

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“this Agreement”) is made effective on the date last executed herein (“Effective Date”) by and between Environmental Research Center Inc. (“ERC”) and Advanced Nutrient Science International, LLC (“ANSI”). ERC and ANSI are hereinafter referred to collectively as “the Parties”. The Parties agree as follows:

1. This Agreement is limited to this Matter, which is defined as all claims and allegations related to the Notice of Violations of California Health & Safety Code §25249.5, *et seq.* (also known as “Proposition 65”) that ERC served on ANSI on September 2, 2011 (“the Notice”), and the following products identified in the Notice, namely (“the Covered Products”).

**Advanced Nutrient Science Intl. Rapid Fast-Acting Thermo Hydroxadrine  
Beta Burners  
Advanced Nutrient Science Intl. Xtreme Shock Zero Sugar Shock Berry  
Advanced Nutrient Science Intl. Xtreme Shock Zero Sugar Watermelon**

2. The Parties enter into this Agreement in order to achieve a settlement of the claims as stated in Section 1 for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of ERC or ANSI of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by ANSI of any fact, issue of law or violation of law. ANSI contends that the settlement in this matter has been agreed to based on economic considerations. Nothing in this Agreement or any document referred to herein, shall be construed as giving rise to any presumption or inference of admission or concession by ANSI as to any fault, wrongdoing or liability whatsoever. The Parties agree that this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. In consideration of the following covenants of ANSI, and the other conditions contained in this Agreement, ERC releases ANSI as set forth in Paragraph 9 below:

a. ANSI agrees that all Covered Products produced and offered for sale in California (and offered for sale to a third party for retail sale in California) on and after the Effective Date, shall comply with California law, including Proposition 65.

b. ANSI agrees to provide an additional notice for all Covered Products produced and offered for sale in California since July 2010 on ANSI’s website, <http://www.nutrientsscience.com/index.html>, as follows:

“Advanced Nutrient Sciences, LLC (ANSI) is issuing a notice to consumers who have purchased certain ANSI products from July 2010 to present. The presence of lead has been detected in certain lots of the following products:

**Advanced Nutrient Science Intl. Rapid Fast Acting Thermo Hydroxadrine  
Beta Burners**

**Advanced Nutrient Science Intl. Xtreme Shock Zero Sugar Shock Berry**

## Advanced Nutrient Science Intl. Xtreme Shock Zero Sugar Watermelon

Lead is a chemical known to the State of California to cause reproductive harm and birth defects. The products above sold by ANSI to consumers since July 2010 may have contained lead. Consumers with questions may call ANSI at: 1-888-777-1233.”

c. Beginning on the effective date, ANSI shall not manufacture for sale in the State of California, distribute into the State of California, or directly sell the Covered Products in the State of California, which expose a person to a daily dose of more than .5 micrograms when taken as directed on the Covered Product’s label, unless each such unit of the Covered Products bears the following warning statement on its individual unit label packaging or by sticker securely affixed on the bottle cap:

**“WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm. DO NOT USE DURING PREGNANCY.”**

d. The term “cancer” shall be included in the warning only if there is an exposure to a daily dose of more than 15 micrograms of lead when taken as directed on the Covered Product’s label.

e. The warning statement set forth in Section 3c. shall be prominent and displayed securely on either the cap, the unit packaging, or by a securely affixed hang tag on the Products with such conspicuousness, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Products.

f. If ANSI is successful with reformulation for any of the Covered Products, and reduces the lead content to 0.5 micrograms or below when taken pursuant to the maximum number of servings pursuant to the directions on the label of the Covered Product, both ERC and ANSI agree that the Covered Products may be offered for sale in California without the warning discussed in Section 3c. If ANSI is successful with reformulation on any of the Covered Products, ANSI shall notify ERC and provide any test results for the Covered Products that document this change in reformulation. ANSI shall test samples in the form intended for the end-user. ANSI shall test at least three (3) randomly-selected samples of two separate lots each year for each Covered Product for lead content to confirm whether the daily dose is more or less than 0.5 micrograms of lead pursuant to the directions on the Covered Product label. ANSI shall provide ERC with any related documentation pursuant to Section 3.f.2, and shall include the lot identification numbers of the lots tested.

