

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and defendant Endurance Brands, Inc. (“Settling Defendant”). CEH and Settling Defendant may each be referred to as a “Party” or collectively as the “Parties.”

1. INTRODUCTION

1.1. On April 14, 2021, CEH served a 60-Day Notice of Violation under The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.* (aka “Proposition 65”) (*i.e.*, the “Notice”) on Settling Defendant, the California Attorney General, the District Attorneys of every County in the State of California, and the City Attorneys for every City in the State of California with a population greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of n-Nitrosodiethylamine (“NDEA”) in latex resistance bands that are manufactured, distributed, and/or sold by Settling Defendant in California.

1.2. The Notice alleges that the Covered Products sold by Settling Defendant, contain NDEA. The Notice alleges that such Covered Products expose people who touch, wear, or otherwise handle the Covered Products to NDEA, a chemical known to the State of California to cause cancer, without first providing clear and reasonable warning to such persons regarding the carcinogenicity of NDEA. The Notice alleges that such conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65.

1.3. Settling Defendant asserts that it has fewer than ten (10) employees and thus is exempt from Proposition 65.

1.4. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Covered Products manufactured, distributed, and/or sold by Settling Defendant. By executing this Agreement, the Parties do not admit any facts or conclusions of

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law. Nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in this or any other or future legal proceedings.

2. DEFINITIONS

2.1. “Covered Products” means latex resistance bands.

2.2. “Effective Date” means the date of the last signature on the Settlement Agreement.

2.3. “Reformulation Date” means within 60-days following the Effective Date.

3. INJUNCTIVE RELIEF

3.1 Reformulation of Covered Products. As of the Reformulation Date, Settling Defendant shall not manufacture, distribute, sell, or offer for sale any Covered Product that contains NDEA in excess of 10 parts per billion (“ppb”) as determined using ISO 19577-2019 by an independent accredited laboratory that will be sold or offered for sale to California consumers.

3.2 Specification to and Certification from Suppliers. No more than thirty (30) days after the Reformulation Date, Settling Defendant shall issue specifications to its suppliers of Covered Products requiring that Covered Products not contain NDEA in excess of 10 ppb, and shall instruct each supplier to use reasonable efforts to eliminate Covered Products containing NDEA on a nationwide basis. Settling Defendant shall obtain and maintain written certification(s) from its suppliers of Covered Products confirming that all such Covered Products received by Settling Defendant for distribution in California do not contain NDEA in excess of 10 ppb as determined using ISO 19577-2019 by an independent accredited laboratory. Settling

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Defendant shall not be deemed in violation of the requirements of Section 3.1 for any Covered Product to the extent: (a) it has relied on a written certification from its vendor that supplied a Covered Product that such Covered Product does not contain NDEA in excess of 10 ppb as determined using ISO 19577-2019 by an independent accredited laboratory and such certification has not previously been demonstrated to be invalid, or (b) it has obtained a test result from an independent third party accredited laboratory reporting that the Covered Product does not contain NDEA in excess of 10 ppb as determined using ISO 19577-2019.

4. ENFORCEMENT

4.1 The Parties agree that any action based on a violation of this Agreement shall be brought in the Superior Court of California in Alameda County. For purposes of this Agreement, notwithstanding Section 1.3 above, the Parties agree that the Superior Court of California in Alameda County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of Alameda. Should a party to this Agreement prevail on any action to enforce the terms of this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

4.2 Enforcement Procedures. Prior to bringing any action to enforce the terms of this Agreement, a Party seeking to enforce shall provide the violating Party thirty (30) days advanced written notice of its intent to enforce the alleged violation. The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may, by new action before the Superior Court of California in Alameda County, seek to enforce the terms and conditions contained in this Agreement.

5. PAYMENTS

5.1 Payments by Settling Defendant. Within fifteen (15) calendar days of the

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Effective Date, Settling Defendant shall pay the total sum of Sixteen Thousand Dollars and no cents (\$16,000.00) as a settlement payment as further set forth in this Section. Any payment by Settling Defendant shall be deemed to be timely and not subject to a late charge and/or other penalty if: (1) postmarked (if sent by the United States Postal Service); or (2) delivered to an overnight carrier (*e.g.*, Federal Express), on or before the deadline set forth in this paragraph.

