

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) between Environmental Research Center, Inc. (“ERC”) and Koru Pacific Packaging, Inc. (“Koru Pacific Packaging”) is effective on the date on which it is fully executed (“Effective Date”). ERC and Koru Pacific Packaging 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 Koru Pacific Packaging on November 21, 2019 (the “Notice”) with regard to the following products identified below (referred to as the “Covered Products”):

- **Naked One To One Premium Grass-Fed Whey + Sweet Potatoes With Nothing To Hide, UPC 670534530887**
- **Naked Whey + Greens Premium Grass-Fed Whey + Greens With Nothing To Hide, UPC 670534530894**
- **Naked Nutrition Less Naked Pea Chocolate, UPC 712395691915**
- **Naked Nutrition Naked Rice, UPC 712395691915**
- **Naked Pea + Matcha Premium Pea Protein + Matcha With Nothing to Hide, UPC 670534531057**
- **Less Naked Mass Chocolate, UPC 712395691854**
- **Naked Whey + Matcha Premium Grass Fed Whey + Matcha, UPC 670534531044**
- **Less Naked Egg Egg White Protein + Raw Cacao + Coconut Sugar Chocolate – Lead, UPC 712395691885**
- **Naked Choc PB, UPC 712395691649**

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. Koru Pacific Packaging is a packaging company that packages powdered and granular dry goods, pills, capsules and tablets. Koru Pacific Packaging contends that it does not determine what ingredients comprise the products that it packages. Rather, Koru Pacific Packaging contends that it relies on its customers for whom it packages products, such as Naked Whey, Inc., which does business as Naked Nutrition (“Naked Nutrition”), to provide it with product specifications. Koru Pacific Packaging further contends that it does not source any of

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the ingredients or labeling for the products it packages, including the Covered Products, and relies on its customers to provide these materials for assembly. Koru Pacific Packaging asserts that after receiving the list of ingredients and labeling from its customers, it assembles the final product and ships the product to its customers to distribute in their discretion. Koru Pacific Packaging claims that it is not responsible for the content of the labeling of the products it packages, including the Covered Products, and is therefore unable to independently place Proposition 65 warnings on products. Koru Pacific Packaging does not sell any of the products it packages, including the Covered Products, directly to consumers, nor does Koru Pacific Packaging determine where the products it packages are ultimately sold to by its customers.

3.1 Koru Pacific Packaging contends that it packaged the Covered Products at the direction of Naked Nutrition and that the last date of packaging for each respecting Covered Product is as follows:

- **Naked One To One Premium Grass-Fed Whey + Sweet Potatoes With Nothing To Hide, UPC 670534530887, Last Packaged on February 20, 2019**
- **Naked Whey + Greens Premium Grass-Fed Whey + Greens With Nothing To Hide, UPC 670534530894, Last Packaged on February 1, 2019**
- **Naked Nutrition Less Naked Pea Chocolate, UPC 712395691915, Last Packaged June 4, 2019**
- **Naked Nutrition Naked Rice, UPC 712395691915, Last Packaged June 4, 2019**
- **Naked Pea + Matcha Premium Pea Protein + Matcha With Nothing to Hide, UPC 670534531057, Last Packaged March 14, 2018**
- **Less Naked Mass Chocolate, UPC 712395691854, Last Packaged April 8, 2020**
- **Naked Whey + Matcha Premium Grass Fed Whey + Matcha, UPC 670534531044, Last Packaged November 7, 2019**
- **Less Naked Egg Egg White Protein + Raw Cacao + Coconut Sugar, UPC 712395691885, Last Packaged February 22, 2019**
- **Naked Choc PB, UPC 712395691649, Last Packaged October 29, 2019**

4. 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 7 below:

4.1 Beginning on the Effective Date, Koru Pacific Packaging shall be permanently enjoined from manufacturing, packaging, or distributing the Covered Products for, or directly selling the Covered Products to, California consumers.

