

SETTLEMENT AGREEMENT AND RELEASE

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1. INTRODUCTION

1.1 This Settlement Agreement (this "Agreement") is entered into by and between Environmental Research Center ("ERC") as a private enforcer and Konsyl.com, Inc. and Konsyl Pharmaceuticals, Inc. (jointly, "KONSYL"). ERC and KONSYL are hereinafter sometimes referred to individually as a "Party" or collectively as the "Parties."

1.2 ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

1.3 Konsyl.com, Inc. and Konsyl Pharmaceuticals, Inc. are each a Delaware corporation, operating out of Maryland. Konsyl Pharmaceuticals, Inc. is qualified to do business in the State of California. At all times relevant to this action, Konsyl Pharmaceuticals, Inc. has employed ten or more persons and is a "person in the course of doing business" within the meaning of Proposition 65.

1.4 On October 21, 2011 and on March 9, 2012, pursuant to California Health and Safety Code § 25249.7(d)(1), ERC served Notices of Violations of Proposition 65 ("Notices of Violations") on the California Attorney General, other public enforcers, and KONSYL. The Notices of Violations contain allegations that KONSYL, without giving a required clear and reasonable warning, has exposed and continues to expose individuals in California to lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, by manufacturing, marketing, distributing and/or selling the following eleven (11) products:

- 1. Konsyl Pharmaceuticals, Inc., Konsyl 100% Natural Psyllium Fiber
- 2. Konsyl Pharmaceuticals, Inc., Konsyl Senna Prompt
- 3. Konsyl Pharmaceuticals, Inc., Daily Therapy Fiber Caplets Laxative
- 4. Konsyl Pharmaceuticals, Inc., Nouristor 4 Week 4 Step Natural Colon Cleanse 1 Purify*
- 5. Konsyl Pharmaceuticals, Inc., Nouristor 4 Week 4 Step Natural Colon Cleanse 2 Cleanse*

- 1 6. Konsyl Pharmaceuticals, Inc., Nouristor 4 Week 4 Step Natural Colon Cleanse 4
- 2 Nourish*
- 3 7. Konsyl Pharmaceuticals, Inc., Psyllium Fiber Naturally Sweetened Orange Flavor
- 4 8. Konsyl Pharmaceuticals, Inc., Psyllium Fiber Sugar Free Orange Flavor
- 5 9. Konsyl Pharmaceuticals, Inc., Psyllium Fiber Naturally Sweetened
- 6 10. Konsyl Pharmaceuticals, Inc., Psyllium Fiber Original Formula
- 7 11. Konsyl Pharmaceuticals, Inc., Psyllium Fiber Easy Mix Formula

8 *Product is 1 of 4 products found in the Four-Step Nouristor Program.

9 These eleven (11) products are hereinafter referred to collectively as the "Covered Products." No
10 public enforcer has prosecuted the allegations set forth in the Notices.

11 1.5 The Parties enter into this Agreement in order to settle disputed claims between
12 them and to avoid prolonged and costly litigation.

13 1.6 Nothing in this Agreement, or compliance with this Agreement, shall constitute or
14 be construed as an admission by the Parties of any fact, issue of law, or violation of law, at any
15 time, for any purpose. Nothing in this Agreement shall be construed as giving rise to any
16 presumption or inference of admission or concession or waiver of a defense by KONSYL as to
17 any fault, wrongdoing or liability whatsoever, including, but not limited to, any alleged violation
18 of Proposition 65.

19 1.7 Except as expressly provided herein, nothing in this Agreement shall prejudice,
20 waive or impair any right, remedy or defense that the Parties may have in any legal proceeding.
21 This paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties
22 of any Party to this Agreement.

23 1.8 The "Effective Date" of this Agreement shall be the date on which this
24 Agreement is fully executed.

25 1.9 The only products covered by this Agreement are the Covered Products, and the
26 only chemical covered by this Agreement is the chemical lead as related to the Covered
27 Products. No provision of this Agreement shall apply to KONSYL's operations outside of the
28 State of California unless, and only to the extent that, such operations result in shipment or sale
29 of Covered Products into California.

