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Attorney for Defendant
PurpleRock Bioschwartz OPCO, LLC, individually and
doing business as Bioschwartz

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

**CITIZENS OF CALIFORNIA SAFETY
CORP.**

Plaintiff,

vs.

**PURPLEROCK BIOSCHWARTZ OPCO,
LLC, individually and doing business as
BIOSCHWARTZ; and DOES 1-100
Defendants.**

CASE NO. 21VECV00605

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: May 3, 2021

Trial Date: None set

1. INTRODUCTION

1.1 On May 3, 2021, Plaintiff Citizens of California Safety Corp (“CCSC”), a California corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)

1 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
2 (“Proposition 65”), against PurpleRock Bioschwartz OPCO, LLC, individually and doing
3 business as Bioschwartz (“Bioschwartz”), and Does 1-100. In this action, CCSC alleges that
4 the following product manufactured, distributed, or sold by Bioschwartz contains lead, a
5 chemical listed under Proposition 65 as a reproductive toxin, and exposes consumers to lead at
6 a level requiring a Proposition 65 warning. This product (referred to hereinafter individually as
7 a “Covered Product”) is: Turmeric Curcumin Sleep Aid with Melatonin (Turmeric Curcumin
8 PM).

9 **1.2** CCSC and Bioschwartz are hereinafter referred to individually as a “Party” or
10 collectively as the “Parties.”

11 **1.3** CCSC is a California corporation dedicated to, among other causes, helping
12 safeguard the public from health hazards by reducing the use and misuse of hazardous and
13 toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging
14 corporate responsibility.

15 **1.4** For purposes of this Consent Judgment, the Parties agree that Bioschwartz is a
16 business entity that has employed ten or more persons at all times relevant to this action, and
17 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.
18 Bioschwartz manufactures, distributes, and/or sells the Covered Product.

19 **1.5** The Complaint is based on allegations contained in CCSC’s Notice of Violation
20 dated August 20, 2020 that was served on the California Attorney General, other public
21 enforcers, and Bioschwartz (“Notice”). A true and correct copy of the 60-Day Notice dated
22 August 20, 2020 is attached hereto as **Exhibit A** and is incorporated herein by reference. More
23 than 60 days have passed since the Notice was served on the Attorney General, public
24 enforcers, and Bioschwartz and no designated governmental entity has filed a complaint against
25 Bioschwartz with regard to the Covered Product or the alleged violations.

26 **1.6** CCSC’s Notice and Complaint allege that use of the Covered Product exposes
27 persons in California to lead without first providing clear and reasonable warnings in violation
28 of California Health and Safety Code section 25249.6. Bioschwartz denies all material

1 allegations contained in the Notice and Complaint. Nothing in the Consent Judgment shall be
2 construed as an admission by Bioschwartz of any fact, issue of law or violation of law, nor
3 shall compliance with the Consent Judgment constitute or be construed as an admission by
4 Bioschwartz of any fact, issue of law or violation of law, at any time, for any purpose.

5 **1.7** The Parties have entered into this Consent Judgment in order to settle,
6 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
7 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
8 be construed as an admission by any of the Parties or by any of their respective officers,
9 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates
10 under common ownership (full or partial), franchisees, licensees, customers, suppliers,
11 distributors, wholesalers, or retailers of any fact, issue of law, or violation of law.

12 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
13 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have,
14 individually or jointly, in any current or future legal proceeding unrelated to these proceedings.

15 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
16 a Judgment by this Court.

17 ///

18 **2. JURISDICTION AND VENUE**

19 For purposes of this Consent Judgment and any further court action that may become
20 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
21 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
22 over Bioschwartz as to the acts alleged in the Complaint, that venue is proper in Los Angeles
23 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
24 resolution of all claims up through and including the Effective Date which were or could have
25 been asserted in this action based on the facts alleged in the Notice and Complaint.

26 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

27 Commencing ninety (90) days after the Effective Date and continuing thereafter,
28 Bioschwartz shall only ship, distribute, sell or offer for sale in California, Reformulated

Product pursuant to Section 3.3 or Covered Product that is labeled with a clear and reasonable warning pursuant to Section 3.1. Bioschwartz shall have no obligation to label Covered Product that was shipped prior to the Effective Date.

3.1.1 As used in this Consent Judgment, 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 Bioschwartz knows or has reason to know will sell the Covered Product in California.

3.1.2 For purposes of this Consent Judgment, 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 Clear and Reasonable Warnings

If Bioschwartz 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 which is 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.

