

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 **AMIN WASSERMAN GURNANI, LLP**

Matthew R. Orr (SBN 211097)

11 515 South Flower Street, 18th Floor

Los Angeles, CA 90071

12 Tel: (213) 933-2330

Email: morrr@awglaw.com

13 Attorneys for Defendant PEScience LLC

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

17 ENVIRONMENTAL HEALTH
ADVOCATES, INC.,

18 Plaintiff,

19 v.

20 PESCIENCE LLC, a Florida limited liability
21 company; PERFORMANCE ENHANCING
22 SUPPLEMENTS, LLC, a Delaware limited
liability company; AMAZON.COM, INC., a
23 Delaware corporation; and DOES 1 through
100, inclusive,

24 Defendants.

Case No. 24CV102196

17 **[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 PEScience LLC (“Defendant” or “PE”) with EHA and PE each individually
5 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 PE employs ten or more individuals and for purposes of this Consent Judgment only, is a
12 “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 PE manufactures, imports, sells, and/or distributes for sale PEScience
16 Buttermilk Protein Waffle & Pancake Mix that contains Lead. EHA further alleges that PE does so
17 without providing a sufficient health hazard warning as required by Proposition 65 and related
18 Regulations. PE denies these allegations and asserts that its products are safe and in compliance with
19 all applicable laws, rules and regulations.

20 **1.5 Notice of Violation**

21 On or around February 1, 2024, EHA served Defendant, Amazon.com Inc., Performance
22 Enhancing Supplements, LLC, the California Attorney General, and all other required public
23 enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Original Notice”). The
24 Original Notice alleged that PE had violated Proposition 65 by failing to sufficiently warn consumers
25 in California of the health hazards associated with exposures to Lead contained in protein pancake &
26 waffle mix products, including but not limited to PEScience Buttermilk Protein Waffle & Pancake Mix
27 manufactured or processed by PE that allegedly contain Lead and are imported, sold, shipped,
28 delivered, or distributed for sale to consumers in California by Releasees (as defined in section 4.1).

1 This Original Notice was subsequently amended on September 13, 2024, to serve the CEOs of all
2 entities listed (the “Amended Notice” and, together with the “Original Notice” the “Notices”).

3 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
4 violations alleged in the Notices.

5 **1.6 Product Description**

6 The products covered by this Consent Judgment are protein pancake & waffle mix products,
7 including but not limited to PEScience Buttermilk Protein Waffle & Pancake Mix manufactured or
8 processed by PE that allegedly contain Lead and are imported, sold, shipped, delivered, or distributed
9 for sale to consumers in California by Releasees (as defined in section 4.1) (“Covered Products”).

10 **1.7 State of the Pleadings**

11 On or around December 4, 2024, EHA filed a Complaint against PE for the alleged violations
12 of Proposition 65 that are the subject of the Notices (“Complaint”).

13 **1.8 No Admission**

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

22 **1.9 Jurisdiction**

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

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means fourteen (14) days
3 following the date on which this Consent Judgment is approved by the Court, as discussed in Section
4 5.

5 **1.11 Compliance Date**

6 For purposes of this Consent Judgment, the term “Compliance Date” means 30 days from the
7 Effective Date, as discussed in Section 5.

8 **2. INJUNCTIVE RELIEF**

9 **2.1 Reformulation of the Covered Products**

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

18 **2.2 Clear and Reasonable Warnings**

19 For Covered Products that contain Lead in a concentration exceeding the reformulation standard
20 set forth in section 2.1 above, and which are distributed or directly sold by PE in the State of California
21 on or after the Compliance Date, PE shall provide a “clear and reasonable” Proposition 65 warning,
22 within the meaning of Section 2549.6 of the Act, subject to Section 2.3 of this Agreement. PE agrees
23 that each warning shall be prominently placed with such conspicuousness, as compared with words,
24 statements, designs, or devices as to render it likely to be seen, read, and understood by an ordinary
25 individual under customary conditions before purchase or use. Each warning shall be provided in a
26 manner such that the consumer or user understands to which specific Covered Products the warning
27 applies, and which listed chemical(s) is/are implicated, so as to minimize the risk of consumer
28 confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Products shall consist of a product-specific warning via one or more of the following methods: (1) A posted sign, shelf tag, or shelf sign for the consumer product at each point of display of the product; (2) Any electronic device or process that automatically provides the warning to the purchaser (not applicable to internet purchases, which are subject to the provisions of § 25602(b)); (3) A warning directly affixed to the product's label or tag; or (4) A short-form warning on the label that complies with the content requirements set forth in §§ 25603(b) and 25603(a). Specifically, pursuant to § 25603(a) – (d), one of the following statements must be utilized:

1) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:”**: Consuming this product can expose you to lead which is 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.

OR

SHORT
FORM

2) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:”** Risk of cancer and reproductive harm from exposure to lead. See www.P65Warnings.ca.gov/food.

OR

SHORT
FORM

3) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:”** Can expose you to lead, a carcinogen and reproductive toxicant. See www.P65Warnings.ca.gov/food.

OR

SHORT FORM ON
A PRODUCT
MANUFACTURED
/LABELED PRIOR
TO 1/1/28,
REGARDLESS OF
DATE OF SALE

4) **WARNING: Cancer and Reproductive Harm—**
www.P65Warnings.ca.gov/food.

