

1 WILLIAM E. THOMSON, Jr. (Bar No. 047195)  
 BROOKS KUSHMAN P.C.  
 2 Howard Hughes Center  
 6701 Center Drive West , Suite 610  
 3 Los Angeles, California 90045  
 Telephone: (310) 348-8200  
 4 Facsimile: (310) 846-4799  
 E-Mail: wthomson@brookskushman.com;  
 5 Attorneys for Plaintiffs  
 ExonHit Therapeutics S.A.  
 6 ExonHit Therapeutics, Inc.

7 DAVID R. SHAUB (Bar No. 032322)  
 LISBETH BOSSHART MERRILL (Bar No. 201822)  
 8 STEPHEN D. MORGAN (Bar No. 239345)  
 SHAUB & WILLIAMS LLP  
 9 12121 Wilshire Boulevard, Suite 205  
 Los Angeles, CA 90025-1165  
 10 Tel : 310-826-6678  
 Fax : 310-826-8042  
 11 Email: lawfirm@sw-law.com  
 Attorneys for Defendant  
 12 Jivan Biologics, Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO DIVISION

15 EXONHIT THERAPEUTICS S.A.  
 16 a French société anonyme, and EXONHIT  
 THERAPEUTICS, INC., a Delaware  
 17 Corporation,

18 Plaintiffs,

19 v.

20 JIVAN BIOLOGICS, INC.  
 a Delaware corporation,

22 Defendant.

23 JIVAN BIOLOGICS, INC.  
 a Delaware corporation,

24 Counter-Claimant

25 v.

26 EXONHIT THERAPEUTICS S.A.  
 a French société anonyme, and EXONHIT  
 27 THERAPEUTICS, INC., a Delaware

Case No. C07 1427 WHA (JCS) (EDL)

**STIPULATION AND CONSENT TO ENTRY OF JUDGMENT**

1 Corporation,

2 Counter-Defendants

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5 Plaintiffs ExonHit Therapeutics S.A. and ExonHit Therapeutics, Inc. (collectively  
6 “ExonHit”), and Defendant, Jivan Biologics, Inc. (“Jivan”) hereby agree and consent to entry of  
7 Judgment on the terms set forth below:

8  
9 **STIPULATION AND CONSENT TO JUDGMENT**

10 1. This case arises under the Patent Act, 35 U.S.C. § 1 et seq. This Court has jurisdiction  
11 over the parties and the subject matter hereto, and venue is proper in this District.

12 2. ExonHit filed its Complaint against Defendant Jivan on March 12, 2007. ExonHit’s  
13 complaint sets forth a claim against Jivan for infringement of United States Patent N°6,881,571  
14 (the “’571 Patent”).

15 3. ExonHit Therapeutics S.A. is the owner of all rights, title and interest in the ‘571  
16 Patent, entitled “Qualitative Differential Screening”.

17 4. Jivan has infringed, induced others to infringe, and/or contributed to the infringement  
18 of the claims of the ‘571 Patent by making, having made, using, selling and/or offering to sell  
19 splice variant microarray device that were made, used, sold, and/or offered for sale prior to entry  
20 of this Stipulation And Consent To Entry of Judgment. At the time of infringement, Jivan was  
21 aware of the existence of the ‘571 Patent.

22 5. All claims of the ‘571 Patent are valid and enforceable.

23 6. The reexamination proceeding before the U.S. Patent and Trademark Office,  
24 including specifically the amendment to claims 1 and 12, did not substantively change the claims  
25 of the ‘571 patent.

26 7. Jivan shall not challenge the validity nor assist any third party, directly or indirectly, in  
27 challenging the validity or enforceability of the ‘571 Patent.

1 8. In any action to enforce the terms of this Consent Judgment, Jivan shall not assert any  
2 affirmative defense to patent infringement for any splice variant microarray device made, used,  
3 sold, or offered for sale prior to the date of entry of this Consent Judgment.  
4

5 **JUDGMENT**

6 The Court, pursuant to the stipulation of the parties, ORDERS, ADJUDICATES AND  
7 DECREES that:

8 1. Judgment is entered against Defendant for infringement of the '571 patent, and to  
9 this end, as of the date of this Judgment, Jivan and its officers, directors, owners, agents, servants,  
10 representatives, employees, assigns and successors shall be and are hereby permanently enjoined  
11 and restrained from making, using, selling, or offering to sell any devices that infringe, literally or  
12 under the doctrine of equivalents, the claims of the '571 Patent, or importing such infringing  
13 devices into the United States, or inducing others to infringe or contributing to the infringement  
14 of the claims of the '571 Patent.

15 2. Jivan's counterclaims are dismissed with prejudice.

16 3. ExonHit releases Jivan from claims for damages for Jivan's splice variant microarray  
17 devices and services sold prior to entry of this Consent Judgment.

18 4. This is a final judgment. No appeals shall be taken from this judgment, and the parties  
19 waive all rights to appeal. This is not adjudication on the merits by the Court. The Court  
20 has not accepted (or rejected) any of the stipulated items set forth above. Nonetheless,  
21 based upon the above stipulation, the Court will enforce the stipulated judgment as  
22 between the litigating parties.

23 5. This Court shall retain jurisdiction over the parties and this action for purposes of  
24 enforcing the Stipulation and Consent to Judgment.  
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Dated: March   1  , 2010

EXONHIT THERAPEUTICS, S.A.

By: [Signature]  
Loic Maurel  
President, Management Board

Dated: March   1  , 2010

EXONHIT THERAPEUTICS, INC

By: [Signature]  
Loic Maurel  
President

Dated: March   01  , 2010

JIVAN BIOLOGICS, INC.

By: [Signature]  
Subha Srinivasan  
Corporate Executive Officer

APPROVED AS TO FORM AND CONTENT:

Dated: March   1  , 2010

BROOKS KUSHMAN P.C.

By: [Signature]  
William E. Thomson, Jr.  
Attorneys for Plaintiffs

Dated: March   1  , 2010

SHAUB & WILLIAMS LLP

By: [Signature]  
Lisbeth Beckett Merrill  
Attorneys for Defendant

IT IS SO ORDERED. THE CLERK SHALL CLOSE THE FILE.

Dated:   March 1, 2010.  

UNITED STATES DISTRICT COURT OF CALIFORNIA  
IT IS SO ORDERED  
[Signature]  
Judge William Alsup  
STIPULATION AND CONSENT TO ENTRY OF JUDGMENT