

Attorney for Plaintiff, APS&EE, LLC

APS&EE, LLC, a limited liability company,
Plaintiff,
v.
SWANSON HEALTH PRODUCTS, INC., a
corporation, and DOES 1 through 100,
inclusive,
Defendants.

[PROPOSED] CONSENT JUDGMENT

Unlimited Jurisdiction

[Proposed] Consent Judgment

1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and
4 between APS&EE, LLC (“Plaintiff”) and Swanson Health Products, Inc. (“Defendant”). Plaintiff
5 and Defendant shall hereinafter collectively be referred to as the “Parties”.

6 **1.1.2** APS&EE is an organization based in California with an interest in
7 protecting the environment, improving human health and the health of ecosystems, and supporting
8 environmentally sound practices, which includes promoting awareness of exposure to toxic
9 chemicals and reducing exposure to hazardous substances found in consumer products.

10 **1.1.3** Plaintiff alleges that Defendant is a person in the course of doing business
11 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
12 65”).

13 **1.2 Allegations**

14 **1.2.1** Plaintiff alleges that Defendant manufactured, distributed, sold, or offered
15 for sale BareOrganics Spirulina Powder, including but not limited to 8-18423-02967-2 (hereafter,
16 the “Products”), in the State of California causing California consumers to be exposed to levels of
17 Lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is
18 potentially subject to Proposition 65 warning requirements because it is listed as known to cause
19 cancer and birth defects or other reproductive harm.

20 **1.2.2** On December 30, 2024, Plaintiff sent a Sixty-Day Notice of Violation (the
21 “Notice”) to Defendant, BareOrganics, LLC, Walmart, Inc., and the various public enforcement
22 agencies regarding the alleged violation of Proposition 65 with respect to the Products. On April
23 22, 2025, Plaintiff, acting in the public interest, filed the instant action (the “Complaint”) in the
24 Superior Court for the County of Los Angeles, alleging violations of Proposition 65.

25 **1.2.3** On July 29, 2025, Plaintiff sent a second Sixty-Day Notice of Violation (the
26 “Second Notice”) to Defendant and the various public enforcement agencies regarding alleged
27 violation of Proposition 65 with respect to lead exposure from Super Green Max Plus powder,
including but not limited to 0-87614-06067-5. Plaintiff has not yet moved to amend the Complaint

1 to include the allegations described in the Second Notice. Defendant claims the allegations of the
2 Second Notice are subject to a consent judgment entered in *As You Sow v. Swanson Health*
3 *Products, Inc.*, San Francisco Superior Court, Case No. CGC-07-466169, filed on or about June
4 11, 2009 (“AYS Consent Judgment”) and that the products at issue in the Second Notice are fully
5 compliant with the AYS Consent Judgment. Plaintiff claims that the injunctive terms of the AYS
6 Consent Judgment have been violated with respect to the product identified in the Second Notice.

7 **1.3 No Admissions**

8 Defendant denies all allegations in Plaintiff’s Notice and Complaint and maintains that the
9 Products have been, and are, in compliance with all laws, and that Defendant has not violated
10 Proposition 65. Nothing in this Consent Judgment nor compliance with this Consent Judgment
11 shall be construed as an admission of liability by Defendant or by any of Defendant’s respective
12 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
13 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue
14 of law, or violation of law. To the contrary, this Consent Judgment and compliance with this
15 Consent Judgment are a compromise of claims that Defendant expressly denies. However, nothing
16 in this section shall affect the Parties’ obligations, duties, and responsibilities under this Consent
Judgment.

17 **1.4 Compromise**

18 The Parties enter into this Consent Judgment in order to resolve the controversy described
19 above in a manner consistent with prior Proposition 65 settlements and consent judgments that
20 were entered in the public interest and to avoid prolonged and costly litigation between them.