PE shall use the phrase “cancer and” and “carcinogen and” in the warnings if PE has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the methodology set forth in Section 2.1 or if PE has reason to believe that another Proposition 65 chemical is present at a level requiring a cancer warning. If there is a chemical present

1 at a level that requires a cancer warning, the chemical requiring use of the cancer phrase in the Warning
2 shall always be identified. Pursuant to Section 25607.1, where the warning is provided on the food
3 product label, it must be set off from other surrounding information and enclosed in a box. Where a
4 specific food product sign, label, placard, or shelf tag is used to provide a warning, it must be displayed
5 with such conspicuousness, as compared with other words, statements, or designs as to render it likely
6 to be read and understood by an ordinary individual prior to sale. In no case shall a short form warning
7 statement appear in a type size smaller than 6-point type. Where a sign, labeling, or label as defined in
8 Section 25600.1 is used to provide a warning that includes consumer information about a product in a
9 language other than English, the warning must also be provided in that language in addition to English.

10 As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold
11 online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603 must
12 be provided via of the following methods: (1) A warning on the product display page; (2) A clearly
13 marked hyperlink using the word “**WARNING**” or the words “**CA WARNING**” or “**CALIFORNIA**
14 **WARNING**” on the product display page that links to the warning; or (3) An otherwise prominently
15 displayed warning provided to the purchaser prior to completing the purchase. If a warning is provided
16 using the short-form label content pursuant to Section 25602(a)(4), the warning provided on the website
17 may use the same content. For purposes of this section, a warning is not prominently displayed if the
18 purchaser must search for it in the general content of the website. These requirements extend to any
19 websites under the exclusive control of PE where Covered Products are sold into California. In addition,
20 PE shall instruct any third-party website to which it directly sells its Covered Products to include the
21 same online warning, as set forth above, as a condition of selling the Covered Products in California.

22 **2.3 Sell-Through Period**

23 Notwithstanding anything else in this Consent Judgment, Covered Products that are
24 manufactured, packaged, or put into commerce on or before the Compliance Date shall be subject to
25 the release of liability pursuant to this Consent Judgment, without regard to when such Covered
26 Products were, or are in the future, distributed or sold to customers. As a result, the obligations of PE,
27 or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products
28

1 manufactured, packaged, or put into commerce between the date this Agreement is executed and the
2 Compliance Date.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Settlement Amount**

5 PE shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all the
6 claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil
7 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
8 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00)
9 pursuant to Code of Civil Procedure section 1021.5.

10 **3.2 Civil Penalty**

11 The portion of the settlement attributable to civil penalties shall be allocated according to Health
12 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
13 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
14 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars
15 (\$5,000.00) in civil penalties shall be paid as follows:

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

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

19
20 Isaac Fayman
Environmental Health Advocates
225 Broadway, Suite 2100
21 San Diego, CA 92101

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

24 For United States Postal Service Delivery:

25
26 Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
27 P.O. Box 4010
Sacramento, CA 95812-4010
28

For Federal Express 2-Day Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

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

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.

3.3 Attorney's Fees and Costs

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

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

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

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

1 **4. CLAIMS COVERED AND RELEASE**

2 **4.1 EHA's Public Release of Proposition 65 Claims**

3 Plaintiff, acting on its own behalf and in the public interest, releases PE, and its parents,
4 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals,
5 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant
6 Entities"), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
7 Products, including but not limited to downstream distributors, wholesalers, customers, retailers
8 (including but not limited to Performance Enhancing Supplements, LLC; Amazon.com LLC), and
9 marketplaces franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all
10 of the foregoing entities' owners, directors, officers, agents, principals, employees, attorneys, insurers,
11 accountants, representatives, predecessors, successors, and assigns (collectively referred to as the
12 "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on
13 exposure to Lead from Covered Products as set forth in the Notice(s). Compliance with the terms of
14 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to Lead
15 from Covered Products as set forth in the Notice(s). This Consent Judgment is a full, final, and binding
16 resolution of all claims under Proposition 65 that were or could have been asserted against PE and/or
17 Releasees for failure to comply with Proposition 65 for alleged exposure to Lead from Covered
18 Products. This release does not extend to any third-party retailers selling the product on a website who,
19 after receiving instruction from PE to include a warning as set forth above in section 2.2, do not include
20 such a warning.

21 **4.2 EHA's Individual Release of Claims**

22 EHA, in its individual capacity, also provides a release to PE and/or Releasees, which shall be
23 a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
24 costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every nature,
25 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
26 actual exposures to Lead in Covered Products manufactured, imported, sold, or distributed by PE
27 before the Effective Date.

1 **4.3 PE's Release of EHA**

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

7 **4.4 No Other Known Claims or Violations**

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

11 **5. COURT APPROVAL**

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

15 **6. SEVERABILITY**

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

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the state of California as
20 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
21 rendered inapplicable for reasons, including but not limited to changes in the law; or in the event the
22 California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues
23 an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition
24 65; or if Lead cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65
25 is determined to be preempted by federal law or a burden on First Amendment rights with respect to
26 Lead in Covered Products or Covered Products substantially similar to Covered Products, then PE may
27 seek relief from the injunctive obligations imposed by this Consent Judgment to the extent any Covered
28 Products are so affected by modifying the agreement via the mechanisms set forth in Section 12.

1 **8. ENFORCEMENT**

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

4 **9. NOTICE**

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

9 If to PE:

10 Matt Orr
11 Amin Wasserman Gurnani
12 515 South Flower Street, 18th Floor
13 Los Angeles, CA 90071
14 morr@awglaw.com

9 If to EHA:

10 Noam Glick
11 Entorno Law, LLP
12 225 Broadway, Suite 2100
13 San Diego, CA 92101
14 noam@entornolaw.com

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

15 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

19 **11. POST EXECUTION ACTIVITIES**

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

1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

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

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

13 **15. ENTIRE AGREEMENT**

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

19 **AGREED TO:**

AGREED TO:

20
21 Date: March 4, 2025

Date: 03/04/2025

22
23 By: 

24 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 

PESCIENCE LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT