

## RELEASE AND SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Environmental Research Center and CVS Pharmacy, Inc.

This Release and Settlement Agreement (“Release”) is entered into by and between Environmental Research Center (“ERC”) and CVS Pharmacy, Inc. (“CVS”), with ERC and CVS collectively referred to as the “Parties.”

#### 1.2 ERC

ERC is a non-profit corporation dedicated to consumer protection and reducing the use and misuse of hazardous and toxic substances.

#### 1.3 CVS

ERC alleges that CVS employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

#### 1.4 General Allegations

ERC alleges that CVS has manufactured, marketed, distributed and/or sold those products identified in Section 1.5 below; that such products contained lead; and that such products lacked Proposition 65 warnings. Lead is on the Proposition 65 list of chemicals as known to cause cancer and birth defects and other reproductive harm.

#### 1.5 Product Description

As used in this Release, “Products” mean: (1) Miralus Healthcare Renewin Joint Care + Energy and (2) Miralus Healthcare Renewin Joint Care Women’s Formula + Energy manufactured, marketed, distributed and/or sold by, or on behalf of, CVS in California or to Californians.

#### 1.6 Notice of Violation

On or about May 9, 2011, ERC served CVS and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that alleged that CVS was violating California’s Proposition 65 (“Prop 65”)(Health & Safety Code § 25249.6) by failing to warn

consumers that the Products contained lead. More than 60 days have elapsed since service of that Notice and no public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.7 No Admission**

CVS denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold, manufactured, marketed, imported and/or distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Release shall be construed as an admission by CVS of any fact, finding, issue of law, or violation of law, nor shall compliance with this Release constitute or be construed as an admission by CVS of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect CVS's obligations, responsibilities, and duties under this Release.

**1.8 Effective Date**

For purposes of this Release, the term "Effective Date" shall mean November 18, 2011.

**2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

**2.1 Reformulation Standards**

Reformulated Products are defined as those Products containing lead in concentrations causing exposures of 0.5 ug/day or less when used within the dose range recommended by the Product manufacturer.

**2.2 Product Warnings**

Commencing on the Effective Date, CVS shall, for all Products containing lead in concentrations causing exposures of more than 0.5 ug/day when used within the dose range recommended by the Product manufacturer, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that a reasonable consumer could be expected to understand to which *specific* Product the warning applies.

**(a) Retail Store Sales.**

**(i) Product Labeling.** A warning to be affixed to the packaging, labeling, or directly on each Product sold in any CVS operated retail outlet in California that states:

**WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

**(ii) Point-of-Sale Warnings.** Alternatively, signs may be posted in any of CVS's California retail stores that sell the Products, with such signs to contain the warning language identified in Section 2.2(a)(i) above. Where more than one Product is sold in proximity to other like items or to those that do not require a warning, the following statement shall be used:<sup>1</sup>

**WARNING:** The following products contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm:

*[list products for which warning is required]*

**(b) Internet Sales.** In the event that CVS sells Products via the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, CVS shall provide warnings for such Products. Warnings given on the internet shall identify the *specific* Product to which the warning applies as further specified below.

**Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet, which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

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<sup>1</sup>For purposes of this Release, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

**WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

**3. PAYMENT OF PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

**3.1 Civil Penalty**

CVS shall pay a civil penalty in the amount of \$1,000, to be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to ERC. CVS shall issue two separate checks for the penalty payment: (a) one check made payable to "ERC in Trust For OEHHA" in the amount of \$750 representing 75% of the total penalty; and (b) one check made payable to ERC in the amount of \$250, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) ERC, whose information shall be provided five calendar days before the payment is due. ERC's payment shall be delivered to ERC's counsel, Andrew L. Packard, on or before December 21, 2011, at the following address:

Andrew L. Packard  
The Law Offices of Andrew L. Packard  
100 Petaluma Boulevard North, Suite 301  
Petaluma, CA 94952

**4. REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS**

The Parties reached an accord on the compensation due to ERC and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5. CVS shall reimburse ERC and its counsel \$9,000 for fees and costs incurred as a result of investigating, bringing this matter to CVS' attention, and negotiating a settlement. The check for reimbursement of ERC's fees and costs shall be made payable to "The Law Offices of Andrew L. Packard Attorney-Client Trust Account" and shall be delivered on or before December 21, 2011, to the following address:

