

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 Sunwarrior Ventures, LLC (“Sunwarrior”), on the other hand, with EHA and Sunwarrior 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. Sunwarrior 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 Sunwarrior manufactures, sells, and distributes for sale in California, a curry sauce product 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. Sunwarrior denies Plaintiff’s allegations that any of its products require Proposition 65 warnings.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to Sunwarrior Harvest Organic Turmeric Root Powder 490g (the “Covered Product”), that EHA alleges contains lead and that is manufactured, sold or distributed for sale in California by Sunwarrior.

1.4 Notice of Violation and Complaint

On or about September 10, 2022, EHA served Sunwarrior Ventures, LLC, Amazon.com, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Sunwarrior 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 Covered Product.

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

1.5 No Admission

Sunwarrior denies the material, factual, and legal allegations in the Notice and maintains that all of the Covered Product it sold and/or distributed for sale in California, including the Covered Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Sunwarrior 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 Sunwarrior of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Sunwarrior. This Section shall not, however, diminish or otherwise affect Sunwarrior 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. "Compliance Date" shall mean thirty (30) days after the Effective Date.

2. INJUNCTIVE RELIEF


2.1 Reformulation

Beginning on the Compliance Date, Sunwarrior shall not manufacture, supply or distribute, for sale or use in the State of California, any Covered Product that, when placed into individual packaging units for sale to consumers in California, exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless such Covered Product complies with the warning requirements of Section 2.2. As used in this Section 2, "to distribute" for sale or use in California means to directly ship Covered Products into California or to sell Covered Products to a distributor Sunwarrior knows will sell Covered Products in California.

2.2 Clear and Reasonable Warnings

As of the Compliance Date, and continuing thereafter, if and only if the Daily Lead Exposure Level in the Covered Product is more than 0.5 micrograms, a clear and reasonable Proposition 65 warning as set forth below must be provided for the Covered Product that Sunwarrior sells in California.

If Sunwarrior is required to provide a warning pursuant to Section 2.1, Sunwarrior 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/food.
- 2)  **WARNING:** [Cancer and] Reproductive Harm - www.P65Warnings.ca.gov.

Sunwarrior shall use the phrase "cancer and" in the warning statement if Sunwarrior has reason to believe that the Daily Lead Exposure Level is greater than 15 micrograms of lead or if Sunwarrior has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. If Sunwarrior elects, the bolded and capitalized words **“CALIFORNIA PROPOSITION 65,” “CA PROP. 65” or “PROPOSITION 65”** may be added prior to the word **“WARNING.”**

This warning statement shall be prominently displayed on the Covered Product packaging or label, or on a placard, shelf tag, or sign or electronic device or automatic process, 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 under customary conditions of purchase or use. If the warning statement is displayed on the Covered Product’s packaging, it must be in a type size no smaller than the largest type size used for other consumer information on the Covered Product. In no case shall a warning statement displayed on the Covered Product’s packaging appear in a type size smaller than 6-point type. If Sunwarrior or

its distributors, retailers or resellers sell 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 or food 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. Sunwarrior shall instruct any third-party internet resellers to which it sells a Covered Product for which a Proposition 65 Warning is required to include the same warning as a condition of sale of such Covered Product in California.

2.3 Grace Period for Existing Inventory of Covered Product

The requirements of Sections 2.1 and 2.2 shall not apply to the Covered Product that is already manufactured and labeled as of the Compliance Date, which Covered Product is expressly subject to the releases provided in Section 4.1.

2.4 Compliance with Proposition 65

The Parties agree and intend for compliance with the terms of this Section 2 to constitute compliance with Proposition 65 with respect to exposures to lead from the Covered Products. The requirements for warnings, set forth above, are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. The Parties agree that

Sunwarrior and Releasees (as defined herein) shall be deemed to be in compliance with Proposition 65 and this Agreement as it relates to Covered Products by 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. 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, Sunwarrior agrees to pay one 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 seven (7) days after the Effective Date, Sunwarrior shall issue two separate checks for the 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:

Melanie Perez
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 seven (7) days after the Effective Date, Sunwarrior agrees to pay the total of 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 Sunwarrior and negotiating a settlement. Sunwarrior's payment shall delivered in the form of one check for eighteen thousand dollars (\$18,000.00) payable to "Entorno Law, LLP". Other than this payment, each Party shall bear its own attorneys' fees and costs.

3.3 Payment Address

All payments required under this Section shall be delivered to:

Melanie Perez
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.4 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Sunwarrior

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 Sunwarrior 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

Sunwarrior and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Covered Product, or any ingredients therein, were purchased by Sunwarrior, and each entity to whom Sunwarrior directly or indirectly distributes or sells the Covered Product including, but not limited to Amazon.com, Inc., and Sunwarrior's downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively, "Releasees"), based on the failure to warn about exposures to lead required under Proposition 65 in the Covered Product manufactured, sold or distributed for sale in California by Sunwarrior before the Compliance Date. This release does not extend to any third-party retailers selling the Product on a website who, after receiving instruction from Sunwarrior to include a warning as set forth above in Section 2.2 on a Covered Product for which a Proposition 65 Warning is required, 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 Sunwarrior 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 Covered Product manufactured, distributed, sold or offered for sale by Sunwarrior, before the Compliance Date.

4.2 Sunwarrior's Release of EHA

Sunwarrior, 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 Covered 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 Notice and relating to the Covered Product will develop or be discovered. EHA on behalf of itself only, on one hand, and Sunwarrior 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 Compliance 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 Sunwarrior:

ATTN: Legal Department
Sunwarrior Ventures, LLC
2250 N Coral Canyon Blvd, STE 100
Washington, UT 84780
legal@growve.com

For EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101
noam@entornolaw.com

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.

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

**ENVIRONMENTAL HEALTH
ADVOCATES, INC.**

By: 
Name: Fred Duran
Title: President
Date: 03/28/2023

SUNWARRIOR VENTURES, LLC

By: 
Name: Dave Bunch
Title: Authorized Representative
Date: 3/28/2023