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SETTLEMENT AGREEMENT AND RELEASE

1. **INTRODUCTION**

1.1 This Settlement Agreement (the "Agreement") is entered into by and between Environmental Research Center ("ERC") as a private enforcer of Proposition 65 and Chemi-Source, Inc., dba Metabolic Response Modifiers ("Chemi-Source"). ERC and Chemi-Source are hereafter 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 Chemi-Source is a California corporation, qualified to do business in the State of California. At all times relevant to this action, ERC alleges that Chemi-Source has employed ten or more persons and is a "person in the course of doing business" within the meaning of Proposition 65.

1.4 On April 4, 2014, pursuant to California Health and Safety Code § 25249.7(d)(1), ERC served a Notice of Violation of Proposition 65 (the "Notice of Violation") on the California Attorney General, other public enforcers, and Chemi-Source. The Notice of Violation contains allegations that Chemi-Source, 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 a dietary supplement called the "MRM Vegan Bone Maximizer." This product is hereafter referred to as the "Covered Product." To the Parties knowledge, no public enforcer is diligently prosecuting 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, nor compliance with its terms, shall constitute or be construed as an admission by Chemi-Source of any fact, issue of law, or violation of law, at any time, for any purpose, such being specifically denied by Chemi-Source who maintains that all of its products, including the Covered Product, are safe and healthy to consume in accordance with the directions for use. Nothing in this Agreement shall be construed as giving rise to any

1 presumption or inference of admission or concession or waiver of a defense by Chemi-Source as
2 to any fault, wrongdoing or liability whatsoever, including, but not limited to, any alleged
3 violation of Proposition 65.

4 1.7 Except as expressly provided herein, nothing in this Agreement shall prejudice,
5 waive or impair any right, remedy or defense that the Parties may have in any legal proceeding.
6 This paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties
of any Party to this Agreement.

7 1.8 The "Effective Date" of this Agreement shall be August 20, 2014.

8 **2. INJUNCTIVE RELIEF**

9 **2.1 Reformulation of Covered Product**

10 On and after the Effective Date, Chemi-Source shall not manufacture for sale or
11 distribution in California any Covered Product for which the maximum daily serving
12 recommended on the label contains more than 0.5 micrograms (mcg) of lead, unless each
13 individual product (in the form intended for sale to the end user) bears one of the warning
14 statements specified in Section 2.2 below on its individual unit label or unit packaging. The term
15 "distributing into California" means to ship any of the Covered Product into California for sale in
16 California or to sell or provide any of the Covered Product to any person or entity, wherever
located, that Chemi-Source knows intends to sell any of the Covered Product in California.

17 **2.2 Clear and Reasonable Warnings**

18 (a) Based on the maximum recommended daily serving for the Covered Product if
19 the daily lead exposure level is greater than 0.5 micrograms (mcg) for any lot of the Covered
20 Product pursuant to the testing protocol and other terms of Section 2.3 below, the following
21 warning shall be provided:

22 **[California Residents Proposition 65] WARNING [California Proposition 65]:**

23 This product contains [lead] [,] [a] [and other] chemical[s] known [to the State of
24 California] to cause [cancer,] birth defects or other reproductive harm.

25 (b) The text in brackets in the Warning above is optional except that the term
26 "cancer" must be included if the maximum serving recommended on the Covered Product's label
27 contains more than 15 micrograms ("mcg") of lead as determined by the quality control
28 methodology set forth in this Agreement, for any lot of the Covered Product.

1 (c) The Section 2.2(a) warning shall be prominently and securely affixed to or printed
2 upon the "label" (as that term is defined in Section 25602 of Title 27(d) of the California Code of
3 Regulations), cap, or packaging of the Covered Product. The warning shall be displayed with
4 such conspicuousness, as compared with other words, statements, or designs on the label, cap, or
5 package, so as to render it likely to be read and understood by an ordinary individual under
6 customary conditions of purchase or use. If the warning is displayed on the product label, the
7 warning shall be at least the same size as the largest of any other health or safety warnings on the
8 product and the word "WARNING" shall be in all capital letters and in bold print. If the
9 warning is affixed to the product with a sticker, Chemi-Source must use a permanent adhesive.
10 No other statements relating to Proposition 65 or lead may accompany the warning on the
11 product label.

