

## **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 Evlution Nutrition, LLC (“EVL”), on the other hand, with EHA and EVL 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. EHA alleges that EVL 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 EVL manufactures, sells, and/or distributes for sale in California, collagen booster products that contain Lead and Lead Compounds 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 or other reproductive harm. EVL denies EHA's allegations that any of its products require Proposition 65 warnings.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are defined as, and expressly limited to EVL Evlution Nutrition Stacked Greens (“Covered Products”), that are manufactured, sold or distributed for sale in California by EVL.

#### **1.4 Notice of Violation**

On or around September 6, 2023, EHA served EVL, the California Attorney General, and certain other public enforcement agencies (EHA believes required) with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that EVL had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to lead

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

### **1.5 No Admission**

EVL denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by EVL 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 EVL of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by EVL. This Section shall not, however, diminish or otherwise affect EVL'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 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 Standard**

Beginning on the Compliance Date, EVL shall be permanently enjoined from manufacturing, distributing, or directly selling in the State of California, any Covered Product, when placed into individual packaging units for sale to consumers in California, that exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless such Covered Products comply with the warning requirements of Section 2.3. As used in this Section 2, "distributed for sale in California" means to directly ship Covered Products into California or to sell Covered Products to a distributor EVL knows will sell Covered Products in California.

### **2.2 Calculation of Lead Levels**


For purposes of this Settlement Agreement and determining EVL's compliance with Proposition 65, "Daily Lead Exposure Level" shall be calculated using the following formula:

micrograms of lead per gram of Covered Product, multiplied by 1.0 gram, multiplied by one serving per day (provided there are no directions or suggested uses on the product label to consume more than once per day), which equals micrograms of lead exposure per day.


### 2.3 General Warning Requirements

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 as calculated according to the calculation standard described herein, a clear and reasonable Proposition 65 warning as set forth below must be provided for the Covered Product that EVL sells in California. EVL agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Covered Products the warning applies, so as to minimize the risk of consumer confusion.

If EVL is required to provide a warning pursuant to Section 2.1, EVL shall provide one of the following warning statements:

- 1)  **WARNING:** This product can expose you to chemicals including lead, which are 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](http://www.P65Warnings.ca.gov).

OR

- 2)  **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

EVL shall use the phrase "cancer and" in the warning statement if the Daily Lead Exposure Level is greater than 15 micrograms of lead or if another Proposition 65 chemical is present which may require a cancer warning. 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 Products packaging or label, or on a placard, shelf tag, or sign in compliance with Health & Safety Code § 25602(a)(2), 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 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 Covered Products' packaging appear in a type size smaller than 6-point type. If the Covered Products' packaging contains consumer information in a foreign language, a warning statement in that language is required. The same warning shall be posted on any websites under the exclusive control of EVL where Covered Products are sold into California. If EVL 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 on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. 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 on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. 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. EVL 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.

## **2.4 Changes in Warning Regulations or Statutes**

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Covered Products and the chemical at issue, which are different than those set forth above, EVL shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted providing that Proposition 65 warnings as to lead in this product are no longer required, a lack of warning by EVL will not thereafter be a breach of this Agreement. EVL shall instruct any third-party website to which it sells its Covered Products to include the same warning as a condition of selling the Covered Products.

## **2.5 Grace Period for Existing Inventory of Covered Products**

The injunctive requirements of Section 2, including both the reformulation and warning requirements, shall not apply to Covered Products that are already in the stream of commerce as of the Compliance Date, which Covered Products are expressly subject to the releases provided in Section 4.1, or that EVL places into the stream of commerce within 120 days of the Compliance Date. Products that were supplied to third parties by EVL prior to the Compliance Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged, and labeled. For the avoidance of doubt, Covered Products in the stream of commerce specifically include, but are not limited to, Covered Products in the process of manufacture. Additionally, the injunctive requirements of Section 2 shall not apply to Covered Products that are distributed or sold outside of the State of California. Nothing in this Settlement Agreement is intended to apply to any of EVL's products other than the Covered Products sold in California, manufactured for sale in California, or "distributed for sale in California."

