

SETTLEMENT AGREEMENT AND RELEASE

1. INTRODUCTION

1.1 This Settlement Agreement (this "Agreement") is entered into by and between Environmental Research Center ("ERC") as a private enforcer and NUTRITION RESOURCE, INC. DBA NUTRIBIOTIC ("NUTRIBIOTIC"). ERC and NUTRIBIOTIC are hereinafter sometimes referred to individually as a "Party" or collectively as the "Parties."

1.2 ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

1.3 NUTRIBIOTIC is a California corporation, operating out of Lakeport, California. NUTRIBIOTIC is qualified to do business in the State of California. For purposes of this action, NUTRIBIOTIC agrees that is a "person in the course of doing business" within the meaning of Proposition 65.

1.4 On May 9, 2012, pursuant to California Health and Safety Code § 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 ("Notice of Violations") on the California Attorney General, other public enforcers, and NUTRIBIOTIC. The Notice of Violations contain allegations that NUTRIBIOTIC, without giving a required clear and reasonable warning, has exposed and continues to expose individuals in California to lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, by manufacturing, marketing, distributing and/or selling the following five (5) products:

1. NUTRIBIOTIC VEGAN RICE PROTEIN PLUS ANTIOXIDANT PROPERTIES
2. NUTRIBIOTIC VEGAN ORGANIC VANILLA RICE PROTEIN
3. NUTRIBIOTIC VEGAN PLAIN RICE PROTEIN
4. NUTRIBIOTIC VEGAN RICE PROTEIN PLUS FLAX SEED
5. NUTRIBIOTIC VEGAN RICE PROTEIN SPECTRUM SHAKE VANILLA

These five (5) products are hereinafter referred to collectively as the "Covered Products." No public enforcer has prosecuted the allegations set forth in the Notice.

1.5 The Parties enter into this Agreement in order to settle disputed claims between them and to avoid prolonged and costly litigation.

1.6 Nothing in this Agreement, or compliance with this Agreement, shall constitute or be construed as an admission by the Parties of any fact, issue of law, or violation of law, at any time, for any purpose. Nothing in this Agreement shall be construed as giving rise to any presumption or inference of admission or concession or waiver of a defense by NUTRIBIOTIC as to any fault, wrongdoing or liability whatsoever, including, but not limited to, any alleged violation of Proposition 65.

1.7 Except as expressly provided herein, nothing in this Agreement shall prejudice, waive or impair any right, remedy or defense that the Parties may have in any legal proceeding. This paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of any Party to this Agreement.

1.8 The only products covered by this Agreement are the Covered Products, and the only chemical covered by this Agreement is the chemical lead as related to the Covered Products. No provision of this Agreement shall apply to NUTRIBIOTIC's operations outside of the State of California unless, and only to the extent that, such operations result in shipment or sale of Covered Products into California.

2. INJUNCTIVE RELIEF

2.1 Reformulation of Covered Product

Beginning on April 1, 2014, NUTRIBIOTIC shall not manufacture for sale in California, distribute into California, sell to any consumer located in California, or supply to distributors or retailers in California, any Covered Product for which the maximum daily dose recommended on the label contains more than 0.5 micrograms (mcg) of lead, unless each individual product (in the form intended for sale to the end user) bears the warning statement specified in Section 2.2 below on its individual unit label or unit packaging. The term "distribute into California" means to ship any of the Covered Products into California for sale in California or to sell or provide any of the Covered Products to any person or entity, wherever located, that NUTRIBIOTIC knows

intends to or will ship any of the Covered Products into or sell any of the Covered Products in California.

2.2 Clear and Reasonable Warnings

(a) If the daily lead exposure level is greater than 0.5 micrograms (mcg) for any lot of the Covered Products, the word “WARNING” shall be stated in bold on the Covered Products’ label followed by:

California Residents: This product contains a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.

An exemplar of the warning language is attached hereto as Exhibit A.

(b) The term “cancer” shall be included only if the maximum dose recommended on the label contains a daily lead exposure level greater than 15 micrograms (mcg) for any lot of the Covered Products.

