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EVOGEN INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

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

Plaintiff,

v.

EVOGEN INC., a California corporation; and
DOES 1 – 25,

Defendants.

CASE NO. RG18928461

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 14, 2018

Trial Date: None set

1. INTRODUCTION

1.1 On November 14, 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 Permanent Injunction, Civil Penalties and Other Relief pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),

1 against EVOGEN INC. (“EVOGEN”) and DOES 1-25. Subsequently, on December 19, 2018, a
2 First Amended Complaint was filed (the operative Complaint referred to hereinafter as the
3 “Complaint”). In this action, ERC alleges that a number of products manufactured, distributed,
4 or sold by EVOGEN contain lead, a chemical listed under Proposition 65 as a carcinogen and
5 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
6 warning. These products (referred to hereinafter individually as a “Covered Product” or
7 collectively as “Covered Products”) are:

- 8 • **Evogen Naturals Evogreens Premium Performance Greens Formula**
9 **Chocolate**
- 10 • **Evogen Naturals Evogreens Premium Performance Greens Formula**
11 **Berry**
- 12 • **Evogen Naturals Evogreens Premium Performance Greens Formula**
13 **Lemon Mint**
- 14 • **Evogen Elite Mass And Recovery Catalyst Cell K.E.M. Cellular Kinetic**
15 **Expansion Matrix Raspberry Lemonade**
- 16 • **Evogen Elite Pre-Workout Solution EVP Evopoietin One-Alpha Grape**
- 17 • **Evogen IsoJect Ultra-Pure Whey Isolate Protein Mocha Evoccino**
- 18 • **Evogen Elite Pre-Workout Solution EVP Plus Energy Raspberry**
19 **Lemonade**
- 20 • **Evogen Elite Pre-Workout Solution EVP Plus Energy Peach Mango**
- 21 • **Evogen Carnigen Plus Caffeine Peach Tea**
- 22 • **Evogen Elite Mass And Recovery Catalyst Cell K.E.M. Cellular Kinetic**
23 **Expansion Matrix Pineapple Guava**
- 24 • **Evogen Elite Mass And Recovery Catalyst Cell K.E.M. Cellular Kinetic**
25 **Expansion Matrix Tropical Mango**
- 26 • **Evogen Elite Mass And Recovery Catalyst Cell K.E.M. Cellular Kinetic**
27 **Expansion Matrix Fruit Punch**
- 28 • **Evogen IsoJect Ultra-Pure Whey Isolate Protein Chocolate**

1 • **Evogen IsoJect Ultra-Pure Whey Isolate Protein Chocolate Peanut Butter**

2 **1.2** ERC and EVOGEN are hereinafter referred to individually as a “Party” or
3 collectively as the “Parties.”

4 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
5 causes, helping safeguard the public from health hazards by reducing the use and misuse of
6 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
7 and encouraging corporate responsibility.

8 **1.4** For purposes of this Consent Judgment only, Plaintiff alleges and EVOGEN will
9 not dispute that EVOGEN is a business entity that has employed ten or more persons at times
10 relevant to this action, and would therefore qualify as a “person in the course of doing business”
11 within the meaning of Proposition 65. EVOGEN manufactures, distributes, and/or sells the
12 Covered Products.

13 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
14 dated August 31, 2018 and October 9, 2018, both of which were served on the California
15 Attorney General, other public enforcers, and EVOGEN (“First and Second Notices”). True and
16 correct copies of the First and Second Notices dated August 31, 2018 and October 9, 2018 are
17 attached hereto as **Exhibits A and B** respectively and each is incorporated herein by reference.
18 More than 60 days have passed since the First and Second Notices were served on the Attorney
19 General, public enforcers, and EVOGEN and no designated governmental entity has filed a
20 Complaint against EVOGEN with regard to the Covered Products or the alleged violations.

21 **1.6** On July 23, 2019, ERC served a Third Notice of Violation on the California
22 Attorney General, other public enforcers, and EVOGEN (“Third Notice”). A true and correct
23 copy of the Third Notice is attached hereto as Exhibit C and incorporated by reference. On
24 August 19, 2019, ERC served a Fourth Notice of Violation on the California Attorney General,
25 other public enforcers, and EVOGEN (“Fourth Notice”). A true and correct copy of the Fourth
26 Notice is attached hereto as Exhibit D and incorporated by reference. The parties stipulate that
27 the Complaint be deemed amended as of October 29, 2019 to include the products set forth in
28 ERC’s Third Notice and Fourth Notice. This Consent Judgment shall apply to all Covered

1 Products set forth in Paragraph 1.1, effective 60 days after August 19, 2019, provided no public
2 enforcer is diligently pursuing the allegations set forth in ERC's Third Notice and Fourth
3 Notice. On October 29, 2019 more than 60 days will have passed since ERC's Third Notice
4 and Fourth Notice were served on the Attorney General, public enforcers, and EVOGEN. The
5 First and Second Notices, Third Notice and Fourth Notice are collectively referred to as
6 "Notices."