5.2 Allocation of Payments. The total settlement amount for Settling Defendant shall be paid in four (4) separate checks in the amounts specified below and delivered as set forth below. Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a joint and several stipulated late fee to be paid by Settling Defendant in the amount of one hundred dollars (\$100.00) for each day the full payment is not received after the applicable payment due date set forth in Section 5.1. The late fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling Defendant shall be allocated as set forth below between the following categories and made payable as follows:

5.2.1 Two Thousand Five Hundred Dollars (\$2,500.00) as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (*i.e.*, 25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for One Thousand Eight Hundred Seventy Five Dollars (\$1,875.00) shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

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For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The CEH portion of the civil penalty payment for Six Hundred Twenty Five Dollars (\$625.00) shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 Thirteen Thousand Five Hundred Dollars (\$13,500.00) as a reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks as follows: (a) Eleven Thousand Dollars (\$11,000.00) payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) Two Thousand Five Hundred Dollars (\$2,500.00) payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 To summarize, Settling Defendant shall deliver checks made out to the payees and in the amounts set forth below:

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$1,875	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$625	LLG

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Lexington Law Group	Fee and Cost	\$11,000	LLG
Center For Environmental Health	Fee and Cost	\$2,500	LLG

Total: \$16,000.00

5.3 Notwithstanding the provisions of the Enforcement of Judgments Law and Code of Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully with its payment obligations under this Section 5, in addition to any other enforcement mechanism available to CEH, CEH may seek an order requiring Settling Defendant to submit a debtor’s examination in the Alameda County Superior Court. In the event that Settling Defendant fails to submit to any such debtor’s examination ordered by the Court, CEH may seek an order holding Settling Defendant in contempt of Court.

6. MODIFICATION

6.1 Written Consent. This Consent Judgment may be modified from time to time by express written agreement of the Parties with the approval of the Court, or by an order of this Court upon motion and in accordance with law.

6.2 Meet and Confer. Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment. The Parties acknowledge and agree that a change in the no significant risk level for NDEA may provide a reason for modification of Sections 3.1 and 3.2 of this Consent Judgment.

7. CLAIMS COVERED AND RELEASED

7.1 This Settlement Agreement is a full, final and binding resolution between CEH on behalf of itself and Settling Defendant and Settling Defendant’s parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling Defendant directly or indirectly distributes or sells Covered Products, including but not limited to

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distributors, wholesalers, customers, retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to NDEA contained in Covered Products that were sold, distributed or offered for sale by Settling Defendant prior to the Effective Date.

7.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted by CEH regarding a violation of Proposition 65 and/or the failure to warn about exposure to NDEA arising in connection with Covered Products manufactured by or for Settling Defendant prior to the Effective Date .

7.3 Compliance with the terms of this Settlement Agreement by Settling Defendant shall constitute compliance with Proposition 65 by Settling Defendant, its Defendant Releasees and its Downstream Defendant Releasees with respect to any alleged failure to warn about NDEA in Covered Products manufactured, distributed or sold by Settling Defendant after the Effective Date.

8. NOTICE

8.1 When CEH is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class or electronic mail to:

Mark Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

8.2 When Settling Defendant is entitled to receive any notice under this Consent Judgment, the notice shall be sent by first class and electronic mail to:

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Todd O. Maiden
Reed Smith LLP
101 Second St., Ste., Ste. 1800
San Francisco, CA 94105
TMaiden@ReedSmith.com

8.3 Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

9. SPECIFIC PERFORMANCE

9.1 The Parties expressly recognize that Settling Defendant's obligations under this Agreement are unique. In the event that Settling Defendant is found to be in breach of this Agreement for failure to comply with the provisions of Section 3 hereto, the Parties agree that it would be extremely impracticable to measure any resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and Settling Defendant expressly waives the defense that a remedy in damages will be adequate.

10. GOVERNING LAW

10.1 The terms of this Agreement shall be governed by the laws of the State of California.

11. ENTIRE AGREEMENT

11.1 This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than

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those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

12. EXECUTION IN COUNTERPARTS

12.1 The stipulations to this Agreement may be executed in counterparts by electronic mail, which taken together shall be deemed to constitute one document.

13. AUTHORIZATION

13.1 Each signatory to this Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the party represented and legally bind that party. The undersigned have read, understand, and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

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Dated: October 25, 2021

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green
Chief Executive Officer

Dated: _____, 2021

ENDURANCE BRANDS, INC.

Signature

Printed Name

Title

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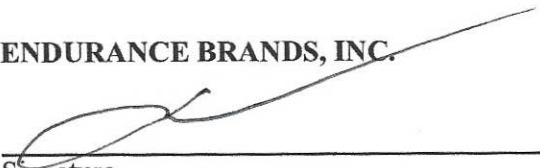
Dated: _____, 2021

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green
Chief Executive Officer

Dated: 10/19/21, 2021

ENDURANCE BRANDS, INC.



Signature

Joseph Scida

Printed Name

President

Title