11 2.3 Reformulation and Testing

12 2.3.1 In complying with Sections 2.1 and 2.2, Chemi-Source shall not be
13 required to provide any of the Warnings specified in Section 2.2 for any Covered Product if the
14 maximum daily serving recommended on the Covered Product's label contains no more than 0.5
15 mcg of lead per day as defined herein. For purposes of determining whether the maximum daily
16 serving of a Covered Product contains no more than 0.5 mcg of lead, five (5) randomly selected
17 samples of such Covered Product (in the form intended for sale to the end-user) shall be tested
18 by Chemi-Source. As used in this Agreement, "no more than 0.5 mcg of lead per day" means
19 that the samples of Covered Product tested by Chemi-Source pursuant to this Agreement each
20 result in a daily exposure of no more than 0.5 mcg per day using the following formula:
21 micrograms of lead per gram of Covered Product, multiplied by grams of product per serving
22 size of the product (using the largest serving size appearing on the product label), multiplied by
23 servings of product per day (using the maximum recommended number of servings per day
24 appearing on the product label), which equals micrograms of lead per day, minus any naturally
25 occurring levels of lead as provided in Section 2.3.2 below after the two (2) samples that each
26 represent the highest and lowest lead results are excluded. Before Chemi-Source's first
27 distribution or sale of a Covered Product manufactured after the Effective Date without a
28 warning (if any), and continuing for at least two (2) years thereafter, at least once every year,
Chemi-Source shall test the Covered Product sold without a Warning for lead content in the
manner provided for in this Agreement.

1 2.3.2 In determining whether the 0.5 mcg level of lead per day under Section
2 2.3.1 is exceeded, Chemi-Source may exclude any naturally occurring lead from cocoa powder
3 in the amount of 0.4 mcg of lead per gram of cocoa powder present in the maximum daily
4 serving recommended on the product label, and any naturally occurring lead in the additional
5 ingredients listed below in Table 1A in accordance with the Attorney General's Stipulation
6 Modifying Agreement in *People v. Warner Lambert, et al.* dated August 8, 2013 (San Francisco
7 County Superior Court Case No. 984503). For purposes of calculating lead content, the amount
8 of lead deemed "naturally occurring" in the Covered Product is the sum of the amounts of
9 "naturally occurring" lead supplied by the quantity of each ingredient listed in this Section 2.3.2
10 and in Table 1A that is present in the maximum daily serving of the Covered Product. Should
11 Chemi-Source seek to exclude naturally occurring lead in its calculation of overall lead content
12 for the Covered Product, Chemi-Source shall provide to ERC within fifteen (15) working days of
13 ERC's written request a complete list of all ingredients in the Covered Product and the
14 corresponding percentage and quantity in grams (rounded to the nearest one tenth of a gram) of
15 each ingredient within the Covered Product, including lab test results that independently confirm
16 the percentage and quantity in grams (rounded to the nearest one tenth of a gram) of each of the
17 ingredients being used in the Covered Product, and any other lab data that independently
18 supports Chemi-Source's contention concerning the amount of naturally occurring lead that is
19 excluded for any particular ingredient sufficient to support the overall exclusion of any naturally
20 occurring lead from the maximum serving size of the Covered Product.

21 2.3.3 Any documentation that Chemi-Source submits to ERC pursuant to this
22 Section 2 shall be kept confidential by ERC pursuant to the terms of this Agreement. ERC
23 understands that Chemi-Source's ingredients and percentages of ingredients in the Covered
24 Product are proprietary trade secrets to the extent they are not otherwise publicly available, and
25 unless ERC obtains Chemi-Source's prior written consent, ERC shall not disclose, under any
26 circumstance, any information provided by Chemi-Source under this Section 2 regarding
27 Covered Product ingredients, and shall only use any information provided by Chemi-Source
28 under this subsection to verify percentages of ingredients for which a naturally occurring
exclusion is sought and which are contained within the Covered Product.

