

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and 68520 Newfoundland and Labrador Inc. (“N&L”), on the other hand, with EHA and N&L 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 Nutra Holdings 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 N&L manufactures, sells, and/or distributes for sale in California, health supplement products that contains cadmium and lead and that it does so without first providing the health hazard warning required by Proposition 65. Cadmium is listed pursuant to Proposition 65 as a chemical known to cause developmental and reproductive toxicity. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and/or reproductive harm.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are defined as, and expressly limited to Authentic Vegan Plant Based Protein Powder (“Covered Products”), that are manufactured, sold and/or distributed, or caused to be manufactured, sold, and/or distributed, for sale in California by N&L.

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

On or around September 21, 2023, EHA served N&L, the California Attorney General, and certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that N&L had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to cadmium and lead contained in Covered Products.

On or around October 6, 2023, EHA served N&L, the California Attorney General, and certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (the “Amended Notice”) alleging that Covered products sold in California cause an exposure to cadmium and lead without providing a Proposition 65 warning. Collectively the Notice and Amended Notice are referred to hereafter as the “Notices.”

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 Notices.

### **1.5 No Admission**

N&L denies the material, factual, and legal allegations in the Notices 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 N&L 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 N&L of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by N&L. This Section shall not, however, diminish or otherwise affect N&L’ obligations, responsibilities, and duties 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 executed by the Parties.

### **1.7 Compliance Date**

For purposes of this Settlement, the term “Compliance Date” means 30 days from the Effective Date.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard**

Beginning on or before the Compliance Date, N&L shall be permanently enjoined from manufacturing, distributing, or directly selling in the State of California, any Covered Product that exposes a person to a “Daily Cadmium Exposure Level” of more than 4.1 micrograms of Cadmium or 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 Cadmium Exposure Level” and “Daily Lead Exposure Level” shall be calculated by multiplying the recommended serving size in a Covered Product by the concentration of Cadmium or Lead in the 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 N&L, Inc. knows will sell Covered Products in California.

In calculating the Daily Lead Exposure Level for a Covered Product, N&L 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 N&L claims entitlement to a “naturally occurring” allowance, then, for each year that N&L claims such an entitlement, N&L shall provide EHA with the following information: (a) N&L 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) N&L 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 N&L 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, N&L 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**, N&L 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 N&L shall claim entitlement to the “naturally occurring” allowance. EHA shall keep the information provided by N&L 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 N&L, EHA shall return or destroy such information upon written request by N&L made at or after such three-year period.

**TABLE 1**

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Cocoa Powder	Up to 0.100 microgram/gram
Chocolate Liquor	Up to 0.100 microgram/gram
Cocoa Butter	Up to 0.1 micrograms/gram
Calcium (elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram
Magnesium Carbonate	Up to 0.332 microgram/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram

**2.2 General Warning Requirements**

Commencing on the Compliance Date, N&L agrees any Covered Product sold into California that was not reformulated pursuant to paragraph 2.1 shall contain a Proposition 65 warning. N&L 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.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Products shall consist of a warning affixed to the packaging, label, tag, directly to each Covered Products sold in California by N&L, or on a placard, shelf tag, sign or electronic device or automatic process that contains one of the following statements:

**1) WARNING:** Consuming this product can expose you to chemicals including [Cadmium][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/food](http://www.P65Warnings.ca.gov/food).

OR

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

This warning statement shall be enclosed in a box and prominently displayed on the Covered Products, on the packing of the Covered Products, 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. N&L 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. If the short-form 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 short-form 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 N&L where Covered Products are sold into California. Such warning shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in existing inventory that had not been reformulated and were distributed and/or sold by N&L or any of the Releasees after the Effective Date. There shall be no obligation for N&L to provide a warning for Covered Products that entered the stream of commerce prior to the Effective Date, and the Section 4 release applies to all such Covered Products.

(i) Changes in Warning Regulations or Statutes

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 and cadmium 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 N&L shall be deemed to be in compliance with Proposition 65 and this Settlement 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.

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, N&L 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 N&L will not thereafter be a breach of this Agreement. N&L 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.

**2.3 Grace Period for Existing Inventory of Covered Products**

The injunctive requirements of Section 2 shall not apply to Covered Products that are already in the stream of commerce as of the Effective Date, which Covered Products are expressly subject to the releases provided in Section 4.1. 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.

**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 Notices or referred to in this Settlement Agreement, N&L agrees to pay two thousand five hundred (\$2,500.00) 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. 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 \$1,875.00 to OEHHA, due fourteen (14) days after the Effective Date.
- One payment of \$625.00 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, N&L agrees to pay twenty-two thousand five hundred dollars (\$22,500.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of N&L, and negotiating a

settlement. The twenty-two thousand five hundred (\$22,500.00) is due fourteen (14) days after the Effective Date.

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**

EHA agrees to provide IRS W-9 forms for each of the payees under this Settlement Agreement. The Parties acknowledge that N&L cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after N&L receives the requisite W-9 forms from EHA's counsel.

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

### **4.1 EHA's Release of N&L**

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 N&L for all claims that can 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 N&L and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and any entity, including, but not limited to each entity to whom N&L directly or indirectly distributes or sells, or causes to distribute or sell, the Covered Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers (including but not limited to Amazon.com, Inc.), franchisees, cooperative members and licensees of the Covered Products ("Releasees"), based on the failure to warn about exposures to cadmium or lead required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale, or caused to be manufactured, sold, or distributed for sale, in California by N&L before the Effective Date, as alleged in the Notices, or for any other reason.

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 N&L 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 cadmium or lead required under Proposition 65 in the Covered Products manufactured, distributed, sold or offered for sale by N&L, before the Effective Date.

#### **4.2 N&L' Release of EHA**

N&L, 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 Notices and relating to the Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and N&L 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.**

EHA and N&L each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**5      PUBLIC BENEFIT**

It is N&L's understanding that the commitments it has agreed to herein, and actions to be taken by N&L 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 N&L 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 N&L' alleged failure to provide a warning concerning actual or alleged exposure to cadmium or 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 N&L 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.

**8.      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.

**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 N&L:

Matt Orr

Amin Wasserman Gurnani  
515 South Flower Street, 18th Floor  
Los Angeles, California 90071  
morr@awglaw.com

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.

**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.

**AGREED TO:**

**AGREED TO:**

Date: 7/29/24

Date: July 29, 2024

By: 

By: 

ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

68520 NEWFOUNDLAND AND  
LABRADOR INC.