7 **1.7** ERC's Notices and Complaint allege that use of the Covered Products exposes
8 persons in California to lead without first providing clear and reasonable warnings in violation
9 of California Health and Safety Code section 25249.6. EVOGEN denies all material
10 allegations contained in the Notices and Complaint.

11 **1.8** The Parties have entered into this Consent Judgment in order to settle,
12 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
13 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
14 be construed as an admission by any of the Parties or by any of their respective officers,
15 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
16 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
17 violation of law.

18 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
20 current or future legal proceeding unrelated to these proceedings.

21 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered as
22 a Judgment by this Court.

23 **2. JURISDICTION AND VENUE**

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

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

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

4 **3.1** Beginning on the Effective Date, EVOGEN shall be permanently enjoined from
5 manufacturing or causing to be manufactured for sale in the State of California, "Distributing
6 into the State of California," or directly selling in the State of California, any Covered Products
7 which expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead
8 per day unless it meets the warning requirements under Section 3.2. Notwithstanding the
9 foregoing, so long as EVOGEN can document the date of manufacture of a Covered Product,
10 Covered Products manufactured prior to the Effective Date may be distributed or sold without a
11 "Warning" (defined below) by any person after the Effective Date without violation of this
12 Consent Judgment.

13 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of
14 California" shall mean to directly ship a Covered Product into California for sale in California or
15 to sell a Covered Product to a distributor that EVOGEN knows or has reason to know will sell
16 the Covered Product in California.

17 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure
18 Level" shall be measured in micrograms, and shall be calculated using the following formula:
19 micrograms of lead per gram of product, multiplied by grams of product per serving of the
20 product (using the largest serving size appearing on the product label), multiplied by servings
21 of the product per day (using the largest number of recommended daily servings appearing on
22 the label), excluding, pursuant to Section 3.1.3, the amount of lead in the ingredients listed in
23 **Table 1** below, if applicable, which equals micrograms of lead exposure per day. If the label
24 contains no recommended daily servings, then the number of recommended daily servings
25 shall be one.

26 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
27 EVOGEN shall be allowed to deduct the amount of lead which is deemed "naturally occurring"
28 in the ingredients listed in **Table 1** that are contained in that Covered Product under the

1 following conditions: For each year that EVOGEN claims entitlement to a “naturally occurring”
2 allowance, EVOGEN shall provide ERC with the following information: (a) EVOGEN must
3 produce to ERC a written list of each ingredient in the Covered Product for which a “naturally
4 occurring” allowance is claimed; (b) EVOGEN must provide ERC with documentation of
5 laboratory testing, conducted during the year for which the “naturally occurring” allowance is
6 claimed, that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any,
7 contained in each ingredient listed in **Table 1** that is contained in the Covered Product and for
8 which EVOGEN intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals
9 the presence of lead in any of the ingredients listed in **Table 1** that are contained in the Covered
10 Product, EVOGEN shall be entitled to deduct the amount of lead contained in each ingredient,
11 up to the full amount of the allowance for each ingredient as shown in **Table 1**, for those
12 ingredients that are in the Covered Product; and (d) If the Covered Product does not contain any
13 of the ingredients listed in **Table 1**, EVOGEN shall not be entitled to a deduction for “naturally
14 occurring” lead in the Covered Product for those ingredients. The information required by
15 Sections 3.1.3(a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date,
16 or anniversary thereof, for any year that EVOGEN shall claim entitlement to the “naturally
17 occurring” allowance:

18 **TABLE 1**

19 INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
20 Cocoa Powder	Up to 1.0 microgram/gram
21 Chocolate Liquor	Up to 1.0 microgram/gram
22 Cocoa Butter	Up to 0.1 micrograms/gram
23 Calcium (elemental)	Up to 0.8 micrograms/gram
24 Ferrous Fumarate	Up to 0.4 micrograms/gram
25 Zinc Oxide	Up to 8.0 micrograms/gram
26 Magnesium Oxide	Up to 0.4 micrograms/gram
27 Magnesium Carbonate	Up to 0.332 micrograms/gram

1	Magnesium Hydroxide	Up to 0.4 micrograms/gram
2	Zinc Gluconate	Up to 0.8 micrograms/gram
3	Potassium Chloride	Up to 1.1 micrograms/gram

3.2 Clear and Reasonable Warnings

If EVOGEN 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.

