

1 **ENTORNO LAW, LLP**

Craig M. Nicholas (SBN 178444)

2 Noam Glick (SBN 251582)

Jake W. Schulte (SBN 293777)

3 Janani Natarajan (SBN 346770)

225 Broadway, Suite 1900

4 San Diego, California 92101

Tel: (619) 629-0527

5 Email: craig@entornolaw.com

Email: noam@entornolaw.com

6 Email: jake@entornolaw.com

Email: janani@entornolaw.com

7
8 Attorneys for Plaintiff

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 BOTANICAL PRODUCTS
17 INTERNATIONAL, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive,

18 Defendants.
19

Case No. 24CV083117

[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 Starseed, Inc. (“Defendant” or “Starseed”) with EHA and Starseed each
5 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 EHA contends Starseed employs ten or more individuals and for purposes of this Consent
12 Judgment only, is a “person in the course of doing business” for purposes of the Safe Drinking Water
13 and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition
14 65”). As further detailed in Section 1.8, Starseed denies these allegations.

15 **1.4 General Allegations**

16 EHA alleges that Starseed manufactures, imports, sells, and distributes for sale Covered
17 Products (as defined in Section 1.6) that expose consumers in California to lead. EHA further alleges
18 that Starseed does so without providing a “clear and reasonable warning” as required by Proposition
19 65 and implementing regulations. As further detailed in Section 1.8, Starseed denies these allegations
20 and asserts that the Covered Products are safe and in compliance with all applicable laws, rules, and
21 regulations.

22 **1.5 Notice of Violation**

23 On or around August 10, 2023, EHA served Farmacopia, LLC, the California Attorney General,
24 and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition
25 65. This notice was subsequently amended on August 25, 2023 to name Botanical Products
26 International, Inc. and remove Farmacopia, LLC. The Notice of Violation was further amended on May
27 22, 2024 to name Starseed (“Notice”). The Notice alleged that Starseed had violated Proposition 65 by
28 failing to sufficiently warn consumers in California of the health hazards associated with exposures to

1 lead contained in dietary supplements products, including but not limited to Super Power Adaptogen
2 Powder Blend manufactured or processed by Starseed that allegedly contain lead and are imported,
3 sold, shipped, delivered, or distributed for sale to consumers in California by Releasees (as defined in
4 section 4.1).

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

7 **1.6 Product Description**

8 The products covered by this Consent Judgment are the Super Power Adaptogen Powder Blend
9 manufactured or processed by Starseed that allegedly contain lead and are imported, sold, shipped,
10 delivered, or distributed for sale to consumers in California by Releasees (as defined in section 4.1)
11 (“Covered Products”).

12 **1.7 State of the Pleadings**

13 On or around July 11, 2024, EHA filed a Complaint against Starseed for the alleged violations
14 of Proposition 65 that are the subject of the Notice (“Complaint”).

15 **1.8 No Admission**

16 Starseed denies the material factual and legal allegations of the Notice and Complaint and
17 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
18 California, including Covered Products, have been, and are, in compliance with all applicable laws,
19 rules and regulations. Nothing in this Consent Judgment shall be construed as an admission of any fact,
20 finding, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by
21 Starseed, including its officers, directors, members, managers, employees, or parent, subsidiary or
22 affiliated corporations. Compliance with this Consent Judgment shall not be construed as an admission
23 of any fact, finding, conclusion of law, issue of law, or violation of law, including without limitation,
24 any admission concerning any violation of Proposition 65 (including whether Starseed is subject to
25 Proposition 65 as a “person in the course of doing business”) or any other statutory, regulatory,
26 common law, or equitable doctrine, or the meaning of the terms “knowingly and intentionally expose”
27 or “clear and reasonable warning” as used in Health and Safety Code section 25249.6. Furthermore,
28 nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or

1 defense the Parties may have in any other or future legal proceeding, except as expressly provided in
2 this Consent Judgment. This Section shall not, however, diminish or otherwise affect Starseed's
3 obligations, responsibilities, and duties under this Consent Judgment.