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of Covered Product**

3 Beginning on January 1, 2014, KONSYL shall not manufacture for sale in California,
4 distribute into California, sell to any consumer located in California, or supply to distributors or
5 retailers in California, any Covered Product for which the maximum daily dose recommended on
6 the label contains more than 0.5 micrograms (mcg) of lead, unless each individual product (in the
7 form intended for sale to the end user) bears the warning statement specified in Section 2.2
8 below on its individual unit label or unit packaging. The term "distribute into California" means
9 to ship any of the Covered Products into California for sale in California or to sell or provide any
10 of the Covered Products to any person or entity, wherever located, that KONSYL knows intends
11 to or will ship any of the Covered Products into or sell any of the Covered Products in California.

11 **2.2 Clear and Reasonable Warnings**

12 (a) If the daily lead exposure level is greater than 0.5 micrograms (mcg) for any lot of
13 the Covered Products, the following warning shall be provided:

14
15 **WARNING: This product contains lead, a chemical known to**
16 **the State of California to cause [cancer,] birth defects and other**
17 **reproductive harm.**

18 (b) The term "cancer" shall be included only if the maximum dose recommended on
19 the label contains a daily lead exposure level greater than 15 micrograms (mcg) for any lot of the
20 Covered Products.

21 (c) The warning shall be prominently and securely affixed to or printed upon the
22 "label" (as that term is defined in Section 25602 of Title 27(d) of the California Code of
23 Regulations), cap, or packaging of the Covered Product. The warning shall be displayed with
24 such conspicuousness, as compared with other words, statements, or designs on the label, cap, or
25 package, so as to render it likely to be read and understood by an ordinary individual under
26 customary conditions of purchase or use. If the warning is displayed on the product label, the
27 warning shall be at least the same size as the largest of any other health or safety warnings on the
28 product and the word "WARNING" shall be in all capital letters and in bold print. If the
warning is affixed to the product with a sticker, KONSYL must use a permanent adhesive. No

1 other statements relating to Proposition 65 or lead may accompany the warning.

2 (d) Nothing in this Settlement Agreement shall be construed to require Konsyl to
3 continue to provide a warning for Covered Products hereunder if Konsyl modifies or
4 reformulates the Covered Products so the amount of lead contained in the Covered Products is
5 below the threshold required for a warning under Proposition 65. Konsyl shall provide ERC with
6 a minimum of thirty (30) days notice prior to discontinuation of a warning for Covered Products
7 pursuant to this Section.

8 **2.3 Testing**

9 (a) On and after the Effective Date, if the formula of any Covered Product is altered
10 by either the inclusion of a new ingredient or an increase in the percentage of an existing
11 ingredient, or if any ingredient in a Covered Product is sourced from a different supplier,
12 KONSYL shall have three (3) randomly selected samples of that Covered Product (in the form
13 intended for distribution or sale to an end-user in California) tested according to the requirements
14 of this Section to determine whether a warning is required. For purposes of determining which
15 warning, if any, is required under Section 2.2, the highest lead detection result of the randomly
16 selected samples of the Covered Products will be controlling.

17 (b) All testing is to be performed by a laboratory certified by the California
18 Environmental Laboratory Accreditation Program or a laboratory that is registered with the
19 United States Food & Drug Administration. Testing under this section shall be performed using
20 Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) or any other testing method agreed
upon in writing by the Parties.

21 (c) If testing is required pursuant to Section 2.3(a) and the result requires a change in
22 the warning presently in use and approved by both Parties at the time of this writing for a
23 product, KONSYL shall forward to ERC the copies of all test results and laboratory report
24 documentation relating to the testing for lead content of each of the lots of Covered Products
25 within twenty (20) working days after receipt by KONSYL of the test results.

26 (d) For purposes of this Agreement, daily lead exposure levels shall be measured in
27 micrograms and shall be calculated using the following formula: micrograms of lead per gram of
28 product (lead content found using the above described testing), multiplied by grams of product

1 per serving of the product (using the maximum serving size appearing on the product label),
2 multiplied by servings of the product per day (using the largest number of servings in a
3 recommended dosage appearing on the product label), equals micrograms of lead exposure per
4 day.

