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12 Environmental Health Advocates, Inc.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 ENVIRONMENTAL HEALTH
16 ADVOCATES, INC.,

17 Plaintiff,

18 v.

19 STEEL SUPPLEMENTS, INC., a Florida
20 corporation; AMAZON.COM, INC., a
21 Delaware Corporation; and DOES 1 through
22 100, inclusive,

23 Defendants.

Case No. 21CV002809

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 (“EHA” or “Plaintiff”) and Steel Supplements, Inc. (“Defendant” or “Steel”) with EHA and Steel each
5 individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is a corporation organized in the state of California, acting in the interest of the general
8 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 At various times during the pertinent statute of limitations Steel has employed ten or more
12 individuals and thus, was a “person in the course of doing business” for purposes of the Safe Drinking
13 Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq.
14 (“Proposition 65”).

15 **1.4 General Allegations**

16 EHA alleges that Steel manufactures, imports, sells, and distributes for sale Steel Supplements
17 VEG-PRO Vegan Protein Powder, Hot Cocoa that contains lead and cadmium. EHA further alleges
18 that Steel does so without providing a sufficient health hazard warning as required by Proposition 65
19 and related Regulations. Pursuant to Proposition 65, lead and cadmium are listed as chemicals known
20 to cause cancer, birth defects and other reproductive harm.

21 **1.5 Notices of Violation**

22 On or around July 14, 2021, EHA served Defendant Steel, Amazon.com, Inc., the California
23 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of
24 Violation of Proposition 65 (“Notice”). The Notice alleged that Steel had violated Proposition 65 by
25 failing to sufficiently warn consumers in California of the health hazards associated with exposures to
26 lead and cadmium contained in Steel Supplements VEG-PRO Vegan Protein Powder, Hot Cocoa.

27 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
28 violations alleged in the Notice.

1 **1.6 Product Description**

2 The products covered by this Consent Judgment are protein powder products including but not
3 limited to Steel Supplements VEG-PRO Vegan Protein Powder, Hot Cocoa manufactured or processed
4 by Steel that allegedly contain lead and/or cadmium and are imported, sold, shipped, delivered, or
5 distributed for sale to consumers in California by Releasees (as defined in section 4.1) (“Covered
6 Products”).

7 **1.7 State of the Pleadings**

8 On or around November 18, 2021, EHA filed a Complaint against Steel for alleged violations
9 of Proposition 65. On or about February 18, 2022, Steel filed its Answer to the Complaint.

10 **1.8 No Admission**

11 Steel denies the material factual and legal allegations of the Notice and Complaint and
12 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
13 California, including Covered Products, have been, and are, in compliance with all laws. Nothing in
14 this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue
15 of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
16 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
17 not, however, diminish or otherwise affect Steel’s obligations, responsibilities, and duties under this
18 Consent Judgment.

19 **1.9 Jurisdiction**

20 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
21 Court has jurisdiction over Steel as to the allegations in the Complaint, that venue is proper in the
22 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
23 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
26 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

1 **2. INJUNCTIVE RELIEF**


2 **2.1 Reformulation of the Covered Products**

3 Beginning thirty (30) days after the Effective Date, Steel shall be permanently enjoined from
4 manufacturing, distributing, or directly selling in the State of California, any Covered Product that
5 exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead or a “Daily
6 Cadmium Exposure Level” of more than 4.1 micrograms of cadmium based on a single serving of
7 Covered Products per day, unless such Covered Products comply with the warning requirements of
8 Section 2.2. The “Daily Lead Exposure Level” and “Daily Cadmium Exposure Level” shall be
9 calculated by multiplying the recommended serving size in Covered Products by the concentration of
10 lead and cadmium in Covered Products. As used in this Section 2, “distributed for sale in California”
11 means to directly ship Covered Products into California or to sell Covered Products to a distributor
12 Steel knows will sell Covered Products in California.


13 **2.2 Clear and Reasonable Warnings**

14 For Covered Products that contain lead in a concentration exceeding the “Daily Lead Exposure
15 Level” of .5 micrograms set forth in section 2.1 above, or that contain cadmium in a concentration
16 exceeding the “Daily Cadmium Exposure Level” of 4.1 micrograms set forth in section 2.1 above, and
17 which are manufactured and packaged for distribution for authorized sale or use in California on or
18 after the Effective Date, Steel shall provide one of the following warning statements.

