

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) between Environmental Research Center, Inc. (“ERC”) and Lone Star Distribution LLC and John’s Lone Star Distribution GP, L.L.C. (“Lone Star”) is effective on the date on which it is fully executed (“Effective Date”). ERC and Lone Star 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 Lone Star on May 16, 2016 (the “Notice”) with regard to the following product identified below (“Covered Product”):

- **Myogenix Inc. Liver Support Extra Strength**

2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Covered Product and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission by 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 covenants and conditions contained in this Agreement, the Parties have agreed to the terms of this agreement, including the warning terms of this Section 3, payment terms of Section 4, release terms of Section 6, and all other promises contained herein:

- A. Beginning on the Effective Date, Lone Star has elected to voluntarily discontinue shipment of the Covered Products for sale into California.
- B. In the event that at any time Lone Star chooses to re-introduce the Covered Products into the California marketplace, Lone Star 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 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 a “Clear and Conspicuous Warning” is provided on the product label or prior to purchase of the Covered Product.
 - i. As used in this Agreement, the term “Clear and Conspicuous Warning” means a warning that complies at the time of sale with Title 27, Division 4, Chapter 1, Article 6 of the California Code of Regulations (27 CCR §§ 25601 *et seq.*) and utilizes the safe harbor warning language set forth in 27 California Code

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of Regulations section 25603.2, or any successor regulations adopted by the State of California Office of Environmental Health Hazard Assessment, or successor agency. In the event there is an amendment to Proposition 65 or its implementing regulations regarding the clear and reasonable warning standard or the safe harbor warning language, this Agreement shall be deemed modified on the date the amendment becomes final or the regulations become effective to incorporate the new standard into this Section. As of the Effective Date, the Clear and Conspicuous Warning shall read:

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

ii. 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 Lone Star knows will sell the Covered Product in California.

iii. 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.

iv. The phrase “cancer and” must be included in the warning only if the maximum recommended daily dose causes an exposure that exceeds the No Significant Risk Level set forth in 27 California Code of Regulations Section 25705 or any successor regulation.

4. Lone Star shall make a total settlement payment of \$15,000.00 (“Total Settlement Payment”) by wire transfer to ERC’s escrow account within seven (7) days of the Effective Date (“Due Date”), for which ERC will give Lone Star the necessary account information. The Total Settlement Payment shall be allocated as follows:

A. \$857.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$642.75) 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% (\$214.25) of the civil penalty.

B. \$417.38 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Lone Star’s attention and negotiating a settlement.

C. \$3,750.00 shall be considered reimbursement of attorney fees for Aqua Terra

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Aeris Law Group and \$9,975.62 shall be considered reimbursement for ERC's in-house legal fees.

D. In the event that Lone Star fails to remit the Total Settlement Payment owed under Section 4 of this Settlement Agreement on or before the Due Date, Lone Star shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Lone Star via electronic mail. If Lone Star fails to deliver the Total Settlement Payment within five days from 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, Lone Star agrees to pay ERC's reasonable attorney fees and costs for any efforts to collect the payment due under this Agreement.

E. ERC represents and warrants that as of the Effective Date, it has disclosed to Lone Star and Myogenix, Inc. all purchases of Myogenix products it has made (or anyone has made on its behalf) and which is or will be the subject of a claim under Proposition 65. Nothing in this Agreement shall be construed as a settlement of any claims concerning any Myogenix product or purchase other than the product identified in this Agreement. Nothing in this Agreement shall preclude ERC from pursuing any claims against Lone Star or anyone else related to any Myogenix product purchased after the Effective Date. ERC acknowledges that the representations and warranties contained in this Section 4.F are a material inducement to Lone Star to enter into 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, affiliates, and legal representatives (collectively the "Releasing Parties") fully release and discharge Lone Star and its respective owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, successors, assigns, affiliates under common ownership, suppliers (direct and indirect), customers, and legal representatives (collectively the "Releasees") from any and all claims for violations of Proposition 65 up through and including the Effective Date based on exposure to any Proposition 65 listed chemical from the Covered Product.

B. In connection with this Agreement, the Releasing Parties and Releasees acknowledge that they may hereafter discover claims presently unknown or facts in addition to or different from those they now know or believe to be true with respect to the matters released in this Agreement. The Releasing Parties and Releasees 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.

California Civil Code section 1542 reads as follows:

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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 Lone Star on behalf of itself only, on the other hand, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code Section 1542.

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 Lone Star's products other than the Covered Product.

8. Nothing herein shall be construed as diminishing Lone Star'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 any such other law to the same extent as if this Agreement did not exist.

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

With a copy to:

Matt Maclear
Aqua Terra Aeris Law Group
7425 Fairmount Avenue
El Cerrito, CA 94530

**LONE STAR DISTRIBUTION LLC
JOHN'S LONE STAR DISTRIBUTION GP, L.L.C.**

Chris Chotard, Lone Star Distribution
11401 Granite Street
Charlotte, NC 28273
ChrisChotard@europasports.com

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With a copy to:
Harris R. Eisenberg, Katten Muchin Rosenman LLP,
525 W. Monroe Street
Chicago, IL 60661
harris.eisenberg@kattenlaw.com

Matthew I. Kaplan
Tucker Ellis LLP
515 S. Flower Street
42nd Floor
Los Angeles, CA 90071
matthew.kaplan@tuckerellis.com

10. After executing this Agreement, ERC will submit to the California Attorney General a Report of Settlement as required by Proposition 65. 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, to the extent required by law.

11. This Agreement contains the entire agreement between the Parties with regard to the Notice, 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.

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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. 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.

18. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which, together, shall be deemed to constitute a single document. The exchange of this Settlement Agreement and of signature pages by facsimile transmission or electronic mail attachment shall be deemed to have the same legal effect as delivery of an original signed copy of this Settlement Agreement. Signatures by scanned and e-mailed image or facsimile transmission shall have the same force and effect as original signatures as an electronic record executed and adopted by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1-1633.17.

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: 8-10-16

LONE STAR DISTRIBUTION LLC

By: 
Title: Authorized Signatory

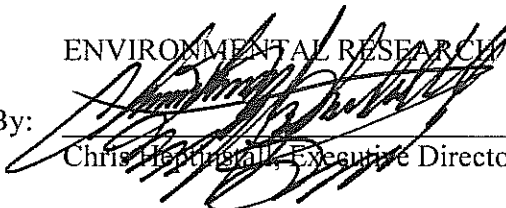
DATED: 8-10-16


JOHN'S LONE STAR DISTRIBUTION GP, L.L.C.

By: 
Title: Authorized Signatory

DATED: 8/3/2016

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 
Chris Hopfinger, Executive Director

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