

LITIGATION SETTLEMENT AGREEMENT AND RELEASE

This Litigation Settlement Agreement and Release (“Agreement”) is entered into effective this 18th day of November, 2011 (the “Effective Date”), by and between Environmental Research Center (hereinafter “ERC”), on the one hand, and Wal-Mart Stores, Inc. and Walmart.com USA LLC, on the other hand.

WHEREAS, on April 15, 2011, ERC served by certified mail its California Health & Safety Code §§ 25249.5, *et seq.* (hereinafter referred to as “Proposition 65”) 60-day notice to Wal-Mart Stores, Inc. alleging that a Proposition 65 warning was required due to lead and lead compounds exposure from two products: (1) Renewin Joint Care + Energy; and (2) Miralus Healthcare Renewin Joint Care Women’s Formula + Energy;

WHEREAS, on June 14, 2011, ERC served by certified mail its Proposition 65 60-day notice to Walmart.com USA LLC alleging that a Proposition 65 warning was required due to lead and lead compounds exposure from two products: (1) Renewin Joint Care + Energy; and (2) Miralus Healthcare Renewin Joint Care Women’s Formula + Energy;

WHEREAS, Renewin Joint Care + Energy and Miralus Healthcare Renewin Joint Care Women’s Formula + Energy are hereinafter referred to as the “Products;”

WHEREAS, ERC has obtained a default judgment against the supplier of the Products - Miralus, Inc. - in Marin County Superior Court Case No. CIV-10-04706 based on the alleged violation of Proposition 65 due to lead and lead compounds exposures arising from the Products;

WHEREAS, for purposes of this Agreement only, ERC, Wal-Mart Stores, Inc. and Walmart.com USA LLC are hereinafter referred to collectively as “Parties” or singularly as “Party;”

WHEREAS, Wal-Mart Stores, Inc. and Walmart.com USA LLC allege that upon receipt of ERC’s April 15, 2011 Proposition 65 60-day notice, they promptly and timely implemented

steps to preclude the sale of the Products in California, including implementing an electronic block on sales of the Products, as well as removing the Products from shelves in Wal-Mart Stores, Inc. stores located in California; and electronically blocking the sale of the Products to addresses located in California from the Walmart USA LLC walmart.com website; and,

WHEREAS, Wal-Mart Stores, Inc. and Walmart.com USA LLC are hereinafter collectively referred to as "Walmart."

NOW, THEREFORE, the Parties, in consideration of the following conditions, covenants, and promises, agree as follows:

A. No Admission Of Liability

Walmart denies the material factual and legal allegations contained in ERC's April 15, 2011 and June 14, 2011 60-day notices concerning the Products and maintains that all Products that Walmart has sold or distributed in California, have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Walmart of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Walmart of any fact, finding, conclusion, issue of law, or violation of law.

B. Walmart's Agreement Not To Sell The Products In California

1. As of the Effective Date, Walmart agrees not to sell the Products in California.

2. If it becomes necessary for an action to be filed and a consent judgment entered pursuant to Section D.4, *infra*, Walmart agrees to injunctive relief precluding the sale of the Products in Wal-Mart Stores, Inc. stores located in California and to addresses located in California via walmart.com., which injunctive relief may be enforced by ERC by motion if an issue arises following the entry of the consent judgment only if ERC has given written notice of the issue and the issue is not resolved by the Parties prior good faith efforts at meeting and conferring.

C. Monetary Consideration

1. Within fifteen business days of the mutual execution and exchange of this Agreement, and pursuant to the applicable provisions of Proposition 65 and California Code of Civil Procedure § 1021.5, Walmart shall remit a single check in the amount of Eighteen Thousand Dollars (\$18,000.00) to the "Law Offices of Andrew L. Packard Attorney-Client Trust Account" at the following address:

Andrew L. Packard, Esq.
LAW OFFICES OF ANDREW L. PACKARD
100 Petaluma Boulevard, Suite 301
Petaluma, CA 94952.

A single 1099 shall be issued by Walmart for the above payment to Law Offices of Andrew L. Packard, whose taxpayer information shall be provided fifteen business days before the payment is due.

2. Out of the Eighteen Thousand Dollars (\$18,000.00) settlement payment, Ten Thousand Dollars (\$10,000.00) will be paid to its counsel Andrew Packard for fees and costs incurred as a result of investigating, bringing this matter to Walmart's attention, and negotiating a settlement.

3. Out of the Eighteen Thousand Dollars (\$18,000.00) total settlement payment, Eight Thousand Dollars \$8,000 will be paid to ERC for costs.

