

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") between Environmental Research Center, Inc. ("ERC") and Church & Dwight Co., Inc. ("Church & Dwight" or "Company") is effective on the date on which it is fully executed ("Effective Date"). ERC and Church & Dwight are referred to individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

WHEREAS, on August 17, 2018, ERC served on Church & Dwight and other public enforcers a Notice of Violation of California Health & Safety Code §25249.5, *et seq.* (also known as "Proposition 65") alleging that various products manufactured, distributed or sold by the Company contained lead, a chemical listed under Proposition 65, that exposed consumers at a level requiring a Proposition 65 warning (the "Notice"). These products are those identified in the Notice as Covered Products and shall be referred to herein individually as a "Covered Product" or collectively as "Covered Products."

WHEREAS, ERC desires to settle all claims made or that could have been made against Church & Dwight, including claims made in the Notice;

WHEREAS, Church & Dwight, while denying any wrongdoing of any kind whatsoever, including denying all allegations of wrongdoing set forth in the Notice, and without admitting liability, nevertheless agrees to enter into this Agreement to avoid further expense, inconvenience and distraction associated with ERC's claims; and,

WHEREAS, the Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Notice 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.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Parties hereby agree as follows:

1. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

1.1 Beginning on the Effective Date, Church & Dwight shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California" or directly selling in the State of California, any Covered Product containing a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day, as set forth in Sections 1.3 and 2.2, unless it meets the warning requirements under Section 3.

1.2 As used in this Agreement, the term "Distributing into the State of California" (or "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 Church & Dwight knows or has reason to know will sell the Covered Product in California.

1.3 For purposes of this Agreement, the "Daily Lead Exposure Level" shall be the amount of lead exposure per day, if any, from a Covered Product, measured in micrograms pursuant to the testing and quality control methodology outlined in Section 2, below, and shall be calculated using the following formula: micrograms of lead per gram of the Covered Product multiplied by grams of the Covered Product per serving of the Covered Product (using the largest serving size stated on the Covered Product label), multiplied by servings of the Covered Product per day (using the largest number of recommended daily servings stated on the Covered Product label), which equals micrograms of lead exposure per day, excluding, pursuant to Section 1.4, the amount of lead in the ingredient listed in Table 1 below, if applicable. If the label of the Covered Product contains no recommended daily servings, then the number of recommended daily servings shall be one.

1.4 In calculating the Daily Lead Exposure Level for a Covered Product, Church & Dwight shall be allowed to deduct the amount of lead which is deemed "naturally occurring" in the ingredient listed in Table 1 that is contained in that Covered Product in accordance with this Section 1.4. If Church & Dwight's testing of the Covered Products and/or their ingredients pursuant to Section 2 reveals the presence of lead in the ingredient listed in Table 1 that is contained in the Covered Product, Church & Dwight shall be entitled to deduct up to the full amount of the allowance for that ingredient, as listed in Table 1, but not to exceed the total amount of lead actually contained in that ingredient that is in the Covered Product. If the Covered Product does not contain the ingredient listed in Table 1, Church & Dwight shall not be entitled to a deduction for "naturally occurring" lead in the Covered Product for that ingredient. Church & Dwight may not deduct the "naturally occurring" allowance for any given lot of the Covered Product if that particular lot of Covered Product does not contain the ingredient in Table 1.

TABLE 1

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (elemental)	Up to 0.8 micrograms/gram

2. TESTING AND QUALITY CONTROL METHODOLOGY

2.1 Beginning on the Effective Date and continuing for three (3) consecutive years, prior to Distributing into the State of California or directly selling in California any Covered Product Church & Dwight shall test, or have tested, at least two (2) randomly selected gummies from each lot of the Covered Products in the form intended for sale to the end-user. If tests conducted pursuant to this Section demonstrate that no Warning (as defined in Section 3.1) is required for a Covered Product during each of the three (3) consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product. However, if during the three-year testing period, Church & Dwight changes ingredient suppliers for any of the Covered Products and/or reformulates the Covered Products, Church & Dwight shall test

each lot of that Covered Product annually for two (2) consecutive years after such change is made.

2.2 For purposes of measuring the "Daily Lead Exposure Level," the arithmetic mean of the lead detection results for the two (2) randomly selected gummy samples in each lot of the Covered Products will be controlling.

2.3 All testing pursuant to this Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, qualification, accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010 mg/kg.

2.4 All testing pursuant to this Agreement shall be performed by (i) an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program or (ii) an independent third-party laboratory registered with the United States Food & Drug Administration or (iii) a laboratory that is agreed to in writing by the Parties.

