

SETTLEMENT AGREEMENT  
BETWEEN  
CONSUMER ADVOCACY GROUP, INC.  
AND  
NHS U.S., LLC

Consumer Advocacy Group, Inc. (“CAG”) and NHS U.S., LLC (CAG and NHS collectively are referred to as the “Parties” and each is a “Party”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that NHS (and/or its predecessors and/or affiliates (collectively, herein “NHS”) violated Proposition 65. The effective date of this Settlement Agreement shall be the date upon which NHS has notice that it is fully executed by all Parties hereto (the “Effective Date”).

**1.0     Introduction**

1.1       CAG is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2       NHS sells, sold or offered for sale, at various times, all sizes, forms of packaging, bulks, of Nature’s Bounty Turmeric Capsules including but not limited to “Nature’s Bounty;” “Turmeric 450mg;” “60 capsules;” “UPC 074312154171.” (collectively referred to throughout as the “Covered Products”). The Covered Products are defined as those either imported, and/or supplied to retailers, and/or manufactured, and/or distributed and/or sold or offered for sale and/or given away by NHS only.

Settlement Agreement Between  
Consumer Advocacy Group, Inc. and NHS U.S., LLC

1.3 CAG alleges that Covered Products contain lead and lead and lead compounds (collectively, “Lead”) and that NHS did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* (“Proposition 65”)).

1.4 On October 1, 1992, the Governor of California added Lead to the Proposition 65 list of chemicals known to the state to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twelve (12) months after addition of Lead to the list of chemicals known to the State to cause cancer, Lead became fully subject to Proposition 65 warning requirements and discharge prohibitions.

1.5 On February 27, 1987, the Governor of California added Lead to the Proposition 65 list of chemicals known to the State to cause reproductive and developmental toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Lead is known to the State to cause developmental toxicity and male and female reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twelve (12) months after addition of Lead to the list of chemicals known to the State to cause reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements and discharge prohibitions.

1.6 Lead is referred to hereinafter as the “Listed Chemical”.

1.7 On or about November 5, 2020 (Attorney General Notice # 2020-3056) CAG served The Nature's Bounty Co.; Nature's Bounty (NY), Inc.; Nature's

Bounty; Walmart Inc.; Walmart.com; Wal-mart Stores, Inc., and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” regarding Covered Products containing the Listed Chemical.

1.8 The Sixty-Day Notice (the “Notice”) alleged that NHS and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Listed Chemical.

1.9 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth herein concerning the Parties’ and the Covered Products’ compliance with Proposition 65 (the “Dispute”).

1.10 By execution of this Settlement Agreement, neither Party makes any admission against interest of any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine.

Nothing in this Settlement Agreement shall be construed as an admission against interest by either Party of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission against interest or evidence of fault, wrongdoing, or liability by NHS, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised,

nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or NHS may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

## **2.0 Release**

2.1 This Settlement Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity, on the one hand, and (a) NHS, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, suppliers, manufacturers, predecessors, successors, and assigns (collectively “Releasees”) and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and specifically including Walmart Inc.; Walmart.com; Wal-mart Stores, Inc. and their respective subsidiaries and affiliates (“Downstream Releasees”), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees or Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising only in connection with the Covered Products manufactured prior to the Effective Date, even if sold by Releasees or Downstream Releasees after the Effective Date.

2.2 CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action, 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 limited to, investigation fees, expert fees, and attorneys' fees) (collectively "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect of any Covered Products manufactured prior to the Effective Date, only to the extent that such Claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees and/or Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products. CAG acknowledges that it is familiar with Section 1542 of Civil Code, which provides as follows:

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

CAG, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil

Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. The release in this section shall have no force or effect until the full amount of payments set forth in Section 4.0 below are paid in full.

### **3.0 NHS' Duties**

3.1 NHS agrees, promises, and represents that after the Effective Date NHS shall either provide Proposition 65 warnings, as specified herein, or optimize the manufacture of any Covered Products manufactured after the Effective Date and offered for sale in California such that the level of Lead in the Covered Products does not exceed 350 parts per billion (“ppb”) (the “Reformulation Standard”).

3.2 NHS agrees, promises, and represents that, as of the Effective Date, it shall sell or otherwise distribute only Covered Products that are manufactured after the Effective Date that meet the “Reformulation Standard” or provide Proposition 65 warnings, as specified herein. Any Covered Product in NHS’ existing inventory that does not meet the Reformulation Standard shall contain a warning that shall comply with the warning requirements under Title 27, California Code of Regulations, §§ 25600, et seq.