5 (e) Nothing in this Agreement shall limit KONSYL's ability to conduct, or require
6 that others conduct, additional testing of the Covered Products including the raw materials used
7 in their manufacture.

8 (f) The testing and sampling methodology set forth above is a result of negotiation
9 and compromise, and is accepted by the Parties for the purposes of settling, compromising, and
10 resolving the issues in this matter, including future compliance with this Agreement, and shall
11 not be used for any purpose or in any other matter, except for the purposes of determining future
12 compliance with this Agreement.

12 2.4 Additional Compliance Measures

13 (a) KONSYL shall continue to incorporate a provision requiring its distributors and
14 retailers to comply with all applicable legal requirements, including state and local laws, in the
15 company's existing Distributor and Retailer Agreements. KONSYL agrees that all future
16 agreements with distributors and retailers shall specifically require compliance with California
17 Proposition 65.

18 (b) For distributors and retailers ordering from KONSYL's website, KONSYL will
19 expand the Terms & Conditions section to include information specific to Proposition 65. In the
20 website warning, KONSYL shall identify each Covered Product that requires a Proposition 65
21 warning for sales in California.

22 (c) If a warning is required for any of the Covered Products sold by KONSYL to its
23 distributors and retailers without a warning, KONSYL shall provide Proposition 65 warning
24 stickers to KONSYL's distributors and retailers, upon such request made by a distributor or
25 retailer.

26 2.5 Products in the Stream of Commerce

27 The injunctive relief set forth in Section 2 shall not apply to any of the Covered Products
28 that KONSYL put into the stream of commerce before January 1, 2014. Within 10 days of

1 January 1, 2014, KONSYL shall provide ERC with the last lot number and expiration date for
2 each of the Covered Products put into the stream of commerce as of January 1, 2014.

3 **2.6 Impact of Statutory and/or Regulatory Changes**

4 Should there be an amendment to Proposition 65 or should OEHHA promulgate
5 regulations that establish a Maximum Allowable Dose Level that is more or less stringent than
6 0.5 micrograms per day, this Settlement Agreement shall be deemed modified on the date the
7 amendment becomes final or the regulations become effective to incorporate that new standard
8 into this Section 2.

9 **3. SETTLEMENT PAYMENT**

10 **3.1 Total Payment**

11 In full and final satisfaction of civil penalties, payment in lieu of further civil penalties,
12 ERC's expenses and costs of litigation, and ERC's attorney fees, KONSYL shall, within 5
13 business days after the Effective Date, issue a single check in the amount of \$110,000 ("Total
14 Settlement Amount"), made payable to "Environmental Research Center – ERC Escrow
15 Account", and send the check by first-class registered or certified mail, or overnight delivery,
16 directly to ERC at the following address:

17 Environmental Research Center
18 3111 Camino Del Rio North, Suite 400
San Diego, CA 92108

19 Sections 3.2-3.5 below describe the agreed partition of the Total Settlement Amount.

20 **3.2 Civil Penalty**

21 As a portion of the Total Settlement Amount, \$18,500 shall be considered a civil penalty
22 pursuant to California Health and Safety Code § 25249.7(b)(1). ERC shall remit 75% (\$13,875)
23 of the civil penalties to the Office of Environmental Health Hazard Assessment ("OEHHA") for
24 deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California
25 Health and Safety Code § 25249.12(c), and a copy of the transmittal letter will be sent to
26 KONSYL's counsel. ERC will retain the remaining 25% (\$4,625) of the civil penalty.

27 **3.3 Payment in Lieu of Further Civil Penalties**

28 As a portion of the Total Settlement Amount, \$55,754 shall be considered a payment to
ERC in lieu of further civil penalties for activities such as (1) funding the purchasing and testing

1 of consumer products that may contain Proposition 65 listed chemicals; and (2) funding the
2 continued day-to-day business of enforcement of Proposition 65 matters that address
3 contaminated ingestible products similar to the subject matter of this action.