2.5 Nothing in this Agreement shall limit Church & Dwight's ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

2.6 Church & Dwight shall retain all test results and documentation obtained pursuant to this Section 2 for a period of five years from the date of each test.

3. CLEAR AND REASONABLE WARNINGS

3.1 If the results of the testing in Section 2 show that a particular lot of Covered Product exceeds a Daily Lead Exposure Level of 0.5 micrograms of lead per day, Church & Dwight may not Distribute into the State of California that lot of Covered Product unless that lot contains the following warning ("Warning"):

WARNING: Consuming this product can expose you to [chemicals including] lead which is [are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

3.2 In the event Church & Dwight provides the Warning, Church & Dwight shall use the phrase "cancer and" in the Warning only if the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 2 or if Church & Dwight has reason to believe that another Proposition 65 chemical is present at a level requiring the cancer warning. Where a Warning is being provided for an exposure to a single chemical the words "chemicals including" may be deleted from the Warning.

3.3 In the event Church & Dwight provides the Warning, the Warning shall be securely affixed to or printed upon the container or label of each Covered Product offered for sale in California. In addition, for any Covered Product sold over the internet, the Warning shall appear on either the product display page or the checkout page when a California delivery

address is indicated for any purchase of any Covered Product. An asterisk or other identifying method must be utilized to identify which product on the checkout page is subject to the Warning.

3.4 In the event Church & Dwight provides the Warning, the Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on its website or on the label or container of Church & Dwight's product packaging and the word "WARNING" shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of, or reducing the clarity of, the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

3.5 In the event Church & Dwight is required to provide the above Warning, Church & Dwight must display the Warning with such conspicuousness, as compared with other words, statements or designs on the label, container, or on its website, as applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

4. PAYMENTS

4.1 In full and final settlement of any and all claims asserted or threatened against Church & Dwight regarding the Notice, and in consideration for the general releases and covenants in this Agreement, Church & Dwight shall make a total payment of \$46,724.29 ("Total Settlement Amount") by wire transfer to ERC's account within ten (10) days after the last of the following occurs ("Due Date"): (i) this Agreement is executed by all of the signatories identified below, (ii) the executed Agreement is exchanged by the Parties; and (iii) ERC or its undersigned attorneys provide Church & Dwight with the necessary paperwork to effectuate payment, including ERC's attorneys' Internal Revenue Service form W-9 and bank account information. ERC shall provide the following bank account information so that Church & Dwight may make the Payment by electronic transfer of funds: bank name, bank address, routing number, account number, and account name.

4.2 ERC and its undersigned attorneys take full responsibility for ensuring that the Total Settlement Amount shall be allocated as follows:

4.2.1 \$2,000.00 shall be considered a payment pursuant to California Health and Safety Code §25249.7(b)(1) (the "H&S Payment"). ERC shall remit 75% (\$1,500.00) of the H&S Payment 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% (\$500.00) of the H&S Payment.

4.2.2 \$6,492.12 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Church & Dwight's attention and negotiating a settlement.

4.2.3 \$13,950.00 shall be distributed to Michael Freund as reimbursement of ERC's attorney's fees, \$617.50 shall be distributed to Ryan Hoffman as reimbursement of ERC's attorney's fees, while \$23,664.67 shall be considered reimbursement for ERC's in-house legal fees.

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

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

5. BINDING EFFECT; CLAIMS COVERED AND RELEASED

5.1 **General Release:** In consideration for the payment set forth in Section 4 and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, ERC, on its behalf and each of its predecessors, successors, assigns, heirs, representatives, attorneys, and beneficiaries in their capacity as such (collectively "ERC Releasors"), hereby irrevocably releases and discharges Church & Dwight, together with its affiliates, predecessors, successors and assigns, and each of its and their respective present and former members, employees, directors, officers, contractors, attorneys, agents, representatives, shareholders, heirs, executors and administrators, in their capacity as such (together with Church & Dwight, "Church & Dwight Releasees") from any and all actions, claims, causes of action, suits, debts, dues, sums of money, controversies, promises, trespasses, damages, judgments, liabilities, liens, losses, obligations and demands, whatsoever in law, admiralty or equity, whether known or unknown, accrued or unaccrued, absolute or contingent, joint or several, matured or unmatured, and whether arising now or in the future, which against the Church & Dwight Releasees, ERC Releasors ever had, now have, or hereafter can, shall, or may have for, upon or by reason of any matter, cause or thing whatsoever (including, but not limited to, the claims set forth in the Notice) relating to the handling, use, or consumption of the Covered Products or any alleged violation of Proposition 65 or Proposition 65's implementing regulations from the beginning of the world to the Effective Date of this Agreement.