TABLE 1A

<u>INGREDIENT</u>	<u>NATURALLY OCCURRING ALLOWANCE FOR LEAD</u>
<u>Calcium (elemental)</u>	0.8 <u>mcg/g</u>
<u>Ferrous Fumarate</u>	0.4 <u>mcg/g</u>
<u>Zinc Oxide</u>	8.0 <u>mcg/g</u>
<u>Magnesium Oxide</u>	0.4 <u>mcg/g</u>
<u>Magnesium Carbonate</u>	0.332 <u>mcg/g</u>
<u>Magnesium Hydroxide</u>	0.4 <u>mcg/g</u>
<u>Zinc Gluconate</u>	0.8 <u>mcg/g</u>
<u>Potassium Chloride</u>	1.1 <u>mcg/g</u>

2.3.4 After the Effective Date, Chemi-Source shall provide ERC with a minimum of thirty (30) days notice prior to manufacturing or distributing the Covered Product for sale in California without a Proposition 65 warning and, upon written request by ERC, Chemi-Source shall provide to ERC any test results and documentation of testing undertaken by Chemi-Source on the Covered Product pursuant to Sections 2.3.1 and 2.3.2 above, within fifteen (15) working days of receipt by Chemi-Source of ERC's written request. ERC shall treat confidentially any such test results disclosed to it, and shall not disclose such test results without Chemi-Source's prior written consent. Chemi-Source shall retain all test results and documentation for the Covered Product undertaken pursuant to Section 2.3.1 and 2.3.2 for a period of three (3) years from the date of each test. However, if at any time before or after the three-year period, Chemi-Source changes ingredient suppliers for the Covered Product and/or reformulates the Covered Product such that Chemi-Source has reason to believe that the Covered Product no longer requires a Warning under the terms of this Agreement, Chemi-Source shall test the Covered Product at least once after such change is made, using the testing protocol described in this Section 2 if the Covered Product is being sold or distributed in California to determine whether a Warning hereunder is still required.



1 2.3.5 All testing pursuant to this Agreement shall be performed by a laboratory
2 that is approved by or accredited by the State of California or the United States Environmental
3 Protection Agency or Food & Drug Administration for the analysis of heavy metals. All testing
4 pursuant to this Agreement shall be performed using a laboratory method that complies with the
5 performance and quality control factors appropriate for the method used (including limit of
6 detection, limit of quantification, accuracy, and precision) and that meets the following criteria:
7 Closed-vessel, microwave-assisted acid digestion employing high-purity reagents, followed by
8 Inductively Coupled Plasma-Mass Spectrometry (ICP-MS), or any other testing method agreed
9 upon in writing by the Parties. Nothing in this Agreement shall limit Chemi-Source's ability to
10 conduct, or require that others conduct, additional testing of the Covered Product, including the
11 raw materials used in their manufacture. Nothing in this Agreement shall require that Chemi-
12 Source produce to ERC any test results on the Covered Product unless it seeks to sell the
13 Covered Product without a Proposition 65 warning in California.

14 2.3.6 This Agreement, including the testing and sampling methodology set forth
15 in this Section 2, is the product of negotiation and compromise, and is accepted by the Parties for
16 purposes of settling, compromising, and resolving issues disputed in this Action, including future
17 compliance by Chemi-Source with this Agreement, and shall not be used for any other purpose,
18 or in any other matter and, except for the purpose of determining future compliance with this
19 Agreement, shall not constitute an adoption or employment of a method of analysis for a listed
20 chemical in a specific medium as set forth in 27 California Code of Regulations § 25900(g)
21 unless otherwise agreed. This Agreement imposes no obligation on Chemi-Source to produce to
22 ERC or otherwise retain test results on products that are not the Covered Product under this
23 Agreement.

24 2.4 Products in the Stream of Commerce

25 The injunctive relief set forth in Section 2 shall not apply to any of the Covered Product
26 that Chemi-Source manufactured before the Effective Date. Within ten (10) working days of the
27 Effective Date, Chemi-Source shall provide ERC with the last lot number and expiration date for
28 the Covered Product manufactured as of the Effective Date.

3. SETTLEMENT PAYMENT

3.1 Total Payment

In full and final satisfaction of all elements of the Proposition 65 claims set forth in the

1 Notice of Violation, and ERC's expenses and attorney fees, Chemi-Source shall, within five (5)
2 business days after the Effective Date, make a total settlement payment of \$50,000 (the "Total
3 Settlement Amount"). Chemi-Source shall make this payment by wire transfer to ERC's escrow
4 account, for which ERC will give Chemi-Source the necessary account information. Sections
5 3.2-3.3 below describe ERC's allocation of the Total Settlement Amount.

