

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

☐ Original Filing ☐ Supplemental Filing ☐ Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S)				
	DEFENDANT(S) INVOLVED IN SETTLEMENT				
CASE INFO	COURT DOCKET NUMBER			COURT NAME	
	SHORT CASE NAME				
REPORT INFO	INJUNCTIVE RELIEF				
	PAYMENT: CIVIL PENALTY		PAYMENT: ATTORNEYS FEES		PAYMENT: OTHER
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		DATE SETTLEMENT SIGNED / /	
	COPY OF SETTLEMENT MUST BE ATTACHED				For Internal Use Only
FILER INFO	NAME OF CONTACT				
	ORGANIZATION			TELEPHONE NUMBER ()	
	ADDRESS			FAX NUMBER ()	
	CITY	STATE	ZIP	E-MAIL ADDRESS	

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

PROPOSITION 65 SETTLEMENT AGREEMENT

WHEN Justice v. DAS Labs, LLC

1. INTRODUCTION

1.1. The Parties

This Proposition 65 Settlement Agreement ("**Agreement**") is entered into by and between WHEN Justice ("**WHEN**") and DAS Labs, LLC ("**DAS**"), with WHEN and DAS each individually referred to as a "**Party**" and collective as the "**Parties.**" WHEN is a California nonprofit public benefit corporation in the State of California proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm are disclosed in or eliminated from consumer products sold in California. DAS is a Utah limited liability company. WHEN alleges that DAS is a person doing business in California for purposes of California Health & Safety Code § 25249.11(b).

1.2. Consumer Product Description

WHEN alleges that DAS manufactured, imported, sold, and distributed for sale in California powdered dietary supplements containing elevated levels of lead, including but not limited to DAS Labs Zero Calorie Bulker Nectar, hereinafter referred to as the "**Products,**" without providing the health hazard warning that WHEN alleges is required by California Health & Safety Code §§ 25249.5 *et seq.* ("**Proposition 65**"). Lead is listed under Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm. DAS contends that the Products were

properly labeled in accordance with Proposition 65 and were and are otherwise in compliance with Proposition 65.

1.3. Notice of Violation

On March 11, 2025, WHEN served DAS, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging DAS violated Proposition 65 when it failed to provide a clear and reasonable warning to consumers in California that its Products may expose them to lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is prosecuting an action against DAS to enforce the allegations set forth in the Notice.

1.4. No Admission

DAS denies all material, factual, and legal allegations contained in the Notice and maintains that all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Agreement shall be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by DAS of any fact, finding, conclusion of law, issue of law, or violation of law.

1.5. Effective Date

For purposes of this Agreement, the term “**Effective Date**” shall mean the date on which both parties have executed the Agreement.


2. INJUNCTIVE RELIEF: DISCONTINUATION OR WARNINGS

Prior to the Effective Date, DAS discontinued and stopped all manufacture, distribution and sale of the Products. If DAS decides to manufacture, distribute or sell the Products in California in the future, DAS shall provide Proposition 65 warning labels on the Products in compliance with Proposition 65 as follows. To the extent that the warnings described in Sections 2.1 through 2.4 below conflict with Proposition 65, Proposition 65 controls. Notwithstanding the foregoing, some existing inventory of the Products may be in the stream of commerce in California as of the Effective Date and may not be labeled in compliance with Proposition 65. However, these Products in the stream of commerce are expressly covered by the releases provided in Section 4.


2.1. Warnings, Generally.

Should DAS decide to manufacture, distribute, or sell the Products in California in the future, DAS shall provide clear and reasonable warnings for all Products in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, *et seq.* 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 and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

2.1.1. Warning. The Warning shall consist of the following statement:

 **WARNING:** Consuming this product can expose you to chemicals including lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

2.1.2. Short-Form Warning. DAS may, but is not required to, use the following short-form warning as set forth in this Subsection 2.3.2 (“Short-Form Warning”), and subject to the additional requirements in Sections 2.5 and 2.6 as follows:

 **WARNING:** Risk of reproductive harm from exposure to lead. See www.P65Warnings.ca.gov.

2.1.3. Foreign Language Requirement. Where a consumer product sign, label, or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

2.2. Product Warnings

DAS shall affix a warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, “**Product Label**” means a display of written, printed, or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. A warning provided pursuant to Section 2.3.1 or 2.3.2 must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**”

must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the labeling does not use the color yellow, then the symbol may be in black and white. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either the Warning, or the Short-Form Warning, described in Section 2.3

2.3. Mail Order Catalog Warnings

In the event that, after the Effective Date, DAS prints new catalogs and sells the Product via mail order through such catalogs to customers located in California, DAS shall provide a warning for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the specific Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3 if the warning provided on the Product label also uses the Short-Form Warning content.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, DAS may utilize a designated symbol of DAS's choosing to cross reference the applicable warning and shall define the

meaning of the designated symbol with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product:

⚠ WARNING: Certain products identified with this symbol [▼] and offered for sale in this catalog can expose you to lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, DAS must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

2.4. Internet Warnings

If, after the Effective Date, DAS sells the Product via the internet to customers located in California, DAS shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Product without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “WARNING” given in conjunction with the sale of the Product via the internet shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger

than other consumer information provided for the Product. The internet warning may use the Short-Form Warning content described in Section 2.3.2 if the warning provided on the Product label also uses the Short-Form Warning content.

