

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 RSP Nutrition (“RSP”), on the other hand, with EHA and RSP’s 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. RSP 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 RSP manufactures, sells, and distributes for sale in California, a protein powder 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.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to RSP’s TrueFit Vegan Protein Powder – Salted Chocolate (the “Product” or “Covered Product”), that EHA alleges contains lead and that is manufactured, sold or distributed for sale in California by RSP.

1.4 Notice of Violation and Complaint

On March 24, 2023, EHA served Game Time Supplements, LLC, Amazon.com, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that RSP 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.

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

RSP 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 RSP 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 RSP of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by RSP. This Section shall not, however, diminish or otherwise affect RSP'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 ninety (90) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation or Clear and Reasonable Warnings

Beginning thirty (30) days after the Effective Date, RSP shall be permanently enjoined from distributing or directly selling in the State of California, any Covered Product that exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead based on a single serving per day unless such Covered Products comply with the warning requirements of Section 2.2. The "Daily Lead Exposure Level" shall be calculated by multiplying the recommended serving size in Covered Product by the concentration of lead in Covered Products. As used in this Section 2, "distributed for sale in CA" means to directly ship Covered Products into California or to sell Covered Products to a distributor RSP knows will sell Covered Products in California.

In calculating the Daily Lead Exposure Level for a Covered Product, RSP shall be allowed to deduct the amount of lead which is deemed "naturally occurring" in the ingredients listed in **Table 1** that are contained in that Covered Product under the following conditions: If RSP claims entitlement to a "naturally occurring" allowance, then, for each year that RSP claims such an entitlement, RSP shall

provide EHA with the following information: (a) RSP must produce to EHA a written list of each ingredient in the Covered Product, and the amount, measured in grams, of each such ingredient contained therein, for which a “naturally occurring” allowance is claimed; (b) RSP must provide EHA with documentation of laboratory testing, conducted during the year for which the “naturally occurring” allowance is claimed, that shows the amount of lead, if any, contained in each ingredient listed in **Table 1** that is contained in the Covered Product and for which RSP intends to deduct “naturally occurring” lead; (c) if the laboratory testing reveals the presence of lead in any of the ingredients listed in **Table 1** that are contained in the Covered Product, RSP shall be entitled to deduct the amount of lead contained in each ingredient, up to the full amount of the allowance for each ingredient as shown in **Table 1**, for those ingredients that are in the Covered Product; and (d) if the Covered Product does not contain any of the ingredients listed in **Table 1**, RSP shall not be entitled to a deduction for “naturally occurring” lead in the Covered Product for those ingredients. The foregoing information shall be provided to EHA within thirty (30) days of the anniversary of the Effective Date and annually thereafter, for any year that RSP shall claim entitlement to the “naturally occurring” allowance. EHA shall keep the information provided by RSP strictly confidential as the specifications and recipes for the Covered Products, including quantities of ingredients, are proprietary trade secrets. Three years after such information is produced by RSP, EHA shall return or destroy such information upon written request by RSP made at or after such three-year period.


TABLE 1

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Cocoa Powder	Up to 0.225 microgram/gram


2.2 Clear and Reasonable Warnings

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

If required, RSP 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.cs.gov/food.

RSP shall use the phrase “cancer and” in the Warning only if the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 2.1 or if RSP has reason to believe that another Proposition 65 chemical is present at a level requiring the cancer warning. This warning statement shall be prominently displayed on the Product label, 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 Option 2 warning statement is displayed on the Covered 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 an Option 2 warning statement displayed on the Covered Products’ 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 RSP where the Product is sold into California. RSP shall instruct any third-party website to which it sells the Product to include the same warning as a condition of selling the Product in California, 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 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, RSP agrees to pay one thousand dollars (\$1,000.00) 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 fully executed by the Parties, RSP shall issue two separate checks for the civil penalty payment to (a) “OEHHA” in the amount of seven-hundred and fifty dollars (\$750.00) and (b) Environmental Health Advocates, Inc., in the amount of two-hundred and fifty dollars (\$250.00).

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:

Isaac Fayman
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 sixty (60) days of the date the Settlement Agreement is executed by the Parties, RSP agrees to pay the total of nine thousand dollars (\$9,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of RSP and negotiating a settlement. RSP’s

payment shall delivered in the form of one check for nine thousand dollars (\$9,000.00) 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

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA’s Release of RSP

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 RSP 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 RSP 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 RSP, and each entity to whom RSP 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 RSP before the Effective Date, as alleged in the Notice. This release does not extend to any third-party retailers selling the Product on a website who, after receiving instruction from RSP 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 RSP 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 RSP, before the Effective Date.

4.2 RSP's Release of EHA

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

Matt Orr
Amin Talati Wasserman LLP
515 S. Flower St., Suite 1800
Los Angeles, CA 90071

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: 9/7/23

Date: 9/6/23

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
RSP NUTRITION