

SETTLEMENT AGREEMENT AND RELEASE

The Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc. (“HLF”) and PurpleRock BioSchwartz Opco LLC (the “Company”) enter into this Settlement Agreement (“Agreement”). HLF and Company are referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1. Introduction

1.1. The “Matter” arises out of the Notices of Violations of California Health & Safety Code §25249.5, et seq. (also known as “Proposition 65”) that HLF served to Purplerock Capital Partners LLC, PurpleRock BioSchwartz Opco LLC, Amazon.com, Inc., Amazon.com Services LLC, Walmart, Inc., Wal-mart Stores East, LP, The Kroger Co., Vitacost.com, Inc., Vitacost.com Inc., and iHerb, LLC (collectively, the “Noticed Companies”) on November 18, 2020 (AG 2020-3265) and November 23, 2021 (AG 2021-02900) (both notices are collectively referred to as “Notices” or “NOV” or “NOVs”). In the Notices, HLF alleges that the following products require warnings for lead under Proposition 65: BioSchwartz Greens Superfood (each a “Covered Product,” or collectively, the “Covered Products”).

1.2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Notices and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law, or violation of law including but not limited to Proposition 65. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability. Company denies the claims in the Notices and denies any liability under Proposition 65.

1.3. “Effective Date” is the date on which this Agreement is fully executed by the Parties.

1.4. “Compliance Date” refers to the date that is 60 days after the Effective Date.

1.5. “Distributor” is any entity or individual that sells Covered Products.

1.6. “Reformulated Product” is a product identical in substance and labeling to Covered Product(s), but with a product’s component(s) harvested in different location(s) or grown/manufactured with different (from Covered Product(s)) methods that reduce “Daily Lead Exposure Level” (as defined in Proposition 65 and under California law) to at or below 0.5 micrograms.

1.7. The term “Reasonably Foreseeable” means that a reasonable inquiry would have revealed to the Company that a Distributor could sell Covered Products to California. Some, but not all examples of such circumstances include: where the Distributor sells products online/over the internet, telephone, telephone applications (apps), or mail-order; maintains or intends to maintain storage, warehouse(s), brick-and-mortar retail establishment(s) located in California.

1.8. “Distribute into the State of California” shall mean to directly or indirectly ship a Covered Product into California for sale in California, or to sell a Covered Product to a Distributor that Company knows, or for which it is Reasonably Foreseeable that such distributor will sell the Covered Products in California.

2. Company's Duties

2.1. Beginning as of the Compliance Date, Company shall not sell in the State of California or "Distribute into the State of California," any Covered Product or Reformulated Covered Product that exposes a person to a "Daily Lead Exposure Level" (as defined in Proposition 65 and under California law) of more than 0.5 micrograms of lead per day, unless it meets the warning requirements in accordance with Sections 2.3 to 2.5.

2.2. Reformulated Product(s); Testing; Daily Lead Exposure Level.

2.2.1. For purposes of determining if a warning is required pursuant to Section 2.3, the Company shall randomly select and test three (3) samples of the Covered Products from different lot numbers by Company (or, if fewer than 3 lots are available for testing, from as many lots as are available).

2.2.2. All testing pursuant to this Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, limit of quantification, accuracy, and precision and meets the following criteria: Gas Chromatography Mass Spectroscopy, achieving a limit of detection of less than or equal to 40 parts per billion, or any other testing method subsequently agreed upon in writing by the Parties.

2.2.3. All testing pursuant to this Agreement shall be performed by an independent third party laboratory accredited to perform lead testing using the methodology in Section 2.2.2. Testing shall be performed prior to Company's first distribution into California or sale in California of any Reformulated Product, manufactured or purchased by Company after the Compliance Date, and testing shall continue at least once per year thereafter for as long as Company sells the Covered Product, unless the latter test negative for three consecutive years.

2.2.4. The testing requirements of Section 2.2 do not apply to any of the Covered Products for which the Company has provided a warning as specified in Section 2.3 to Section 2.8.

2.3. A clear and reasonable exposure warning must be provided for all Covered Products violative of section 2.1 that Company Distributes into the State of California, sells, or otherwise introduces into the State of California after the Compliance Date. The warning shall consist of either the Warning (under 2.3(a)) or the Short-Form Warning (under 2.3(b)), respectively.

a. **Warning.** The "Warning" shall consist of the statement:

- **WARNING:** Consuming this product can expose you to chemicals including lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

b. **Short-Form Warning:**

The "Short-Form Warning" shall consist of the statement:

 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

The font size of the Short-Form warning must be a minimum of 6 points, and it cannot be smaller than the largest size font used for other consumer information (as defined in 27 Cal. Code Regs. § 25600.1(c) included on the label.

