

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") between Environmental Research Center, Inc. ("ERC") and Dreambrands, Inc. ("Dreambrands") is effective on the date on which it is fully executed ("Effective Date"). ERC and Dreambrands 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 Dreambrands on May 26, 2022 (the "Notice") with regard to the following products identified below (referred to as the "Covered Products"):

- **Mdrive Start Elite Nutrition with Protein Chocolate Flavored**
- **Mdrive Lean Weight Loss Protein Blood Orange Chocolate**

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 Beginning sixty (60) days after the Effective Date (the "Compliance Date"), Dreambrands shall be permanently enjoined from "Distributing into the State of California," or directly selling in the State of California, any Covered Product which exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the warning requirements under Section 3.2. Products sold, shipped, or distributed for sale by Dreambrands before the Effective Date may sell through without a warning even if the Covered Product does not comply with the 0.5 microgram limit of this Section.

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 Dreambrands 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

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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 Dreambrands is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized ("Warning"):

OPTION 1 (Long-form 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.

OPTION 2 (Short-form Warning):

⚠ WARNING: [Cancer and] Reproductive Harm - www.P65Warnings.ca.gov/food.

Dreambrands 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 Dreambrands has reason to believe that another Proposition 65 chemical is present at a level requiring the cancer warning. For the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the word "WARNING." Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white.

The Warning shall be securely affixed to or printed upon the label of any Covered Product and 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 Covered Product's primary display page, on the checkout page when a California delivery address is indicated for any purchase of any Covered Product, or by otherwise prominently displaying the Warning to the purchaser prior to completing the purchase. The Warning is not prominently displayed if the purchaser must search for it in the general content of the website. If the Warning appears on the checkout page, an asterisk or other identifying method must be utilized to identify which product on the checkout page is subject to the Warning. The internet Warning may be provided with a conspicuous hyperlink stating "WARNING" in all capital and bold letters so long as the hyperlink goes directly to a page prominently displaying the Warning without content that detracts from the Warning.

The word "WARNING" in the 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

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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 Dreambrands' ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

3.4.6 Within thirty (30) days of ERC's written request, Dreambrands shall deliver lab reports obtained pursuant to Section 3.4, and related documentation, to ERC. Dreambrands 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 and reporting requirements of Section 3.4 do not apply to any Covered Product for which Dreambrands is providing a Warning, continuously and without interruption from the Compliance Date, pursuant to Section 3.2 of this Consent Judgment. In the event a Warning is provided after the Compliance Date but Dreambrands thereafter ceases to provide the Warning, the testing and reporting requirements of Section 3.4 of this Consent Judgment shall apply beginning within one year after the date the Warning ceases to be provided, unless the cessation in providing the Warning was a temporary error that was resolved when discovered.

4. Dreambrands shall make a total payment of \$35,000.00 ("Total Settlement Amount") by wire transfer to ERC's account within 30 days of the Effective Date ("Due Date"), for which ERC will give Dreambrands the necessary account information. The Total Settlement Amount shall be allocated as follows:

a. \$6,700.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$5,025.00) 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% (\$1,675.00) of the civil penalty.

b. \$2,552.83 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Dreambrands' attention and negotiating a settlement.

c. \$5,300.00 shall be distributed to Michael Freund as reimbursement of ERC's attorney fees, while \$20,447.17 shall be distributed to ERC for its in-house legal fees.

d. In the event that Dreambrands fails to remit the Total Settlement Amount owed under Section 4 of this Agreement on or before the Due Date, Dreambrands shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Dreambrands via electronic mail. If Dreambrands fails to deliver the Total

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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, Dreambrands 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 Notice.

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 Dreambrands and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of Dreambrands), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Product, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties").

6.2 ERC, on behalf of itself only, 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 Compliance Date.

6.3 ERC, on its own behalf only, and Dreambrands 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 Compliance 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.

6.4 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 Dreambrands, on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Compliance Date, including all rights of action therefore. ERC and Dreambrands acknowledge that the claims released in Sections 6.2 and 6.3 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

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

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

6.6 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 Dreambrands' products other than the Covered Products.

7. Nothing herein shall be construed as diminishing Dreambrands' 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:

Michael Freund
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Email: freund1@aol.com

FOR DREAMBRANDS, INC.:

Cecile Kehoe
Dreambrands, Inc.
7466 E. Monte Cristo Avenue
Suite 101
Scottsdale, AZ 85260
Email: ckehoe@dreamspan.com

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With a copy to:
Daniel W. Fox
K&L Gates LLP
4 Embarcadero Ctr, Suite 1200
San Francisco, CA 94111
Telephone: (415) 882-8200
Email: daniel.fox@klgates.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 Notice, the settlement, and this Agreement.
10. 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.
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 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

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Handwritten initials 'DF' and 'CK' in black ink, with 'DF' on the left and 'CK' on the right, separated by a horizontal line.

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acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

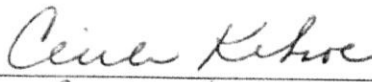
16. Any legal action to enforce this Agreement shall be brought in the county of Alameda of the State of California. ERC shall be entitled to recover its reasonable attorneys' fees and costs that are necessary and required to enforce the Agreement pursuant to California Code of Civil Procedure section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

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.

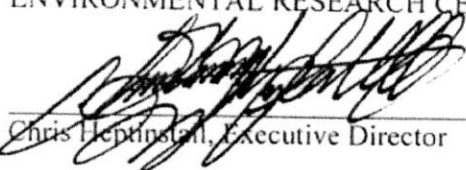
DATED: 10/26/22

DREAMBRANDS, INC.

By: 
Name: Cecile Kehoe
Title: CSO

DATED: 10/24/22

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 
Chris Heptinstall, Executive Director

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