

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) between Environmental Research Center, Inc. (“ERC”) and HMR Plan, LLC, Profile Products, LLC, Profile Development, LLC, Profile Plan, LLC, and Ten Oaks Management, LLC (collectively “HMR”) is effective on the date on which it is fully executed (“Effective Date”). ERC, and HMR 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 HMR on January 12, 2024, January 26, 2024, March 14, 2024, and March 21, 2024 (the “Notices”) with regard to the following products identified below (referred to as the “Covered Products”):

- **HMR 70 Plus Chocolate Shake and Pudding Mix (lead)**
- **HMR 800 Chocolate Shake Mix (lead)**
- **HMR Double Chocolate Chip Flavored Bar (lead)**
- **HMR Iced Oatmeal Flavored Bar (lead)**
- **HMR 120 Chocolate Shake Mix (lead)**
- **HMR 70 Plus Vanilla Shake and Pudding Mix (lead)**
- **HMR 800 Vanilla Shake Mix (lead)**
- **Profile Sanford Pumpkin Spice Shake (lead)**
- **Profile Sanford Cookies and Cream Shake (lead)**
- **Profile Sanford Chocolate Plant-Based Protein Shake Naturally Flavored & Sweetened (lead, cadmium)**
- **Profile Sanford Creamy Chocolate Shake Naturally & Artificially Flavored (lead)**
- **Profile Sanford Sweet Strawberry Shake Naturally & Artificially Flavored (lead)**
- **Profile Sanford Creamy Mocha Shake Naturally & Artificially Flavored (lead, mercury)**
- **Profile Sanford Vanilla Cake Batter Shake (lead)**
- **Profile Plan Strawberry Cheesecake Naturally Flavored Shake (lead)**
- **Profile Plan Salted Caramel Shake Naturally Flavored (lead)**
- **Profile Sanford Banana Cream Pie Shake (lead)**
- **Profile Sanford Chocolate Brownie Shake (lead)**
- **Profile Plan Mint Chip Naturally Flavored Shake (lead)**
- **Profile Plan Mocha Latte Naturally Flavored Shake (lead)**
- **Profile Dark Chocolate Marshmallow Protein Bar (lead)**
- **Profile Plan Chocolate Almond Protein Bar (lead)**
- **Profile Plan Chocolate Mint Protein Bar (lead)**
- **Profile Plan Chocolate S'mores Protein Bar (lead)**
- **Profile Sanford Rich Vanilla Shake Naturally & Artificially Flavored (lead)**

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2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding 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. 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 (a) 30 days after the Effective Date for Internet Warnings as described in Section 3.2, (b) 45 days after the Effective Date for Package Insert Warnings as described in Section 3.2, and (c) six months after the Effective Date for On-Label Warnings as described in Section 3.2 (the "Compliance Dates"), HMR 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 Covered Product which exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or a "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day and/or a "Daily Mercury Exposure Level" of more than 0.3 micrograms of mercury per day unless it meets the warning requirements under Section 3.2.

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 HMR 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.

3.1.3 For purposes of this Agreement, the "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of cadmium 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 cadmium exposure per day. If the label contains no

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recommended daily servings, then the number of recommended daily servings shall be one.

3.1.4 For purposes of this Agreement, the “Daily Mercury Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of mercury 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 mercury 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 HMR 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][and][cadmium][and][mercury], 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.

HMR 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 HMR has reason to believe that another Proposition 65 chemical is present at a level requiring the cancer warning. As identified in the brackets, the warning shall appropriately reflect whether there is lead, cadmium, mercury, or multiple chemicals present in each of the Covered Products, but if there is a chemical present at a level that requires a cancer warning, the chemical requiring use of the phrase “cancer and” in the Warning shall always be identified.

The Warning shall be securely affixed to or printed upon the label of any Covered Product (On-Label Warning), and it must be set off from other surrounding information and enclosed in a box. Prior to, but not after, the Compliance Date for On-Label Warnings, HMR shall provide the Warning via a leaflet or flier or other similar package insert, containing only the Warning and identification of the associated Covered Product(s) (a representation on a leaflet or flier or other similar package insert that all products in a package are associated with the Warning is compliant with this Agreement so long as there is a reasonable basis for a Warning on all products in the package), with each online order of Covered Product(s) shipped into California or sold at brick-and-mortar locations in California (Package Insert Warning). In addition, for any Covered Product sold over the internet, the Warning shall appear either (a) on the Covered Product’s primary product display page or (b) on the checkout page when a California delivery address is indicated for any purchase of the Covered Product (Internet Warning). If the Warning is provided 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. In no event shall any internet or website Warning be contained in or made through a link.

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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 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.

HMR must display the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, 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. Where a sign or label used to provide the Warning for a Covered Product includes consumer information about the Covered Product in a language other than English, the Warning must also be provided in that language in addition to English.

For purposes of this Agreement, the term “label” means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper.

If subsequently enacted changes to Proposition 65 or its implementing regulations permit the use of additional or different information on any warning specifically applicable to the Covered Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe Harbor Warning may be utilized in place of or in addition to, as applicable, the warning set forth in this Section.

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 and/or the “Daily Cadmium Exposure Level” is no greater than 4.1 micrograms of cadmium per day and/or the “Daily Mercury Exposure Level” is no greater than 0.3 micrograms of mercury per day as determined by the exposure methodology set forth in Section 3.1.2 and the quality control methodology described in Section 3.4, and that is not known by HMR to contain other chemicals that violate Proposition 65’s safe harbor thresholds.

