

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and NutraChamps Inc. (“NutraChamps”), on the other hand, with EHA and NutraChamps 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 products. NutraChamps 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 NutraChamps sells in California, beet root powder that contains Lead and that it does so without first providing a Proposition 65 warning. 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, Beet Heat Beet Root Circulation Superfood (“the Product”), that contains Lead and that is sold in California by NutraChamps.

1.4 Notices of Violation

On September 14, 2021, EHA served NutraChamps, Amazon.com, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that NutraChamps and others violated Proposition 65 when they failed to warn consumers in California of the health risks associated with exposures to Lead from the Product.

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

NutraChamps denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold 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 NutraChamps 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 NutraChamps of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by NutraChamps. This Section shall not, however, diminish or otherwise affect NutraChamps' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean thirty (30) 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, NutraChamps agrees to manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California, Products 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 Products comply with the warning requirements of Section 2.2. As used in this Section 2.1, "distributed for sale in California" means to directly ship Products into California or to sell Products to a distributor NutraChamps knows will sell Products in California.

2.2 Clear and Reasonable Warnings

As of the Effective Date, and continuing thereafter, a clear and reasonable Proposition 65 warning as set forth in this §§ 2.2 and 2.3 must be provided for all Products that NutraChamps sells in California.

2.3 Warning Requirements

On or after the Effective Date, for Products that are set forth in §§ 2.2, NutraChamps 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.ca.gov

This warning statement shall be prominently displayed on the Products, on the packing of the Products, 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 Products' 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 Products' packaging appear in a type size smaller than 6-point type. The same warning shall be posted on any websites under the exclusive control of NutraChamps where the Products are sold into California. NutraChamps shall instruct any third-party website to which it sells the Products to include the same warning as a condition of selling the Products.

2.4 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date, which Products are expressly subject to the releases provided in Section 4.1.

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, NutraChamps agrees to pay three thousand dollars (\$3,000.00) 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 fourteen (14) days of the date this Settlement Agreement is executed by the Parties, NutraChamps shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of two thousand two hundred and fifty dollars (\$2,250.00) and (b) Environmental Health Advocates, Inc., in the amount of seven hundred and fifty dollars (\$750.00).

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, NutraChamps agrees to pay twenty-seven thousand dollars (\$27,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of NutraChamps’ negotiating a settlement. NutraChamps shall provide their payment to EHA’s counsel in three (3)

monthly installments starting on or before fourteen (14) days from the Effective Date and continuing thereafter for two (2) months. Each monthly installment shall be in the amount of nine thousand dollars (\$9,000.00) payable to "Entorno Law, LLP". The first installment will be sent on or before fourteen (14) days from the Effective Date; the second installment will be sent on or before forty-five (45) days from the Effective Date; the third installment will be sent on or before seventy-five (75) days from the Effective Date.

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

~~NutraChamps 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 NutraChamps cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after NutraChamps receives the requisite W-9 forms from EHA's counsel.~~ S.D

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document has
been provided

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of NUTRACHAMPS

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 NutraChamps 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 NutraChamps and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and each entity to whom NutraChamps directly or indirectly distributes or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, including but not limited to Amazon.com, ("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 NutraChamps before the Effective Date, as alleged in the Notices. This release does not extend to any third-party retailers selling the product on a website who, after receiving instruction from NutraChamps to include a warning as set forth above in section 2.3, 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 NutraChamps 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 NutraChamps, before the Effective Date.

4.2 NutraChamps' Release of EHA

NutraChamps, 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.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Product will develop or be discovered. EHA on behalf of itself only, on one hand, and NutraChamps 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 4.1 and 4.2 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.

5. 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.

6. 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.

7. 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.

8. 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 NutraChamps:

Ryan S. Landis
CMBG3 Law, LLC.
100 Spectrum Center Dr., Suite 820
Irvine, CA 92618

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.

9. **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.

10. **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).

11. **MODIFICATION**

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

12. **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: 02/25/2022

Date:

02/28/2022

By:



By:



ENVIRONMENTAL HEALTH
ADVOCATES, INC.

NUTRACHAMPS INC.