21 **1.5 Jurisdiction and Venue**

22 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
23 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
24 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
25 this Consent Judgment pursuant to California Code of Civil Procedure Section 664.6 and
26 Proposition 65.
27

1 **1.6 Effective Date**

2 The “Effective Date” shall be the date this Consent Judgment is approved and entered by
3 the Court.

4 **2. INJUNCTIVE RELIEF**

5 **2.1 Reformulation Standard**

6 As of the Effective Date, Defendant shall not sell, distribute, or cause the Products to be
7 offered for sale in California unless: (a) the Products expose a person to less than 0.5 micrograms
8 of lead per day based on the recommended Daily Serving as calculated below in Section 2.2, or
9 (b) the Products are distributed, sold, or offered for sale with a clear and reasonable warning as
10 described below in Section 2.3. As used in this Consent Judgment, “distributing into California”
11 shall mean to directly ship Products into California for sale in California or to sell Products to a
12 distributor that Defendant knows or has reason to know will sell the Products in California.

12 **2.2 Exposure Calculation**

13 **2.2.1** A “Daily Serving” (for purposes of determining Proposition 65 compliance
14 for chemicals present in the Products) shall be defined by the serving size set forth on the label of
15 the Products under "Nutrition Facts", "Supplement Facts", or equivalent. If the label, package, or
16 product display page on the internet¹ do not recommend a number of daily servings, then the
17 number of daily servings shall be one.

18 **2.2.2** The daily exposure shall be calculated by using the following formula:
19 micrograms of lead per gram, multiplied by grams of the product per serving, multiplied by
20 servings of the product per day.

21 **2.3 Proposition 65 Warnings**

22 Whenever a warning is required under Section 2.1, Defendant shall use one of the
23 following options:
24
25
26

27 ¹ The “Product display page on the internet” applies to Products purchased online, not to Products
purchased elsewhere, such as a brick-and-mortar retail store.

Option 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/food.

Option 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

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

Option 3 (for Products manufactured and labeled before January 1, 2028)

WARNING: [Cancer and] Reproductive Harm -www.P65Warnings.ca.gov.

If daily exposure for the Products exceeds 15 micrograms of lead, where daily exposure is determined under Section 2.2, Defendant shall include the phrase “cancer and” or “carcinogen and” in the warning.

Nothing in this Agreement prevents Defendant from modifying any warning contained in Option 1 or 2 to disclose the presence of additional chemicals if Defendant determines that such disclosure is appropriate or required.

Under Option 3, the warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

Each warning shall be provided on the Product label, set off from other surrounding information, enclosed in a box. Additionally, if the Product contains consumer information in a

1 foreign language, the warning must be provided in the foreign language. The Products shall carry
2 said warning on each label with such conspicuousness as compared with other words, statements
3 or designs as to render it likely to be read and understood by an ordinary consumer prior to sale.
4 A Product sold by Defendant on the internet to persons located in California shall also provide the
5 warning using one or more of the following methods: (1) a warning on the product display page;
6 (2) a clearly marked hyperlink with the words “WARNING”, “CA WARNING”, or
7 “CALIFORNIA WARNING” on the product display page that links to the warning, or (3) by
8 otherwise prominently displaying the warning to the purchaser prior to completing the purchase.
9 For Products that Defendant provides for a downstream entity to sell on the internet to persons
10 located in California, Defendant shall comply with 27 CCR section 25600.2(b).

11 The Parties agree that Defendant may comply with this Consent Judgment by adhering to this
12 section or by complying with warning regulations adopted by the State of California’s Office of
13 Environmental Health Hazard Assessment (“OEHHA”) or requirements applicable to the Products
14 pursuant to entry of a Modified Consent Judgment in accordance with Section 6.

15 If regulations or legislation are enacted providing that Proposition 65 warnings are no longer
16 required with respect to lead in the Products, or should safe harbor warning exposure thresholds be
17 promulgated, such that the lack of a warning will not thereafter breach this Consent Judgment, then
18 Defendant shall no longer be required to comply with the warning obligations of this Consent
19 Judgment.

