

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) between Environmental Research Center, Inc. (“ERC”) and Evolv Health, LLC (“Evolv Health”) is effective on the date on which it is fully executed (“Effective Date”). ERC and Evolv Health are referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1. This matter arises out of the Notices of Violation of California Health & Safety Code §25249.5, *et seq.* (also known as “Proposition 65”) that ERC served on Evolv Health on January 21, 2020 and March 16, 2020 (the “Notices”) with regard to the following products identified in the Notices and set forth below (referred to individually as “Covered Product” or collectively as “Covered Products”):


- (1) **ēvo₂lv shake chocolate (lead)**
- (2) **ēvo₂lv shake vanilla (lead)**
- (3) **ēvo₂lv lifebar Sweet & Salty Caramel (lead, cadmium)**
- (4) **ēvolv Lifebar Dark Chocolate (lead, cadmium)**
- (5) **ēvolv Lifebar Chocolate Mint (lead, cadmium)**
- (6) **ēvolv Lifebar Blueberry Pomegranate (cadmium)**

2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the claims alleged in the Notices 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. Evolv Health expressly denies all of the allegations in the Notices and maintains that its products are and have been in compliance with applicable 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, but rather this Agreement is a compromise of claims that are expressly contested and denied. 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 7 below:

3.1 Evolv Health contends that it has sold its assets, discontinued operations and is no longer in the business of manufacturing or distributing any products. As such, and subject to Section 3.2, beginning on the Effective Date, Evolv Health 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 of the Covered Products.

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3.1.1 As used in this Agreement, the terms “Distributing into the State of California” and “Distributed 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 Evolv Health knows or has reason to know will sell the Covered Product in California.

3.2 Clear and Reasonable Warnings

With respect to any Covered Products manufactured before the Effective Date and in the possession of Evolv Health or its successors or assigns on or before the Effective Date, such Covered Products may be Distributed into the State of California or sold in the State of California so long as they provide an appropriate Proposition 65 warning that complies with Title 27, California Code of Regulations sections 25602, 25607.1 and 25607.2 (2020).

4. Evolv Health shall make a total payment of \$25,000.00 (“Total Settlement Amount”) by wire transfer to ERC’s account within 10 business days of the Effective Date (“Due Date”), for which ERC will give Evolv Health the necessary account information within 2 business days of the Effective Date. However, if ERC has not provided the account information to Evolv Health within 7 business days of the Effective Date, then Evolv Health’s payment is due to ERC within 3 business days of receipt of that information, and the Due Date will be adjusted accordingly. The Total Settlement Amount shall be allocated as follows:

a. \$14,352.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$10,764.00) 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% (\$3,588.00) of the civil penalty.

b. \$3,078.43 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Evolv Health’s attention and negotiating a settlement.

c. \$7,569.57 shall be considered reimbursement for ERC’s in-house legal fees.

d. In the event that Evolv Health fails to remit the Total Settlement Amount owed under Section 4 of this Agreement on or before the Due Date, Evolv Health shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Evolv Health via electronic mail. If Evolv Health 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, Evolv Health 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. If, after the Effective Date and except as provided in Section 3.2, Evolv Health breaches this Settlement Agreement by manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any of the Covered Products, it shall be liable to ERC for additional civil penalties of up to \$2,500 for each time that a Covered Product is manufactured for sale in the State of California, "Distributed into the State of California," or directly sold in the State of California by or on behalf of Evolv Health as well as for attorneys' fees and costs incurred by ERC for the enforcement of the breach of this Settlement Agreement. ERC shall remit 75% of the additional civil penalty to OEHHA for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c), and ERC will retain the remaining 25% of the additional civil penalty.

7. Binding Effect; Claims Covered and Released

7.1. This Agreement is a full, final, and binding resolution between ERC, on behalf of itself, its successors and/or assignees, and Evolv Health and its respective officers, directors, shareholders, members, employees, agents, parent companies, subsidiaries, affiliates, divisions, suppliers, franchisees, licensees, customers (not including private label customers of Evolv Health), 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, and its successors and/or assignees, hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, obligations, damages, penalties, fees, costs, fines, and expenses asserted, or that could have been asserted from the distribution, sale, 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 up to and including the Effective Date.

7.2 ERC on its own behalf only, and Evolv Health 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 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 or asserted by the Parties, including those 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 Evolv Health, 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 Evolv Health 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:

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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 Evolv Health, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

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 Notices.

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 Evolv Health's products other than the Covered Products.

8. Nothing herein shall be construed as diminishing Evolv Health'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 EVOLV HEALTH, LLC:

Bryan Farrar, Chief Operating Officer & General Counsel
Evolv Health, LLC
1551 Corporate Dr.
Suite 200
Irving, Texas 75038

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With a copy to:
Sarah A. Slack
Foley & Lardner LLP
555 Flower St, Suite 3300
Los Angeles, CA 90071
Ph: (213) 972-4612
Email: sslack@foley.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 the Notices, the settlement, and this Agreement.

11. This Agreement, and any agreements signed contemporaneously, contains the entire agreement between the Parties with regard to settlement of the Notices, and supersedes all prior 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.

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 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

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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.

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: 6-22-20

EVOLV HEALTH, LLC

By: Trey White
Name:
Title:

DATED: 6/17/2020

ENVIRONMENTAL RESEARCH CENTER, INC.

By: [Signature]
Chris Heptinstall, Executive Director

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