

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 Zen Spirit, LLC (“Zen Spirit”), on the other hand, with EHA and Zen Spirit 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 Zen Spirit 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 Zen Spirit manufactures, sells, and/or distributes for sale in California, dietary supplements products that contains 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 reproductive/developmental harm.

1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to Zen Spirit Psyllium Husk Powder (“Covered Products”), that are manufactured, sold and/or distributed for sale in California by Zen Spirit.

1.4 Notice of Violation

On or around January 4, 2024, EHA served Zen Spirit, 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 Zen Spirit had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to lead contained in Covered Products.

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

Zen Spirit 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 Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Zen Spirit 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 Zen Spirit of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Zen Spirit. This Section shall not, however, diminish or otherwise affect Zen Spirit'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 fourteen (14) days following the execution of this this Settlement Agreement by the Parties.

1.7 Compliance Date

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

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

Beginning on or before the Compliance Date, Zen Spirit 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 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 Lead Exposure Level” shall be calculated by multiplying the recommended serving size in Covered Product by the concentration of lead in 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 Zen Spirit knows will sell Covered Products in California.

2.2 General Warning Requirements

Commencing on the Compliance Date, Zen Spirit, if and only if the Daily Lead Exposure Level in the Covered Product is more than 0.5 micrograms, then Zen Spirit agrees that any Covered Product sold that was not reformulated pursuant to paragraph 2.1 shall contain a Proposition 65 warning if offered for sale to California customers. Zen Spirit 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 Zen Spirit, 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.

This warning statement shall be 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. If the 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 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 Zen Spirit where Covered Products are sold into California. If Zen Spirit 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> may appear on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. 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 Zen Spirit or any of the Releasees after the Compliance Date. There shall be no obligation for Zen Spirit 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.

(i) 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, Zen Spirit 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, or in the event of federal pre-emption, a lack of warning by Zen Spirit will not thereafter be a breach of this Agreement. Zen Spirit 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, including both the reformulation and warning requirements, 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 4.1, or that Zen Spirit places into the stream of commerce within one hundred twenty (120) days of the Compliance Date. Products that were supplied to third parties by Zen Spirit prior to the Compliance Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactures, packaged, and labeled. 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. Additionally, the injunctive requirements of Section 2 shall not apply to Covered Products that are distributed or sold outside of the State of California. Nothing in this Settlement Agreement is intended to apply to any of Zen Spirit's products other than the Covered Products sold in California, manufactured for sale in California, or "distributed for sale in California."

2.3 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 recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. The Parties agree that Zen Spirit and Releasees (as defined herein) shall be deemed to be in compliance with Proposition 65 and this 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 OEHHA applicable to the product and the exposure at issue that are in effect after the Effective Date.

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 Notice or referred to in this Settlement Agreement, Zen Spirit 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 thirty (30) days after the Effective Date.
- One payment of \$625.00 to EHA, due thirty (30) 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, Zen Spirit agrees to pay seventeen thousand five hundred dollars (\$17,500.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of Zen Spirit, and negotiating a settlement. The seventeen thousand five hundred dollars (\$17,500.00) in Attorney's Fees and Costs shall be payable to Entorno Law, LLP as monthly installments of \$2,500 each. Each monthly installment shall be sent to Entorno Law, LLP on or before the 30th calendar day of each month, with the first payment due on or before August 30, 2024. If EHA timely receives each of the first five payments totaling \$12,500, it agrees to waive the final two payments totaling \$5,000.

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

Zen Spirit 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 Zen Spirit cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Zen Spirit receives the requisite W-9 forms from EHA's counsel. EHA will produce the necessary documentation prior to any payment due under this Settlement Agreement, and Zen Spirit shall be forgiven for any late payment caused by EHA's failure to timely produce such documentation.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Zen Spirit

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 Zen Spirit 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 Zen Spirit and each of its respective

parents, subsidiaries, affiliated entities, directors, officers, members, employees, attorneys, and any entity, including, but not limited to each entity to whom Zen Spirit directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including but not limited to Amazon.com, Inc.), franchisees, cooperative members and licensees (“Releasees”), 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 Zen Spirit before the Effective 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 Zen Spirit 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 lead required under Proposition 65 in the Covered Products manufactured, distributed, sold or offered for sale by Zen Spirit, before the Effective Date.

4.2 Zen Spirit's Release of EHA

Zen Spirit, 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 Notice and relating to the Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and Zen Spirit 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 Zen Spirit each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5 PUBLIC BENEFIT

It is Zen Spirit's understanding that the commitments it has agreed to herein, and actions to be taken by Zen Spirit 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 Zen Spirit 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 Zen Spirit'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 Zen Spirit 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. In the event that Proposition 65, either as a whole or as specifically applicable to the Covered Products or listed chemicals, is repealed or federally preempted, or if new or different safe harbor levels are established as applicable to the Covered Products, or if Proposition 65 is otherwise rendered inapplicable to the Covered Products or listed chemicals, all by any final regulation or statute, or by a decision of the California Supreme Court, or if any of the provisions of this Settlement Agreement are specifically rendered inapplicable or no longer required as to the Covered Products as a result of any such regulatory or statutory change, repeal or preemption or decision of the California Supreme Court, or due to federal laws or regulations, then Zen Spirit may provide written notice to EHA of any asserted change in the law, and it shall have no further obligations pursuant to this Settlement Agreement with respect to the Covered Products, to the extent that the Covered Products are so affected.

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 Zen Spirit:

Hazel Ocampo
Greenberg Traurig, LLP
12760 High Bluff Drive, Suite 240
San Diego, CA 92130
ocampoh@gtlaw.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. FORCE MAJEURE

The inability of Noticed Party to comply with any deadline set forth in this Settlement Agreement due to an act of terrorism, fire, earthquake, civil disorder, war, or Act of God that is beyond the reasonable control of Noticed Party shall be grounds to modify the deadlines set forth in this Settlement Agreement.

13. MODIFICATION

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

14. 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: 06/18/2024

Date: 08/16/2024

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
ZEN SPIRIT, LLC