

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) between Environmental Research Center, Inc. (“ERC”) and Bonk Breaker, LLC and Bonk Breaker (collectively “Bonk Breaker”) is effective on the date on which it is fully executed (“Effective Date”). ERC and Bonk Breaker are referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1. This Matter arises out of the Notice of Violation of California Health & Safety Code §25249.5, *et seq.* (also known as “Proposition 65”) that ERC served on Bonk Breaker on December 22, 2014 (the “Notice”) with regard to each of the following products identified below (referred to individually as “Covered Product” or collectively as “Covered Products”):

- **Bonk Breaker LLC Bonk Breaker Espresso Chip**
- **Bonk Breaker LLC Bonk Breaker Peanut Butter & Banana**
- **Bonk Breaker LLC Bonk Breaker Coconut Cashew**
- **Bonk Breaker LLC Protein Bonk Breaker Cookies & Cream**
- **Bonk Breaker LLC Protein Bonk Breaker Peanut Butter Chocolate Chip**
- **Bonk Breaker LLC Protein Bonk Breaker Almond Cherry Chunk**
- **Bonk Breaker LLC Protein Bonk Breaker Peanut Butter & Jelly**
- **Bonk Breaker LLC Bonk Breaker Apple Pie with Chia Seed**
- **Bonk Breaker LLC Bonk Breaker Peanut Butter & Jelly**
- **Bonk Breaker LLC Bonk Breaker Blueberry Oat**
- **Bonk Breaker LLC Bonk Breaker Fig**
- **Bonk Breaker LLC Bonk Breaker Peanut Butter Chocolate Chip**
- **Bonk Breaker LLC Bonk Breaker Almond Butter & Honey**

2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Matter and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law or violation of law. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability. 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 and conditions contained in this Agreement, the Parties have provided the releases as set forth in Section 6 below:

a. Beginning sixty (60) days from the Effective Date (“Compliance Date”), Bonk Breaker shall not manufacture for sale in the State of California, “Distribute into the State of California”, or directly sell in the State of California, any Covered Product which exposes a

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person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day when the maximum suggested dose is taken as directed on the Covered Product's label, unless each such unit of the Covered Product bears the following warning statement:

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

i. As used in this Agreement, 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 Bonk Breaker knows will sell the Covered Product in California.

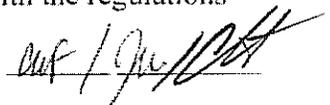
ii. For the purposes of this Agreement, "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the 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.

iii. The phrase "cancer and" must be included in the warning only 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.

b. 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. No other statements may accompany the warning.

c. If Bonk Breaker is successful with reformulation for any of the Covered Products which reduces the Daily Lead Exposure Level to 0.5 micrograms of lead or below when taken pursuant to the maximum suggested dose as directed on the Covered Product's label, the Parties agree that the Covered Products may be offered for sale in California without the warning stated in Section 3a. If Bonk Breaker is successful with reformulation on any of the Covered Products, Bonk Breaker shall notify ERC and provide any test results for the Covered Products that document this change in formulation, no longer than 10 working days after Bonk Breaker receives the test results and prior to Bonk Breaker manufacturing for sale in the State of California, or directly selling in the State of California, any Covered Products without the warning set forth in section 3a. Any testing shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program or an independent third-party laboratory that is registered with the United States Food & Drug Administration. The method of selecting samples for testing must comply with the regulations

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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 Bonk Breaker's ability to conduct or require that others conduct additional testing of the Covered Products, including raw materials used in their manufacture.

d. Notwithstanding the obligations set forth in paragraphs 3a, b and c above, Bonk Breaker shall not be required to include any warning statements or labels on any of the Covered Products that have been distributed, and available to purchase by consumers, as of the Effective Date, and Bonk Breaker shall not have any liability, either past, current or future, based on the existence of any unlabeled Covered Products that had been distributed and made available for sale as of the Effective Date.

4. Bonk Breaker shall make a total settlement payment of \$90,000.00 ("Total Settlement Payment") in twelve equal monthly payments ("Settlement Payments") by wire transfer to ERC's escrow account, for which ERC will give Bonk Breaker the necessary account information. The first payment of \$7,500.00 shall be made within five (5) business days of the Effective Date, and the additional eleven payments shall be paid in 30 day increments thereafter ("Due Dates"). The Total Settlement Payment shall be allocated as follows:

a. \$24,612.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$18,459.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHHA") 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% (\$6,153.00) of the civil penalty.