Bioschwartz shall use the phrase “cancer and” in the Warning if Bioschwartz has reason to believe that the the “Daily Lead Exposure Level” is greater than 15 micrograms of lead. As identified in the brackets, the warning shall identify at least one chemical present per endpoint (cancer or birth defects or other reproductive harm) in the Covered Product.

The Warning shall appear on the label of each Covered Product or on Bioschwartz’s checkout page on its website for California consumers identifying any Covered Product, or a link to the Warning, using the word “WARNING,” shall appear on the product display page prior to completing checkout on Bioschwartz’s website when a California delivery address is indicated

1 for any purchase of any Covered Product. An asterisk or other identifying method, such as text
2 accompanying the product, may be utilized to identify which product(s) on the checkout page are
3 subject to the Warning. The Warning may be used in conjunction with a more general warning
4 in the checkout procedures indicating that item(s) in the customer's order are subject to a
5 California Proposition 65 warning. If the Warning appears on the label of a Covered Product, the
6 Warning shall be securely affixed to or printed upon the label of the Covered Product and it must
7 be set off from other surrounding information and enclosed in a box. Given Bioschwartz' lack of
8 control over third-party websites, the online warning requirements expressed in this Section
9 apply only to Covered Product sold through Bioschwartz's website so long as Bioschwartz
10 complies with the requirements of 27 CCR 25600.2 (in effect on the date of entry of this Consent
11 Judgment).

12 Bioschwartz must display the above Warning with such conspicuousness, as compared
13 with other words, statements or designs on the label or container, or on its website, if applicable, to
14 render the Warning likely to be read and understood by an ordinary individual under customary
15 conditions of purchase or use of the product. If subsequently enacted changes to Proposition 65 or
16 its implementing regulations require the use of additional or different information on any warning,
17 the Parties agree that the new safe harbor warning may be utilized in place of the warnings set
18 forth in this Section.

19 **3.3 Reformulated Covered Product**

20 A Reformulated Covered Product is a Covered Product for which the "Daily Lead
21 Exposure Level" is no greater than 0.5 micrograms of lead per day.

22 **4. SETTLEMENT PAYMENT**

23 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
24 attorney's fees, and costs, Bioschwartz shall make, or have made on its behalf, a total payment
25 of \$12,000.00 ("Total Settlement Amount") to CCSC to be paid within five (5) days after the
26 Effective Date. The Total Settlement Amount shall be apportioned as follows: \$1,000.00 shall
27 be considered a civil penalty pursuant to California Health and Safety Code section
28 25249.7(b)(1). CCSC shall remit 75% (\$750.00) 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 section 25249.12(c). CCSC will retain the remaining 25% (\$250.00) of the civil penalty. CCSC’s counsel shall be responsible for remitting Bioschwartz’s penalty payment under this Consent Judgment to OEHHA

4.2 For all work performed as a result of investigating, bringing this matter to Bioschwartz’s attention and negotiating a settlement in the public interest through the mutual execution of this Consent Judgment and the Court’s approval of the same, but exclusive of fees and costs on appeal, if any, Bioschwartz shall reimburse CCSC and its counsel \$11,000.00. The Parties negotiated this resolution of the compensation due to CCSC and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5.

5. MODIFICATION OF CONSENT JUDGMENT

5.1 This Consent Judgment may be modified (i) by written stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by motion of either Party pursuant to and upon entry by the Court of a modified consent judgment.

5.2 In the event that Proposition 65 is repealed or preempted, then Bioschwartz shall have no further obligation pursuant to this Consent Judgment with respect to, and to the extent that the Covered Product is so affected.

6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT

6.1 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate this Consent Judgment.

6.2 If CCSC alleges that any Covered Product fails to qualify as a Reformulated Covered Product (for which CCSC alleges that no Warning has been provided), then CCSC shall inform Bioschwartz in a reasonably prompt manner of its test results, including information sufficient to permit Bioschwartz to identify the Covered Product at issue. Bioschwartz shall, within thirty (30) days following such notice, provide CCSC with testing

information, from an independent third-party laboratory, demonstrating Bioschwartz's compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to CCSC taking any further legal action.

7. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, affiliates under common ownership (full or partial), divisions, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application to any Covered Product which is distributed or sold exclusively outside the State of California and which is not used by California consumers.

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

8.1 This Consent Judgment is a full, final, and binding resolution between CCSC, on behalf of itself and in the public interest, and Bioschwartz and its respective officers, directors, shareholders, owners, employees, agents, parent companies, subsidiaries, divisions, affiliated entities under common (full or partial) ownership, attorneys, suppliers, franchisees, licensees, customers, 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"). CCSC, on behalf of itself and in the public interest, 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 Product, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Product regarding lead up to and including the Effective Date.

