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Environmental Health Advocates, Inc.

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 ENVIRONMENTAL HEALTH
13 ADVOCATES, INC.,

14 Plaintiff,

15 v.

16 ANCIENT BRANDS, LLC., a Florida
17 limited liability corporation; BRISTOL
18 FARMS., a California corporation;
AMAZON.COM, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

19 Defendants.

Case No.

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 (“EHA” or “Plaintiff”) and Ancient Brands, LLC., (“Defendant” or “Ancient Brands”) with EHA and
5 Ancient Brands each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is a corporation organized in the state of California, acting in the interest of the general
8 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Ancient Brands employs ten or more individuals and for purposes of this Consent Judgment
12 only, is a “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that Ancient Brands manufactures, imports, sells, and distributes for sale Ancient
16 Nutrition Plant Protein + Berry that contains lead. EHA further alleges that Ancient Brands does so
17 without providing a sufficient health hazard warning as required by Proposition 65 and related
18 Regulations. Ancient Brands denies these allegations and asserts that its products are safe and in
19 compliance with all applicable laws, rules and regulations.

20 **1.5 Notice of Violation**

21 On or around February 29, 2024, EHA served Defendant Ancient Brands, LLC., Bristol Farms.,
22 Amazon.com, Inc., the California Attorney General, and all other required public enforcement agencies
23 with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Ancient
24 Brands had violated Proposition 65 by failing to sufficiently warn consumers in California of the health
25 hazards associated with exposures to lead contained in dietary supplements products, including but not
26 limited Ancient Nutrition Plant Protein + Berry manufactured or processed by Ancient Brands that
27 allegedly contain lead and are imported, sold, shipped, delivered, or distributed for sale to consumers
28 in California by Releasees (as defined in section 4.1).

1 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
2 violations alleged in the Notice.

3 **1.6 Product Description**

4 The products covered by this Consent Judgment are Ancient Nutrition Plant Protein + products,
5 including but not limited to Berry and Vanilla, manufactured or processed by Ancient Brands that
6 allegedly contain lead and are imported, sold, shipped, delivered, or distributed for sale to consumers
7 in California by Releasees (as defined in section 4.1) (“Covered Products”).

8 **1.7 State of the Pleadings**

9 On or around June 4, 2024, EHA filed a Complaint against Ancient Brands for the alleged
10 violations of Proposition 65 that are the subject of the Notice (“Complaint”).

11 **1.8 No Admission**

12 Ancient Brands denies the material factual and legal allegations of the Notice and Complaint
13 and maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
14 California, including Covered Products, have been, and are, in compliance with all applicable laws,
15 rules and regulations. Nothing in this Consent Judgment shall be construed as an admission of any fact,
16 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
17 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
18 of law. This Section shall not, however, diminish or otherwise affect Ancient Brands's obligations,
19 responsibilities, and duties under this Consent Judgment.

20 **1.9 Jurisdiction**

21 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
22 Court has jurisdiction over Ancient Brands as to the allegations in the Complaint, that venue is proper
23 in the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
24 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this
27 Consent Judgment is approved by the Court, as discussed in Section 5.

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1 **1.11 Compliance Date**

2 For purposes of this Consent Judgment, the term “Compliance Date” means 60 days from the
3 date on which this Consent Judgment is approved and entered as a judgment of the Court, as discussed
4 in Section 5.

5 **2. INJUNCTIVE RELIEF**

6 **2.1 Reformulation of the Covered Products**

7 Beginning on or before the Compliance Date, Ancient Brands shall be permanently enjoined
8 from manufacturing, distributing, or directly selling in the State of California, any Covered Product
9 that exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead based on
10 a single serving per day unless such Covered Products comply with the warning requirements of
11 Section 2.2. The “Daily Lead Exposure Level” shall be calculated by multiplying the recommended
12 serving size in Covered Product by the concentration of lead in Covered Products. As used in this
13 Section 2, “distributed for sale in CA” means to directly ship Covered Products into California or to
14 sell Covered Products to a distributor Ancient Brands knows will sell Covered Products in California.

15 **2.2 Clear and Reasonable Warnings**

16 For Covered Products that contain lead in a concentration exceeding the Reformulation
17 Standard set forth in section 2.1 above, and which are distributed or directly sold by Ancient Brands in
18 the State of California on or after the Compliance Date, Ancient Brands shall provide one of the
19 following warning statements.

20 **Option 1:**

21 WARNING: Consuming this product can expose you to chemicals
22 including Lead, which are known to the State of California to cause
23 cancer and birth defects or other reproductive harm. For more
 information, go to www.P65Warnings.ca.gov/food.