3.3 As to Covered Products manufactured after the Effective Date, if such Covered Products do not meet the Reformulation Standard, NHS shall provide warnings consistent with Title 27 California Code of Regulations, §§ 25600, *et seq.* Should NHS sell any Covered Products online via a website under its

control, if required the warning will be posted in the manner provided for with respect to internet sales, as provided for in Title 27, California Code of Regulations, §§ 25601 and 25602, including as they may be subsequently amended. Where the Covered Product includes consumer information as defined by California Code of Regulations Title 27, California Code of Regulations §25600.1(c) in a language other than English, the warning if required must also be provided in that language in addition to English but otherwise, the warning only needs to be provided in English.

3.4 As between CAG and NHS, compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in existing inventory and for Covered Products manufactured after the Effective Date, regardless of when distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

#### **4.0 Payments**

4.1 Within ten (10) business days after the Effective Date, NHS agrees to pay a total of seventy thousand dollars (\$70,000.00) by separate checks apportioned as follows:

4.1.1 Penalty: NHS shall issue two separate checks for a total amount of twelve thousand dollars (\$12,000.00) as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of nine thousand dollars

(\$9,000.00), representing 75% of the total civil penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of three thousand dollars (\$3,000.00), representing 25% of the total civil penalty. OEHHA's check shall be delivered to the Office of Environmental Health Hazard Assessment P.O. Box 4010 Sacramento, CA 95812-4010, Attn: Mike Gyurics. CAG's check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Additionally, two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010 Sacramento, CA 95812-4010, Attn: Mike Gyurics (EIN: 68-0284486) in the amount of \$9,000.00. The second 1099 shall be issued in the amount of \$3,000.00 to CAG and delivered to Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212. By the Effective Date, CAG shall provide taxpayer identification information as necessary for NHS to process the check to CAG.

4.1.2 Attorneys' Fees and Costs: Fifty-eight thousand (\$58,000.00) of such payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to NHS' attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the effective Date, Yeroushalmi & Associates shall provide NHS with its Employer



Identification Number.

**5.0 Authority to Enter Into Settlement Agreement**

5.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

5.2 NHS represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind NHS to this Settlement Agreement.

**6.0 Report of the Settlement Agreement to the Office of the Attorney General Of California**

CAG shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

**7.0 Execution in Counterparts and Facsimile**

This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original.

**8.0 Modification of Settlement Agreement**

Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

**9.0 Application of Settlement Agreement**

9.1 This Settlement Agreement shall apply to, and be binding upon the Parties, and inure to the benefit of CAG and the Releasees and Downstream Releasees identified in Section 2 above and their respective successors or assigns.

9.2 On and after the Effective Date, NHS' obligations under this Settlement Agreement apply only to Covered Products sold in California or to California

consumers, and NHS' compliance with this Settlement Agreement shall constitute compliance with Proposition 65 by each Releasee and/or Downstream Releasee with regard to the Listed Chemical in the Covered Products, regardless of when sold or by whom they are sold.

#### **10.0 Enforcement of Settlement Agreement**

Notwithstanding the above, CAG may bring an action to enforce any breach of the monetary settlement terms in Section 4.0, above, upon five (5) days written notice by CAG to NHS of the alleged breach in accordance with the notification requirements set forth in Section 12.0, below. In case of any enforcement action, the prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement of this Settlement Agreement. This Settlement Agreement is enforceable only by the Parties hereto.

#### **11.0 Notification Requirements**

Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

Reuben Yeroushalmi, Esq.  
YEROUSHALMI & YEROUSHALMI  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

For NHS:

Judith M. Praitis, Esq.  
Faegre Drinker Biddle & Reath LLP  
1800 Century Park East, Suite 1500  
Los Angeles, California 90067 USA.

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section. Courtesy notifications may be provided by email.

**13.0 SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

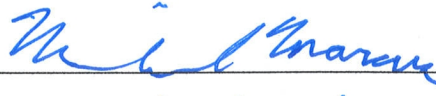
**14.0 GOVERNING LAW**

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


[Signatures on Next Page]

WHEREFORE, the Parties agree to the foregoing terms and conditions:

CONSUMER ADVOCACY GROUP, INC.

Dated: June 5, 2023 By:   
Printed Name: Michael Marcus  
Title: Director

NHS U.S., LLC

Jun 7, 2023  
Dated: \_\_\_\_\_  
By:   
Printed Name: Aileen Stocks  
Title: President, wellness