8.2 CCSC on its own behalf only, and Bioschwartz on its own behalf only, further waive and release any and all claims they may have against each other and their respective officers, directors, shareholders, owners, employees, agents, parents, subsidiaries, divisions, affiliated entities under common (full or partial) ownership, and attorneys for all

actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice and Complaint up through and including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

8.3 It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notices and Complaint, and relating to the Covered Product, will develop or be discovered. CCSC on behalf of itself only, and Bioschwartz on behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. CCSC and Bioschwartz acknowledge that the claims released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

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

8.4 Compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead in the Covered Product as set forth in the Notice and Complaint.

8.5 Nothing in this Consent Judgment is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of Bioschwartz's products other than the Covered Product.

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

In the event that any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

1 **10. GOVERNING LAW**

2 The terms and conditions of this Consent Judgment shall be governed by and construed in
3 accordance with the laws of the State of California.

4 **11. PROVISION OF NOTICE**

5 All notices required to be given to either Party to this Consent Judgment by the other shall
6 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
7 email may also be sent.

8 ///

9 **FOR CITIZENS OF CALIFORNIA SAFETY CORP:**

10 California Corporate Agents, Inc.
11 Alex Patel
12 16830 Ventura Blvd Ste 360
13 Encino, CA 91436

14 With a copy to:

15 Shant Vayvayan SBN 320135
16 Brown Bear Law, APC
17 P.O. Box 573423
18 Tarzana, CA 91357
19 Telephone: 818-457-1543
20 Facsimile: 323-5767196
21 Email: shant@brownbearlaw.com

22 **PURPLEROCK BIOSCHWARTZ OPCO, LLC, individually and doing business as**
23 **BIOSCHWARTZ**

24 PurpleRock BioSchwartz Opco LLC
25 Att: Tom Mooy, CEO
26 11825 High Tech Ave, Suite 200,
27 Orlando, FL, 32801

28 With a copy to:

Abhishek K. Gurnani
Amin Talati Wasserman LLP
100 S. Wacker Drive, Suite 2000
Chicago, IL 60606
Telephone: (312) 327-3325
Email: abhishek@amintalati.com

1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, CCSC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

15 The terms of this Consent Judgment have been reviewed by the respective counsel for each
16 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
17 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
18 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
19 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
20 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
21 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
22 equally in the preparation and drafting of this Consent Judgment.

23 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

24 If a dispute arises with respect to either Party's compliance with the terms of this Consent
25 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
26 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
27 filed in the absence of such a good faith attempt to resolve the dispute beforehand.
28

1 **16. ENTIRE AGREEMENT, AUTHORIZATION**

2 **16.1** This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter herein, and any and all
4 prior discussions, negotiations, commitments, and understandings related hereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
7 herein, shall be deemed to exist or to bind any Party.

8 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

10 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
11 **CONSENT JUDGMENT**

12 This Consent Judgment has come before the Court upon the request of the Parties. The
13 Parties request the Court to fully review this Consent Judgment and, being fully informed
14 regarding the matters which are the subject of this action, to:


15 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
16 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
17 been diligently prosecuted, and that the public interest is served by such settlement; and

18 (2) Make the findings pursuant to California Health and Safety Code section
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

20 **IT IS SO STIPULATED:**

21 Dated: May 5, 2021

CITIZENS OF CALIFORNIA SAFETY
CORP

22 
23 By: _____
24 By: Melody Rahimi

25 Its: Director

1 Dated: 5/5/2021, 2021

PURPLEROCK BIOSCHWARTZ OPCO,
LLC individually and doing business as
BIOSCHWARTZ


Thomas Mooy

By: Tom Mooy
Its: CEO

7 **APPROVED AS TO FORM:**

8 Dated: May 5, 2021

BROWN BEAR LAW, APC

By: 

Shant Vayvayan
Attorneys for Plaintiff Citizens of
California Safety Corp.

13 Dated: May 5, 2021

AMIN TALATI WASSERMAN LLP

By: 

Jennifer Adams
Attorney for Defendant Purplerock
Bioschwartz OPCO, LLC, individually
and doing business as Bioschwartz

19 **ORDER AND JUDGMENT**

20 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
21 approved and Judgment is hereby entered according to its terms.

22 IT IS SO ORDERED, ADJUDGED AND DECREED.

25 Dated: _____, 2021

Judge of the Superior Court