The Law Offices of Andrew L. Packard  
100 Petaluma Boulevard North, Suite 301  
Petaluma, CA 94952

**5. CLAIMS COVERED AND RELEASED**

**5.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

This Release is a full, final and binding resolution between ERC and CVS of any violation of Proposition 65 that was or could have been asserted by ERC against CVS, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom CVS directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors and licensees ("Releasees"), based on their failure to warn about alleged exposures to lead contained in the Products that were sold by CVS before December 21, 2011.

**5.2 ERC's Public Release of Proposition 65 Claims**

In further consideration of the promises and agreements herein contained, ERC on behalf of itself, its past, current and future agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to Lead in the Products sold by CVS (collectively "claims"), against CVS and Releasees.

**5.3 ERC's Individual Release of Claims**

ERC, in its individual capacity only and *not* in its representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of ERC of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to the lead alleged to have

been in the Products manufactured, marketed, distributed or sold by CVS.

**5.4 CVS's Release of ERC**

CVS on behalf of itself, agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against ERC, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by ERC and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

**6. SEVERABILITY**

If, subsequent to the execution of this Release, any of the provisions of this Release are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**7. GOVERNING LAW**

The terms of this Release shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Release are rendered inapplicable or no longer require as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then CVS shall provide written notice to ERC of any asserted change in the law, and shall have no further obligations pursuant to this Release with respect to, and to the extent that, the Products are so affected. Nothing in this Release shall be interpreted to relieve CVS from any obligation to comply with any pertinent state or federal toxics control law.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Release shall be in writing and: (i) personally delivered; (ii) sent by first-class, (registered or certified mail) return receipt requested; or (iii) sent by overnight courier to one party from the other party at the following addresses:

To CVS:

Karen Feisthamel, Esq.  
Senior Legal Counsel  
CVS Pharmacy, Inc.  
One CVS Drive  
Woonsocket, Rhode Island 02895

To ERC:

Andrew L. Packard  
The Law Offices of Andrew L. Packard  
100 Petaluma Blvd. North, Suite 301  
Petaluma, CA 94952

Any party may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Release may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

ERC and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. POST EXECUTION ACTIVITIES**

The Parties intend and agree that this Release shall be given full effect for purposes of precluding claims regarding the Products against CVS or the Releasees under Proposition 65 as covered under this Release. If requested in writing by CVS (within twelve months of the Effective Date), CVS may ask ERC to file a complaint and seek approval of this Release through a court approved consent judgment incorporating the terms of this Release pursuant to California Health and Safety Code Section 25249.7, or as may be otherwise allowed by law.

If requested, ERC agrees to reasonably cooperate with CVS and to use best efforts and that of its counsel to support the entry of a consent judgment incorporating the terms of this Release for approval by a superior court in California. Pursuant to CCP §§ 1021 and 1021.5, CVS will reimburse ERC and its counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Release, in an amount not to exceed \$10,000.00. No fees under this paragraph will be due and owing to ERC or its counsel unless a written request is made by CVS to have ERC file a complaint and seek a consent judgment. CVS will remit payment to

The Law Offices of Andrew L. Packard, at the address set forth in Section 4 above. Such additional fees shall be paid by CVS within ten days of entry of the consent judgment approving the Release herein.

12. MODIFICATION

This Release may be modified only by written agreement of the Parties.

13. AUTHORIZATION

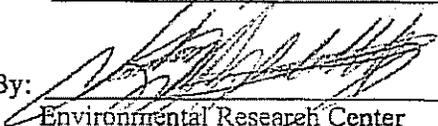
The undersigned are authorized to execute this Release and have read, understood, and agree to all of the terms and conditions of this Release.

AGREED TO:

AGREED TO:

Date: 12/12/11

Date: 12/12/2011

By:   
Environmental Research Center

By:   
CVS Pharmacy, Inc. *Karen L. Feisthamed*  
*Sr. Legal Counsel -*  
*Assistant Secretary*