

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Keep America Safe and Beautiful and Bloom Nutrition, LLC:**

This Settlement Agreement is entered into by and between Keep America Safe and Beautiful (“KASB”), represented by its attorneys KJT Law Group, LLP on the one hand, and Bloom Nutrition, LLC (“Bloom”), on the other hand, with KASB and Bloom collectively referred to as the “Parties.”

1.2. **General Allegations**

KASB alleges that Bloom manufactured, distributed, and offered for sale in the State of California High Energy Pre-Workout, containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* (“Proposition 65”). California has identified and listed lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. **Product Description**

The product covered by this Settlement Agreement is defined as Bloom Pre-Workout, including but not limited to: “Bloom – High Energy Pre-Workout – Bahama Mama; UPC #: 8 50042 64108 8” that Bloom has sold, offered for sale, manufactured, or distributed in California. All such items shall be referred to herein as the “Covered Product.”

1.4. **Notice of Violation**

On March 14, 2023, Keep America Safe and Beautiful served Bloom and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled “60-Day Notice of Violation” (“Notice”) that

provided Bloom and such public enforcers with notice that Bloom was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Covered Product exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. **No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Bloom's compliance with Proposition 65. Specifically, Bloom denies the allegations contained in KASB's Notice and maintains that all products that it has placed for sale and distribution in California, including the Covered Product, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Bloom of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Bloom of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Bloom. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Bloom under this Settlement Agreement.

1.6. **Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed. The term "Compliance Date" shall mean ninety (90) days after the Effective Date.

2. INJUNCTIVE RELIEF:

2.1 Beginning on the Compliance Date, Bloom shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product that expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day, unless it meets the warning requirements under Section 2.2.

As used in this Settlement Agreement, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Bloom knows or has reason to know will sell the Covered Product in California. The injunctive relief in Section 2 does not apply to any Covered Product that was packaged, distributed, shipped or sold by Bloom prior to the Compliance Date. All claims as to such Covered Product is released in this Settlement Agreement.

For purposes of this Settlement Agreement, the "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

2.2 Clear and Reasonable Warnings

If Bloom is required to provide a warning pursuant to Section 2.1, one of the following warnings must be utilized ("Warning").

Option 1:

WARNING: Consuming 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

Option 2:

WARNING: [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov/food

Bloom shall use the phrase "cancer and" in the Warning if the exposure level is greater than 15 micrograms of lead per day

The Warning shall be provided to California consumers in manner that complies with 27 C.C.R. §25602(a). Notwithstanding the above, the content and method of transmission shall be provided in any form as authorized by Proposition 65 law or regulation effective on or after the Compliance Date.

If KASB alleges that any Covered Product fails to adhere to this Settlement Agreement, then KASB shall inform Bloom of its test results, including information sufficient to permit Bloom to identify the Covered Product at issue and investigate. Bloom shall, within thirty (30) days following such notice, provide KASB with testing information demonstrating Bloom's compliance with the Settlement Agreement, or proof that omission of the Warning was due to the Covered Product being manufactured prior to the Compliance Date. The Parties shall first attempt to resolve the matter prior to KASB taking any further legal action.

3. CONSIDERATION

In settlement of all the claims referred to in this Settlement Agreement, the Parties reached an accord on the compensation due, under the private attorney general doctrine and principles of contract law. Under these legal principles, Bloom shall pay (\$23,500.00) as

settlement and for fees and costs, incurred as a result of investigating and bringing this matter to Bloom's attention.

4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, \$1,500.00 shall be considered a "civil penalty." The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty shall be mailed to; payable to; "KJT Law Group, LLP", to be forwarded to KASB.

5. REIMBURSEMENT OF FEES AND COSTS

In settlement of all the claims referred to in this Settlement Agreement, \$22,000.00 shall be considered reimbursement of KASB's attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. The Parties reached an accord on the compensation due to KASB and its counsel under the private attorney general doctrine and principles of contract law.

6. PAYMENT INFORMATION

Bloom shall mail these payments within ten (10) business days following the Effective Date, at which time such payments shall be mailed to the following addresses respectively:

All payments owed to KASB and for attorneys' fees, shall be payable and delivered to the following payment address:

KJT LAW GROUP LLP
230 N. Maryland Avenue, Suite 306
Glendale, CA 91206

All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to

OEHHA at the following addresses:

For United States Postal Delivery:

Mike Gyurics
Senior Accounting Officer -- MS 19-B
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA. 95812-0410

For Non-United States Postal Service Delivery:

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

7. RELEASE OF ALL CLAIMS

7.1. Release of Bloom, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 through 6 above, KASB, on behalf of itself, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Covered Product, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) against Bloom, its equity owners, parent companies, corporate affiliates, subsidiaries, predecessors, successors and assigns (collectively "Releasees") and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, including but not limited to Amazon.com Services, LLC – for any alleged violations of Proposition 65, or any other alleged violations of statutory or common law, arising from alleged exposure to lead in relation to the Covered Product, up through the Compliance Date.

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. This Settlement Agreement is expressly intended to cover and include all such claims up through the Compliance Date. KASB, in its capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

8. 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then Bloom shall have no further obligations pursuant to this Settlement Agreement.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Bloom:

Abhishek K. Gurnani
Amin Talati Wasserman, LLP
549 W. Randolph Street, Suite 400
Chicago, IL 60661
Telephone: 312.327.3325
Email: abhishek@amintalati.com

For KASB:

Tro Krikorian, Esq.
KJT Law Group, LLP
230 N. Maryland Ave., Suite 306
Glendale, CA 91206

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

10. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

12. MODIFICATION

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

13. DRAFTING

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.

14. 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.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have agreed, accepted, and executed this Agreement on the date written.

Executed on 08/29/2023.


Keep America Safe and Beautiful



By:

Executed on 8/29/23.

Bloom Nutrition, LLC



By: Neil Blewitt
Its: SVP, Operations