associates
24 1919 Addison Street, Suite 105
25 Berkeley, CA 94704
26 Telephone: (510) 540-1992
27 Facsimile: (510) 540-5543

28 **ABSONUTRIX, LLC.**

Himanshu Nautiyal
4701 Ridgefall Road
Greensboro, NC 27410

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.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

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

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

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

1 **16. ENFORCEMENT**

2 ERC may, by motion or order to show cause before the Superior Court of Alameda
3 County, enforce the terms and conditions contained in this Consent Judgment. In any action
4 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
5 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
6 To the extent the failure to comply with the Consent Judgment constitutes a violation of
7 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
8 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
9 law for failure to comply with Proposition 65 or other laws.

10 **17. ENTIRE AGREEMENT, AUTHORIZATION**

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

17 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Consent Judgment.

19 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
20 **CONSENT JUDGMENT**

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

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

27 (2) Make the findings pursuant to California Health and Safety Code section
28 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

1 **IT IS SO STIPULATED:**

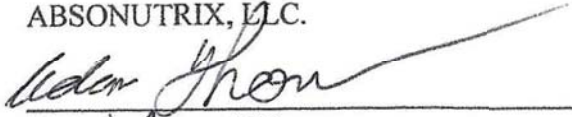
2 Dated: 2/23/, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

3
4 By: 
Chris Hoptun, Executive Director

5
6 Dated: 2/26, 2018

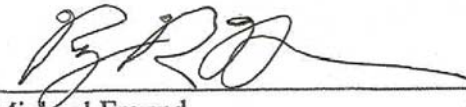
ABSONUTRIX, LLC.

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8 
9 By: Adam Thomas
10 Its: Manager

11 **APPROVED AS TO FORM:**

12 Dated: 2/26, 2018

MICHAEL FREUND & ASSOCIATES

13
14 By: 
15 Michael Freund
16 Ryan Hoffman
17 Attorneys for Plaintiff Environmental
18 Research Center, Inc.

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20 **ORDER AND JUDGMENT**

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

23 IT IS SO ORDERED, ADJUDGED AND DECREED.

24
25 Dated: _____, 2018

Judge of the Superior Court