(c) The warning shall be prominently and securely affixed to or printed upon the “label” (as that term is defined in Section 25602 of Title 27(d) of the California Code of Regulations), cap, or packaging of the Covered Product. The warning shall be displayed with such conspicuousness, as compared with other words, statements, or designs on the label, cap, or package, so as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. If the warning is displayed on the product label, the warning shall be at least the same size as the largest of any other health or safety warnings on the product and the word “WARNING” shall be in all capital letters and in bold print. If the warning is affixed to the product with a sticker, NUTRIBIOTIC must use a permanent adhesive. No other statements relating to Proposition 65 or lead may accompany the warning.

(d) Nothing in this Agreement shall be construed to require NUTRIBIOTIC to continue to provide a warning for Covered Products hereunder if NUTRIBIOTIC modifies or reformulates the Covered Products so the amount of lead contained in the Covered Products is below 0.5 micrograms per day. NUTRIBIOTIC shall provide ERC with a minimum of thirty (30) days notice prior to discontinuation of a warning for Covered Products pursuant to this Section.

3. SETTLEMENT PAYMENT

3.1 Total Payment

In full and final satisfaction of civil penalties, payment in lieu of further civil penalties, ERC's expenses, and ERC's attorney fees, NUTRIBIOTIC shall, within 10 business days after the date this Agreement is signed by both Parties make a total settlement payment of \$5,000 by wire transfer to ERC's escrow account within 5 days of the Effective Date, for which ERC will give NUTRIBIOTIC the necessary account information. The settlement payment shall be allocated as follows:

3.2 Civil Penalty

As a portion of the Total Settlement Amount, \$1,500.00 shall be considered a civil penalty pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75% (\$1,125.00) of the civil penalties 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), and a copy of the transmittal letter will be sent to NUTRIBIOTIC's counsel. ERC will retain the remaining 25% (\$375.00) of the civil penalty.

3.4 Reimbursement of Expenses and Costs

As a portion of the Total Settlement Amount, \$611.33 shall be considered a reimbursement to ERC for its reasonable costs incurred as a result of preparing and bringing this matter to NUTRIBIOTIC's attention, and negotiating a settlement.

3.5 Attorney Fees

As a portion of the Total Settlement Amount, \$1,260.00 shall be allocated by ERC as payment to Karen Evans, Esq. as reimbursement for ERC's attorneys' fees and \$1,628.67 shall be allocated to ERC as reimbursement for its in-house attorneys fees.

4. COSTS AND FEES

Except as expressly set forth herein in Section 3, each Party shall bear its own attorneys' fees, costs, and expenses in this action.

5. Plaintiff's Release of Defendant; includes a "Downstream Release."

5.1 Release Terms

ERC, acting on behalf of itself, its parents, subsidiaries, affiliates, shareholders, directors members, officers, employees, and attorneys, permanently and fully releases NUTRIBIOTIC, its parents, subsidiaries, affiliates, shareholders, directors, members, officers, employees, and attorneys, and each entity to whom each of them directly or indirectly distributed or sold the Covered Products, including, but not limited to defendants, distributors, wholesalers, retailers, franchisees, and any other person or entity in the course of doing business who distributed, marketed or sold the Covered Products (not including any private label customers of NUTRIBIOTIC), from all claims of any nature asserted in the Notice of Violations based on exposure to lead from the Covered Products up through March 31, 2014.

5.2 Claims included in Release

ERC, on its own behalf, has full knowledge of the contents of Section 1542 of the Civil Code. ERC acknowledges that the claims released herein include unknown claims and therefore ERC waives Section 1542 as to any such unknown claims. Section 1542 reads 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.

ERC, on its own behalf, acknowledges and understands the significance and consequences of this specific waiver of Civil Code Section 1542.

5.3 Compliance with the terms of this Agreement constitutes compliance with Proposition 65 with respect to exposures to lead from the Covered Products as set forth in the Notices of Violations.

5.4 ERC on behalf of itself only, on the one hand, and NUTRIBIOTIC, on the other hand, release and waive all claims they may have against each other and their respective officers,

directors, employees, agents, representatives and attorneys for any statements or actions made or undertaken by them or their respective officers, directors, employees, agents, representatives and attorneys in connection with the Notices of Violations.

5.5 Nothing in this release is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of NUTRIBIOTIC's products other than the Covered Products.

5.6 Nothing herein shall be construed as diminishing NUTRIBIOTIC's continuing obligations to comply with Proposition 65.

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

6.1 After execution of this Agreement, ERC will submit a Report of Settlement to the California Attorney General. 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 this matter, its settlement, and this Agreement.

