

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) between Environmental Research Center, Inc. (“ERC”) and IdealShape, LLC (“IdealShape”) is effective on the date on which it is fully executed (“Effective Date”). ERC and IdealShape 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 IdealShape on August 30, 2016 (the “Notice”) with regard to each of the following products identified below (referred to individually as “Covered Product” or collectively as “Covered Products”):

- **IdealShape LLC IdealFit IdealLean BCAAs For Women Raspberry Lemonade**
- **IdealShape LLC IdealFit IdealLean Pre-Workout For Women Blue Raspberry**
- **IdealShape LLC IdealFit IdealLean Protein Shake For Women Chocolate Brownie**
- **IdealShape LLC IdealFit IdealLean BCAAs for Women Green Apple**
- **IdealShape LLC IdealFit IdealLean Pre-Workout For Women Watermelon Ice**

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 on the Effective Date, IdealShape 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 each such unit of the Covered Product bears the following warning statement:

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**“WARNING: This product contains lead, 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 IdealShape 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 statements contradicting or conflicting with the Warning shall accompany the Warning.

c. IdealShape shall arrange, for at least five (5) consecutive years and at least once per year, commencing one year from the Effective Date, for the lead testing of five (5) randomly-selected samples of five separate lots each year for each Covered Product to confirm whether the Daily Lead Exposure Level is more or less than 0.5 micrograms of lead when the maximum suggested dose is taken pursuant to the directions on the Covered Product’s label. IdealShape shall provide ERC with any related documentation pursuant to Section 3d., and shall include the lot identification numbers of the lots tested. IdealShape shall test samples in the form intended for the end-user to be distributed or sold to California consumers.

d. If IdealShape is successful with reformulation for any of the Covered Products which reduces the Daily Lead Exposure Level to 0.5 micrograms of lead per day or below when taken pursuant to the maximum suggested dose as directed on the Covered Product’s label, the

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Parties agree that the Covered Products may be offered for sale in California without the warning stated in Section 3a. If IdealShape is successful with reformulation on any of the Covered Products, IdealShape 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 IdealShape receives the test results and prior to IdealShape 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.

i. Pursuant to Sections 3c. and 3d., any such 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 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 IdealShape's ability to conduct or require that others conduct additional testing of the Covered Products, including raw materials used in their manufacture.

ii. Pursuant to Sections 3c. and 3d., IdealShape shall retain copies of its test data from the date testing commenced and shall provide all test data to ERC within fifteen (15) days of receiving the data after conducting the required testing as set forth above. The requirement to provide all test data to ERC shall cease after five (5) years from the Effective Date.

4. IdealShape shall make a total settlement payment of \$85,000.00 ("Total Settlement Payment") by wire transfer to ERC's escrow account within 5 days of the Effective Date ("Due Date"), for which ERC will give IdealShape the necessary account information. The Total Settlement Payment shall be allocated as follows:

a. \$29,728.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$22,296.00) 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% (\$7,432.00) of the civil penalty.

b. \$567.91 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this Matter to IdealShape's attention and negotiating a settlement.

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c. \$44,591.59 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. \$3,555.00 shall be considered reimbursement of attorney fees for the Law Office of Richard M. Franco and \$6,557.50 shall be considered reimbursement for ERC's in-house legal fees.

e. In the event that IdealShape fails to remit the Total Settlement Payment owed under Section 4 of this Settlement Agreement on or before the Due Date, IdealShape shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to IdealShape via electronic mail. If IdealShape 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, IdealShape agrees to pay ERC's reasonable attorney fees and costs for any efforts to collect the payment 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 IdealShape and its respective owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, successors, assigns, and legal representatives (collectively the "Releasing Parties") from any and all claims for violations of Proposition 65 up through and including the Effective 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, on the one hand, and IdealShape, on behalf of itself only, on the other

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Jim [Signature]

hand, 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 IdealShape, 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 IdealShape's products other than the Covered Products.

8. Nothing herein shall be construed as diminishing IdealShape'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](mailto:chris_erc501c3@yahoo.com)

With a copy to:  
Richard M. Franco, Esquire  
Law Office of Richard M. Franco  
6500 Estates Drive  
Oakland, CA 94611

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Tel: (510) 684-1022  
Email: rick@francolaw.com

**IdealShape, LLC**

Skyler A. Meine  
Chief Marketing Officer  
IdealShape LLC  
2000 W 500 N  
Lindon, UT 84042  
Skyler@idealshape.com

With a copy to:  
Forrest A. Hainline III, Esquire  
Goodwin Procter LLP  
3 Embarcadero Center  
San Francisco, CA 94111  
Tel: (415) 733-6065  
Email: FHainline@goodwinlaw.com

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 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 as to injunctive terms only 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.

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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.

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: 9-30-16

IDEALSHAPE, LLC

By:



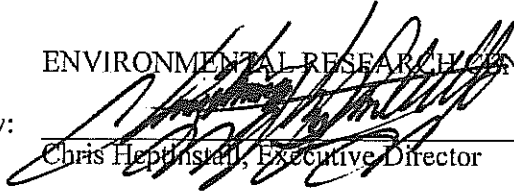
Skyler A. Meine

Title: Chief Marketing Officer

DATED: 9/30/2016

ENVIRONMENTAL RESEARCH CENTER, INC.

By:



Chris Heptinstall, Executive Director

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