5.2 ERC on its own behalf only, and Church & Dwight on its own behalf only, 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 up through and including the Effective Date, provided, however, that nothing in Section 5 shall affect or limit any Party's right to seek to enforce the terms of this Agreement.

5.3 ERC and Church & Dwight acknowledge that the claims released in Sections 5.1 and 5.2 above may include unknown claims, and the Parties 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

ERC, on behalf of itself only, and Church & Dwight, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

5.4 Compliance with the terms of this Agreement shall be deemed to constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead in the Covered Products as set forth in the Notice.

5.5 ERC Releasees hereby covenant and agree not to sue any Church & Dwight Releasee on any claim relating to the Covered Products provided that Church & Dwight complies with the terms of this Agreement.

5.6 Nothing in this Agreement is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of Church & Dwight's products other than the Covered Products.

5.7 Nothing herein shall be construed as diminishing Church & Dwight's continuing obligations to comply with Proposition 65.

5.8 Nothing in Section 5 shall affect or limit any Party's right to seek to enforce the terms of this Agreement.

6. NOTICES

6.1 All notices required or permitted to be given hereunder shall be in writing and shall be deemed delivered (i) upon receipt if delivered by hand, (ii) the next business day after being sent by prepaid, nationally-recognized, overnight air courier, (iii) five (5) business days after being sent by registered or certified mail, return receipt required, postage prepaid, or (iv) upon transmittal when transmitted by confirmed telecopy or electronic mail (provided that such notice is followed by notice pursuant to any of (i) - (iii) above or receipt is confirmed by the receiving party's response). All notices shall be addressed as follows:

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Telephone: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

With a copy to:

Michael Freund
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 371-0885

FOR CHURCH & DWIGHT

Church & Dwight Co, Inc.
500 Charles Ewing Boulevard
Ewing, New Jersey 08628
Attn: General Counsel

with a copy to:

Proskauer Rose LLP
11 Times Square
New York, NY 10036
Attn: Baldassare Vinti, Esq.

7. ADDITIONAL PROVISIONS

7.1 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 the Notice, the settlement, and this Agreement.

7.2 ERC understands and agrees that the Payment referenced in Section 4, above, represents the full and complete compromise of ERC's disputed claims and that payment made under this Agreement is not to be construed as an admission of liability on the part of Church & Dwight, who hereby expressly denies any liability. Neither this Agreement, nor any of its terms or provisions, nor the negotiations or proceedings connected with it, shall be offered or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in any proceeding brought to enforce this Agreement or as required by law or Court Order.

7.3 ERC agrees that no further payments of any kind will be made to ERC following Church & Dwight's tender of the Payment enumerated in Section 4, above, and ERC's receipt of same.

7.4 ERC and its undersigned attorneys agree that they shall not knowingly or intentionally communicate, or cause to be communicated, orally or in writing to unrelated third parties any disparaging, misleading, or false remarks about Church & Dwight, or its respective employees, officers or agents (in their capacities as employees, officers or agents of Church & Dwight), nor will ERC or its undersigned attorneys attempt to dissuade others from purchasing or using Church & Dwight's products. The Parties agree that oral and/or written communications in compliance with Proposition 65 shall be excepted from this Section 7.4.

7.5 ERC and its undersigned attorneys represent and warrant to Church & Dwight that neither ERC nor its undersigned attorneys are aware of any other claims ERC may have against Church & Dwight. The undersigned attorneys for ERC also represent and warrant that they have not encouraged or provided assistance to any other person or legal entity to bring a claim against Church & Dwight. Nothing in this Paragraph 7.5 will be construed in any way that would cause any attorney involved with this Agreement to violate any rule of professional conduct. To the extent any obligation set forth above on any attorney would violate such a rule, that obligation (but only that obligation) shall be of no force or effect.

7.6 ERC and its attorneys assume responsibility for any tax consequences they may incur with the settlement referenced herein.

7.7 This Agreement contains the entire agreement between the Parties with regard to settlement of the Notice, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the Notice as set forth in this Agreement.

7.8 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.

7.9 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.

7.10 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.

7.11 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.

7.12 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 regarding the Notice and this Agreement. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

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

7.14 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.

7.15 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.

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IN WITNESS WHEREOF, this Agreement has been duly executed to be effective as of the Effective Date.

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 

Name: Chris Heptinstall

Title: Executive Director

Date: 3/15/2019

MICHAEL FREUND & ASSOCIATES

By: MF

Name: Michael Freund

Title: _____

Date: 4/1/19

CHURCH & DWIGHT CO., INC.

BY: Maire L. Brophy

Name: Maire L. Brophy

Title: Associate General Counsel

Date: 4/5/2019