3.4 Testing and Quality Control Methodology

3.4.1 Beginning within one year of the Effective Date, HMR shall arrange for lead, cadmium, and mercury testing of the Covered Products at least once a year for a minimum of three (3) consecutive years (the “Testing Period”) by arranging for testing of three (3) randomly selected samples of the Covered Products, in the form intended for sale to the end-user, which HMR 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 the Covered Products during each of the three (3) consecutive years, then the testing requirements of this Section will no longer be required as to the Covered Products. However, if during the Testing Period, HMR

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changes ingredient suppliers for the Covered Products and/or reformulates the Covered Products, HMR shall test that Covered Product annually for at least an additional two years immediately following the conclusion of the Testing Period.

3.4.2 For purposes of measuring the “Daily Lead Exposure Level” and/or the “Daily Cadmium Exposure Level” and/or the “Daily Mercury Exposure Level,” the highest lead and/or cadmium and/or mercury detection result of the three (3) randomly selected samples of the Covered Products 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 and limit of quantification, sensitivity, 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 0.005 mg/kg.

3.4.4 All testing 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 HMR’s ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture. In the event that ERC believes it has cause to issue a Prop 65 60-day notice letter (a “60-Day Letter”) to HMR at any time past the Effective Date, ERC shall provide written notice of the same (the “ERC Letter”) to HMR at the notice address provided in Section 8 herein. If the parties are not able to resolve such dispute within 30 days of the date that ERC issued the ERC Letter to HMR, then ERC may issue a 60-Day Letter in accordance with applicable law.

3.4.6 Within thirty (30) days of ERC’s written request, HMR shall deliver lab reports obtained pursuant to Section 3.4, and related documentation, to ERC. HMR shall retain all such lab reports and related documentation for a period of three years from the date of each test.

3.5 Nothing in Section 3 of this Agreement shall prevent or preclude ERC from obtaining and relying upon its own testing for purposes of enforcement, so long as such testing meets the requirements of Sections 3.4.3 and 3.4.4.

4. HMR shall make a total payment of Fifty Thousand Dollars \$50,000 (“Total Settlement Amount”) by wire transfer to ERC’s account within 15 days of the Effective Date (“Due Date”), on the condition that ERC will provide HMR with ERC’s payment instructions and W-9. The Total Settlement Amount shall be allocated as follows:

a. \$5,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$3,750.00) of the civil penalty to the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe Drinking Water

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and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c). ERC will retain the remaining 25% (\$1,250.00) of the civil penalty.

b. \$8,506.25 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to HMR's attention and negotiating a settlement.

c. \$36,493.75 shall be distributed to ERC for its in-house legal fees.

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

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 HMR and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of HMR), distributors, wholesalers, retailers, Sanford Frontiers, and Weight Loss, Inc. (f/k/a HMR Weight Management Services Corp.), 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, only on behalf of itself and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, and divisions (the "ERC Parties"), 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 (the "Claims") 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 and/or mercury (the "Prop 65 Claims") up to and including the applicable Compliance Dates. ERC and HMR further release any Claims that one Party may have against the other Party from the beginning of time through the applicable Compliance Dates, whether or not related to the Prop 65 Claims. As of the Effective Date, ERC is not aware of any potential or actual Prop 65 Claims against HMR other than for the Covered Products disclosed herein.

6.3 ERC, on behalf of itself only, and HMR on its own behalf only, further waive

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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 applicable Compliance Dates, 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 Notices, and relating to the Covered Products, will develop or be discovered. ERC, on behalf of itself only, and HMR, on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the applicable Compliance Dates, including all rights of action therefore. ERC and HMR 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 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 HMR, 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 and/or cadmium and/or mercury in the Covered Products as set forth in the Notices.

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 HMR's products other than the Covered Products.

7. Nothing herein shall be construed as diminishing HMR's 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
Ph: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

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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 HMR PLAN, LLC; PROFILE PRODUCTS, LLC;
PROFILE DEVELOPMENT, LLC; and PROFILE PLAN, LLC:**

Ryan Niparts, CEO
P.O. Box 89128
Sioux Falls, SD 57109
Ryan.niparts@profileplan.com

With a copy to:
Gerrod Bede
General Counsel
Ph: (614) 477-0826
Email: gerrod.bede@profileplan.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 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.

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

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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 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. The court shall have the authority to award reasonable attorneys' fees and costs 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: 24/05/24

HMR PLAN, LLC

By: Ryan Niparts
Ryan Niparts (May 24, 2024 10:24 EDT)

Name: Ryan Niparts

Title: CEO

DATED: 24/05/24

PROFILE PRODUCTS, LLC

By: Ryan Niparts
Ryan Niparts (May 24, 2024 10:25 EDT)

Name: Ryan Niparts

Title: CEO

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DATED: 24/05/24

PROFILE DEVELOPMENT, LLC

By: Ryan Niparts
Ryan Niparts (May 24, 2024 10:24 EDT)
Name: Ryan Niparts
Title: CEO

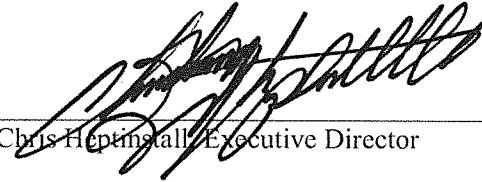
DATED: 24/05/24

PROFILE PLAN, LLC

By: Ryan Niparts
Ryan Niparts (May 24, 2024 10:24 EDT)
Name: Ryan Niparts
Title: CEO

DATED: 5/24/24

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 
Chris Heptinstall, Executive Director

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