

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") between Environmental Research Center, Inc. ("ERC") and Midway Labs USA, LLC and Midway Labs Bio LLC (collectively "Midway Labs") is effective on the date on which it is fully executed ("Effective Date"). ERC and Midway Labs 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 Midway Labs on January 18, 2019 (the "Notice") with regard to the following products identified below (referred to individually as "Covered Product" or collectively as "Covered Products"):

- 1) **Midway Military Trail Premium Supplements Whey 100% Whey Protein Milk Chocolate Flavor**
- 2) **Midway Glamour Nutrition Love Spell Female Sexual Energy**
- 3) **Midway Military Trail Premium Supplements ERE Force Testosterone Booster**
- 4) **Midway Military Trail Premium Supplements Thermogenic Blast Fat Strike**

Midway Labs denies the claims in the Notice and maintains some or all of the Covered Products do not require warnings under Proposition 65.

2. 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.

3. **INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

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:

3.1 On and after the date that is sixty (60) days after the Effective Date, Midway Labs shall be 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 Products which do not qualify as a Conforming Covered Product as defined below in Section 3.3, unless such Covered Product complies with the warning requirements of Section 3.2.

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3.1.1 As used in this Agreement, the term "Distributing 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 Midway Labs knows or has reason to know will sell the Covered Product in California.

3.1.2 For purposes of this Agreement, the "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 recommended daily servings appearing on the label), which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

3.2 Clear and Reasonable Warnings

If Midway Labs is required to provide a warning pursuant to Section 3.1, the following warning must be utilized ("Warning"):

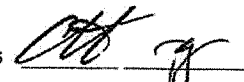
WARNING: Consuming this product can expose you to chemicals including [lead] which is [are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

Midway Labs 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 3.4 or if Midway Labs knows that another Proposition 65 chemical is present at a level requiring a cancer warning.

The Warning shall be securely affixed to or printed upon the container or label of each Covered Product offered for sale in California, and if the Warning is provided on the label, it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet, the Warning shall appear on 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. In no event shall any internet or website Warning be contained in or made through a link.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label or container of Midway Labs' 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.

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Midway Labs must display the above 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.

3.3 Conforming Covered Products

A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the quality control methodology described in Section 3.4.

3.4 Testing and Quality Control Methodology

3.4.1 In the event that testing is required, beginning within one year of the Effective Date, Midway Labs shall arrange for lead testing of the Covered Products at least once a year for a minimum of three (3) consecutive years by arranging for testing of five (5) randomly selected samples of the Covered Products, in the form intended for sale to the end-user, which Midway Labs intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into the State of California." If tests conducted pursuant to this Section demonstrate that no Warning 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 or after the three-year testing period, Midway Labs changes ingredient suppliers for any of the Covered Products and/or reformulates the Covered Products, Midway Labs shall test that Covered Product for at least two (2) consecutive years after such change is made, but in no event shall the total period for testing be for less than three years or more than five years.

3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the average of the lead detection results of the five (5) randomly selected samples of the Covered Products by Midway Labs, will be controlling.

3.4.3 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.

3.4.4 All testing required pursuant to this Agreement 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.

3.4.5 Nothing in this Agreement shall limit Midway Labs' ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

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3.4.6 Within thirty (30) days of ERC's written request, Midway Labs shall deliver lab reports obtained pursuant to Section 3.4, and related documentation, to ERC. Midway Labs shall retain all such lab reports and related documentation for a period of three years from the date of each test. Any request by ERC for lab reports and related documentation shall be made prior to the expiration of the three-year time period identified in this section 3.4.6.

3.4.7 The testing requirements of Section 3.4.1 do not apply to any Covered Product for which Midway Labs has provided the Warning specified in Section 3.2 continuously and uninterrupted after the Effective Date; however, in the event Midway Labs ceases to provide the Warning specified in Section 3.2, Midway Labs shall be required to comply with the testing requirements of this Section beginning immediately after the date the Warning ceases to be provided or one year after the Effective Date, whichever date is later

4. Midway Labs shall make a total payment of \$10,000.00 ("Total Settlement Amount") by wire transfer to ERC's account by no later than June 24, 2019 ("Due Date"), for which ERC will give Midway Labs the necessary account information. The Total Settlement Amount shall be allocated as follows:

a. \$1000.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$750.00) 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% (\$250.00) of the civil penalty.

