

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This settlement agreement (“Settlement Agreement”) is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Vital Planet, LLC (“Vital”), on the other hand, with EHA and Vital each individually referred to as a “Party” and collectively as the “Parties.” EHA maintains it 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 Vital 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 Vital manufactures, sells, and/or distributes for sale in California, dietary supplement powder products that contain 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 developmental/reproductive harm. Vital denies that it is or was required to provide a health hazard warning, and denies liability and all allegations of wrongdoing.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, Vital Gut Renew Powder Supplement (“Covered Product”), that is manufactured, sold and/or distributed for sale in California by Vital.

1.4 Notice of Violation

On or around December 19, 2023, EHA served Vital, 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 Vital had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to lead contained in the Covered Product.

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

Vital 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 the Covered Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Vital 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 Vital of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Vital. This Section shall not, however, diminish or otherwise affect Vital’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 the date this Settlement Agreement is executed by the Parties.

1.7 Compliance Date

For purposes of this Settlement, the term “Compliance Date” means ninety (90) calendar days from the Effective Date.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

Beginning on the Compliance Date, Vital shall be permanently enjoined from manufacturing, distributing, or directly selling in the State of California, the Covered Product if it 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 the Covered Product complies with the warning requirements of Section 2.2. The “Daily Lead Exposure Level” shall be calculated by multiplying the recommended serving size in the Covered Product by the concentration of lead in the Covered Product. As used in this Section 2, “distributed for sale in CA” means to directly ship the Covered Product into California or to sell the Covered Product to a distributor Vital knows will sell the Covered Product in California.

2.2 General Warning Requirements

(i) Proposition 65 Warning

Vital agrees any Covered Product it distributes for sale in CA after the Compliance Date that was not reformulated pursuant to the “Daily Lead Exposure Level” standard set forth in Section 2.1 shall contain a Proposition 65 warning. Vital 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.

For purposes of this Settlement Agreement, a conspicuous warning for the Covered Product shall consist of a warning affixed to the packaging, label, tag, directly to each Covered Product distributed for sale in CA by Vital, 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 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.

OR

2) WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov/food.

If the warning statement is displayed on the Covered Product’s 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 Product's packaging appear in a type size smaller than 6-point type. If the Covered Product's packaging contains consumer information in a foreign language, a warning statement in that language is required. The same warning shall be posted on each website under the exclusive control of Vital where the Covered Product is distributed for sale in CA. Such warning shall constitute compliance with Proposition 65 with respect to the listed chemical in the Covered Product for any Covered Product in existing inventory that had not been reformulated and were distributed and/or sold by Vital or any of the Releasees after the Effective Date. There shall be no obligation for Vital to provide a warning for any Covered Product that entered the stream of commerce prior to the Compliance Date, and the Section 4 release applies to such Covered Product. Vital shall instruct any third-party website to which it sells its Covered Product and which re-sells the Covered Product to include the same warning as a condition of selling the Covered Product.

(ii) 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 Product and lead that are different than those set forth above in Section 2.2.i., Vital shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Settlement Agreement. If regulations or legislation are enacted providing that Proposition 65 warnings as to lead in the Covered Product are no longer required, a lack of warning by Vital will not thereafter be a breach of this Settlement Agreement.

2.3 Grace Period for Existing Inventory of Covered Product

The injunctive requirements of Section 2 shall not apply to Covered Product that is already in the stream of commerce as of the Effective Date, and such Covered Product is expressly subject to the releases provided in Section 4.1. For the avoidance of doubt, Covered Product in the stream of

commerce specifically includes, but is not limited to, Covered Product in the process of manufacture and in inventory.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Cal. 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, Vital agrees to pay two thousand dollars (\$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 seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) of the penalty amount retained by EHA. Vital 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 one thousand and five hundred dollars (\$1,500.00) to OEHHA, due fourteen (14) calendar days after the Effective Date.
- One payment of five hundred dollars (\$500.00) to EHA, due fourteen (14) calendar days after the Effective Date.

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this subsection 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 Attorneys' 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 but while denying liability, Vital agrees to pay eighteen thousand dollars (\$18,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of Vital, and negotiating a settlement. This is separate and apart from the payment set forth in Section 3.1. This payment shall be payable to Entorno Law, LLP as follows:

- One payment of thirteen thousand dollars (\$13,000.00), due fourteen (14) calendar days after the Effective Date.
- One payment of five thousand dollars (\$5,000.00), due seventy-four (74) calendar days after the Effective Date.

All payments required under this subsection shall be delivered to:

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

3.3 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Vital

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 Vital, 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 Vital and its parents, subsidiaries, affiliates, sister companies, insurers, directors, officers, members, employees, attorneys, successors, and assignees, and any entity, including, but not limited to each entity to whom Vital directly or indirectly distributed or sold the Covered Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including but not limited to Amazon.com, Inc.), franchisees, cooperative members and licensees (collectively, "Releasees"), based on the allegations in the Notice including the failure to warn about exposures to lead required under Proposition 65 in the Covered Product manufactured, sold or distributed for sale in California by Vital before the Effective Date ("Released Claims").

