

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) between The Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc. (“HLF”) and Hama Hama Company (“Hama Hama”) is effective 60 days after the date on which it is fully executed (“Effective Date”). HLF and Hama Hama are hereinafter referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows.

1. General Terms

1.1 This Agreement is intended to fully resolve all claims, demands, and allegations set forth in or related to the Notice of Violation of California Health & Safety Code § 25249.5, *et seq.* (also known as “Proposition 65”) that HLF served on Hama Hama on January 12, 2021 (the “Notice”) with regard to the following products identified below (referred to hereinafter as “Covered Product”).

1.2 COVERED PRODUCT

Hama Hama Fresh from Hood Canal Yearling Farm Raised Pacific Oysters
NET WT 16 OZ;

Hama Hama Farm Sampler Hove Cove Oysters x-small;

Hama Hama Farm Sampler Eld Inlet Oysters x-small.

1.3 The Parties enter into this Agreement in order to achieve a settlement of the claims as stated in Section 1 (collectively “this Matter”) and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law, or violation of law. Nothing in this Agreement or any document referred to herein shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability whatsoever. The Parties agree that this Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

2. Cadmium Standards and Warnings.

In consideration of the following covenants of Hama Hama and other conditions contained in this Agreement, the Parties have provided the releases as set forth in Section 5 below.

2.1 Beginning on the Effective Date, Hama Hama shall not manufacture for sale in the State of California, “Distribute into the State of California,” or directly sell

in the State of California, any Covered Product which exposes a person to a “Daily Exposure Level” of more than 4.1 micrograms of cadmium per day, unless each such unit of the Covered Product bears the warning meeting the warning requirements of this Section. As used in this Agreement, the term “Distribute into the State of California” means that the actual sale of the Covered Product has occurred in California.

2.2 Warnings. Any Covered Products that Hama Hama manufactures or sells after the Effective Date that it thereafter Distributes into the State of California shall either (1) qualify as a Reformulated Covered Products under Section 3, or (2) comply with the warning requirements of this Section.

2.2.1. The term “WARNING” shall be in bold and capitalized.

2.2.2 A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline must be placed to the left of the word “WARNING”. The size of the symbol cannot be smaller than the height of the word “WARNING”. The warning symbol should be downloaded from this website: <https://www.p65warnings.ca.gov/warning-symbol>. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white.



2.2.3 Physical store sales. The warning statement shall be prominently displayed on the Covered Products, on (1) the packaging of the Covered Products, or (2) on a placard, shelf tag, or sign, provided that the statement is displayed with such conspicuousness, as compared with other words, statements, or designs or devices on the label, labeling, or sign, as to render it likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use.

2.2.4 The warning statement displayed on the Covered Product’s label must be set off from other surrounding information and enclosed in a text box. The entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 6-point type. “Consumer information” includes warnings, directions for use, ingredient lists, and nutritional information. “Consumer information” does not include the brand name, product name, company name, location of manufacture, or product advertising.

2.2.5 If the warning statement is displayed on a placard, shelf tag, or sign where the Covered Product is offered for sale in a physical store, the warning placard or sign must enable an ordinary individual to determine which Covered Products the warning applies to. In accordance with 27 CCR § 25600.2, Hama Hama will provide consumer product exposure warnings to third parties.

2.2.6 Internet Sales. For the internet/online sales, the warning on the internet page must be prominently displayed on either the product page, or by otherwise prominently displaying the warning prior to completing the purchase, or both, to California purchasers. Covered Products sold online must also have the label warning described in Section 2.2.4.

2.2. 7 Warning statement. If Hama Hama provides warnings under Section 2.2, Hama Hama shall provide one of the following warning statements:

A) Option 1:

WARNING: This product can expose you to [chemicals including] cadmium, 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.

B) Option 2:

WARNING: Consuming this product can expose you to chemicals including cadmium, 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.

C) Short-Form Warning: The font size of this short-form warning must be a minimum of 6 points, and it cannot be smaller than the largest size font used for other consumer information included on the label. The Short Form Warning is limited only to label warning and cannot be used on signs or other types of warnings.

