

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“Plaintiff” or “EHA”) and The UCAN Company (“Defendant” or “UCAN”). EHA and UCAN are each sometimes individually referred to as a “Party” and collectively as the “Parties.” EHA alleges that it is a corporation in the State of California serving in the interest of the general public who seeks to improve human health by reducing or eliminating Proposition 65 listed chemicals in consumer products. EHA alleges that UCAN 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 UCAN manufactured, imported, sold, offered for sale, and/or distributed for sale in California certain dietary supplement products that contain Lead without first providing a Proposition 65 warning. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and reproductive harm.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are defined as protein supplements, including but not limited to UCAN Energy + Plant Protein Powder, that are manufactured, imported, sold, offered for sale, and/or distributed for sale in California by UCAN (“Covered Products”).

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

On or about December 1, 2023, EHA served UCAN, 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 UCAN violated Proposition 65 when it failed to sufficiently warn consumers in California that the Covered Products can expose consumers to Lead. 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**

UCAN enters into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notice, and solely to avoid potentially prolonged and costly litigation. UCAN denies the material factual and legal allegations contained in the Notice, maintains that it is not a person subject to Proposition 65, that it is not subject to personal jurisdiction in California, and that all products that it has sold and/or distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission against interest by UCAN of any fact, finding, issue of law, or violation of law; including, but not limited to any fact or conclusion of law suggesting or demonstrating that UCAN has sold any products in California, or that it has violated Proposition 65, or that it is subject to personal jurisdiction in California, nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by UCAN of any of the above, such being specifically denied by UCAN. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense UCAN may have in this or any other future legal proceedings, including UCAN's position that it is not a person in the course of doing business under Proposition 65, nor that it is not subject to personal jurisdiction in California. This Settlement Agreement is the product of negotiation and compromise and is accepted by UCAN solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.5 shall not diminish or otherwise affect the Parties' 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 fully 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/California Proposition 65 Warning Standard**

Beginning on or before the Compliance Date, UCAN shall be permanently enjoined from manufacturing, importing, distributing, or directly selling in the State of California, any Covered Products that expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of Lead based on the package label serving size 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 package label serving size for the Covered Products by the concentration of lead in Covered Products. 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 UCAN knows will sell the Covered Products in California. Covered Products that do not cause a Daily Lead Exposure Level of more than .5 micrograms of Lead based on the package label serving size are “Reformulated Covered Products” and do not require a Proposition 65 warning for Lead hereunder.

### 2.2 **General Warning Requirements**

Commencing on the Compliance Date, UCAN agrees that any Covered Product it sells in California that is not a Reformulated Covered Product shall contain a Proposition 65 warning. UCAN 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 Product sold in California by UCAN, or on a placard, shelf tag, sign or electronic device or automatic process that contains one of the following statements:

- 1) [California Prop 65] **WARNING:** Consuming 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/food](http://www.P65Warnings.ca.gov/food).

or

- 2) [California Prop 65] **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

This warning statement shall be displayed on the Covered Products, on the labeling of the Covered Products, on the packaging 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 use. If the warning is displayed on the product label it shall be placed in a box. If the warning statement is displayed on the Covered Products' labeling or 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' labeling or packaging appear in a type size smaller than 6-point type. If the Covered Products' labeling contains "consumer information" in a foreign language, a warning statement in that language is also required. The same warning shall be posted on any websites under the exclusive control of UCAN 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 have not been reformulated and were distributed and/or sold by UCAN or any of the Releasees after the Compliance Date. There shall be no obligation for UCAN to provide a warning for Covered Products that entered the stream of commerce prior to the Compliance Date, and the Section 4 release applies to all such Covered Products.

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, UCAN 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 Covered Products are no longer required, a lack of warning by UCAN will not thereafter be a breach of this Agreement. UCAN 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 in California. UCAN shall post the warning on its own website and, if it has the ability to do so, on the websites of third-party internet sellers where it has actual knowledge the third-party internet sellers are selling the Covered Products in California.