5. Koru Pacific Packaging shall make a total payment of \$40,000.00 ("Total Settlement Amount") by wire transfer to ERC's account within 5 days of the Effective Date ("Due Date"), for which ERC will give Koru Pacific Packaging the necessary account information. The Total Settlement Amount shall be allocated as follows:

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a. \$27,285.82 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$20,464.37) 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% (\$6,821.45) of the civil penalty.

b. \$3,813.05 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Koru Pacific Packaging's attention and negotiating a settlement.

c. \$8,901.13 shall be considered reimbursement for ERC's in-house legal fees.

d. In the event that Koru Pacific Packaging fails to remit the Total Settlement Amount owed under Section 5 of this Agreement on or before the Due Date, Koru Pacific Packaging shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Koru Pacific Packaging via electronic mail. If Koru Pacific Packaging 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, Koru Pacific Packaging agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to collect the payment due under this Agreement.

5.1 In addition to the penalties and attorney's fees described in Section 5, Koru Pacific Packaging will be liable for additional penalties in the amount of \$5,000.00, payable to ERC, should it be determined that Koru Pacific Packaging has manufactured, packaged, or distributed for, or sold directly to, California consumers any of the Covered Products after the Effective Date.

5.1.1 Should ERC locate a Covered Product manufactured, packaged, or distributed for, or sold directly to, California consumers by Koru Pacific Packaging after the Effective Date, ERC shall notify Koru Pacific Packaging in writing of such discovery as soon as practicable. This notice shall contain information sufficient to identify the date of purchase, including a receipt, as well as the manufacture, packaging and/or distribution date, and any SKU, UPC, or lot numbers appearing on the product. The notice contemplated by this section will also set forth supporting facts underlying ERC's basis for believing that Koru Pacific Packaging is the entity responsible for manufacturing, packaging, or distributing the Covered Product for, or directly selling the Covered Product to, California consumers after the Effective Date.

5.1.2 Within thirty (30) days of receipt of the notice described in Section 5.1.1, Koru Pacific Packaging will provide information sufficient to show that the Covered Product(s) identified in the Section 5.1.1 notice were not manufactured, packaged, or distributed for, or sold directly to, California consumers by Koru Pacific Packaging after the Effective Date. If Koru Pacific Packaging makes such a showing within the time provided by this Section, it will not be liable for the penalty set forth in Section 5.1.

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6. Except as expressly set forth in Sections 5 and 5.1, the Parties shall bear their own costs, expenses, and attorneys' fees related to the Notice.

7. Binding Effect; Claims Covered and Released

7.1. This Agreement is a full, final, and binding resolution between ERC, on behalf of itself, and Koru Pacific Packaging and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of Koru Pacific Packaging other than Naked Nutrition), 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") with respect to the Covered Products. 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 and/or cadmium up to and including the Effective Date.

7.2 ERC on its own behalf only, and Koru Pacific Packaging 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 7 shall affect or limit any Party's right to seek to enforce the terms of this Agreement.

7.3 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 Koru Pacific Packaging, 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 Koru Pacific Packaging acknowledge that the claims released in Sections 7.1 and 7.2 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 Koru Pacific Packaging, 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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7.4 Compliance with the terms of this Agreement shall be deemed to constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead and/or cadmium in the Covered Products as set forth in the Notice.

7.5 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 Koru Pacific Packaging's products other than the Covered Products.

8. Nothing herein shall be construed as diminishing Koru Pacific Packaging's continuing obligations to comply with Proposition 65.

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, 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:
Charles W. Poss
Environmental Research Center, Inc.
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Email: charles.poss@erc501c3.org

FOR KORU PACIFIC PACKAGING, INC.:

Carol R. Brophy
cbrophy@steptoe.com
Cody A. DeCamp
cdecamp@steptoe.com
Steptoe & Johnson LLP
One Market Plaza
Spear Tower 39th Fl
San Francisco, CA 94105
Ph: (415) 365-6700

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

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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.

11. 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. 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.

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 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 Notice and the terms and conditions of this Agreement or have made the decision not to consult with an attorney regarding the Notice 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.

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 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, subject to the limitations, if any, set forth in Section 5.1.2.

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.

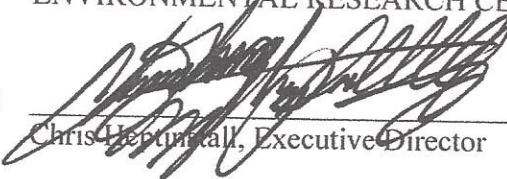
DATED: 6.30.20

KORU PACIFIC PACKAGING, INC.

By: Kerry Sanford
Printed Name:
Title: V.P. Operations

DATED: 6/8/20

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 
Chris Heptinstall, Executive Director

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