2.4. A Warning or Short-Form Warning provided pursuant to Section 2.3 must print the word “WARNING:” in all capital letters and in bold font, followed by a colon. For the Short-Form Warning, the warning symbol to the left of the word “WARNING:” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “WARNING:”. The warning shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning 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 under customary conditions of purchase or use. The warning statement displayed on the Covered Product’s label, must be set off from other surrounding information and enclosed in a text box.

2.5. If Company or a Distributor sells Covered Products via internet websites to customers located in California, the warning requirements of this section shall also be satisfied if the warning is displayed online prior to the purchase, either: (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the same page as the price for the Covered Product; or (c) on one or more web pages displayed to a purchaser prior to completion of purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle with the clickable word “WARNING” in bold, black font, in the font size no less than the product description, and a link to the text of the full warning and the website <http://www.P65Warnings.ca.gov> may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies. The Proposition 65 warning for dietary supplements that may contain lead utilized by Amazon Seller Central for products sold on Amazon marketplace is sufficient to comply with the online warning obligations of this section

2.6. Company shall instruct any third party internet sellers to provide the warning as a condition of sale of the Covered Products in California.

2.7. For any Covered Product sold by Company to a Distributor that will or for which it is Reasonably Foreseeable will sell those Covered Products over the internet, Company shall instruct any such Distributor in writing to provide the warning as a condition of sale of the Covered Products in California.

2.8. For any Covered Products that Company has currently in its inventory as of the Effective Date that violate Section 2.1, Company shall not Distribute into the State of California these Covered Products unless they contain a warning in accordance with Sections 2.3 to 2.5.

2.9. The Parties agree that Company and Released Parties (as defined herein) shall be deemed to be in compliance with Proposition 65 and this Agreement as relates to Covered Products by Company adhering to this Section 2 or by complying with warning requirements set forth under California Health & Safety Code §25249.5, et seq. and/or adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) applicable to the product and the exposure at issue that are in effect after the Effective Date.

3. Settlement Payments

3.1. In satisfaction of all claims for civil penalties and attorneys’ fees and costs related to the Notices, Company shall pay a total settlement amount of \$125,000.00 (the “Settlement Amount”) within 10 days of the Effective Date by wire transfer to HLF’s counsel escrow account, for which HLF’s counsel will give Company the necessary account information no later than 2 days after the Effective Date.

HLF shall be solely responsible for allocating the Settlement Amount pursuant to Section 3. Upon request, HLF or its legal counsel shall supply the Company with a completed W-9 form. The Settlement Amount shall be allocated as follows:

3.2. \$25,000 shall be considered a “civil penalty,” of which HLF shall remit seventy-five percent (75%) to the “Safe Drinking Water and Toxic Enforcement Fund” managed by the State of California’s Office of Environmental Health Hazard Assessment.

3.3. \$100,000 shall be considered reimbursement of HLF’s attorneys’ fees and costs related to the Matter.

3.4. Except as expressly set forth in this Section 3 and 12 below, the Parties shall bear their own costs, expenses, and attorneys’ fees related to this Matter.

4. Binding Effect; Claims Covered and Released

4.1. This Agreement is a full, final, and binding resolution between HLF and the Company of any violation of Proposition 65 that were or could have been asserted by HLF. HLF, on behalf of itself, and its respective principals, officers, directors, employees, parents, subsidiaries, executors, administrators, attorneys, successors, and assigns (collectively, the “Releasers”), unconditionally and generally releases and forever remises, acquits, releases, satisfies and discharges PurpleRock Bioschwartz Opco LLC and its successor in interest, Bioschwartz, LLC, and each of their respective direct and indirect corporate parents and subsidiaries, as well as the past, present and future owners, shareholders, directors, officers, employees, attorneys, insurers, representatives, franchisees, cooperative members, licensees, successors and assigns of all such persons or entities, and also each entity who directly or indirectly buys, distributes, markets or sells the Covered Products, including but not limited to, upstream manufacturers, downstream distributors, wholesalers, customers, retailers, and marketplaces (including but not limited to PurpleRock Capital Partners LLC, Amazon.com, Inc., Amazon.com Services LLC, Walmart, Inc., Wal-mart Stores East, LP The Kroger Co., Vitacost.com, Inc. Vitacost.com Inc., and iHerb, LLC, and the predecessors, successors and assigns of any of them) (collectively, “Released Parties”), from and against any and all claims, demands, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses, that Releasers have, had or may have against the Released Parties from one year prior to NOV to the date of this Agreement, whether known or unknown, for failure to provide warnings for alleged exposures to lead from use of the Covered Products, all claims for violations of Proposition 65 through the Effective Date based on exposure to lead from manufacture, sale, marketing, distribution, use or consumption of the Covered Products, or all claims otherwise arising out of or relating to the Notices.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 above, HLF, on behalf of itself, and its respective principals, officers, directors, employees, parents, subsidiaries, affiliates, executors, administrators, attorneys, successors, and assigns hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action against the Released Parties arising out of the alleged or actual exposure to lead from use of the Covered Products.