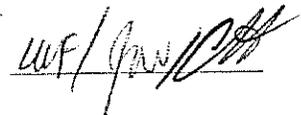
b. \$7,787.00 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this Matter to Bonk Breaker's attention and negotiating a settlement.

c. \$36,918.28 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. \$19,830.22 shall be considered reimbursement for ERC's in-house legal fees and \$852.50 shall be considered reimbursement to ERC for Ryan Hoffman's legal fees.

e. In the event that Bonk Breaker fails to remit any of the Settlement Payments owed under Section 4 of this Settlement Agreement on or before the Due Dates, Bonk Breaker shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Bonk Breaker via electronic mail. If Bonk Breaker fails to

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deliver the installment payment within fourteen (14) days from its receipt of the written notice, the Total Settlement Payment shall become immediately due and payable and shall accrue interest at the statutory judgment interest rate provided in the Code of Civil Procedure section 685.010. Additionally, Bonk Breaker agrees to pay ERC's reasonable attorneys' fees and costs in the event ERC is successful in its efforts to collect any payments due under this Agreement.

5. Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys' fees related to this Matter.

6. Binding Effect; Claims Covered and Released

a. ERC, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, successors, assigns, and legal representatives fully releases Bonk Breaker and its respective owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, successors, assigns, legal representatives, distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Products, and the predecessors, successors, and assigns of any of them (collectively the "Releasing Parties") from any and all claims for violations of Proposition 65 up through and including the Compliance Date based on exposure to lead from the Covered Products as set forth in the Notice.

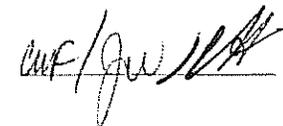
b. The Releasing Parties further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice.

c. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Products will develop or be discovered. ERC on behalf of itself only, and Bonk Breaker, on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore, and further acknowledge that the claims released this section may include unknown claims, and nevertheless waive 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, on the one hand, and Bonk Breaker, on the other hand, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code Section 1542.

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7. 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 Bonk Breaker's products other than the Covered Products.

8. Nothing herein shall be construed as diminishing Bonk Breaker's continuing obligations to comply with Proposition 65. To the extent that failure to comply with this Agreement constitutes a violation of Proposition 65 or other laws, ERC may seek whatever fines, costs, penalties, or remedies as are provided for law for failure to comply with Proposition 65 or other laws.

9. All notices required to be given to either Party to this Agreement by the other shall be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via email may also be sent.

**FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

Chris Heptinstall, Executive Director, Environmental Research Center  
3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
Tel: (619) 500-3090  
Email: chris\_erc501c3@yahoo.com

**FOR BONK BREAKER, LLC and BONK BREAKER:**

Bonk Breaker, LLC  
3019 Olympic Blvd Suite D  
Santa Monica, CA 90404

Bonk Breaker  
3019 Olympic Blvd Suite D  
Santa Monica, CA 90404

With a copy to:

Jeffrey Wolf, Esquire  
Quarles & Brady LLP  
Renaissance One, Two North Central Avenue  
Phoenix, AZ 85004  
Telephone: (602) 229-5643  
Facsimile: (602) 420-5168

10. After executing 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

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much information as is requested by the California Attorney General, or any other governmental agency, regarding this Matter, its settlement, and this Agreement.

11. 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.

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

13. 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.

14. 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.

15. 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.

16. 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.

17. Any legal action to enforce this Agreement shall be brought in the county of Alameda of the State of California. ERC shall be entitled recover its reasonable attorneys' fees that are necessary and required to enforce the agreement pursuant to California Code of Civil Procedure section 1021.5.

18. 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.

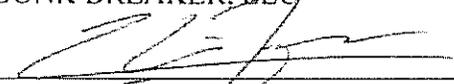
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19. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

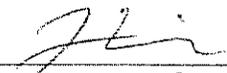
DATED: 7-25-16

BONK BREAKER, LLC

By:   
[ Chris Frable  
Title: [ Co-CEO ]

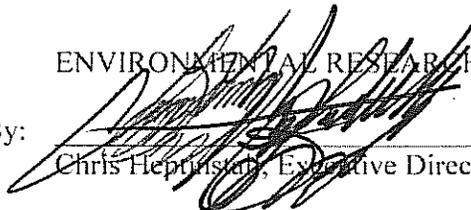
DATED: 7/25/16

BONK BREAKER

By:   
[ Jason Winn  
Title: [ Co-CEO ]

DATED: 7/25/16

ENVIRONMENTAL RESEARCH CENTER, INC.

By:   
Chris Heptinstad, Executive Director

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