20 **3. PAYMENTS**

21 **3.1 Civil Penalty Pursuant To Proposition 65**

22 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a total
23 civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with *Health and*
24 *Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for OEHHA, and the remaining
25 25% (\$1,000.00) for Plaintiff.

26 Defendant shall issue these payments collectively as part of the total payment described
27 below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the wire
transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective

1 payments to OEHHA and APS&EE.

2 **3.2 Reimbursement Of Plaintiff's Fees And Costs**

3 Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs
4 incurred in prosecuting the instant action for all work performed through execution and approval
5 of this Consent Judgment, in the amount of twenty-two thousand dollars (\$22,000.00).
6 Accordingly, Defendant shall remit total payment via wire transfer to Law Offices of Lucas T.
7 Novak in the amount of twenty-six thousand dollars (\$26,000.00), which includes the civil penalty
8 described in Section 3.1, within ten (10) business days of the Effective Date. Wire instructions
9 have been exchanged between the Parties.

10 **4. RELEASES**

11 **4.1 Public And Private Release of Proposition 65 Claims**

12 This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf
13 of itself, and acting in the public interest, and Defendant and its officers, directors, members,
14 shareholders, employees, representatives, attorneys, agents, parent and subsidiary companies,
15 divisions, affiliates, and the predecessors, successors, and assigns of any of them (collectively, the
16 "Defendant Releasees"), and all other upstream and downstream entities in the Products'
17 distribution chain, including but not limited to manufacturers, retailers, suppliers, distributors,
18 franchisees, marketplace hosts, wholesalers, customers, private label customers, licensees, and
19 licensors, including but not limited to BareOrganics, LLC and Walmart, Inc., and all their officers,
20 directors, members, shareholders, employees, representatives, attorneys, agents, parent and
21 subsidiary companies, divisions, affiliates, predecessors, successors, and assigns (collectively, the
22 "Released Parties"), for any alleged violation of Proposition 65 concerning the failure to warn
23 about exposure to lead from the Products sold or distributed by Defendant in California before the
24 Effective Date, and fully resolves all claims that have or could have been brought in this action up
25 to and including the Effective Date. Plaintiff on behalf of itself, and in the public interest,
26 discharges Defendant Releasees and Released Parties from all claims, actions, causes of action,
27 suits, demands, liabilities, damages, civil penalties, obligations, debts, losses, fees, costs and
expenses asserted with respect to any alleged failure to warn about lead exposure from the Products

1 sold or distributed by Defendant in California before the Effective Date.

2 Additionally, Plaintiff on behalf of itself only, releases Defendant Releasees and Released
3 Parties from all claims, actions, causes of action, suits, demands, liabilities, damages, civil
4 penalties, obligations, debts, losses, fees, costs and expenses with respect to any alleged failure to
5 warn about lead exposure from the products described in the Second Notice that were sold or
6 distributed by Defendant in California before the Effective Date, including the Super Green Max
7 Plus powder product, in exchange for Defendant's compliance with the AYS Consent Judgment
8 applicable to said products.

9 **4.2 Defendant's Release Of Plaintiff**

10 Defendant, by this Consent Judgment, waives all rights to institute any form of legal action
11 against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts,
12 successors and assignees for actions or statements made or undertaken, whether in the course of
13 investigating claims or seeking enforcement of Proposition 65 against Defendant in this matter. If
14 any released party should institute any such action, then APS&EE's release of said released party
15 in this Consent Judgment shall be rendered void and unenforceable.

16 **4.3 Waiver Of Unknown Claims**

17 Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil
18 Code which provides as follows:

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

25 Each of the Parties waives and relinquishes any right or benefit it has or may have under
26 Section 1542 of California Civil Code or any similar provision under the statutory or non-
27 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,
or different from, those that it believes to be true with respect to the claims released herein. The
Parties agree that this Consent Judgment and the releases contained herein shall be and remain

1 effective in all respects notwithstanding the discovery of such additional or different facts.
2 Compliance with the terms of this Consent Judgment shall be deemed to constitute compliance
3 with Proposition 65 by any of the Released Parties regarding alleged exposures to lead in the
4 Products, as set forth in the Notices and Complaint. However, Released Parties that do not
5 comply with the warning requirements of Section 2.3 after being instructed to do so are not
6 released from future liability with respect to the failure to warn about exposure to Lead from the
7 Products.