7. MODIFICATION OF AGREEMENT

This Agreement may be modified only upon written agreement of the Parties.

8. ENFORCEMENT OF AGREEMENT; GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

In the event a dispute arises with respect to any Party's compliance with the terms and/or conditions of this Agreement, the Party seeking compliance of another Party shall make a good faith attempt to resolve the dispute by conferring with the other Party in person, by telephone or by written communication before seeking relief from a court. The prevailing party in any dispute brought to a court for resolution shall be awarded all reasonable costs and attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining relief more favorable to it than the relief the other party was agreeable to providing during the Parties' good faith attempt to resolve the dispute that is the subject of such an enforcement proceeding.

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

In the event that any of the provisions hereof are subsequently held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

10. GOVERNING LAW

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.

11. DRAFTING

The terms of this Agreement have been reviewed by the respective legal counsel for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with its legal counsel. The Parties agree that, in any subsequent interpretation or construction of this Agreement, no inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Agreement.

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and supersedes and replaces any and all prior agreements or understandings, written or oral, with regard to the matters set forth herein. No other agreements or understandings not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

13. EXECUTION IN COUNTERPARTS

This Agreement may be executed in counterparts, which taken together shall be deemed to constitute one document. A facsimile or pdf signature shall be construed as valid as the original signature.

14. NOTICES

All notices required by this Agreement to be given to any Party shall be sent by first-class registered or certified mail, or overnight delivery, to the following:

FOR ERC:

Chris Heptinstall, Executive Director
Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

With a copy to:

Karen A. Evans
Law Office of Karen A. Evans
4218 Biona Place
San Diego, CA 92116

FOR NUTRIBIOTIC:

NUTRION RESOURCE, INC. DBA NUTRIBIOTIC
P.O.Box 238
Lakeport, CA 95453

With a copy to:

Robert R. Cross
SKOOTSKY & DER LLP
90 New Montgomery, Suite 600
San Francisco, CA 94105

15. AUTHORITY TO SIGN TO THIS AGREEMENT

Each person signing this Agreement on behalf of a Party certifies that he or she is fully authorized by that Party to stipulate to the terms and conditions of this Agreement on behalf of that Party, to enter into and execute this Agreement on behalf of that Party, and to legally bind that Party to this Agreement. Each person signing this Agreement on behalf of a Party represents and warrants that he or she has read and understands this Agreement, and agrees to all of the terms and conditions of this Agreement on behalf of that Party.

AGREED TO BY THE PARTIES:

Dated: 12/31/2014

ENVIRONMENTAL RESEARCH CENTER

By: 

Chris Héptinstall
Executive Director

Dated: _____

NUTRITION RESOURCE, INC. DBA
NUTRIBIOTIC

By: _____

Name:

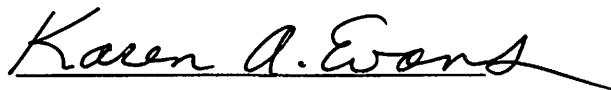
Title:

APPROVED AS TO FORM:

Dated: 12-31-14

LAW OFFICE OF KAREN A. EVANS

By:



Karen A. Evans, Attorney for
ENVIRONMENTAL RESEARCH CENTER

Dated: _____

SKOOTSKY & DER LLP

By: _____

Robert R. Cross, Attorney for
NUTRITION RESOURCE, INC. DBA
NUTRIBIOTIC



AGREED TO BY THE PARTIES:

Dated: _____

ENVIRONMENTAL RESEARCH CENTER

By: _____

Chris Heptinstall
Executive Director

Dated: 12/31/14

NUTRITION RESOURCE, INC. DBA
NUTRIBIOTIC

By: 

Name: Wendy C. Brassard
Title: Op. Mgr.

APPROVED AS TO FORM:

Dated: _____

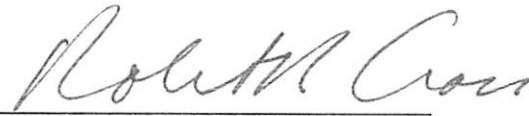
LAW OFFICE OF KAREN A. EVANS

By: _____

Karen A. Evans, Attorney for
ENVIRONMENTAL RESEARCH CENTER

Dated: 12/31/14

SKOOTSKY & DER LLP

By: 

Robert R. Cross, Attorney for
NUTRITION RESOURCE, INC. DBA
NUTRIBIOTIC