4. As additional consideration, Walmart shall pay a monetary civil penalty in the amount of \$2,000.00, 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. Walmart will remit to ERC two separate checks for the civil penalty payment: (a) one check made payable to "ERC in Trust For OEHHA" in the amount of \$1,500.00 representing 75% of the total penalty; and (b) one check made payable to "ERC" in the amount of \$500.00, representing 25% of the total penalty. Two separate 1099s shall be issued by Walmart for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814

(EIN: 68-0284486); and (b) ERC, whose taxpayer information shall be provided fifteen business days before the payment is due. Payment shall be delivered to ERC's counsel, Andrew L. Packard, within fifteen business days of the mutual execution and exchange of this Agreement, at the following address:

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

D. Release And Waiver Of All Claims

1. In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section C, ERC on behalf of its self, its past and current agents, representatives, attorneys, employees, officers and directors, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), that were brought or could have been brought against Walmart or their respective parents, subsidiaries or affiliates, licensors, licensees, suppliers (other than Miralus, Inc.) or any other person or entity in the course of doing business, and the successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell the Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers and representatives of each of them (collectively "Releasees") arising out of of ERC's April 15, 2011 and June 14, 2011 Proposition 65 60-day notices. This release is limited to, but is intended to be a full, final, and binding resolution of, all claims arising under ERC's April 15, 2011 and June 14, 2011 Proposition 65 60-day notices, as against Walmart and the other Releasees, as such Claims relate to the alleged failure to warn about lead and lead compounds exposures from the Products. Compliance with this Settlement Agreement shall constitute compliance with Proposition 65 for Walmart and their respective Releasees with respect to the Products after the Effective Date.

2. The Parties intend and agree that this Agreement shall be given full effect for purposes of precluding claims regarding the Products against Walmart or their respective Releasees under Proposition 65 as covered under this release. If ERC is requested in writing by Walmart within twelve months of the Effective Date to file a complaint and seek approval of this Agreement through a court approved consent judgment incorporating the terms of this Settlement Agreement pursuant to California Health and Safety Code § 25249.7, or as may be otherwise allowed by law, ERC agrees to reasonably cooperate with Walmart and to use ERC's best efforts (including, but not limited to ERC engaging counsel), to support the entry of a consent judgment incorporating the terms of this Agreement for approval by a superior court in California. The court approved consent judgment shall be a release of all claims in Section D.1., including claims in the interest of the general public. Pursuant to California Code of Civil Procedure §§ 1021 and 1021.5, Walmart will reimburse ERC and its counsel for their reasonable fees and costs incurred in filing the complaint and seeking judicial approval of this Agreement in the form of a consent judgment, in an amount not to exceed Ten Thousand Dollars (\$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 Walmart to have ERC file a complaint and thereafter a motion for Court approval of the Parties' Proposition 65 Agreement and a "Stipulation And Proposed Order Re: Consent Judgment" to be drafted by ERC's counsel. Within fifteen days of entry of the resulting judgment, Walmart will remit payment to ERC and ERC's counsel via joint check in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for work reasonably and necessarily performed to effectuate the provisions of this paragraph.

3. Additionally, with regard to ERC's personal release, it is expressly understood by ERC that the releases given by ERC pursuant to this Agreement include the release of all Claims, known or unknown, which ERC may now or in the future have against Walmart or their respective Releasees arising out of or related to the circumstances underlying ERC's April 15, 2011 and June 14, 2011 Proposition 60-day notices concerning the Products. ERC expressly declares that it has read, understood and knowingly waived any and all rights it may have under the provisions of the California Civil Code section 1542 and any comparable federal or state statute or rule of law. California Civil Code section 1542 provides as follows:

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

4. In connection with regard to ERC's personal release, ERC hereby agrees, represents and warrants that it realizes and acknowledges that factual matters now unknown may have given or hereafter may give rise to causes of action, claims, demands, debts, damages, costs, losses and expenses which are now unknown, unanticipated and unsuspected and ERC agrees and represents that this Release has been negotiated and agreed upon in light of this realization, and that it nevertheless, hereby intends to release, discharge and acquit Walmart and their respective Releasees from any such known or unknown claims, causes of action, demands, debts, controversies, damages, costs, losses and expenses which are in any way related to the Claims described hereinabove.

5. Nothing in the releases or waivers given in this Agreement by ERC is intended to nor shall it be construed as impacting ERC's rights to enforce its default judgment against Miraluz, Inc.

E. Recitals

The Recitals contained in this Agreement are hereby made a part of the terms and provisions of this Agreement, and shall be binding on the Parties as if fully set forth herein.

F. Entire Agreement

This Agreement constitutes the entire agreement between the Parties with reference to the subject matter contained herein, and all prior negotiations and understandings between the Parties are merged into this Agreement.

G. Modifications or Amendments

This Agreement may not be altered, modified, amended or changed in any respect or particular whatsoever, except by a writing duly executed by all of the Parties hereto.

H. Representation by Counsel and Explanation by Counsel

ERC represents and warrants that (a) ERC has had the opportunity to consult with ERC's counsel concerning the content and legal effect of this Agreement; (b) ERC has had the same explained to ERC by ERC's counsel; (c) ERC is fully aware of, understands, and agrees with the Agreement's contents and legal effect; and (d) ERC has had the opportunity to ask any question(s) regarding this Agreement to ERC's counsel, including to have any desired interpretation explained, and has had the same answered to ERC's satisfaction.

I. Interpretation of the Agreement

1. The validity, interpretation and performance of this Agreement shall be controlled by, and construed under the laws of the State of California.