24 **Option 2:**

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

26 This warning statement shall be prominently displayed on the Covered Products, on the packing
27 of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with
28 such conspicuousness, as compared with other words, statements, or designs as to render it likely to be

1 read and understood by an ordinary individual prior to sale. If the warning statement is displayed on
2 the Covered Products' packaging, it must be in a type size no smaller than the largest type size used
3 for other consumer information on the product. In no case shall a warning statement displayed on the
4 Covered Products' packaging appear in a type size smaller than 6-point type. If the Covered Products'
5 packaging contains consumer information in a foreign language, a warning statement in that language
6 is required. The same warning shall be posted on any websites under the exclusive control of Ancient
7 Brands where Covered Products are sold into California. Ancient Brands shall instruct any third-party
8 website to which it directly sells its Covered Products to include the same warning as a condition of
9 selling the Covered Products in California. Any website warning must comply with all regulations set
10 forth in this section.

11 **2.3 Sell-Through Period**

12 Notwithstanding anything else in this Consent Judgment, Covered Products that are
13 manufactured, packaged, or put into commerce on or after the date this Agreement is executed shall be
14 subject to the release of liability pursuant to this Consent Judgment, without regard to when such
15 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations
16 of Ancient Brands, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered
17 Products manufactured, packaged, or put into commerce between the date this Agreement is executed
18 and the Effective Date.

19 **3. MONETARY SETTLEMENT TERMS**

20 **3.1 Settlement Amount**

21 Ancient Brands shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction
22 of all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes
23 civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code
24 section 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars
25 (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5.

26 **3.2 Civil Penalty**

27 The portion of the settlement attributable to civil penalties shall be allocated according to Health
28 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid

1 to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
2 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars
3 (\$5,000.00) in civil penalties shall be paid as follows:

- 4 • One payment of \$3,750.00 to OEHHA, due fourteen (14) days after the Effective Date.
- 5 • One payment of \$1,250.00 to EHA, due fourteen (14) days after the Effective date.

6 All payments owed to EHA shall be delivered to the following address:

7
8 Isaac Fayman
9 Environmental Health Advocates
10 225 Broadway, Suite 2100
11 San Diego, CA 92101

12 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
13 (Memo Line "Prop 65 Penalties") at the following addresses:

14 For United States Postal Service Delivery:

15 Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 P.O. Box 4010
19 Sacramento, CA 95812-4010

20 For Federal Express 2-Day Delivery:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 1001 I Street
25 Sacramento, CA 95814

26 Ancient Brands agrees to provide EHA’s counsel with a copy of the check payable to OEHHA,
27 simultaneous with its penalty payment to EHA.

28 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.

Relevant information is set out below:

- “Environmental Health Advocates, Inc.” (EIN: 84-2322975) at the address provided above.
- “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

All payments referenced in this section shall be paid within fourteen (14) days of the date the
Court approves EHA’s motion to approve this Consent Judgment.

1 **3.3 Attorney’s Fees and Costs**

2 The portion of the settlement attributable to attorneys’ fees and costs shall be paid to EHA’s
3 counsel, who are entitled to attorneys’ fees and costs incurred by it in this action, including but not
4 limited to investigating potential violations, bringing this matter to Ancient Brands's attention, as well
5 as litigating and negotiating a settlement in the public interest.

6 Ancient Brands shall provide its payment for civil penalty and for attorneys’ fees and costs to
7 EHA’s counsel by physical check or by electronic means, including wire transfers, at Ancient Brands's
8 discretion, as follows: forty-five thousand dollars (\$45,000.00) in Attorney’s Fees and Costs shall be
9 paid as one payment, due fourteen (14) days after the Effective Date.

10 The attorney fee payments shall be made payable to Entorno Law, LLP. The address for this
11 entity is:

12 Noam Glick
13 Entorno Law, LLP
14 225 Broadway, Suite 1900
15 San Diego, CA 92101

16 **4. CLAIMS COVERED AND RELEASE**

17 **4.1 EHA’s Public Release of Proposition 65 Claims**

18 Plaintiff, acting on its own behalf and in the public interest, releases Ancient Brands, and its
19 parents, subsidiaries, affiliated entities under common ownership or control, its directors, officers,
20 principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns
21 (“Defendant Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells
22 the Covered Products, including but not limited to downstream distributors, wholesalers, customers,
23 retailers (including but not limited to Bristol Farms and Amazon.com, Inc.), and marketplaces
24 franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of the
25 foregoing entities’ owners, directors, officers, agents, principals, employees, attorneys, insurers,
26 accountants, representatives, predecessors, successors, and assigns (collectively referred to as the
27 “Releasees”) from all claims for violations of Proposition 65 up through the Effective Date based on
28 exposure to lead from Covered Products as set forth in the Notice(s). Compliance with the terms of this
Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to lead from

1 Covered Products as set forth in the Notice(s). This Consent Judgment is a full, final, and binding
2 resolution of all claims under Proposition 65 that were or could have been asserted against Ancient
3 Brands and/or Releasees for failure to comply with Proposition 65 for alleged exposure to lead from
4 Covered Products. This release does not extend to any third-party retailers selling the product on a
5 website who, after receiving instruction from Ancient Brands to include a warning as set forth above
6 in section 2.2, do not include such a warning.