4 **1.9 Jurisdiction**

5 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
6 Court has jurisdiction over Starseed as to the allegations in the Complaint, that venue is proper in the
7 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
8 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term "Effective Date" means the date on which this
11 Consent Judgment is approved and entered by the Court, as discussed in Section 5.

12 **1.11 Compliance Date**

13 For purposes of this Consent Judgment, the term "Compliance Date" means thirty (30) days
14 from the Effective Date.

15 **2. INJUNCTIVE RELIEF**

16 **2.1 Reformulation of the Covered Products**

17 Beginning on or before the Compliance Date, Starseed shall be permanently enjoined from
18 manufacturing, distributing, or directly selling in the State of California, any Covered Product that
19 exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of Lead based on a
20 single serving per day unless such Covered Products comply with the warning requirements of Section
21 2.2. The "Daily Lead Exposure Level" shall be calculated by multiplying the recommended serving
22 size in Covered Product by the concentration of lead in Covered Products. As used in this Section 2,
23 "distributed for sale in CA" means to directly ship Covered Products into California or to sell Covered
24 Products to a distributor Starseed knows will sell Covered Products in California.

25 **2.2 Clear and Reasonable Warnings**

26 For Covered Products that contain lead in a concentration exceeding the Daily Lead Exposure
27 Level set forth in section 2.1 above, and which are distributed or directly sold by Starseed in the State
28 of California on or after the Compliance Date, Starseed shall provide one of the following warning

1 statements.

2 **Option 1:**

3 **WARNING:** Consuming this product can expose you to chemicals
4 including Lead, which is known to the State of California to cause
5 cancer and birth defects or other reproductive harm. For more
6 information, go to www.P65Warnings.ca.gov/food.

6 **Option 2:**

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

8 This warning statement shall be in enclosed in a box and prominently displayed on the Covered
9 Products, on the packing of the Covered Products, or on a placard, shelf tag, or sign provided that the
10 statement is displayed with such conspicuousness, as compared with other words, statements, or designs
11 as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning
12 statement is displayed on the Covered Products’ packaging, it must be in a type size no smaller than the
13 largest type size used for other consumer information on the product. In no case shall a warning
14 statement displayed on the Covered Products’ packaging appear in a type size smaller than 6-point type.
15 If the Covered Products’ packaging contains consumer information in a foreign language, a warning
16 statement in that language is required.

17 As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold
18 online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603(a)
19 must be provided by including either the warning or a clearly marked hyperlink using the word
20 “**WARNING**” on the product display page, or by otherwise prominently displaying the warning to the
21 purchaser prior to completing the purchase. If an on-product warning is provided pursuant to Cal. Code
22 Regs. Tit. 27, § 25603(a), the warning provided on the website may use the same content as the on-
23 product warning. For purposes of this section, a warning is not prominently displayed if the purchaser
24 must search for it in the general content of the website. These requirements extend to any websites under
25 the exclusive control of Starseed where Covered Products are sold into California. In addition, Starseed
26 shall instruct any third-party website to which it directly sells its Covered Products to include the same
27 online warning, as set forth above, as a condition of selling the Covered Products in California.
28

1 Changes in the law and regulations applicable to Proposition 65 (including applicable safe harbor
2 warnings), including changes resulting from federal and/or state court rulings, occurring after this date
3 may be incorporated into the terms of this Consent Judgment, pursuant to the modification provisions
4 set forth in Section 12.

5 **2.3 Sell-Through Period**

6 Notwithstanding anything else in this Consent Judgment, Covered Products that are
7 manufactured, packaged, or put into commerce on or before the Compliance Date shall be subject to
8 the release of liability pursuant to this Consent Judgment, without regard to when such Covered
9 Products were, or are in the future, distributed or sold to customers. As a result, the obligations of
10 Starseed, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products
11 manufactured, packaged, or put into commerce before the Compliance Date.

12 **3. MONETARY SETTLEMENT TERMS**

13 **3.1 Settlement Amount**

14 Starseed shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all
15 the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil
16 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
17 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00)
18 pursuant to Code of Civil Procedure section 1021.5.