4 **3.4 Reimbursement of Expenses and Costs**

5 As a portion of the Total Settlement Amount, \$14,246 shall be considered a
6 reimbursement to ERC for its reasonable expenditures associated with the enforcement of
7 Proposition 65 and other expenses and costs incurred as a result of preparing and bringing this
8 matter to KONSYL's attention, and negotiating a settlement in the public interest.

9 **3.5 Attorney Fees**

10 As a portion of the Total Settlement Amount, \$21,500 shall be considered a
11 reimbursement to ERC for its attorney's fees.

12 **4. COSTS AND FEES**

13 Except as expressly set forth herein in Section 3, each Party shall bear its own attorneys'
14 fees, costs, and expenses in this action.

15 **5. Plaintiff's Release of Defendant; includes a "Downstream Release."**

16 **5.1 Release Terms**

17 ERC, acting on behalf of itself and acting in the public interest, permanently and fully
18 releases KONSYL, its parents, subsidiaries, affiliates (including those companies that are under
19 common ownership and/or common control), shareholders, directors, members, officers,
20 employees, and attorneys, and each entity to whom each of them directly or indirectly distributed
21 or sold the Covered Products, including, but not limited to distributors, wholesalers, retailers,
22 franchisees, and any other person or entity in the course of doing business who distributed,
23 marketed or sold the Covered Products (not including private label customers of KONSYL),
24 from all claims of any nature asserted in the Notices of Violations based on exposure to lead
25 from the Covered Products up through the Effective Date.

26 **5.2 Claims included in Release**

27 ERC, on its own behalf, has full knowledge of the contents of Section 1542 of the
28 Civil Code. ERC acknowledges that the claims released herein include unknown claims and
therefore ERC waives Section 1542 as to any such unknown claims. Section 1542 reads as

1 follows:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
3 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
4 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
5 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
6 OR HER SETTLEMENT WITH THE DEBTOR.

7 ERC, on its own behalf, acknowledges and understands the significance and consequences of
8 this specific waiver of Civil Code Section 1542.

9 5.3 Compliance with the terms of this Agreement constitutes compliance with
10 Proposition 65 with respect to exposures to lead from the Covered Products as set forth in the
11 Notices of Violations.

12 5.4 ERC on behalf of itself only, on the one hand, and KONSYL, on the other hand,
13 release and waive all claims they may have against each other and their respective officers,
14 directors, employees, agents, representatives and attorneys for any statements or actions made or
15 undertaken by them or their respective officers, directors, employees, agents, representatives and
16 attorneys in connection with the Notices of Violations.

17 5.5 Nothing in this release is intended to apply to any occupational or environmental
18 exposures arising under Proposition 65, nor shall it apply to any of KONSYL's products other
19 than the Covered Products.

20 5.6 Nothing herein shall be construed as diminishing KONSYL's continuing
21 obligations to comply with Proposition 65.

22 **6. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

23 6.1 After execution of this Agreement, ERC will submit a Report of Settlement to the
24 California Attorney General. In addition, ERC will provide to the California Attorney General
25 the fully signed copy of this Agreement. The Parties acknowledge and agree that the Parties
26 shall provide as much information as is requested by the California Attorney General, or any
27 other governmental agency, regarding this matter, its settlement, and this Agreement.

28 **7. MODIFICATION OF AGREEMENT**

1 This Agreement may be modified only upon written agreement of the Parties.

2 **8. ENFORCEMENT OF AGREEMENT; GOOD FAITH ATTEMPT TO**
3 **RESOLVE DISPUTES**

4 In the event a dispute arises with respect to any Party's compliance with the terms and/or
5 conditions of this Agreement, the Party seeking compliance of another Party shall make a good
6 faith attempt to resolve the dispute by conferring with the other Party in person, by telephone or
7 by written communication before seeking relief from a court. If the dispute is not resolved after
8 such an attempt, this Agreement may be enforced pursuant to Code of Civil Procedure § 664.4 or
9 any other valid provision of the law. The prevailing party in any such dispute brought to a court
10 for resolution shall be awarded all reasonable costs and attorney's fees. As used in the preceding
11 sentence, the term "prevailing party" means a party who is successful in obtaining relief more
12 favorable to it than the relief the other party was agreeable to providing during the Parties' good
13 faith attempt to resolve the dispute that is the subject of such an enforcement proceeding.