19 **Option 1:**

20  **WARNING** : Consuming this product can expose you to
21 chemicals including lead or cadmium, which is known to the
22 State of California to cause cancer and birth defects or other
reproductive harm. For more information go to
www.P65warnings.ca.gov/food

23 **Option 2:**

24  **WARNING** : Cancer and Reproductive Harm –
25 www.P65Warnings.ca.gov/food

26 This warning statement shall be prominently displayed on the Covered Products, on the packing
27 of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with
28 such conspicuousness, as compared with other words, statements, or designs as to render it likely to be

1 read and understood by an ordinary individual prior to sale. A compliant warning shall also be posted
2 on any websites under the exclusive control of Steel where Covered Products are sold into California.
3 Steel shall instruct any third-party website to which it sells its Covered Products to include the same
4 warning as a condition of selling the Covered Products.

5 For any Covered Products sold over the internet, the warning shall be provided to California
6 consumers in a manner that complies with 27 C.C.R. § 25602(b). Specifically, for internet purchases,
7 a warning must also be provided by including either the warning or a clearly marked hyperlink using
8 the word "**WARNING**" on the product display page, or by otherwise prominently displaying the
9 warning to the purchaser prior to completing the purchase.

10 **2.3 Sell-Through Period**

11 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
12 manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to this
13 Consent Judgment, without regard to when such Covered Products were, or are in the future, distributed
14 or sold to customers. As a result, the obligation of Steel, or any Releasees (if applicable), do not apply
15 to these Covered Products manufactured on or prior to the Effective Date.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Settlement Amount**

18 Steel shall pay \$50,000 in settlement and total satisfaction of all the claims referred to in the
19 Notice, the Complaint, and this Consent Judgment. This includes civil penalties in the amount of \$5,000
20 pursuant to Health and Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of
21 \$45,000 pursuant to Code of Civil Procedure section 1021.5.

22 **3.2 Civil Penalty**

23 The portion of the settlement attributable to civil penalties shall be allocated according to Health
24 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
25 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
26 twenty-five percent (25%) of the penalty paid to EHA individually.
27
28

1 All payments owed to EHA shall be delivered to the following address:

2 Environmental Health Advocates
3 225 Broadway, Suite 2100
4 San Diego, CA 92101

5 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
(Memo Line "Prop 65 Penalties") at the following addresses:

6 For United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 P.O. Box 4010
11 Sacramento, CA 95812-4010

12 For Federal Express 2-Day Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

18 Steel agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
19 simultaneous with its penalty payments to EHA.

20 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.
21 Relevant information is set out below:

- 22 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- 23 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

24 **3.3 Attorney's Fees and Costs**

25 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's
26 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not
27 limited to investigating potential violations, bringing this matter to Steel's attention, as well as litigating
28 and negotiating a settlement in the public interest.

Steel shall provide their payment to EHA's Counsel in one check for \$45,000 payable to
"Entorno Law, LLP". Payment may be by physical check or by electronic means, including wire
transfers, at Steel's discretion.

1 Physical checks may be sent to the following address:

2 Noam Glick
3 Entorno Law, LLP
4 225 Broadway, Suite 2100
5 San Diego, CA 92101

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 EHA's Public Release of Proposition 65 Claims**

8 Plaintiff acting on its own behalf and in the public interest releases Steel, and its parents,
9 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,
10 employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant
11 Entities"), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
12 Products including but not limited to downstream distributors, wholesalers, customers, and retailers
13 (including but not limited to Amazon.com, franchisees, franchisors, cooperative members, suppliers,
14 licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents, principals,
15 employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns
16 (collectively referred to as the "Releasees") from all claims for violations of Proposition 65 up through
17 the Effective Date based on exposure to lead and/or cadmium from Covered Products as set forth in the
18 Notice(s). Compliance with the terms of this Consent Judgment constitutes compliance with
19 Proposition 65 with respect to exposures to lead and/or cadmium from Covered Products as set forth in
20 the Notice(s). This Consent Judgment is a full, final, and binding resolution of all claims under
21 Proposition 65 that were or could have been asserted against Steel and/or Releasees for failure to
22 provide warnings required under Proposition 65 for alleged exposure to lead and/or cadmium through
23 reasonably foreseeable use of the Covered Products. This release does not extend to any third-party
24 retailers selling the product on a website who, after receiving instruction from Steel to include a warning
25 as set forth above in section 2.2, do not include such a warning.