8 **5. COURT APPROVAL**

9 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
10 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
11 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
12 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
13 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
14 support the entry of this agreement in a timely manner, including cooperating on drafting and
15 filing any papers in support of the required motion for judicial approval. If this Consent
16 Judgment is not approved by the Court, it shall be void and have no force or effect.

17 **6. MODIFICATION**

18 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
19 and on entry of a modified consent judgment by the Court thereon; or (ii) on a successful motion
20 or application of any Party and the entry of a modified consent judgment by the Court.

21 **7. APPLICATION OF CONSENT JUDGMENT**

22 This Consent Judgment shall have no application to any Product that is distributed or
23 sold exclusively outside the State of California and that is not used by California consumers.

24 **8. SEVERABILITY**

25 Should any part or provision of this Consent Judgment for any reason be declared by a
26 Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in
27 full force and effect.

9. GOVERNING LAW

1 The terms of this Consent Judgment shall be governed by the laws of the State of
2 California. This Consent Judgment is entered into in the State of California and may only be
3 enforced in the State of California.

4 **10. NOTICES**

5 All correspondence and notice required to be provided under this Consent Judgment shall
6 be in writing and delivered personally or sent by first class or certified mail addressed as follows:

7

TO DEFENDANT:	TO PLAINTIFF:
Sean Newland, Esq. Greenberg Traurig, LLP 2375 E. Camelback Rd. Suite 800 Phoenix, AZ 85016	Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069

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12 **11. COUNTERPARTS**

13 This Consent Judgment may be executed in counterparts, each of which shall be deemed
14 an original, and all of which, when taken together, shall constitute the same document. Execution
15 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall
16 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
17 Judgment shall have the same force and effect as the originals.

18 **12. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment on behalf of their
20 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
21 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this Consent
22 Judgment and is not subject to any conflicting obligation that will or might prevent or interfere
23 with the execution or performance of this Consent Judgment by said Party.

24 **13. ENFORCEMENT**

25 Plaintiff may attempt to enforce the Consent Judgment's terms and conditions by motion.
26 Before bringing a motion, Plaintiff shall provide Defendant with written notice of the issue and
27 meet and confer about the basis for the anticipated motion for at least 30 days in an attempt to

1 resolve it informally. No enforcement motion shall be filed during the 30-day meet-and-confer
2 period. If such attempts at informal resolution fail, Plaintiff may file its enforcement motion.


3 **14. ENTIRE AGREEMENT; COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent Judgment contains the entire and only agreement between the Parties and
5 all prior negotiations and understandings related hereto shall be deemed to have been merged
6 within it. There are no representations or terms of agreement made by any Party with respect to
7 the subject matter hereof or the other Party except for those contained in this Consent Judgment.
8 This Consent Judgment may be executed in counterparts, and by facsimile or portable document
9 format (PDF) signature, each of which shall be deemed an original, and all of which, when taken
10 together, shall constitute one and the same document.

11 **15. POST EXECUTION ACTIVITIES**

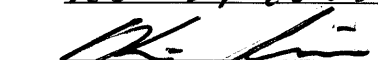
12 Plaintiff agrees to comply with the reporting form requirements in Health & Safety Code
13 § 25249.7(f).

14
15 **AGREED TO:**

16 Date: 
17 By: 01/05/26

18 Authorized Representative of APS&EE, LLC

19
20 **AGREED TO:**

21 Date: Dec 23, 2025
22 By: 

23 Authorized Representative of SWANSON HEALTH PRODUCTS, INC.

24 **IT IS SO ORDERED.**

25 Dated: _____
26 _____
27 JUDGE OF THE SUPERIOR COURT