4.2. HLF, on its own behalf only, on the one hand, and Company, on its own behalf only, on the other hand, further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connections with the Notices.

4.3. It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notices, and relating to the Covered Products, will develop or be discovered. HLF on behalf of itself only, and Company on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and

include all such claims up through and including the Effective Date, including all rights of action therefore. HLF and Company acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 and any federal or state law of similar effect 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 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.

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

4.4. The Parties agree that compliance with the terms of this Agreement shall constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to lead or lead compounds in the Covered Products or Reformulated Products manufactured, purchased, distributed, or sold by Company after the Compliance Date.

5. If HLF alleges that Company has failed to comply with this Agreement, prior to filing an action or notice of violation as to any Released Party, HLF shall first provide Company thirty (30) days' advance written notice of the alleged violation(s). HLF shall provide testing results, lot numbers, photographs of the Covered Product packaging for the Covered Product at issue. The Parties shall meet and confer during such thirty (30) day period in an effort to resolve the matter informally without the need for litigation. If during the sixty (30) day period, Company provides HLF evidence of a corrective action taken to rectify the alleged violation, including steps that are taken in good faith that may take longer to complete than during the thirty (30) day period, then HLF may allow up to 60 days to correct the repeated violation. If the matter is not resolved within 30 days, HLF can file a litigation and recover all reasonable costs and attorney fees allowed under law.

6. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement.

7. Modification

7.1. Except as provided in this Section 7, this Agreement may be modified only by a written agreement of the Parties.

7.2. If, in the future, there is a Proposition 65 regulation that specifies a naturally occurring allowance for lead in the Covered Products, or there is any other change in the law that Company believes warrants a modification to this Agreement, Company may notify HLF of its intent to modify the Agreement and the Parties shall meet and confer to discuss any appropriate modification.

7.3. If a dispute should arise concerning a modification of this Agreement, then the Parties shall meet and confer in good faith to attempt to resolve the dispute, but if it cannot be resolved in that manner, either Party may present the dispute to the court for resolution.

8. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, successors, and assigns.

9. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

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

11. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

12. Any legal action to enforce this Agreement or related to this Matter may be brought in any California superior court. In any legal action brought to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

13. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail (.pdf), copy of this Agreement, or any other counterpart, shall be deemed to be an original.

14. All notices required to be given to either Party under this Agreement shall be in writing and sent to the following recipients by (a) first-class mail or (b) overnight delivery.

For HLF:

Poulsen Law P.C.
282 11th Avenue, Suite 2612
New York, New York, 10001
Tel: +1 (646) 776 5999
Tel: + 1(650) 296 1014 Direct
ap@poulsenlaw.org

For Company:

Matthew R. Orr, Esq.
Amin Talati Wasserman, LLP
515 South Flower Street, 18th Floor
Los Angeles, CA 90071
Tel: +1 (213) 933 2330
matt@amintalati.com

15. Each of the individuals who executes this Agreement represents and warrants he/she has the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and has read, understood, and agreed to all the terms and conditions in this Agreement.

[SIGNATURE PAGE(S) FOLLOW(S)]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

THE CHEMICAL TOXIN WORKING GROUP INC. DBA HEALTHY LIVING FOUNDATION INC.

PURPLEROCK BIOSCHWARTZ OPCO LLC

By: 

Date: 10-12-22

DocuSigned by:
By: Sebastian Castro
0BACE1C4AB13463...

Date: 10/12/2022