## **2.6 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 EVL 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, EVL agrees to pay two thousand (\$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. EVL shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" and (b) Environmental Health Advocates, Inc., as follows:

- One payment of \$1,500.00 to OEHHA, due fourteen (14) days after the Effective Date.
- One payment of \$500.00 to EHA, due fourteen (14) days after the Effective Date.

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 Non-United States Postal Service 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, EVL agrees to pay twenty-three thousand dollars (\$23,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of EVL, and negotiating a settlement. The twenty-three thousand dollars (\$23,000.00) in Attorney's Fees and Costs shall be due fourteen (14) days after the Effective Date and shall be payable to Entorno Law, LLP as follows:

All payments required under this Section shall be delivered to:

Noam Glick  
Entorno Law, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **3.3 Tax Documentation**

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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 EHA's Release of EVL**

This Settlement Agreement is a full, final, and binding resolution of all claims between EHA,

on its own behalf and not on behalf of the public, and EVL for all claims that were 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 (i) EVL and its respective direct and indirect corporate parents, subsidiaries and affiliates, and the directors, officers, members, employees, attorneys, agents, insurers, successors and assigns of such persons or entities, (ii) each upstream entity from whom the Covered Product or any ingredients therein were purchased by or on behalf of EVL, and (iii) each entity to whom EVL directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including but not limited to Amazon.com), franchisees, cooperative members and licensees (collectively, the “Releasees”), based on the failure to warn about exposures to lead required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale in California by EVL before the Compliance Date.

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 EVL 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 Products manufactured, distributed, sold or offered for sale by EVL, before the Compliance Date.

#### **4.2 EVL's Release of EHA**

EVL, 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 Products.



#### **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 Products will develop or be discovered. EHA on behalf of itself only, on one hand, and EVL 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. PUBLIC BENEFIT**

It is EVL's understanding that the commitments it has agreed to herein, and actions to be taken by EVL under this Settlement Agreement confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of EVL that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to EVL's alleged failure to provide a warning concerning actual or alleged exposure to lead prior to use of the Covered Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that EVL is in material compliance with this Settlement Agreement.

#### **6. 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.

**7. 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, either as a whole or as specifically applicable to the Covered Products or listed chemicals, is repealed or federally preempted, or if new or different safe harbor levels are established as applicable to the Covered Products, or if Proposition 65 is otherwise rendered inapplicable to the Covered Products or listed chemicals, all by any final regulation or statute, or by a decision of the California Supreme Court, or if any of the provisions of this Settlement Agreement are specifically rendered inapplicable or no longer required as to the Covered Products as a result of any such regulatory or statutory change, repeal or preemption or decision of the California Supreme Court, or due to federal laws or regulations, then EVL may provide written notice to EHA of any asserted change in the law, and it shall have no further obligations pursuant to this Settlement Agreement with respect to the Covered Products, to the extent that the Covered Products are so affected.

**8. ENFORCEMENT**

In any action to enforce the terms of this Settlement Agreement, each Party shall bear its own attorneys' fees and costs in connection with the claims resolved in this Settlement Agreement.

**9. 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 EVL:

Hazel Ocampo  
Greenberg Traurig, LLP  
12760 High Bluff Drive, Suite 240  
San Diego, CA 92130  
ocampoh@gtlaw.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.

**10. 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.

**11. 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).

**12. MODIFICATION**

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

**13. 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.

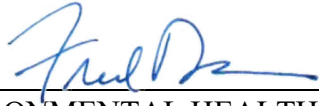
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**AGREED TO:**

**AGREED TO:**

Date: 01/31/2024

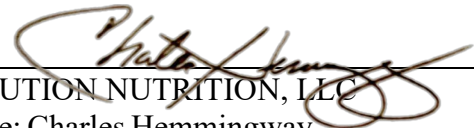
Date: 1/25/2024

By: 

ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

Name:

Title:

By: 

EVOLUTION NUTRITION, LLC

Name: Charles Hemmingway

Title: CEO