(1) Pursuant to Section 3f., any such testing shall be performed by a laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the United States Food & Drug Administration for the analysis of heavy metals. The method of selecting samples for testing must comply with the regulations of the Food & Drug Administration as set forth in Title 21, Part 111, Subpart E of the Code of Federal Regulations, including section 111.80(c). Testing for lead shall be performed

using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and closed-vessel, microwave-assisted digestion employing high-purity reagents or any other testing method agreed upon in writing by the parties. Nothing in this Agreement shall limit ANSI's ability to conduct or require that others conduct additional testing of the Products, including raw materials used in their manufacture.

(2) Pursuant to Section 3f., ANSI shall retain copies of its test data from the date testing commenced and shall provide all test data to ERC upon fifteen (15) days of receipt of said data after conducting the required testing as set forth above. The requirement to provide all test data to ERC shall cease after three years from date of the Effective Date.

g. The requirements of Sections 1, 2, and 3a.,3c.,3d.,3e., 3f. will only apply to any time in which ANSI is a "person in the course of doing business," as that term is defined in Health and Safety Code Section 25249.11(b). ANSI represents that at the time of this Settlement Agreement and Release, it is a "person in the course of doing business" because it has 10 or more employees. ANSI represents that it understands that even if ANSI is not a "person in the course of doing business" under Proposition 65, other companies in its chain of distribution (such as manufacturers, retailers, or distributors) that have 10 or more employees are not exempt from Proposition 65 and could violate Proposition 65 by knowingly and intentionally exposing individuals to chemicals contained in ANSI products without first giving a clear and reasonable warning.

4. In full and final satisfaction of civil penalties, payment in lieu of further civil penalties, ERC's expenses, and consulting fees and costs of investigation, ANSI shall make a total payment of \$45,000 ("Total Settlement Amount") to ERC. Sections 4.a-4.e below describe the agreed partition and timing of payments of the Total Settlement Amount.

a. As a portion of the Total Settlement Amount, \$6,750 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$5,062.50) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c). ERC will retain the remaining 25% (\$1,687.50) of the civil penalty.

b. As a portion of the Total Settlement Amount, \$20,250.00 shall be considered a payment to ERC in lieu of further civil penalties for activities such as (1) funding the investigating, researching and testing of consumer products that may contain Proposition 65 listed chemicals; (2) funding grants to California non-profit foundations/entities dedicated to public health; (3) funding the ERC Eco Scholarship Fund for high school students in California interested in pursuing an education in the field of environmental sciences; (4) funding the ERC Cancer Scholarship Fund for cancer survivors in California interested in pursuing a higher education, (5) funding ERC's Operation Education Program designed to provide funding to educators in the State of California public school system for creative and effective environment and environmental sciences teaching projects; (6) funding ERC's Voluntary Compliance Program to work with companies not subject to Proposition 65 to reformulate their products to

reduce potential consumer exposures to Proposition 65 listed chemicals; (7) funding ERC's RxY Program to assist various medical personnel to provide testing assistance to independent distributors of various products; (8) funding ERC's Got Lead? Program to assist consumers in testing products for lead content; (9) funding post-settlement monitoring of past consent judgments; (10) funding to maintain ERC's database of lead-free products, Proposition 65-compliant products and contaminated products; (11) funding to track and catalog Proposition 65-compliant, contamination-free sources of ingredients used in the products ERC tests; and (12) funding the continued enforcement of Proposition 65 matters which address contaminated ingestible products, similar to the subject matter of this Action.

c. As a portion of the Total Settlement Amount, \$18,000 shall be considered a reimbursement to ERC for its reasonable investigation and consulting costs associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this matter to ANSI's attention, and negotiating a settlement in the public interest.

d. Within 5 days of the Effective Date, ANSI shall pay ERC the sum of twenty-five thousand dollars (\$25,000.00); within 45 days of the Effective Date, ANSI shall pay ERC the sum of ten thousand dollars (\$10,000.00); and within 90 days of the Effective Date, ANSI shall pay ERC the sum of ten thousand dollars (\$10,000.00) by checks made payable to "Environmental Research Center" and sent by first-class registered or certified mail, or overnight delivery, to ERC at: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108.

5. ANSI and ERC shall bear any and all of their own costs, expenses, and attorneys' fees related to this matter.

6. In consideration of the following covenant of ERC, and the other conditions contained in this Agreement, ERC releases ANSI as set forth in Paragraph 7 below.

7. ERC, on behalf of themselves and their respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors and assigns, and legal representatives, and acting on its own behalf releases ANSI from all claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead from the Covered Products as set forth in the Notice served on ANSI on September 2, 2011.