EVOGEN shall use the phrase “cancer and” in the Warning if EVOGEN has reason to believe that 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 EVOGEN 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. If the Warning is provided on the label, it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet, the Warning shall appear on the primary product information page. In no event shall any internet or website Warning be contained in or made through a link.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label or container of EVOGEN’s product packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

EVOGEN must display the above Warning with such conspicuousness, as compared with other words, statements or designs on the label or container, or on its website, if applicable, to

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

3.3 Conforming Covered Products

A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure Level” is no greater than 0.5 micrograms of lead per day as determined by the quality control methodology described in Section 3.4.

3.4 Testing and Quality Control Methodology

3.4.1 Beginning within one year of the Effective Date, EVOGEN shall arrange for lead testing of the Covered Products at least once a year for a minimum of three consecutive years by arranging for testing of three randomly selected samples of each of the Covered Products, in the form intended for sale to the end-user, which EVOGEN intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or “Distributing into the State of California.” If tests conducted pursuant to this Section demonstrate that no Warning is required for a Covered Product during each of three consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during or after the three-year testing period, EVOGEN changes ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered Products, EVOGEN shall test that Covered Product annually for at least two (2) additional years after such change is made. EVOGEN shall not be required to test any products that will be discontinued (i.e. EVOGEN will cease the manufacturing of those Covered Products and will cease acquiring those Covered Products from the manufacturer) within six (6) months after the Effective Date or within two (2) months after the date of the annual testing required by Section 3.4.1.

3.4.2 For purposes of measuring the “Daily Lead Exposure Level,” the highest lead detection result of the three (3) randomly selected samples of the Covered Products will be controlling. However, EVOGEN shall be allowed to retest three additional randomly selected samples and use the highest result from the second selection, if the highest sample of the first set is more than 50% higher than the next highest sample.

1 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
2 laboratory method that complies with the performance and quality control factors appropriate
3 for the method used, including limit of detection, qualification, accuracy, and precision that
4 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
5 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

6 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
7 independent third party laboratory certified by the California Environmental Laboratory
8 Accreditation Program or an independent third-party laboratory that is registered with the
9 United States Food & Drug Administration.

10 **3.4.5** Nothing in this Consent Judgment shall limit EVOGEN’s ability to
11 conduct, or require that others conduct, additional testing of the Covered Products, including
12 the raw materials used in their manufacture.

13 **3.4.6** Within thirty (30) days of ERC’s written request, EVOGEN shall deliver
14 lab reports obtained pursuant to Section 3.4 to ERC. EVOGEN shall retain all test results and
15 documentation for a period of five years from the date of each test.

16 **3.4.7** The testing and reporting requirements of Sections 3.4.1 and 3.4.6 do not
17 apply to any Covered Product for which EVOGEN has provided the Warning specified in
18 Section 3.2 continuously and uninterrupted after the Effective Date; however, in the event
19 EVOGEN ceases to provide the Warning specified in Section 3.2, EVOGEN shall be required
20 to comply with the testing and reporting requirements of this Section 3.4 beginning within three
21 months after the date the Warning ceases to be provided or one year after the Effective Date,
22 whichever date is later.

23 **4. SETTLEMENT PAYMENT**

24 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
25 attorney’s fees, and costs, EVOGEN shall make a total payment of \$45,000.00 (“Total
26 Settlement Amount”) to ERC within 5 days of the Effective Date (“Due Date”). EVOGEN
27 shall make this payment by wire transfer to ERC’s account, for which ERC will give EVOGEN
28 the necessary account information. The Total Settlement Amount shall be apportioned as

1 follows:

2 **4.2** \$5,000.00 shall be considered a civil penalty pursuant to California Health and
3 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$3,750.00) 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 section 25249.12(c). ERC will retain the remaining 25% (\$1,250.00) of the civil penalty.

7 **4.3** \$7,248.88 shall be distributed to ERC as reimbursement to ERC for reasonable
8 costs incurred in bringing this action.

9 **4.4** \$19,200.00 shall be distributed to Aqua Terra Aeris Law Group as
10 reimbursement of ERC’s attorney’s fees, while \$13,551.12 shall be distributed to ERC for its
11 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
12 costs.