26 **4.2 EHA's Individual Release of Claims**

27 EHA, in its individual capacity, also provides a release to Steel and/or Releasees, which shall
28 be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every nature,

1 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
2 actual exposures to lead and/or cadmium in Covered Products manufactured, imported, sold, or
3 distributed by Steel before the Effective Date.

4 **4.3 Steel's Release of EHA**

5 Steel on its own behalf, and on behalf of Releasees as well as its past and current agents,
6 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
7 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
8 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
9 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved by the Court and shall be null and
12 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
13 by such additional time as the Parties may agree to in writing.

14 **6. SEVERABILITY**

15 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
16 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the state of California as
19 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
20 rendered inapplicable for reasons, including but not limited to changes in the law, then Steel may
21 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations
22 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so
23 affected.

24 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
25 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
26 requirements of Proposition 65; or if lead and cadmium cases are permanently enjoined by a court of
27 competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden
28 on First Amendment rights with respect to lead and cadmium in Covered Products or Covered Products

1 substantially similar to Covered Products, then Steel shall be relieved of its obligation to comply with
2 Section 2 herein.

3 **8. ENFORCEMENT**

4 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
5 to its reasonable attorneys' fees and costs.

6 **9. NOTICE**

7 Unless otherwise specified herein, all correspondence and notice required by this Consent
8 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
9 mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

10 If to Steel:

11 Marial Covarrubias
12 Quinn Covarrubias
13 2220 Douglas Boulevard, Suite 240
14 Roseville, CA 95661

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101

14 Any Party may, from time to time, specify in writing to the other, a change of address to which
15 notices and other communications shall be sent.

16 **10. COUNTERPARTS; DIGITAL SIGNATURES**

17 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
18 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
19 same document.

20 **11. POST EXECUTION ACTIVITIES**

21 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
22 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
23 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
24 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
25 employ their best efforts, including those of their counsel, to support the entry of this agreement as
26 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this
27 Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to
28

1 any objection that any third-party may make, and appearing at the hearing before the Court if so
2 requested.

3 **12. MODIFICATION**

4 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
5 a modified Consent Judgment thereon by the Court; or (ii) a successful motion or application of any
6 Party, and the entry of a modified consent judgment thereon by the Court.

7 **13. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
9 have read, understand, and agree to all of the terms and conditions contained herein.

10 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

15 **15. ENTIRE AGREEMENT**

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

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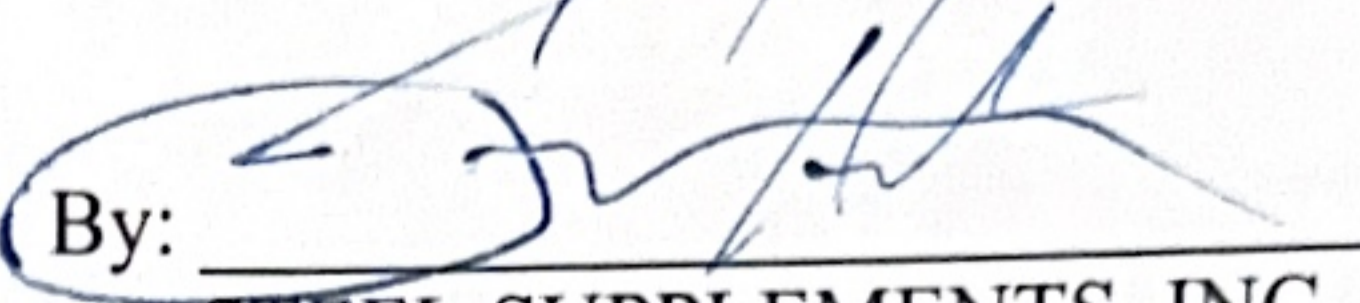
AGREED TO:

Date: 12/09/2022

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:

Date: 12/9/22

By: 
STEEL SUPPLEMENTS, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT