

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made effective on the date on which it is fully executed (the "Effective Date") between Environmental Research Center Inc. ("ERC") and HVL LLC dba DOUGLAS LABORATORIES ("HVL"). ERC and HVL 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 HVL on February 28, 2014 (the "Notice"), and the products identified below (the "Covered Products").

- **Douglas Laboratories Ultra Preventive 2000 Series Arth-Support Formula**
- **Douglas Laboratories Gluco-Mend**
- **Douglas Laboratories Aller-Sin Caps**
- **Douglas Laboratories EstroMend**
- **Douglas Laboratories ThyroMend**
- **Douglas Laboratories Metabolic Rejuvenation (Kit includes the following products)**
  - **Douglas Laboratories Metabolic Rejuvenation Week 1 Preparation**
  - **Douglas Laboratories Metabolic Rejuvenation Week 3 Detox**
- **Douglas Laboratories Pecta-Sol Powder**
- **Douglas Laboratories Ultra Tox**
- **Douglas Laboratories Metabolic Cleanse Natural Vanilla Flavor**
- **Douglas Laboratories Ultra Protein Plus Natural Chocolate Almond Flavor**
- **Douglas Laboratories Ultra Whey Plus Orange Cream Flavor**
- **Douglas Laboratories G.F.S.-2000 Powder**
- **Douglas Laboratories Detoxification Pack**
- **Douglas Laboratories Ultra Protein Plus Natural Vanilla Bean Flavor**
- **Douglas Laboratories Ultra-D Tox Capsules**
- **Douglas Laboratories Fiber-Plex**

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 HVL of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by HVL of any fact, issue of law or violation of law. HVL denies the claims asserted in the Notice and denies that the Covered Products require warnings under Proposition 65. 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 HVL 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 HVL, and the other conditions contained in this Agreement, ERC releases HVL as set forth in Section 6 below:

a. Any Covered Products that are manufactured on or after the Effective Date that HVL thereafter distributes into the State of California,<sup>1</sup> offers for sale to a third party for retail sale in California, or directly sells in the State of California, shall contain no more than 0.5 micrograms of lead per day when the maximum suggested daily dose is taken as directed on the Covered Product's label, unless each unit of the Covered Products bears the following warning statement on its individual unit label packaging or by sticker securely affixed on the container or bottle cap:

**“[California Residents Proposition 65] WARNING: This product contains [lead,] a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.”**

b. The terms in brackets are optional; however, the term “cancer and” shall be included in the warning if the maximum recommended daily dose causes an exposure to more than 15 micrograms of lead when taken as directed on the Covered Product's label.

c. The warning statement set forth in Section 3a. shall be prominent and displayed securely on either the 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 appearing on the label or container shall be at least the same size as the largest of any other health or safety warnings correspondingly appearing on the label or container, as applicable, or such product, and the word “**WARNING**” shall be in capital letters and in bold print. Apart from the warning set forth in Section 3a., no additional statement discussing Proposition 65 or lead may be stated on the Covered Product or the unit packaging of the Covered Product.

d. For purposes of Section 3, the term “no more than 0.5 micrograms of lead per day” means that the second highest lead detection result of the samples tested pursuant to Section 3f. indicates that there is not more than 0.5 micrograms of lead, when calculated using the formula in Section 3e(1) and after subtracting the amount of lead deemed to be “naturally occurring” for each ingredient listed in Table 3d., below. The amount of lead deemed “naturally occurring” in each of the Covered Products is the sum of the amounts of “naturally occurring” lead supplied by the quantity of each ingredient listed in Table 3d. that is present in each Covered Product. For each ingredient listed in Table 3d., the amount of lead deemed “naturally occurring” is listed in Table 3d. in micrograms of “naturally occurring” lead per gram of the ingredient that is contained in the Covered Product.

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<sup>1</sup> As used in this Settlement Agreement and Release, the term “distribute into the State of California” shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that HVL knows will sell the Covered Product in California.

**Table 3d.**

<b>Ingredient</b>	<b>Amount of lead per gram of ingredient deemed naturally occurring</b>
Calcium (elemental)	0.8 micrograms (per 1000 milligrams)
Magnesium Oxide	0.4 micrograms/gram
Cocoa Powder	1.0 micrograms/gram

e. Prior to HVL's first distribution or sale of any Covered Products manufactured after the Effective Date, and continuing thereafter for at least three (3) consecutive years and at least once per year, HVL shall arrange for the lead testing of five (5) randomly-selected samples of five (5) separate lots each year (or from the maximum number of lots that are available for testing if there are fewer than five (5) lots available) for each Covered Product to confirm whether the maximum recommended daily dose is no more than 0.5 micrograms of lead when taken pursuant to the directions on the Covered Product's label.

(1) 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.