13 **4.6** In the event that EVOGEN fails to remit the Total Settlement Amount owed
14 under Section 4 of this Consent Judgment on or before the Due Date, EVOGEN shall be
15 deemed to be in material breach of its obligations under this Consent Judgment. ERC shall
16 provide written notice of the delinquency to EVOGEN via electronic mail. If EVOGEN fails to
17 deliver the Total Settlement Amount within five (5) days from the written notice, the Total
18 Settlement Amount shall accrue interest at the statutory judgment interest rate provided in the
19 California Code of Civil Procedure section 685.010. Additionally, EVOGEN agrees to pay
20 ERC’s reasonable attorney’s fees and costs for any efforts to collect the payment due under this
21 Consent Judgment.

22 **5. MODIFICATION OF CONSENT JUDGMENT**

23 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
24 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
25 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
26 modified consent judgment.

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

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

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

16 **5.4** Where the meet-and-confer process does not lead to a joint motion or
17 application in support of a modification of the Consent Judgment, then either Party may seek
18 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
19 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure
20 section 1021.5.

21 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
22 **JUDGMENT**

23 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
24 this Consent Judgment.

25 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
26 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
27 inform EVOGEN in a reasonably prompt manner of its test results, including information
28 sufficient to permit EVOGEN to identify the Covered Products at issue. EVOGEN shall, within

thirty (30) days following such notice, provide ERC with testing information, from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating EVOGEN's compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

7. APPLICATION OF CONSENT JUDGMENT

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

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on behalf of itself and in the public interest, and EVOGEN and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of EVOGEN), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Product, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or consumption of the Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Products regarding lead up to and including the Effective Date. Within 30 days after the Effective Date of this Consent Judgment, ERC shall file a Request for Dismissal without prejudice of its pending case against Pacful, Inc., Alameda County Superior Court Case No. RG10029763.

8.2 ERC on its own behalf only, and EVOGEN on its own behalf only, further

1 waive and release any and all claims they may have against each other for all actions or
2 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
3 65 in connection with the Notices and Complaint up through and including the Effective Date,
4 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
5 enforce the terms of this Consent Judgment.

6 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
7 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
8 discovered. ERC on behalf of itself only, and EVOGEN on behalf of itself only, acknowledge
9 that this Consent Judgment is expressly intended to cover and include all such claims up
10 through and including the Effective Date, including all rights of action therefore. ERC and
11 EVOGEN acknowledge that the claims released in Sections 8.1 and 8.2 above may include
12 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
13 unknown claims. California Civil Code section 1542 reads as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
15 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
16 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
17 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
18 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
19 PARTY.

20 ERC on behalf of itself only, and EVOGEN on behalf of itself only, acknowledge and
21 understand the significance and consequences of this specific waiver of California Civil Code
22 section 1542.

23 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
24 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
25 in the Covered Products as set forth in the Notices and Complaint.

26 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
27 environmental exposures arising under Proposition 65, nor shall it apply to any of EVOGEN's
28 products other than the Covered Products.

29 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

30 In the event that any of the provisions of this Consent Judgment are held by a court to be

unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

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

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

With a copy to:

MATTHEW C. MACLEAR
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EVOGEN INC.

Evogen, Inc.
c/o Hany Rambod
271 E Hacienda Ave.
Campbell, CA 95008

With a copy to:

WILLIAM F. TARANTINO
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
Telephone: (415) 268-7000
Email: wtarantino@mofo.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.

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.

28 ///

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:

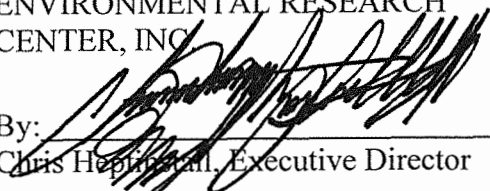
24 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
25 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
26 been diligently prosecuted, and that the public interest is served by such settlement; and

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: 11/11, 2019

ENVIRONMENTAL RESEARCH
CENTER, INC.

3
4 By: 
5 Chris Haplin, Executive Director

6 Dated: 12/3/, 2019


EVOGEN INC.

7
8 By: 
9 Hany Rambod
10 Its: CEO

11 **APPROVED AS TO FORM:**


12 Dated: November 1, 2019

AQUA TERRA AERIS LAW GROUP

13
14 By: 
15 Matthew C. Maclear
16 Anthony M. Barnes
17 Attorneys for Plaintiff Environmental
Research Center, Inc.

18 Dated: December 4, 2019

MORRISON & FOERSTER LLP

19
20 By: 
21 William F. Tarantino
22 Attorney for Defendant Evogen Inc.

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IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court