### **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 Compliance Date, which Covered Products are expressly subject to the releases provided in Section 4. 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 for monetary relief of any kind related to the Notice, alleged in the Notice, or referred to in this Settlement Agreement (except for Plaintiff's attorney's fees and expenses set forth in Section 3.2 below), UCAN agrees to pay three thousand dollars (\$3,000) in civil penalties. The civil 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. UCAN 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 \$2,250 to OEHHA, due 14 (fourteen) days after the Effective Date.
- One payment of \$750 to EHA, due 14 (fourteen) 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, UCAN shall reimburse EHA's counsel the total amount of twenty two thousand dollars (\$22,000) for all attorney's fees and expenses incurred in this matter, including, but not limited to all fees and costs incurred for investigating, testing, consulting with experts, bringing this matter to the attention of UCAN, and negotiating this settlement in the public interest. This payment shall be payable to Entorno Law, LLP, due fourteen (14) days after the Effective Date as follows: one payment of \$22,000 made by check payable to Entorno Law LLP, due (14) days after the Effective Date.

### **3.3. Payment Address**

All payments required under Section 3.2 shall be delivered to:

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

### **3.4 Tax Documentation**

UCAN agrees to provide a completed IRS Form 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 UCAN cannot issue any settlement payments pursuant to Sections 3.1 and 3.2 above until after UCAN receives the requisite W-9 forms from EHA's counsel.

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

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

This Settlement Agreement is a full, final, and binding resolution of all claims between EHA, acting on its own behalf, and UCAN for all claims that can or could have been asserted by EHA, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors and assignees, against UCAN, its suppliers, and each of UCAN's respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, and attorneys of each of them, and any entity, including, but not limited to each entity from whom or to whom UCAN directly or indirectly purchases, imports, or distributes or sells the Covered Products, including, but not limited to, its suppliers, downstream distributors, wholesalers, customers, retailers (including but not limited to Amazon.com, Inc. and its affiliates), franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the actual or alleged failure to warn about alleged exposures to lead in the Covered Products manufactured, imported, sold, offered for sale, or distributed for sale in California by UCAN before the Compliance Date, as alleged in the Notice, 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 UCAN and the Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses and/or expenses including, but not limited to, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect

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to Covered Products manufactured, imported, distributed, sold or offered for sale by UCAN, before the Compliance Date.

#### **4.2 UCANs Release of EHA**

UCAN, 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: Mutual Release of Known and Unknown Claims**

It is possible that other claims not known to the Parties including but not limited to those arising out of the facts alleged in the Notice and relating to products manufactured, imported, distributed, and/or sold by or for UCAN and its affiliates through the Compliance Date will develop or be discovered.. EHA on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, on one hand, and UCAN on behalf of itself and its affiliates, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims for products manufactured, imported, distributed, and/or sold by or for UCAN and its affiliates up through the Compliance Date, including all rights of action therefor. The Parties acknowledge that the claims for products manufactured, imported, distributed, and/or sold by or for UCAN and its affiliates 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 UCAN expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of 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 they may lawfully waive such rights or benefits pertaining to the released matters.

#### **4.4 Deemed Compliance with Proposition 65**

The Parties agree that compliance by UCAN with this Settlement Agreement constitutes compliance with Proposition 65 with respect to actual or alleged exposure to Lead from use of the Covered Products.

#### **5 PUBLIC BENEFIT**

It is UCAN's understanding that the commitments it has agreed to herein, and actions to be taken by UCAN 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 the Parties 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 UCAN's alleged failure to provide a warning concerning actual or alleged exposure to lead prior to use of the Covered Products it has manufactured, imported, 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 UCAN 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**

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of

no less than 30 days to try to resolve any alleged violation. EHA shall not bring an enforcement action or institute a judicial proceeding or seek any other relief of any kind if UCAN demonstrates that it has complied with the requirements of Section 2. In the event that meet-and-confer efforts are unsuccessful, the Party alleging a violation may initiate a judicial proceeding to enforce this Settlement Agreement no earlier than 30 days after issuing the written notice specified herein. In the event that a Party initiates such a judicial proceeding, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs in accordance with applicable law.

**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 UCAN:

Chief Executive Officer  
The UCAN Company  
11 Research Dr., Ste. 1  
Woodbridge, CT 06525

With copy to:

J. Robert Maxwell, Esq.  
Rogers Joseph O'Donnell  
311 California Street, 10th Fl  
San Francisco, CA 94104  
jmaxwell@rjo.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. JOINT PREPARATION**

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**12. 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.

**13. 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).

**14. MODIFICATION**

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

**15. 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.



Settlement Agreement.

DOCS-#573516-v1-Final\_UCAN\_Settlement\_Agreement.pdf

DocuSign Envelope ID: 5EB41288-4448-499E-8654-6EAF73B5DDEC

**AGREED TO:**

**AGREED TO:**

Date: 04/22/2024

Date: 4/19/2024

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
THE UCAN COMPANY  
ELENA SUKACHEVA, CEO