

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Keep America Safe and Beautiful and Evlution 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 Evlution Nutrition LLC ("Evlution"), on the other hand, with KASB and Evlution collectively referred to as the "Parties."

1.2. General Allegations

KASB alleges that Evlution manufactured, distributed, and offered for sale in the State of California products, 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 Evlution Nutrition – Fibermode – Fiber+Probiotic – Unflavored – UPC #: 8 18901 02230 0, that Evlution 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 December 11, 2023, Keep America Safe and Beautiful served Evlution 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 Evlution and such public enforcers with notice that Evlution 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 Evlution's compliance with Proposition 65. Specifically, Evlution 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 Evlution 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 Evlution of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Evlution. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Evlution 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. "Compliance Date" shall mean thirty (30) days after the Effective Date.

2. INJUNCTIVE RELIEF:

2.1 Reformulation Standard

Beginning on the Compliance Date, Evlution 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 2.3. 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 Evlution knows or has reason to know will sell the Covered Product in California. The injunctive relief in Section 3 does not apply to any Covered Product that was manufactured, packaged, distributed, shipped or sold by Evlution prior to the Compliance Date. All claims as to such Covered Product are released in this Settlement Agreement.

2.2 Calculations of Lead Levels

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.

2.3 Clear and Reasonable Warnings

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 Evlution sells in California. Evlution 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 Evlution 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 <http://www.p65warnings.ca.gov/food>

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

This warning statement shall be prominently displayed on the Covered Products packaging or label, or on a placard, shelf tag, or sign or electronic device or automatic process 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 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. The warning must be set off from other surrounding information, enclosed in a box. If the Covered Products' packaging contains consumer information in a foreign language, a warning statement in that language is required. Where the warning is provided on the food product label, it must be set off from other surrounding information. The same warning shall be posted on any websites under the exclusive control of Evlution where Covered Products are sold into California. If Evlution 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/food> 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. Evlution 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. Such warning shall constitute compliance with Proposition 65 with respect to the

lead and lead compounds in the Covered Products for any Covered Products in existing inventory that had not been reformulated and were distributed and/or sold by Evlution or any of the Releasees after the Compliance Date. There shall be no obligation for Evlution 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.

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, Evlution 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 Evlution will not thereafter be a breach of this Agreement. Evlution 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.

2.6 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 agree that Evlution and Releasees (as defined herein) 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 Proposition 65 requirements set forth under state law and/or adopted by the State of California's Office of

Environmental Health Hazard Assessment applicable to the product and the exposure at issue that are in effect after the Effective Date.

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, Evlution shall pay the total amount of \$17,500.00 as full and final settlement and for all penalties, fees and costs, incurred as a result of investigating and bringing this matter to Evlution's attention, as more particularly set forth in Sections 4 and 5 below.

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

In settlement of all the claims referred to in this Settlement Agreement, \$1,500.0 shall be considered a "civil penalty." The civil penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds (\$1,125.00) remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty (\$375.00) shall be remitted to KASB. Evlution shall make these payments within fourteen (14) days after the Effective Date, at which time such payments shall be made as follows:

All payments owed to KASB shall be delivered by the way of wire transfer to the following payment address:

Beneficiary: Keep America Safe and Beautiful
Wells Fargo Bank Routing Number: 121000248
Wells Fargo Bank Account Number: 6767279471
Beneficiary Address: 10512 Sycamore Avenue, Stanton, CA 90680-2629

All payments owed to OEHHA shall be delivered directly to OEHHA at the following

addresses:

For United States Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
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, MS #19B
Sacramento, CA 95814.

5. REIMBURSEMENT OF FEES AND COSTS

In settlement of all the claims referred to in this Settlement Agreement, \$16,000.00 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. Evlution shall make these payments within fourteen (14) days after the Effective Date, at which time such payments shall be made as follows:

All payments owed to KASB's counsel shall be delivered to:

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

Counsel for KASB agrees to provide a completed IRS Form W-9 form for each of the payees under this Settlement Agreement. The Parties acknowledge that Evlution cannot issue any payments pursuant to Section 4 above and this Section 5 until after Evlution receives the requisite W-9 forms from KASB's counsel.

6. RELEASE OF ALL CLAIMS

6.1. Release of Evlution, 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, and on behalf of its direct and indirect corporate parent, subsidiary and affiliates, and the current agents, representatives, attorneys, successors and assignees of such persons or entities, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any and all claims relating to the Covered Product, including, without limitation, any and 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 (i) Evlution and its direct and indirect corporate parents, subsidiaries, partners, predecessors, successors 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 Evlution, and (iii) each entity to whom Evlution directly or indirectly distributes or sells, or causes to distribute or sell, the Covered Products, including, but not limited to, its distributors, wholesalers, licensors, licensees, auctioneers, customers, retailers (including but not limited to Amazon.com Services, LLC,) franchisees and cooperative members and the respective equity owners, parent companies, affiliates, subsidiaries, predecessors, successors and assigns of such persons or entities (collectively, the "Releasees"), 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 or 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 Evlution before the Compliance Date.

6.2 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 Product will develop or be discovered. This Settlement Agreement is expressly intended to cover and include all such claims up through the Effective 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. 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.

7. PUBLIC BENEFIT

It is Evlution's understanding that the commitments it has agreed to herein, and actions to be taken by Evlution 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 Evlution 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 Evlution'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 Evlution is in material compliance with this Settlement Agreement.

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 or its implementing regulations are repealed or are otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then Evlution may modify this Settlement Agreement to reflect such changes to the law, as set forth in Section 11.

8. 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 Evlution: Matthew R. Orr, Esq.
Amin Wasserman Gurnani, LLP
515 South Flower Street, 18th Floor
Los Angeles, CA 90071
morr@awglaw.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.

9. 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.

10. 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.

11. MODIFICATION

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

12. 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.

13. 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.

14. 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.

15. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

KASB and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

16. 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.

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

Executed on 12/10/2024.

Keep America Safe and Beautiful



By: Lance Nguyen - COO

Executed on _____.

Evolution Nutrition LLC

By: _____

Its:

It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

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

Executed on _____.

Keep America Safe and Beautiful

By:

Executed on 12/12/2024

Evolution Nutrition LLC


By: Charles Hemmingway

Its: CEO