

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 LexUnder Inc. (“LexUnder”), on the other hand, with EHA and LexUnder 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 LexUnder 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 LexUnder manufactures, sells, and/or distributes for sale in the State of California, certain dietary supplement 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 reproductive/developmental harm. LexUnder denies any and all violations of Proposition 65 and contends that its products have been and are in conformance with all laws.

1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to Food to Live Organic Wheatgrass Powder (“Covered Products”), that are manufactured, offered for sale, sold and/or distributed for sale in California by LexUnder.

1.4 Notice of Violation

On or about March 21, 2024, EHA served LexUnder, 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 LexUnder had violated Proposition 65 by failing to

sufficiently warn consumers in California of the alleged health hazards associated with exposures to lead contained in the 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

LexUnder denies the material, factual, and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all of the products it manufactured, sold, offered for sale, and/or distributed for sale in the State of California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by LexUnder of any fact, finding, conclusion, issue of law or violation of law or evidence of fault, wrongdoing or liability, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by LexUnder of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by LexUnder. This Section shall not, however, diminish or otherwise affect LexUnder's obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, LexUnder maintains that it has not knowingly manufactured, imported, distributed, sold or offered for sale, or caused to be manufactured, imported, distributed, sold or offered for sale the Subject Products for sale in California in violation of Proposition 65.

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 Agreement, the term "Compliance Date" means 90 days from the Effective Date.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

Beginning on or before the Compliance Date, LexUnder shall be permanently enjoined from

manufacturing, 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 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 LexUnder knows will sell Covered Products in California.


2.2 General Warning Requirements

Commencing on the Compliance Date, and continuing thereafter, LexUnder agrees any Covered Products sold that were not reformulated pursuant to paragraph 2.1 shall contain a clear and reasonable Proposition 65 warning. LexUnder 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 Products sold in California by LexUnder, or on a placard, shelf tag, sign or electronic device or automatic process that contains one of the following statements:

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

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

This warning statement shall be enclosed in a box and prominently displayed on 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 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 warning statement shall be posted on any websites under the exclusive control of LexUnder where Covered Products are sold into the State of 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 had not been reformulated and were distributed and/or sold by LexUnder or any of the Releasees after the Effective Date. There shall be no obligation for LexUnder to provide a warning for Covered Products that entered the stream of commerce prior to the Effective Date, and the Section 4 release applies to all such Covered Products.

LexUnder may comply with the warning requirements of this section by any other means authorized pursuant to Health and Safety Code § 25249.5 *et seq.* and/or by adhering to the safe harbor regulations and/or guidelines published by the Office of Environmental Health Hazard Assessment, as they may be amended from time to time.

(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, LexUnder 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 the Covered Products are no longer required, a lack of warning by LexUnder will not thereafter be in breach of this Settlement Agreement, and LexUnder's compliance with this legislation or regulations will constitute compliance with Section 2 of this Settlement Agreement. LexUnder shall ask any third-party website to which it sells its Covered Products to include the warning statement as a condition of selling the Covered Products.

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 Effective Date, which Covered Products are expressly subject to the releases provided in Section 4.1. 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 alleged in the Notice or referred to in this Settlement Agreement, LexUnder agrees to pay two thousand (\$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 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 \$1,500.00 to OEHHA, due sixty (60) days after the Effective Date.
- One payment of \$500.00 to EHA, due sixty (60) 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, LexUnder 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 to the attention of LexUnder, and negotiating a settlement. The eighteen thousand (\$18,000.00) is due in two payments. The first payment of eight thousand (\$8,000.00) shall be due sixty (60) days after the Effective Date. The second and last payment of ten thousand (\$10,000.00) shall be due ninety (90) days after the Effective Date.

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

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of LexUnder

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 LexUnder 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/or assignees (collectively "Releasers"), against LexUnder and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, representatives, agents, attorneys, successors, and assignees and any entity, including, but not limited to each entity to whom LexUnder directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, marketplace hosts, vendors, franchisees, dealers, shareholders, cooperative members, owners, purchasers, licensors, licensees, and retailers, including but not limited to Amazon.com, Inc. ("Releasees"), based on the failure to warn about exposures to lead required under Proposition 65 in the Covered Products manufactured, sold, offered for sale, or distributed for sale in the State of California by LexUnder before the Effective Date, as alleged in the Notice, or for any other reason.

In further consideration of the promises and agreements herein contained, Releasers hereby waive any and all rights they may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against LexUnder 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 LexUnder, before the Effective Date.

4.2 LexUnder's Release of EHA

LexUnder, 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 LexUnder 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 LexUnder each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5 PUBLIC BENEFIT

It is LexUnder's understanding that the commitments it has agreed to herein, and actions to be taken by LexUnder 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 LexUnder 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 LexUnder'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 LexUnder 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

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 LexUnder:

Mr. Alex Melnik
LexUnder Inc.
2769 W. 15th St.
Brooklyn, NY 11224

alex@foodtolive.com

With copy to:

Jennifer K. Singh
Dennis Raglin
Steptoe LLP
One Market Plaza, Steuart Tower Suite 1070
San Francisco, CA 94105
jsingh@steptoe.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. MODIFICATION

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

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their

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respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.


AGREED TO:

AGREED TO:

Date: 09/27/2024

Date: 09/24/2024

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
LEXUNDER INC.
Alexander Melnik