

SETTLEMENT AGREEMENT AND RELEASE

1. INTRODUCTION

1.1 Parties

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Alani Nutrition, LLC (“Alani Nutrition”), on the other hand, with EHA and Alani Nutrition each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer Product. Alani Nutrition employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that Alani Nutrition manufactures, sells, and distributes for sale in California, super greens powder that contains Lead and that it does so without first providing the health hazard warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, Alani Nu Super Greens Powder (“the Product”), that EHA alleges contains Lead and that is manufactured, sold or distributed for sale in California by Alani Nutrition.

1.4 Notice of Violation and Complaint

On September 13, 2021, EHA served Alani Nutrition, Amazon.com, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Alani Nutrition and others violated Proposition 65 when they failed to warn its customers and consumers in California of the health risks associated with exposures to Lead from the Product.

On January 18, 2022, EHA filed a Complaint against Alani Nutrition in Superior Court of

the State of California, in and for the County of Alameda, Case No. 22CV005604 (the “Action”).

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Alani Nutrition denies the material, factual, and legal allegations in the Notice and maintains that all of the Product it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Alani Nutrition of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Alani Nutrition of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Alani Nutrition. This Section shall not, however, diminish or otherwise affect Alani Nutrition’s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean fourteen (14) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation or Clear and Reasonable Warnings

Beginning on the Effective Date and continuing thereafter, Alani Nutrition agrees to manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California, Product that do not expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day, using tests performed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), unless such Product complies with the warning requirements of Section 2.2. As used in this Section 2.1, “distributed for sale in California” means to directly ship Product into California or to sell Product to a distributor Alani Nutrition knows will sell Product in California.

2.2 Clear and Reasonable Warnings

As of the Effective Date, and continuing thereafter, if and only if the Product contains more than 0.5 micrograms of lead per day, a clear and reasonable Proposition 65 warning as set forth below must be provided for the Product that Alani Nutrition sells in California.

If required, Alani Nutrition shall provide one of the following warning statements:

- 1) **WARNING:** 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.
- 2) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.cs.gov

This warning statement shall be prominently displayed on the Product, on the packing of the Product, or on a placard, shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Product's packaging, it must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall a warning statement displayed on the Product's packaging appear in a type size smaller than 6-point type. If the Product contains more than 0.5 micrograms of lead per day, the same warning shall be posted on any websites under the exclusive control of Alani Nutrition where the Product is sold into California. Alani Nutrition shall instruct any third-party website to which it sells the Product to include the same warning as a condition of selling the Product, but only if the Product contains more than 0.5 micrograms of lead per day.

2.3 Grace Period for Existing Inventory of Product

The requirements of Sections 2.1 and 2.2 shall not apply to the Product that is already manufactured and labeled as of the Effective Date, which Product is expressly subject to the releases provided in Section 5.1.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Alani Nutrition agrees to pay two thousand dollars (\$2,000.00) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EHA. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, Alani Nutrition shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of one thousand five hundred dollars (\$1,500.00) and (b) Environmental Health Advocates, Inc., in the amount of five hundred dollars (\$500.00).

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

For United States Postal Service Delivery:

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

For Federal Express 2-Day Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

All penalty payments owed to EHA shall be sent to:

Samantha Dice
Environmental Health Advocates
225 Broadway, Suite 1900
San Diego, CA 92101

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the

private attorney general doctrine and principles of contract law. Under these legal principles, within fourteen (14) days of the date this Settlement Agreement is executed by the Parties, Alani Nutrition agrees to pay eighteen thousand dollars (\$18,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Alani Nutrition's negotiating a settlement. The payment for attorneys' fees and costs shall be made payable to EHA's counsel in one check, payable to Entorno Law, LLP.

3.3 Payment Address

All payments required under this Section shall be delivered to:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.4 Tax Documentation

Alani Nutrition agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Alani Nutrition cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Alani Nutrition receives the requisite W-9 forms from EHA's counsel.

4. DISMISSAL

Within three (3) business days of Alani Nutrition making the payments described in Sections 3.1 and 3.2, EHA shall file a Request for Dismissal with Prejudice of the Action.

5. CLAIMS COVERED AND RELEASED

5.1 EHA's Release of Alani Nutrition

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EHA, on its own behalf and not on behalf of the public, and Alani Nutrition of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against Alani Nutrition and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by Alani Nutrition, and each entity to whom Alani Nutrition directly or

indirectly distributes or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on the failure to warn about exposures to Lead required under Proposition 65 in the Product manufactured, sold or distributed for sale in California by Alani Nutrition before the Effective Date, as alleged in the Notice and in the Action. This release does not extend to any third-party retailers selling the Product on a website who, after receiving instruction from Alani Nutrition to include a warning as set forth above in Section 2.2, if the Product contains more than 0.5 micrograms of lead per day, do not include such a warning.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Alani Nutrition and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to Lead required under Proposition 65 in the Product manufactured, distributed, sold or offered for sale by Alani Nutrition, before the Effective Date.

5.2 Alani Nutrition’s Release of EHA

Alani Nutrition, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken or statements made by EHA and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

5.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Product will develop or be discovered. EHA on behalf of itself only, on one hand, and Alani Nutrition on behalf of itself only, on the other hand, acknowledge that this

Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 5.1 and 5.2 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 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.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

8. ENFORCEMENT

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

9. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Alani Nutrition:

Daniel S. Silverman
Venable LLP
2049 Century Park East, Suite 2300
Los Angeles, CA 90067

For EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

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

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

12. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

13. AUTHORIZATION


The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 03/03/2022

Date: 03.04.2022

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
ALANI NUTRITION, LLC