19 **3.2 Civil Penalty**

20 The portion of the settlement attributable to civil penalties shall be allocated according to Health
21 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
22 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
23 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars
24 (\$5,000.00) in civil penalties shall be paid as follows:

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

27 All payments owed to EHA shall be delivered to the following address:
28

1 Isaac Fayman
2 Environmental Health Advocates
3 225 Broadway, Suite 2100
4 San Diego, CA 92101

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

7 For United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 P.O. Box 4010
12 Sacramento, CA 95812-4010

13 For Federal Express 2-Day Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 1001 I Street
18 Sacramento, CA 95814

19 Starseed agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
20 simultaneous with its penalty payment to EHA.

21 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.
22 Relevant information is set out below:

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

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

27 **3.3 Attorney's Fees and Costs**

28 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's
counsel, who allege they are entitled to attorneys' fees and costs incurred by them in this action,
including but not limited to investigating potential violations, bringing this matter to Starseed's
attention, as well as litigating and negotiating a settlement in the public interest. "po

1 Starseed shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's
2 counsel by physical check or by electronic means, including wire transfers, at Starseed's discretion, as
3 follows: forty-five thousand dollars (\$45,000.00) in Attorney's Fees and Costs shall be paid as follows:

4 One payment of \$45,000.00, due fourteen (14) days after the Effective Date.

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

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

9 **4. CLAIMS COVERED AND RELEASE**

10 **4.1 EHA's Public Release of Proposition 65 Claims**

11 Plaintiff, acting on its own behalf and in the public interest, releases Starseed, and its past,
12 present, and future parents, subsidiaries, affiliates, directors, owners, officers, principals, agents,
13 employees, beneficiaries, attorneys, insurers, accountants, representatives, predecessors, successors,
14 assigns, each entity to whom Starseed directly or indirectly distributes, ships, or sells the Covered
15 Products, including but not limited to downstream distributors, wholesalers, customers, retailers
16 (including but not limited to Botanical Products International, Inc.), owners and operators of online
17 marketplaces and e-commerce platforms, franchisees, franchisors, cooperative members, suppliers,
18 licensees, and licensors, and all of the foregoing entities' respective owners, directors, officers, agents,
19 principals, employees, beneficiaries, attorneys, insurers, accountants, representatives, predecessors,
20 successors, and assigns (collectively referred to as the "Releasees") from all claims for violations of
21 Proposition 65 up through the Effective Date based on exposure to lead from Covered Products as set
22 forth in the Notice(s) and Complaint. Compliance with the terms of this Consent Judgment constitutes
23 compliance with Proposition 65 with respect to exposures to lead from Covered Products as set forth
24 in the Notice(s) and Complaint. This Consent Judgment is a full, final, and binding resolution of all
25 claims under Proposition 65 that were or could have been asserted against Starseed and/or Releasees
26 for failure to comply with Proposition 65 for alleged exposure to lead from Covered Products. This
27 release does not extend to any third-party retailers selling the product on a website who, after receiving
28 instruction from Starseed to include a warning as set forth above in section 2.2, do not include such a

1 warning.

2 **4.2 EHA's Individual Release of Claims**

3 EHA, in its individual capacity, also provides a release to Releasees, which shall be a full and
4 final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs,
5 expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every nature, character,
6 and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
7 exposures to lead in Covered Products manufactured, imported, sold, or distributed by Starseed before
8 the Effective Date. In furtherance of the foregoing, as to alleged exposures to Lead from the Covered
9 Products, EHA on behalf of itself only, hereby waives any and all rights and benefits which it now has,
10 or in the future may have, conferred upon it with respect to Claims arising from any violation of
11 Proposition 65 or any other statutory or common law regarding the failure to warn about exposure and
12 any alleged exposure of persons to Lead from the Covered Products by virtue of the provisions of
13 section 1542 of the California Civil Code, which provides as follows:

14
15 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
16 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
17 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
18 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
19 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
20 **DEBTOR OR RELEASED PARTY.**