6 **3.2 Reimbursement of Expenses and Costs**

7 As a portion of the Total Settlement Amount, \$20,000 shall be allocated as a
8 reimbursement to ERC for its reasonable expenditures associated with the enforcement of
9 Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this
10 matter to Chemi-Source's attention, and negotiating a settlement.

11 **3.3 Attorney Fees**

12 As a portion of the Total Settlement Amount, \$30,000 shall be allocated as a
13 reimbursement to ERC for its attorney's fees (\$20,000 for attorney fees of Karen Evans, \$4,000
14 for attorney fees of Ryan Hoffman, and \$6,000 for attorney fees of Michael Freund).

15 **4. COSTS AND FEES**

16 Except as expressly set forth herein in Section 3, each Party shall bear its own attorneys'
17 fees, costs, and expenses in connection with the claims resolved herein.

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

19 **5.1 Release Terms**

20 ERC, acting on behalf of itself and its agents (including its attorneys), permanently and
21 fully releases Chemi-Source, its parents, subsidiaries, affiliates (including those companies that
22 are under common ownership and/or common control), shareholders, directors, members,
23 officers, employees, and attorneys, and each entity to whom any of them directly or indirectly
24 distributed or sold the Covered Product, including, but not limited to, distributors, wholesalers,
25 franchisees, licensees, and any other person or entity in the course of doing business who
26 distributed, marketed, or sold the Covered Product (not including any private label customers of
27 Chemi-Source), from all claims of any nature asserted in the Notice of Violation based on
28 exposure to lead from the Covered Product manufactured up through and including the Effective
Date.

5.2 ERC, on behalf of itself only, has full knowledge of the contents of Section 1542
of the Civil Code. ERC and its agents (including its attorneys), acknowledges that the claims

1 released herein include unknown claims and therefore ERC waives Section 1542 as to any such
2 unknown claims. Section 1542 reads as follows:

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

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

10 5.4 Compliance with the terms of this Agreement constitutes compliance with
11 Proposition 65 with respect to alleged exposures to lead from the Covered Product.

12 5.5 ERC and its agents (including its attorneys), on the one hand, and Chemi-Source
13 and its agents (including its attorneys), on the other hand, release and waive all claims they may
14 have against each other and their respective officers, directors, employees, agents,
15 representatives, and attorneys for any statements or actions made or undertaken by them or their
16 respective officers, directors, employees, agents, representatives, and attorneys in connection
17 with the claims asserted in the Notice of Violation.

18 5.6 Nothing in this release is intended to apply to any of Chemi-Source's products
19 other than the Covered Product.

20 5.7 Nothing herein shall be construed as diminishing Chemi-Source's continuing
21 obligations to comply with Proposition 65.

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

23 6.1 After execution of this Agreement, ERC will submit a Report of Settlement to the
24 California Attorney General. In addition, ERC will provide to the California Attorney General
25 the fully signed copy of this Agreement.

26 **7. IMPACT OF STATUTORY AND/OR REGULATORY CHANGES**

27 Nothing in this Agreement shall be construed to require Chemi-Source to continue to
28 provide a Warning for the Covered Product hereunder if: (1) Chemi-Source modifies or
reformulates the Covered Product so the amount of lead contained in the Covered Product is
below the threshold required for a warning under Proposition 65; or (2) new statutory standards
established applicable to lead no longer require Chemi-Source to provide a warning for the
Covered Product under Proposition 65; or (3) the Proposition 65 MADL established by OEHHA

1 for lead is modified such that a Proposition 65 Warning is no longer required for Chemi-Source's
2 Covered Product. Chemi-Source shall provide ERC with a minimum of thirty (30) days' written
3 notice prior to discontinuation of a Warning for Covered Product pursuant to this Section.

4 **8. MODIFICATION OF AGREEMENT**

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

5 **9. ENFORCEMENT OF AGREEMENT; GOOD FAITH ATTEMPT TO**
6 **RESOLVE DISPUTES**

7 In the event a dispute arises with respect to any Party's compliance with the terms and/or
8 conditions of this Agreement, the Party seeking compliance of another Party shall make a good
9 faith attempt to resolve the dispute by conferring with the other Party in person, by telephone or
10 by written communication before seeking relief from a Court. If the dispute is not resolved after
11 such an attempt, this Agreement may be enforced pursuant to Code of Civil Procedure § 664.4 or
12 any other valid provision of the law. The prevailing party in any such dispute brought to this
13 Court for resolution shall be awarded its reasonable costs and attorney's fees. As used in the
14 preceding sentence, the term "prevailing party" means a party who is successful in obtaining
15 relief more favorable to it than the relief the other party was agreeable to providing during the
16 Parties' good faith attempt to resolve the dispute that is the subject of such an enforcement
17 proceeding.