WARNING: [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov/food

The bracketed terms may be provided at Hama Hama's option if the Covered Products is compliant with Proposition 65's safe level for the bracketed indication.

2.2.8 The warning requirements set forth herein are recognized by the Parties as the exclusive manner of providing a warning for the Covered Products, unless warnings requirements for the Covered Products have been amended and were specified in the Proposition 65 regulations for cadmium in food (Title 27, California Code of Regulations, section 25601, *et seq.*) or as such regulations may be amended in the future.

3. Reformulated Covered Products; Testing

3.1 A "Reformulated Covered Product" is one that does not exceed 1.6 parts per million ("ppm") of cadmium, as determined by this Section: 1.6 ppm x 2.48 grams

per day = 4 mcg/day. For purposes of determining if a warning is required pursuant to Section 2, the average cadmium concentration of six (6) samples of the Covered Product randomly selected from different lot numbers by Hama Hama will be used. HLF reserves the right to test reformulated products and assert any new claims that may arise.

3.2 Hama Hama shall not be required to engage in testing pursuant to this Agreement unless Hama Hama distributes into the State of California after the Effective Date the Covered Product without a warning. All testing pursuant to this Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, limit of quantification, accuracy, and precision and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg, or any other testing method subsequently agreed upon in writing by the Parties.

3.3 All testing pursuant to this Agreement shall be performed by an independent third-party laboratory that is accredited to perform cadmium testing using the methodology in this Section. Unless the Covered Product contains the warning as specified under Section 2, testing shall be performed prior to Hama Hama's first distribution into California or sale in California of any Covered Product manufactured or purchased by Hama Hama after the Effective Date, and testing shall continue at least once per year thereafter for an additional five (5) years as set forth in Section 3.4 below.

3.4 If Hama Hama continues to sell Covered Product to California without the applicable warning after Effective Date, Hama Hama shall arrange for at least five (5) consecutive years and at least once per year, commencing one year from the Effective Date, for the cadmium testing of five (5) randomly selected samples each year for each Covered Product to confirm whether the Daily Exposure Level is more or less than 4.1 micrograms of cadmium when consumed pursuant to 2.48 grams daily over 30 days as noted in 3.1. Hama Hama shall test samples in the form intended for the end-user to be distributed or sold to California consumers.

3.5 If Hama Hama is successful with reformulation of the Covered Product and reduces the Daily Exposure Level to 4.1 micrograms of cadmium or below when taken pursuant to the maximum suggested dose as directed on the Covered Product's label, the Parties agree that the Covered Product may be offered for sale in California without the warning. Hama Hama shall notify HLF and provide any test results for the Covered Product that document this change in formulation, prior to Hama Hama directly selling in the State of California any Covered Product without the warning set forth in Section 2.

3.6 The testing requirements set forth in this Agreement are not applicable to any Covered Product for which Hama Hama has provided a warning as specified in Section 2.

4. Settlement Payments

4.1 In full satisfaction of all potential civil penalties and attorneys' fees, costs, and any other expenses incurred by HLF or its counsel, Hama Hama shall pay a total settlement amount of \$70,000 (the "Settlement Amount") by wire transfer to HLF's counsel escrow account within ten (10) days of the Effective Date, for which HLF's counsel will give Hama Hama the necessary account information.

4.2 HLF shall be solely responsible for allocating the payment pursuant to Sections 4.3. Upon request, HLF or its legal counsel shall supply Hama Hama with a completed W-9 form.

4.3 The Settlement Amount shall be allocated as follows:

4.3.1 \$17,500 shall be considered a "civil penalty", of which HLF shall remit seventy-five percent (75%) to the "Safe Drinking Water and Toxic Enforcement Fund" managed by the State of California's Office of Environmental Health Hazard Assessment.

4.3.2 \$52,500 shall be considered reimbursement of HLF's costs and HLF's attorneys' fees and costs related to the Matter.

Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys' fees related to this Matter.