21 EHA understands and acknowledges that the significance and consequence of this waiver of
22 California Civil Code section 1542 is that even if EHA suffers future damages arising out of or resulting
23 from, or related directly or indirectly to, in whole or in part, claims arising from any violation of
24 Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to
25 Lead from the Covered Products, including but not limited to any exposure to, or failure to warn with
26 respect to exposure to Listed Chemicals from the Covered Products, EHA will not be able to make any
27 claim for those damages against Releasees. Furthermore, EHA acknowledges that it intends these
28 consequences for any such claims arising from any violation of Proposition 65 or any other statutory
or common law regarding the failure to warn about exposure to Lead from Covered Products as may
exist as of the date of this release but which EHA does not suspect to exist, and which, if known, would
materially affect its decision to enter into this Consent Judgment, regardless of whether its lack of

1 knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

2 **4.3 Starseed's Release of EHA**

3 Starseed on its own behalf, and on behalf of Releasees as well as its past and current agents,
4 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
5 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
6 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
7 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

8 **4.4 No Other Known Claims or Violations**

9 EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged
10 violations of Proposition 65 by Starseed or for which Starseed bears legal responsibility other than
11 those that are fully resolved by this Consent Judgment.

12 **5. COURT APPROVAL**

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

16 **6. SEVERABILITY**

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

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the state of California as
21 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
22 rendered inapplicable for reasons, including but not limited to changes in the law; or in the event the
23 California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues
24 an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition
25 65; or if Lead cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65
26 is determined to be preempted by federal law or a burden on First Amendment rights with respect to
27 lead in Covered Products or Covered Products substantially similar to Covered Products, then Starseed
28 may seek relief from the injunctive obligations imposed by this Consent Judgment to the extent any

1 Covered Products are so affected by modifying the agreement via the mechanisms set forth in Section
2 12.

3 **8. ENFORCEMENT**

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

6 **9. NOTICE**

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

11 If to Starseed:

12 Gregory S. Berlin
13 Alston & Bird LLP
14 350 South Grand Avenue, Suite 5100
Los Angeles, CA 90071
gerg.berlin@alston.com

11 If to EHA:

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

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

17 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

21 **11. POST EXECUTION ACTIVITIES**

22 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
23 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
24 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
25 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
26 employ their reasonable best efforts, including those of their counsel, to support the entry of this
27 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
28 purposes of this Section, "reasonable best efforts" shall include, at a minimum, supporting the motion

1 for approval, responding to any objection that any third-party may make, and appearing at the hearing
2 before the Court if so requested.

3 **12. MODIFICATION**

4 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
5 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
6 party as provided by law and upon entry of a modified consent judgment thereon by the Court.

7 **13. AUTHORIZATION**

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

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

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

15 **15. ENTIRE AGREEMENT**

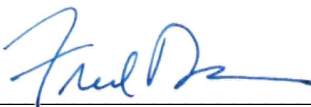
16 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
17 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
18 commitments, and understandings related hereto. No representations, oral or otherwise, express or
19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


21 **AGREED TO:**

AGREED TO:

22
23 Date: 10/18/2024

Date: 10/22/24

24 By: 
25 ENVIRONMENTAL HEALTH
26 ADVOCATES, INC.

By: 
25 Lily Mazzarella (Oct 22, 2024 15:49 EDT)
26 STARSEED, INC.

IT IS SO ORDERED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: _____

JUDGE OF THE SUPERIOR COURT






Sent on Behalf of Sam Burdick - Alston & Bird

Final Audit Report

2024-10-22

Created:	2024-10-22
By:	Cindy Jensen (cindy.jensen@alston.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA1aV36dSRABu_QXLgVeVOpejvZFGRnrAU

"Sent on Behalf of Sam Burdick - Alston & Bird" History

-  Document created by Cindy Jensen (cindy.jensen@alston.com)
2024-10-22 - 3:48:59 PM GMT
-  Document emailed to Lily Mazzearella (lilymazzearella@gmail.com) for signature
2024-10-22 - 3:49:57 PM GMT
-  Email viewed by Lily Mazzearella (lilymazzearella@gmail.com)
2024-10-22 - 7:48:20 PM GMT
-  Document e-signed by Lily Mazzearella (lilymazzearella@gmail.com)
Signature Date: 2024-10-22 - 7:49:08 PM GMT - Time Source: server
-  Agreement completed.
2024-10-22 - 7:49:08 PM GMT