

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement") is made effective on the date on which it is fully executed (the "Effective Date") between Environmental Research Center Inc. ("ERC") and Physicians Pharmaceuticals, Inc. ("PPI"). ERC and PPI are referred to individually as a "Party" and 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 PPI on November 30, 2012 (the "Notice"), and the products identified below (the "Covered Products").

- Physicians Laboratories Revival Strawberry Banana Bliss Sucralose
- Physicians Laboratories Revival Banana Blessings with Sucralose
- Physicians Laboratories Revival Strawberry Smile Sucralose
- Physicians Laboratories Revival Just Peachy! With Sucralose
- Physicians Laboratories Revival Cappuccino Comfort Sucralose
- Physicians Laboratories Revival Blueberry Blush Sucralose
- Physicians Laboratories Revival Chocolate Daydream Sucralose

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 PPI of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by PPI of any fact, issue of law or violation of law. PPI 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 PPI as to any fault, wrongdoing or liability whatsoever. The Parties agree that this Section 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 PPI, and the other conditions contained in this Agreement, ERC releases PPI as set forth in Section 6 below:

a. PPI agrees that all Covered Products produced and offered for sale in California by itself or an authorized third-party on and after the Effective Date, shall comply with California law, including Proposition 65.

b. Beginning on the Effective Date, PPI shall not manufacture for sale in the State of California, distribute through an authorized distributor into the State of California, or directly sell in the State of California, any Covered Products which expose a person to a daily dose of lead more than 0.5 micrograms per day when the maximum suggested dose is taken as directed on the Covered Product's label and PPI cannot establish that the level of lead is naturally occurring, unless each such unit of the Covered Products bears the following warning statement on its labeling (including but not limited to the product's invoice) or individual unit label packaging or by sticker securely affixed on the container or bottle cap:

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

c. The warning statement set forth in Section 3b. shall be prominent and displayed securely on either the labeling (including but not limited to the product’s invoice), cap, the unit packaging, or by a sticker securely affixed to the Covered 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. The warning statement in Section 3b may not be accompanied by language beyond or in addition to the warning, such as an explanation of Proposition 65 or exemptions thereto.

d. For purposes of this Agreement, daily lead exposure levels shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals micrograms of lead exposure per day.

e. If PPI 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 PPI agree that the Covered Products may be offered for sale in California without the warning stated in Section 3b.

f. The requirements of Sections 3a., 3b., 3c., 3d., 3e., 3f. will only apply to any time in which PPI is a “person in the course of doing business,” as that term is defined in Health and Safety Code Section 25249.11(b). PPI represents that during periods when the Covered Products were placed in the stream of commerce it was a person in the course of doing business because it employed 10 or more employees.

4. PPI shall make a total payment of \$5,000.00 (“Total Settlement Amount”) to ERC. Sections 4.a-4.c below describe the agreed partition of the Total Settlement Amount.

a. As a portion of the Total Settlement Amount, \$3,500.00 shall be considered a reimbursement to ERC for its reasonable work and costs associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of bringing this matter to PPI’s attention and negotiating a settlement.

b. As a portion of the Total Settlement Amount, \$1,500.00 shall be considered reimbursement of attorney fees for Rose, Klein & Marias LLP.

c. Pursuant to Section 4, PPI agrees to remit the Total Settlement Amount of \$5,000.00 to ERC within 5 days of the Effective Date. PPI shall make this payment by check made payable to “Environmental Research Center” and sent by first-class registered or certified

mail, or overnight delivery, to ERC at: Environmental Research Center, 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108.

d. In the event that PPI fails to remit the payment owed under Section 4 of this Settlement Agreement on or before the due date, PPI shall be deemed to be in material breach of its obligations under this Settlement Agreement.

5. Except as expressly set forth in Section 4, PPI and ERC shall bear any and all of their own costs, expenses, and attorneys' fees related to this matter.

6. ERC, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives, releases PPI 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.

7. The Parties hereby agree that this Settlement Agreement & Release applies to PPI, and fully releases PPI, 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 Covered 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, [and excluding private label customers.] from all claims asserted in the Notice.

8. ERC, on its own behalf, on one hand, and PPI, 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.

9. 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 PPI's products other than the Covered Products.

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

11. After execution of this Agreement, ERC will submit to the California Attorney General a Report of Settlement. In addition, ERC will provide to the California Attorney General a 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.

12. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes 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 the Parties.

13. 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.

14. 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 of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

15. If any provision, term, or section of this Agreement is found to be invalid, illegal, or unenforceable, then 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, then such provision, term, or section may be modified so that the unenforceable provision, term, or section is enforceable to the greatest extent possible.

16. 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.

17. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

18. The Parties are aware and acknowledge that this Agreement is an out-of-court settlement and that they will not receive the protections afforded by a court-approved consent judgment. The Parties are entering into this Agreement in good faith and in an effort to settle all claims and allegations related to the Notice, and this Agreement applies only to the claims made by ERC and to the products identified in the Notice.

19. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail, copy of this Agreement, or any other counterpart, 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 respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

DATED: 02/28/14

PHYSICIANS PHARMACEUTICALS, INC.

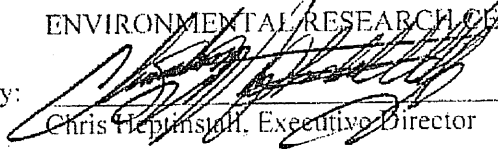
By: 

Suzanne Tabor,

Title: [ President ]

DATED: 3/13/2014

ENVIRONMENTAL RESEARCH CENTER, INC.

By:   
Chris Hepburn, Executive Director