(2) Upon fifteen (15) days of receipt of a written request by ERC, HVL shall provide ERC with documentation of results of testing undertaken pursuant to Sections 3e. and 3f., and HVL shall include the lot identification numbers of the lots tested. HVL shall test samples in the form intended for the end-user to be distributed or sold to California consumers.

f. Any testing pursuant to Sections 3e. and 3f. shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or an independent third-party laboratory that is registered with the United States Food & Drug Administration. HVL may perform this testing itself only if it provides, in an attachment to the test results HVL provides to ERC, proof that its laboratory meets the requirements in this Section 3f(1). 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) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method agreed upon in writing by the Parties. Nothing in this Agreement shall limit HVL's ability to conduct or require that others conduct additional testing of the Covered Products, including raw materials used in their manufacture.

(1) Pursuant to Sections 3e. and 3f., HVL shall retain copies of its test data from the date testing commenced for a period of at least five (5) years.

(2) The testing requirements of Sections 3e. and 3f. are not applicable to any Covered Products for which HVL has provided the warning specified in Section 3a.

g. The requirements of Section 3 will only apply to any time in which HVL is a "person in the course of doing business," as that term is defined in Health and Safety Code Section 25249.11(b). HVL 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 ten (10) or more employees.

4. In full satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorneys' fees, and costs, HVL shall make a total payment of \$70,000 ("Total Settlement Amount") to ERC within five (5) business days of the Effective Date. HVL shall make this payment by wire transfer to ERC's escrow account, for which ERC will give HVL the necessary account information. Sections 4.a-4.e below describe the agreed partition of the Total Settlement Amount.

a. As a portion of the Total Settlement Amount, \$11,696.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$8,772.00) 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% (\$2,924.00) of the civil penalty.

b. As a portion of the Total Settlement Amount, \$20,953.00 shall be considered a reimbursement to ERC for its reasonable work, analysis, and consulting costs associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of bringing this matter to HVL's attention and negotiating a settlement.

c. \$21,721.00 shall be considered payment in lieu of civil penalties, for day-to-day business activities such as (1) continued enforcement of Proposition 65, which includes work, analyzing, researching and testing consumer products that may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are the subject of this Matter; and (2) the continued monitoring of past consent judgments and settlements to ensure companies are in compliance with Proposition 65.

d. As a portion of the Total Settlement Amount, \$15,630.00 shall be considered reimbursement of attorney fees for Lozeau Drury LLP.

e. Pursuant to Section 4, HVL agrees to remit the Total Settlement Amount of \$70,000 to ERC within five (5) business days of the Effective Date. HVL shall make this payment by wire transfer to ERC's escrow account, for which ERC will give HVL the necessary account information.

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

5. Except as expressly set forth in Section 4, HVL and ERC shall bear 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 fully releases and discharges HVL, 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 (excluding any private label customers of the Covered Products), retailers, franchisees, and any other person or entity in the course of doing business that distributed, marketed, or sold the Covered Products (collectively referred to as "Covered Releasees") from any and all claims, actions, suits, demands liabilities, damages, penalties, fees, costs and expenses (collectively, "Claims") asserted or that could have been asserted for alleged violations of Proposition 65, or any other statutory or common law, arising from the failure to provide warnings for alleged exposures to lead, or for causing alleged exposures to lead, in Covered Products manufactured before the Effective Date.

It is possible that other Claims not known to the Parties arising out of the facts alleged in the Notice of Violation and relating to the Covered Products will develop or be discovered. ERC, on behalf of itself only, acknowledges that this Agreement is expressly intended to cover and include all such Claims, including all rights of action therefor. ERC has full knowledge of the contents of California Civil Code section 1542 as to any such unknown Claims. California Civil Code 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 behalf of itself only, acknowledges and understands the significance and consequences of this specific waiver of California Civil Code section 1524.

7. Compliance with the requirements of Section 3 of this Agreement shall be deemed to constitute compliance by any Covered Releasee with Proposition 65 with respect to any lead in the Covered Products.

8. ERC, on its own behalf, on one hand, and HVL, 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 for all actions or statements made or undertaken by the Covered 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 HVL's products other than the Covered Products.

10. Nothing herein shall be construed as diminishing HVL'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 reasonably requested by the California Attorney General, or any other governmental agency, regarding this Matter, the Parties' 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. 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 its attorneys' fees in addition to any other legally recoverable costs.

20. 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.

21. 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.

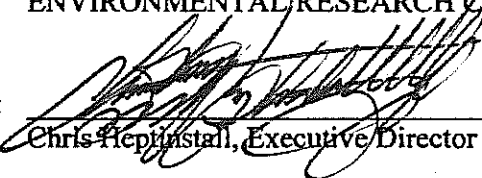
DATED: July 30, 2014

HVL LLC dba DOUGLAS LABORATORIES

By:   
David Smith, Vice President of Finance

DATED: 7/30/2014

ENVIRONMENTAL RESEARCH CENTER, INC.

By:   
Chris Reppinstall, Executive Director