18 **10. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

21 **11. GOVERNING LAW**

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

25 **12. DRAFTING**

26 The terms of this Agreement have been reviewed by the respective legal counsel for the
27 Parties prior to its signing, and each Party has had an opportunity to fully discuss the terms and
28 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

1 the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of
2 this Agreement. It is conclusively presumed that all of the Parties participated equally in the
3 preparation and drafting of this Agreement.

4 **13. ENTIRE AGREEMENT**

5 This Agreement contains the sole and entire agreement and understanding of the Parties
6 with respect to the entire subject matter hereof, and supersedes and replaces any and all prior
7 agreements or understandings, written or oral, with regard to the matters set forth herein.

8 **14. EXECUTION IN COUNTERPARTS**

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

12 **15. NOTICES**

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

15 **FOR ERC:**

16 Chris Heptinstall, Executive Director
17 Environmental Research Center
18 3111 Camino Del Rio North, Suite 400
19 San Diego, CA 92108

20 **WITH COPY TO:**

21 Karen A. Evans
22 Law Office of Karen A. Evans
23 4218 Biona Place
24 San Diego, CA 92116

25 **FOR CHEMI-SOURCE:**

26 Mark Olson
27 Chemi-Source
28 2665 Vista Pacific Drive
Oceanside, CA 92056

WITH COPY TO:

James Robert Maxwell
Rogers Joseph O'Donnell

1 311 California Street, 10th Floor
2 San Francisco, CA 94104

3 **16. AUTHORITY TO STIPULATE TO THIS AGREEMENT**

4 Each person signing this Agreement on behalf of a Party certifies that he or she is fully
5 authorized by that Party to stipulate to the terms and conditions of this Agreement on behalf of
6 that Party, to enter into and execute this Agreement on behalf of that Party, and to legally bind
7 that Party to this Agreement. Each person signing this Agreement on behalf of a Party represents
8 and warrants that he or she has read and understands this Agreement, and agrees to all of the
9 terms and conditions of this Agreement on behalf of that Party.
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1 IT IS SO STIPULATED:

2 Dated: _____

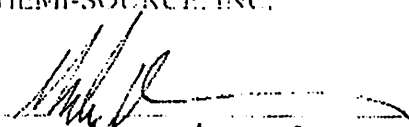
ENVIRONMENTAL RESEARCH CENTER

3
4 By: _____

5 Chris Heptinstall
6 Executive Director

7 Dated: 7-28-2014

CHEMI-SOURCE, INC.

8
9 By: 

10 Name: Mark Olson

11 Title: CEO

12
13 APPROVED AS TO FORM:

14
15 Dated: _____

LAW OFFICE OF KAREN A. EVANS

16
17
18 By: _____

19 Karen A. Evans
20 Attorney for
21 ENVIRONMENTAL RESEARCH CENTER

22 Dated: 8/11/14

23 ROGERS JOSEPH O'DONNELL

24
25 By: 

26 Attorney for
27 Chemi-Source

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IT IS SO STIPULATED:

Dated: 8/8/2014

ENVIRONMENTAL RESEARCH CENTER

By: 
Chris Heffinstall
Executive Director

Dated: _____

CHEMI-SOURCE, INC.

By: _____

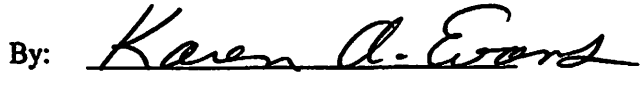
Name:

Title:

APPROVED AS TO FORM:

Dated: 8-8-14

LAW OFFICE OF KAREN A. EVANS

By: 
Karen A. Evans
Attorney for
ENVIRONMENTAL RESEARCH CENTER

Dated: _____

ROGERS JOSEPH O'DONNELL

By: _____

Bob Maxwell
Attorney for
Chemi-Source