b. \$1,855.86 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Midway Labs' attention and negotiating a settlement.

c. \$3,600 shall be distributed to the Law Office of Richard M. Franco as reimbursement of ERC's attorney's fees, while \$3,544.14 shall be considered reimbursement for ERC's in-house legal fees.

d. In the event that Midway Labs fails to remit the Total Settlement Amount owed under Section 4 of this Agreement on or before the Due Date, Midway Labs shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Midway Labs via electronic mail. If Midway Labs fails to deliver the Total Settlement Amount within five 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, Midway Labs agrees to pay ERC's reasonable attorneys' 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 the Notices.

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6. Binding Effect; Claims Covered and Released

6.1. This Agreement is a full, final, and binding resolution between ERC, on behalf of itself, and Midway Labs and its respective officers, directors, shareholders, employees, agents, representatives, contractors, attorneys, insurers, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of Midway Labs), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of the Covered Products, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or consumption of the Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

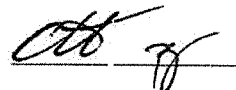
6.2 ERC on its own behalf only, and Midway Labs on its own behalf only, further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notices up through and including the Effective Date, provided, however, that nothing in Section 6 shall affect or limit any Party's right to seek to enforce the terms of this Agreement.

6.3 It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notices, and relating to the Covered Products, will develop or be discovered. ERC, on behalf of itself only, and Midway Labs, 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. ERC and Midway Labs acknowledge that the claims released in Sections 6.1 and 6.2 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:

(i) 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 Midway Labs, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

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6.4 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 Notices.

6.5 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 Midway Labs' products other than the Covered Products.

7. Nothing herein shall be construed as diminishing Midway Labs' continuing obligations to comply with Proposition 65.

8. 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, or via electronic mail where required. Courtesy copies of notices sent via first-class mail may also be sent via email.

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.heptinstall@erc501c3.org

With a copy to:

Richard M. Franco
Law Office of Richard M. Franco
6500 Estates Drive
Oakland, CA 94611
Ph: 510-684-1022
Email: rick@rfrancolaw.com

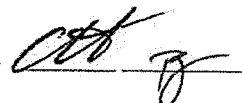
FOR MIDWAY LABS USA, LLC and MIDWAY LABS BIO LLC:

Peter Giallorenzo
CFO
Midway Labs USA, LLC
6401 Congress Ave., Suite 100
Boca Raton, FL 33487

With a copy to:

Kenneth A. Linzer, Esquire
Diaz, Reus & Targ, LLP
12100 Wilshire Blvd, Ste 1090
Los Angeles, CA 90025
Ph: 310-826-2627

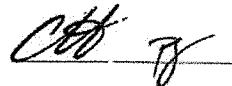
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Email: klinzer@diazreus.com

9. 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 Notices, the settlement, and this Agreement.
10. This Agreement contains the entire agreement between the Parties with regard to settlement of the Notices, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the Notices as 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.
11. 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.
12. 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.
13. 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.
14. 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.
15. The Parties acknowledge by signing this Agreement that they have a right to consult an attorney and that they have either consulted their attorney(s) with respect to the Notices and the terms and conditions of this Agreement or have made the decision not to consult with an attorney regarding the Notices and 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.
16. 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.

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17. 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.

18. 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.

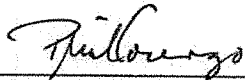
DATED: 6/24/19

MIDWAY LABS USA, LLC

By: 
Peter Giallorenzo
Title: Chief Financial Officer

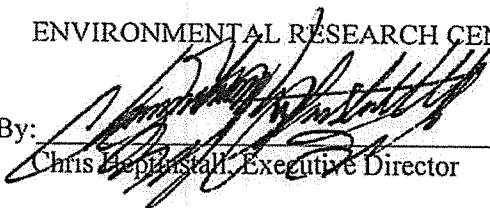
DATED: 6/24/19

MIDWAY LABS BIO LLC

By: 
Peter Giallorenzo
Title: Chief Financial Officer

DATED: 6/21/19

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 
Chris Deplustall, Executive Director

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