2. The paragraph headings hereof are for the convenience of the Parties only and shall be given no substantive or interpretive effect whatsoever.

3. Each of the Parties hereto acknowledge that the Agreement has been jointly drafted by the Parties, and that they have reviewed and revised, or have had the opportunity to revise, this Agreement. Accordingly, any ambiguity contained herein shall not be construed either for or against any Party.

J. Binding Agreement

This Agreement is binding as a contract.

K. Notices

All notices given under the Agreement are to be in writing, sent by a method that confirms delivery, and should be sent as specified below:

For Walmart:

Wal-Mart Stores, Inc.
Attn: Legal Department
702 S. W. 8th Street (MS 0215)
Bentonville, AR 72716-0215

With a copy to:

Michael D. Abraham, Esq.
Barkto, Zankel, Tarrant & Miller
900 Front Street, Suite 300
San Francisco, California 94111

For ERC

Environmental Research Center
5694 Mission Center Road, #199
San Diego, CA 92108

With a copy to:

Andrew L. Packard, Esq.
LAW OFFICES OF ANDREW L. PACKARD
100 Petaluma Boulevard, Suite 301
Petaluma, CA 94952

L. Severability

If any provision or part of a provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable for any reason whatsoever, the remaining provisions and parts of provisions hereof shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

M. No Waiver

The waiver by any Party of the performance of any covenant, condition, promise or representation shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, promise or representation.

N. Counterparts and Execution

This Agreement may be executed in one or more counterparts. All counterparts of any such documents together shall constitute one and the same instrument. This Agreement may be executed and transmitted by facsimile or electronically as a PDF, which facsimile or PDF signature shall have the same force and effect as the original signature.

O. Successors and Heirs

The Parties expressly covenant and agree that this Agreement shall inure to the benefit of, and be binding upon their respective heirs, administrators, representatives, successors, trustees, parents, family members, spouses, executors, guardians, beneficiaries, affiliates and assigns.

P. Compliance With Health & Safety Code § 25249.7(f)

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

Q. No Other Prop. 65 Claims As To Either Of The Products

ERC represents and warrants that it has no information to support and does not intend to bring any other Proposition 65 claim concerning either of the Products against Walmart or any of the other Releasees.

R. Additional Performance

The Parties agree to execute and deliver such other and further documents and perform such other acts as shall be reasonably necessary to effectuate the purpose of this Agreement.

[The rest of this page is intentionally left blank]

IN WITNESS WHEREOF, Environmental Research Center, Wal-Mart Stores, Inc. and Walmart.com USA LLC respectively have executed this Agreement, effective as of the date first above written.

Dated: 12/23/2011

Environmental Research Center

By: 

Its: EXECUTIVE DIRECTOR

Dated: 1/4/12

Wal-Mart Stores, Inc.

By: Scott McCall
Its: Scott McCall, Sr. VP Group Health & Wellness

Dated: _____

Walmart.com USA LLC.

By: _____
Its: _____

APPROVED AS TO FORM

Dated: _____

LAW OFFICES OF ANDREW L. PACKARD

By: _____
Andrew L. Packard
Counsel for Environmental Research Center

Dated: _____

BARTKO, ZANKEL, TARRANT & MILLER
A Professional Corporation

By: _____
Michael D. Abraham
Counsel for Wal-Mart Stores, Inc. and
Walmart.com USA LLC

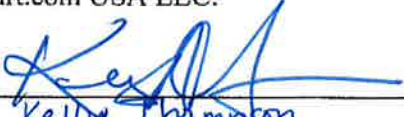
Dated: _____

Wal-Mart Stores, Inc.

By: _____
Its: _____

Dated: 1/4/12

Walmart.com USA LLC.

By: 
Its: Kelly Thompson
VP of Merchandising

APPROVED AS TO FORM

Dated: _____

LAW OFFICES OF ANDREW L. PACKARD

By: _____
Andrew L. Packard
Counsel for Environmental Research Center

Dated: _____

BARTKO, ZANKEL, TARRANT & MILLER
A Professional Corporation

By: _____
Michael D. Abraham
Counsel for Wal-Mart Stores, Inc. and
Walmart.com USA LLC

Dated: _____

Wal-Mart Stores, Inc.

By: _____
Its: _____

Dated: _____

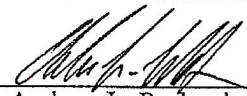
Walmart.com USA LLC.

By: _____
Its: _____

APPROVED AS TO FORM

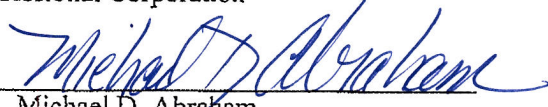
Dated: 1/13/12

LAW OFFICES OF ANDREW L. PACKARD

By: 
Andrew L. Packard
Counsel for Environmental Research Center

Dated: 1/13/12

BARTKO, ZANKEL, TARRANT & MILLER
A Professional Corporation

By: 
Michael D. Abraham
Counsel for Wal-Mart Stores, Inc. and
Walmart.com USA LLC