8. The Parties hereby agree that this Settlement Agreement & Release applies to ANSI, and fully releases ANSI, its parents, subsidiaries, affiliates (including those companies that are under common ownership and/or common control), shareholders, directors, members, managers, officers, employees, and attorneys, and each entity to whom each of them directly or indirectly distributed or sold the Products, including but not limited to manufacturers, distributors, wholesalers, customers, retailers, franchisees, and any other person or entity in the course of doing business who distributed, marketed or sold the products, from all claims of any nature asserted in the Notice.

9. ERC, on its own behalf, on one hand, and ANSI, on the other hand, release and waive any claims they may have against each other, and their shareholders, officers, directors,

members, managers, employees, agents, representatives, and attorneys (“the Releasees”) for all actions or statements made or undertaken by the Releasees in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice.

10. Nothing in this release is intended to apply to any occupational or environmental exposures arising under Proposition 65, except as otherwise provided in this agreement, nor shall it apply to any of ANSI’s products other than the Covered Products.

11. Nothing herein shall be construed as diminishing ANSI’s continuing obligations to comply with Proposition 65.

12. After execution of the Agreement, ERC will submit to the California Attorney General a Report of Settlement on Form JUS 1501, as it is completed in Exhibit “A” attached hereto. In addition, ERC will provide to the California Attorney General the fully signed copy of this Agreement. The Parties acknowledge and agree that the Parties shall provide as much information as is requested by the California Attorney General, or any other governmental agency, regarding the Matter, its settlement, and this Agreement.

13. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by all parties to this Agreement.

14. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, affiliates, officers, directors, employees, agents, servants, heirs, executors, successors, and assigns.

15. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties’ attorneys prepared and/or drafted all or any portion this Agreement. It is conclusively presumed all of the Parties participated equally in the preparation and drafting of this Agreement.

16. If any provision, term or section of this Agreement is found to be invalid, illegal or unenforceable, all remaining provisions, terms or sections shall continue in full force and effect and remain binding on the Parties. If any provision, term or section of this Agreement is determined to be unenforceable, such provision, term or section may be modified so that the unenforceable provision, term or section is enforceable to the greatest extent possible.

17. This Agreement shall be deemed to have been entered into in the State of California, and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

18. Any legal action to enforce this Agreement shall be brought in any county of the State of California, any of which is deemed to be the proper venue for such legal action. The prevailing

party in any such legal action shall be entitled to recover for its attorney fees in addition to any other legally recoverable costs.

19. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail or other copies of this Agreement or any counterparts, shall be deemed to be an original.

20. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the party for whom they execute to the terms and conditions of this Agreement.

DATED: 3/26/12

ADVANCED NUTRIENT SCIENCE INTERNATIONAL, LLC

By: 

Print Name: David J. McCabe

Title: CEO

DATED: 3/26/12

ENVIRONMENTAL RESEARCH CENTER, INC

By: 

Chris Heptinstall, Executive Director

# **EXHIBIT A**

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501  
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

**REPORT OF SETTLEMENT**

Please print or type required information  Original Filing  Supplemental Filing  Corrected Filing

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S) <b>Environmental Research Center, Inc.</b>				
	DEFENDANT(S) INVOLVED IN SETTLEMENT <b>Advanced Nutrient Science International, LLC</b>				
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>N/A</b>		COURT NAME <b>N/A</b>		
	SHORT CASE NAME <b>N/A</b>				
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Warnings/Reformulation</b>				
	PAYMENT: CIVIL PENALTY <b>\$6750.00</b>		PAYMENT: ATTORNEYS FEES <b>\$0</b>	PAYMENT: OTHER <b>\$38,250.00</b>	For Internal Use Only
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED <b>/ /</b>	
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>				
NAME OF CONTACT <b>Chris Heptinstall, Executive Director</b>					
<b>FILER INFO</b>	ORGANIZATION <b>Environmental Research Center, Inc.</b>		TELEPHONE NUMBER <b>((619)) 500-3090</b>		
	ADDRESS <b>3111 Camino Del Rio North, Suite 400</b>		FAX NUMBER <b>( )</b>		
	CITY <b>San Diego</b>	STATE <b>CA</b>	ZIP	E-MAIL ADDRESS <b>chris_erc@comcast.net</b>	

**FILING INSTRUCTIONS:** This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.