3. MONETARY SETTLEMENT TERMS

3.1. Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), DAS agrees to pay a civil penalty of **\$35,000.00** within **seven (7) days** of the Effective Date. DAS's civil penalty payment will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("**OEHHA**"), and the remaining twenty-five percent (25%) retained by WHEN. DAS shall issue its payment in two (2) checks made payable to: (a) "**OEHHA**" in the amount of **\$26,250.00**; and (b) "**WHEN Justice**" in the amount of **\$8,750.00**. WHEN's counsel shall deliver to OEHHA and WHEN their respective portion of the penalty payment.

3.2. Reimbursement of Attorneys' Fees and Costs

WHEN and their counsel offered to resolve all the allegations in the Notice without reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to WHEN's counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual

execution and reporting of this Agreement to the Office of the California Attorney General. Within seven (7) days of the Effective Date, DAS agrees to issue a check in the amount of **\$40,000.00** payable to “Soteria Law” for all fees and costs incurred investigating, bringing this matter to DAS’s attention, negotiating a settlement in the public interest, and reporting its terms to the Office of the California Attorney General pursuant to Section 9.

3.3. Payments

All payments payable and due under this Agreement shall be delivered to WHEN’s counsel at the following address:

Soteria Law
Attn: Jacqueline Biner, Esq.
3540 Wilkinson Lane #8
Lafayette, CA 94549

4. CLAIMS COVERED AND RELEASED

4.1. WHEN Justice’s release of DAS Labs, LLC

This Agreement is a full, final, and binding resolution between WHEN, as an entity in the public interest but *not* on behalf of the public, and DAS, of any violation of Proposition 65 that was or could have been asserted by WHEN on behalf of itself, its past and current agents, representatives, attorneys, affiliates, successors, and/or assignees, against DAS, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom DAS directly or indirectly distributes or sells the Products, including, but not limited to,

downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively “**Releasees**”), based on their DAS’s failure to warn about alleged exposures to lead contained in the Products that were manufactured, distributed, sold, and/or offered for sale by DAS in California before the Effective Date, as alleged in the Notice, and those Products currently in the stream of commerce in California as set forth in Section 2.

In further consideration of the promises and agreements herein contained, WHEN as an entity in the public interest but *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of WHEN’s rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that WHEN may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys’ fees (exclusive of any attorney’s fees incurred pursuant to Section 13) arising under Proposition 65 with respect to the Product before the Effective Date and with respect to those Products currently in the stream of commerce in California as set forth in Section 2 (collectively “**Claims**”), against DAS and Releasees.

4.2. Section 1542 Waiver

It is further understood and agreed that DAS and WHEN, in their individual, not representative, capacities specifically and expressly waive any and all rights under

Section 1542 of the California Civil Code, or any analogous (in whole or in part) federal, state, or municipal law, rule, regulation, or ordinance related to the Product manufactured, distributed, sold, and/or offered for sale by DAS in California before the Effective Date, as alleged in the Notice, and those Products currently in the stream of commerce in California as set forth in Section 2. Section 1542 provides as follows: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the Release, which if known by him or her, must have materially affected his settlement with the debtor.”

4.3. DAS Labs, LLC’s release of WHEN Justice

DAS, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against WHEN and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by WHEN and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by any reason of law generally, or as to the Products, then DAS may provide WHEN with written notice of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Agreement, with respect to, and to the extent that, the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required by this Agreement shall be in writing and send by: (a) first-class registered or certified mail, return receipt requested; or (b) a recognized overnight courier to any Party by the other at the following addresses:

For WHEN Justice:

Soteria Law
Attn: Jacqueline Biner, Esq.
3540 Wilkinson Lane #8
Lafayette, CA 94549

For DAS Labs, LLC:

Dentons Durham Jones Pinegar
Attn: Tyler Cahoon, Esq.
1557 Innovation Way, Ste. 400
Lehi, UT 84043 &
tyler.cahoon@dentons.com

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

8. COUNTERPARTS, FACSIMILE, AND PDF SIGNATURES

This Agreement may be executed electronically and in counterparts, each of which shall be deemed an original and, all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH REPORTING REQUIREMENTS

WHEN and its counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

10. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

11. MODIFICATION

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

12. JOINT PREPARATION

The Parties jointly participated in the preparation of this Agreement, and this Agreement is the result of the joint effort of the Parties. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. The Parties to this Agreement agree any statute or rule of construction providing that ambiguities should be interpreted against the drafting Party shall be waived, and, in this regard, the Parties hereby waive California Civil Code § 1654.

13. ENFORCEMENT

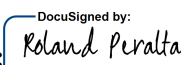
The Parties mutually agree, before any Party may take action to enforce the terms of this Agreement for alleged breach, the Party seeking enforcement must give the other Party written notice of such alleged breach and a good faith opportunity to respond and cure. Thereafter, the Parties agree to meet and confer for a period of no less than thirty (30) days to attempt to resolve any alleged violation or breach. If the alleged violation cannot be resolved after good faith attempts to correct the violation or breach and after meeting and conferring as required under this Section, then the Party alleging a violation may thereafter move to enforce the terms of this Agreement, including through the filing of a formal enforcement action or any other remedy available under the law. On any motion to enforce the terms of this Agreement in compliance with this Section, the prevailing Party shall be entitled to its reasonable attorney's fees and costs according to proof.

14. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Agreement.


AGREED TO:

Date: 7/3/2025

By: 
DocuSigned by:
F9912C92A48A4A6...
Roland Peralta, President
WHEN Justice

AGREED TO:

Date: 7/9/2025

By: 
Signed by:
0CB04E3473E4488
Ryan Gardner, CEO
DAS Labs, LLC