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 Vital 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 attorneys' fees arising under the Released Claims.

4.2 Vital's Release of EHA

Vital, 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 before the Effective Date, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, with respect to the Covered 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 Covered Product will develop or be discovered. EHA on behalf of itself only, on one hand, and Vital 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 Vital each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5. PUBLIC BENEFIT

It is Vital's understanding that the commitments it has agreed to herein, and actions to be taken by Vital under this Settlement Agreement, confer a significant benefit to the general public, as set forth in Cal. Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Vital 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 Vital's alleged failure to provide a warning concerning actual or alleged exposure to lead in the Covered Product, such private party action would not confer a significant benefit on the general public as to the Covered Product addressed in this Settlement Agreement, provided that Vital 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 AND VENUE

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. All claims arising out of this Settlement Agreement shall be initiated and maintained exclusively in the state or federal courts located in Alameda County, 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 incurred in such an action or proceeding in addition to any other relief to which such Party may be entitled.

9. LIMITED CONFIDENTIALITY

9.1 The Parties agree to keep the terms and existence of this Settlement Agreement, and all documents and things exchanged during settlement negotiations leading up to this Settlement

Agreement that have not been disclosed prior to the Effective Date, (collectively “Confidential Information,”) strictly confidential, and shall not reveal Confidential Information to any other person or entity, **except**: (a) for disclosure to the California Attorney General’s Office, OEHHA, and/or any person or entity required by statute or regulation to receive this Settlement Agreement, with the understanding that said agency may post the agreement on its website so that it is publicly available; (b) as required by law or order of a court or any other government authority; (c) as is reasonably necessary to be disclosed to the Parties’ accountants, insurers, tax advisors, investors, potential investors, attorneys, employees, representatives, bankers, or bondholders; (d) as is reasonably necessary to the defense or enforcement of any action to which the terms of this Settlement Agreement apply; (e) for Vital to assist any Releasee in defending or resolving any complaint, demand or claim concerning the matters released by this Settlement Agreement; (f) for Vital to negotiate, seek to negotiate, or consummate any business transaction that would be affected by any term of this Settlement Agreement; (g) for Vital to pursue claims, whether in litigation, informally, or otherwise, against any person or entity related to the Notice; (h) in connection with any purchase, acquisition, or potential purchase of Vital’s assets or liabilities; (i) as Vital determines is necessary with respect to disclosure to insurers and/or with the court or arbitrator in any legal proceedings against any insurer; (j) as Vital determines necessary to defend or respond to any demand or claim similar to those set forth in the Notice, or the Released Claims; and (k) in response to a valid subpoena or as otherwise compelled by a court of competent jurisdiction or governmental agency.

9.2 If any Party to this Settlement Agreement receives an informal request, discovery request or subpoena for the disclosure of Confidential Information that is not exempt from disclosure under the preceding paragraph, then that Party must first notify the other Party hereto within ample time to seek a protective order or other relief before the requested Party or its counsel produces Confidential Information.

9.3 EHA shall refrain from posting any reference to anything released by this Settlement Agreement, including the Notice (and anything therein), on any website, blog, or other publicly accessible media, except to the extent required by law.

9.4 The Parties shall refrain from making or causing to make any publication, oral, written or by implication, of a defamatory, disparaging or otherwise derogatory matter pertaining to each other, including their employees, owners, agents, or affiliates. This prohibition is specifically meant to be broader than defamation and includes contacting employees, customers, clients, or vendors and stating or implying anything negative about the other Party.

9.5 The Parties expressly acknowledge and agree that any breach of the obligations of Section 9 would cause the other Party to suffer immediate, irreparable injury for which money damages would be an inadequate remedy, and that the non-violating Party will be entitled to injunctive relief, as provided for under applicable law or equity, without being required to post any bond or other security, in the event of any such breach. Injunctive relief will not be deemed the exclusive remedy for any such breach, but will be in addition to all other remedies available under applicable law.

10. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing, and sent by email and: (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:

If to Vital:

Yoko Moore
Vital Planet, LLC
133 Candy Ln
Palm Harbor, FL 34683
accounting@vitalplanet.com

With a copy (that shall not constitute notice) to:

Ari N. Rothman
Venable LLP
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
ANRothman@Venable.com

If to 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.

11. 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.

12. COMPLIANCE WITH CALIFORNIA 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).

13. MODIFICATION

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

14. ENTIRE AGREEMENT

This Settlement Agreement comprises and contains the entire agreement between the Parties respecting the matters set forth in this Settlement Agreement, and supersedes and replaces all prior negotiations, understandings, proposed agreements, and agreements between the Parties, written or oral. No Party has made any statement, representation, or promise, other than as expressly set forth herein, to any other Party in entering into this Settlement Agreement, which has been relied upon by any other Party entering into this Settlement Agreement.

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.


AGREED TO:

AGREED TO:

Date: 03/28/2024

Date: 3-28-2024

By: 

By: 

ENVIRONMENTAL HEALTH
ADVOCATES, INC.

VITAL PLANET, LLC