7 **4.2 EHA's Individual Release of Claims**

8 EHA, in its individual capacity, also provides a release to Ancient Brands and/or Releasees,
9 which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
10 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every
11 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
12 alleged or actual exposures to lead in Covered Products manufactured, imported, sold, or distributed
13 by Ancient Brands before the Effective Date.

14 **4.3 Ancient Brands's Release of EHA**

15 Ancient Brands on its own behalf, and on behalf of Releasees as well as its past and current
16 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against
17 EHA and its attorneys and other representatives, for any and all actions taken or statements made by
18 EHA and its attorneys and other representatives, whether in the course of investigating claims,
19 otherwise seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered
20 Products.

21 **4.4 No Other Known Claims or Violations**

22 EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged
23 violations of Proposition 65 by Ancient Brands or for which Ancient Brands bears legal
24 responsibility other than those that are fully resolved by this Consent Judgment.

25 **5. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved by the Court and shall be null and
27 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
28 by such additional time as the Parties may agree to in writing.

1 **6. SEVERABILITY**

2 Subsequent to the Court’s approval and entry of this Consent Judgment, if any provision is held
3 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

4 **7. GOVERNING LAW**

5 The terms of this Consent Judgment shall be governed by the laws of the state of California as
6 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
7 rendered inapplicable for reasons, including but not limited to changes in the law, then Ancient Brands
8 may provide written notice to EHA of any asserted change, and shall have no further injunctive
9 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
10 Products are so affected.

11 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
12 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
13 requirements of Proposition 65; or if lead cases are permanently enjoined by a court of competent
14 jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First
15 Amendment rights with respect to lead in Covered Products or Covered Products substantially similar
16 to Covered Products, then Ancient Brands shall be relieved of its obligation to comply with Section 2
17 herein.

18 **8. ENFORCEMENT**

19 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
20 to its reasonable attorneys’ fees and costs.

21 **9. NOTICE**

22 Unless otherwise specified herein, all correspondence and notice required by this Consent
23 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
24 mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to
25 the following addresses:
26
27
28

1 If to Ancient Brands:

If to EHA:

2 Damon M. Pitt
3 Venable LLP
4 2049 Century Park East, St. 2300
Los Angeles, CA 90067
DMPitt@Venable.com

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101
noam@entornolaw.com

5 Any Party may, from time to time, specify in writing to the other, a change of address to which
6 notices and other communications shall be sent.

7 **10. COUNTERPARTS; DIGITAL SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
9 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
10 same document.

11 **11. POST EXECUTION ACTIVITIES**

12 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
13 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
14 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
15 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
16 employ their reasonable best efforts, including those of their counsel, to support the entry of this
17 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
18 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for approval,
19 responding to any objection that any third-party may make, and appearing at the hearing before the
20 Court if so requested.

21 **12. MODIFICATION**

22 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
23 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
24 Party, and the entry of a modified consent judgment thereon by the Court.

25 **13. AUTHORIZATION**

26 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
27 have read, understand, and agree to all of the terms and conditions contained herein.

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1 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

2 If a dispute arises with respect to either Party’s compliance with the terms of this Consent
3 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
4 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
5 in the absence of such a good faith attempt to resolve the dispute beforehand.

6 **15. ENTIRE AGREEMENT**

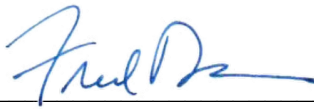
7 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
8 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
9 commitments, and understandings related hereto. No representations, oral or otherwise, express or
10 implied, other than those contained herein have been made by any Party. No other agreements, oral or
11 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

12 **AGREED TO:**

AGREED TO:

13
14 Date: 06/19/2024

Date: 6/20/2024

15
16 By: 
17 ENVIRONMENTAL HEALTH
18 ADVOCATES, INC.

By: 
ANCIENT BRANDS, INC.

19 **IT IS SO ORDERED.**

20
21 Date: _____

22 JUDGE OF THE SUPERIOR COURT
23
24
25
26
27
28