14 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

15 In the event that any of the provisions hereof are subsequently held by a court to be
16 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

17 **10. GOVERNING LAW**

18 This Agreement shall be deemed to have been entered into in the State of California, and
19 governed and interpreted by the laws of the State of California, regardless of the physical
20 locations of the individuals executing this Agreement at the time of execution.

21 **11. DRAFTING**

22 The terms of this Agreement have been reviewed by the respective legal counsel for the
23 Parties prior to its signing, and each Party has had an opportunity to fully discuss the terms and
24 conditions with its legal counsel. The Parties agree that, in any subsequent interpretation or
25 construction of this Agreement, no inference, assumption or presumption shall be drawn, and no
26 provision of this Agreement shall be construed against any Party, based on the fact that one of
27 the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of
28 this Agreement. It is conclusively presumed that all of the Parties participated equally in the

1 preparation and drafting of this Agreement.

2 **12. ENTIRE AGREEMENT**

3 This Agreement contains the sole and entire agreement and understanding of the Parties
4 with respect to the entire subject matter hereof, and supersedes and replaces any and all prior
5 agreements or understandings, written or oral, with regard to the matters set forth herein. No
6 other agreements or understandings not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the Parties.

8 **13. EXECUTION IN COUNTERPARTS**

9 This Agreement may be executed in counterparts, which taken together shall be deemed
10 to constitute one document. A facsimile or pdf signature shall be construed as valid as the
11 original signature.

12 **14. NOTICES**

13 All notices required by this Agreement to be given to any Party shall be sent by first-class
14 registered or certified mail, or overnight delivery, to the following:

15 **FOR ERC:**

16
17
18 Chris Heptinstall, Executive Director
19 Environmental Research Center
20 3111 Camino Del Rio North, Suite 400
21 San Diego, CA 92108

22 Karen A. Evans
23 Law Office of Karen A. Evans
24 4218 Biona Place
San Diego, CA 92116

25 **FOR KONSYL:**

26
27 Konsyl Pharmaceuticals, Inc.
28 C/O ICC Industries, Inc.
Legal Department

1 460 Park Avenue, 7th Floor
2 New York, NY 10022

3
4 Robert J. Basil
5 The Basil Law Group, P.C.
6 1270 Broadway,
7 Suite 305
8 New York, NY 10001

9 **15. AUTHORITY TO STIPULATE TO THIS AGREEMENT**

10 Each person signing this Agreement on behalf of a Party certifies that he or she is fully
11 authorized by that Party to stipulate to the terms and conditions of this Agreement on behalf of
12 that Party, to enter into and execute this Agreement on behalf of that Party, and to legally bind
13 that Party to this Agreement. Each person signing this Agreement on behalf of a Party represents
14 and warrants that he or she has read and understands this Agreement, and agrees to all of the
15 terms and conditions of this Agreement on behalf of that Party.

16 **IT IS SO STIPULATED:**

17 Dated: 10/31/13

ENVIRONMENTAL RESEARCH CENTER

18
19
20 By: 

Chris Hepfinball
Executive Director

21
22
23 Dated: 11/4/13

KONSYL PHARMACEUTICALS, INC.

24
25
26 By: 

Name: Anthony Cantafano
Title: Executive Vice President

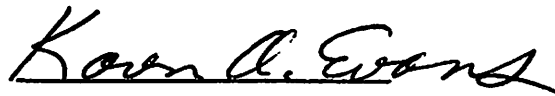
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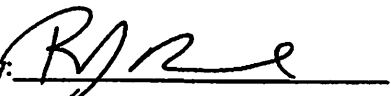
APPROVED AS TO FORM:

Dated: 11-8-13

LAW OFFICE OF KAREN A. EVANS

By: 
Karen A. Evans
Attorney for
ENVIRONMENTAL RESEARCH CENTER

Dated: 11/6/2013

By: 
Robert J. Basil
Attorney for
KONSYL PHARMACEUTICALS, INC.