5. Binding Effect; Claims Covered and Released

5.1 This Agreement is a full, final, and binding resolution between HLF, on behalf of itself, and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, executors, administrators, successors, and assigns, on the one hand, and Hama Hama, on behalf of itself, and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, and assigns, on the other, of any alleged violation of Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to cadmium from the handling, use, or consumption of the Covered Product, and fully resolves all claims that have been asserted or that could have been asserted in this action up to and including the Effective Date for failure to provide Proposition 65 warnings for the Covered Product. HLF hereby fully releases and discharges Hama Hama and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of the Covered Product, and the predecessors, successors and assigns of any of them (collectively, "Released Parties"), from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted or that could have been asserted as to any alleged violation of Proposition 65 up through and including the Effective Date arising from the alleged failure to provide Proposition 65 warnings regarding cadmium on, or for causing alleged exposure to cadmium from, the Covered Product.

5.2 HLF, on behalf of itself only, hereby releases and discharges the Released Parties from all known claims, causes of action, suits, damages, penalties, liabilities, injunctive relief, declaratory relief, attorney's fees, costs, and expenses arising from or related to the claims asserted or that could have been asserted, under the law of the State of California, regarding the presence of cadmium in the Covered Product or the facts alleged in the Notice, including without limitation any and all claims concerning exposure of any person to cadmium in the Covered Product up to, and including, the Effective Date.

5.3 HLF on its own behalf only, on the one hand, and Hama Hama on its own behalf only, on the other, further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice, provided, however, that nothing shall affect or limit any Party's right to seek to enforce the terms of this Agreement.

5.4 Compliance with the terms of this Agreement shall be deemed to constitute compliance with Proposition 65 by any Released Party regarding alleged exposures to cadmium in the Covered Product.

5.5 Nothing in this Release is intended to apply to any occupational or environmental exposures arising under Proposition 65, except as otherwise provided in this Agreement, nor shall it apply to any of Hama Hama products other than the Covered Product.

6. Resolution of Disputes

6. If HLF alleges that Hama Hama has failed to comply with this Agreement, prior to filing an action or motion relating to enforcement, HLF shall first provide Hama Hama thirty (30) days' advance written notice of the alleged violation. HFL shall provide testing results, lot numbers, photographs of the Covered Product packaging, and purchase receipts for the Covered Product at issue in the alleged violation, as applicable. The Parties shall meet and confer during such thirty (30) day period in an effort to reach agreement on an appropriate cure for the alleged violation without the need for litigation.

7. After execution of this Agreement, HLF will submit to the California Attorney General a Report of Settlement. In addition, HLF will provide to the California Attorney General a signed copy of this Agreement.

8. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by the Parties. Notwithstanding the foregoing, Hama Hama shall be entitled, at its option, to modify any warning that it provides under Section 2 to conform with any change in the Proposition 65 warning regulations set forth in Title 27 of the California Code of Regulations that may be adopted after the Effective Date. In the event that Proposition 65 is repealed or is otherwise

rendered inapplicable by reason of law generally, or as to the Covered Products, then Hama Hama shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

9. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, affiliates, officers, directors, employees, agents, servants, heirs, executors, successors, and assigns.

10. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

11. If any provision, term, or section of this Agreement is found to be invalid, illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full force and effect and remain binding on the Parties.

12. This Agreement shall be governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals or entities executing this Agreement at the time of execution.

13. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

14. The Parties are aware and acknowledge that this Agreement is an out-of-court settlement. The Parties are entering into this Agreement in good faith and in an effort to settle all claims and allegations related to the Notice.

15. Any legal action to enforce this Agreement shall be brought in any county of the State of California, any of which is deemed to be the proper venue for such legal action.

16. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail, copy of this Agreement, or any other counterpart, shall be deemed to be an original.

17. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

Signatures and date follow on the next page.

DATED: 7/30/2021 HLF



By: David Steinmann
Chief Officer
The Chemical Toxin Working Group Inc. dba Healthy
Living Foundation Inc.

DATED: July 30, 2021 Hama Hama



By: Kendra James
President
Hama Hama Company