

## **SETTLEMENT AND RELEASE AGREEMENT**

### **1. INTRODUCTION**

#### **1.1. Ecological Alliance, LLC and Hormel Foods Corporation**

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Hormel Foods Corporation ("HFC"), on the other hand, with Ecological and HFC collectively referred to as the "Parties" and individually as a "Party."

#### **1.2. General Allegations**

Ecological alleges that HFC manufactured and distributed and offered for sale in the State of California Hormel® branded mashed sweet potatoes that allegedly contained lead and that did not include a warning allegedly required by the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* and its implementing regulations ("Proposition 65"). Lead is chemical listed under Proposition 65 as known to the State of California to cause cancer, birth defects or other reproductive harm.

#### **1.3. Product Description**

The products that are covered by this Settlement Agreement are defined as Hormel® branded mashed sweet potatoes that were sold or offered for sale in California. All such items shall be referred to herein as the "Products."

#### **1.4. Notice of Violation**

On February 24, 2021, Ecological served HFC, Stater Bros. Markets, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "60-Day Notice of Violation" ("Notice") that informed them that the Products were allegedly being sold in California in violation of California Health & Safety Code section 25249.6 because they failed to include a warning

allegedly required by Proposition 65 that consumers would allegedly be exposed to lead from the Products. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

**1.5. No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning HFC's compliance with Proposition 65 with regard to the Products. HFC denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or all other statutory, regulatory, common law or equitable requirements. Nothing in this Settlement Agreement shall be construed as an admission by HFC of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by HFC of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by HFC. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of HFC under this Settlement Agreement.

**1.6. Effective & Compliance Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed. "Compliance Date" shall mean six (6) months after the Effective Date.

**2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

As of the Compliance Date, HFC, at its sole discretion, agrees to either (a) cease selling, offering for sale or distributing the Products in California, (b) manufacture, import, or otherwise

source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.1 below, or (c) provide a clear and reasonable Proposition 65 warning on the Products pursuant to Section 2.2 below.

**2.1. Reformulation Standards**

The Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the level of lead in the Products sold by HFC in California does not exceed 40 ppb (parts per billion) (“Reformulated Products”). Such Products that HFC manufactured, shipped or contracted to be shipped for California sale, or otherwise caused to enter the stream of commerce prior to the Compliance Date, shall be deemed exempted from the requirements of this Section 2 and HFC shall have no obligation to warn.

**2.2. Warning Option**

Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning requirement shall only be required as to Products that are manufactured, distributed, marketed, imported, sold, shipped for sale or offered for sale to consumers by HFC in the State of California. No Proposition 65 warning shall be required for any Products that are manufactured, supplied or contracted to be supplied to third parties by HFC prior to the Compliance Date, and all such Products are hereby deemed to be exempt from Proposition 65 enforcement under this Agreement.

### **2.3. Warning Language**

(a) Where required to meet the criteria set forth in Section 2.2, HFC shall display one of the following warning statements on the label of the Products that do not meet the warning exemption standard set forth in Section 2.1 above:

(1) **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](http://www.P65Warnings.ca.gov/food).

(2) **WARNING:** Cancer and Reproductive Harm--  
[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

The warning shall be set off from other surrounding information, enclosed in a box. HFC may include the names of additional chemicals in the warning if they are present in the Products at a level that HFC reasonably believes would require a Proposition 65 warning.

(b) The requirements for warnings, set forth in subsection (a) above, are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. HFC shall be deemed to be in compliance with the warning requirements of this Settlement Agreement by either adhering to this Section 2.3 or by complying with the Proposition 65 warning requirements adopted by the State of California Office of Environmental Health Hazard Assessment (“OEHHA”) as of or after the Effective Date.

(c) If Proposition 65 warnings for lead should no longer be required, HFC shall have no further obligations pursuant to this Settlement Agreement.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, HFC shall pay a total of \$2,000 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to OEHHA and the remaining 25% of the penalty remitted to Ecological. Ecological's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, HFC shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to HFC's attention. HFC shall pay Ecological's counsel \$16,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Within three weeks of execution of this Agreement by all parties, HFC shall make a payment of Eighteen Thousand Dollars (\$18,000), for the civil penalties and attorney's fees / costs by wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325149324377

Beneficiary: Custodio & Dubey LLP

Other than this payment, each Party is to bear its own attorneys' fees and costs. Each Party is solely responsible for reporting all information about the settlement payments to the relevant tax authorities and for payment of any taxes associated with the settlement payments.

## **6. RELEASE OF ALL CLAIMS**

### **6.1. Release of HFC, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained and the payments to be made pursuant to Sections 3 and 4 above, Ecological, on behalf of itself and its owners, principals, members, shareholders, officers, directors, employees, parents, subsidiaries, past and current agents, representatives, attorneys, successors and/or assignees (collectively, "Releasers"), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and fully releases all claims relating to the Products, including, without limitation, all actions, in law or in equity, including all claims, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) HFC, (b) each of HFC's downstream distributors or retailers (including but not limited to Stater Bros. Markets), and any other upstream or downstream entities in the distribution chain for the Products, including, but not limited to, manufacturers, wholesalers, suppliers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers,

owners, purchasers, third-party re-sellers, and users,(c) HFC's corporate affiliates, sister companies, subsidiaries, doing business as entities ("DBAs"), successor companies, and each of their respective officers, directors, attorneys, representatives, shareholders, members, agents, employees, and sister and parent entities, and (d) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors and assigns of any of the entities identified in subsection (a) and (c), above (collectively "Releasees").

Ecological also, on behalf of itself and Releasors, but *not* in its representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, and as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against HFC and/or the Releasees. Ecological acknowledges that it is familiar with California Civil Code section 1542, 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.

Ecological, on behalf of itself and Releasors expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on them by the provisions of California Civil Code section 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 Parties agree that compliance with the terms of this Agreement shall constitute compliance by any Releasee with Proposition 65.

**6.2. HFC's Release of Ecological**

HFC waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ecological and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

**7. 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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then HFC shall have no further obligations pursuant to this Settlement Agreement.

**8. NOTICES**

Unless specified elsewhere herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by:

(i) electronic mail; or (ii) overnight courier on any party by the other party at the following addresses:

For HFC:	Matthew Kaplan Tucker Ellis LLP 515 South Flower Street   Forty Second Floor Los Angeles, CA 90071
----------	---

For Ecological:	Vineet Dubey, Esq. Custodio & Dubey LLP 445 S. Figueroa St., Suite 2520 Los Angeles, CA 90071
-----------------	--

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



**9. COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. The exchange of copies of a signature by facsimile or other electronic means, including email or email attachment, shall be binding and enforceable under California's Uniform Electronic Transaction Act, Civil Code sections 1633.1 *et seq.*

**10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

Ecological agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, including all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties, or were relied on by either Party.

**12. MODIFICATION**

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

**13. AUTHORIZATION**

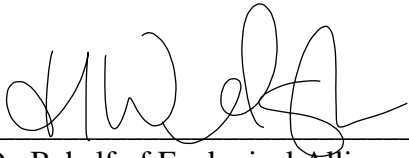
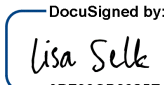
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**14. SEVERABILITY**

If any part of this Settlement Agreement is void or otherwise invalid and hence, unenforceable, such invalid or void portion shall be deemed to be separate and severable from the balance of this Settlement Agreement, which shall be given full force and effect as though the void or invalid provision had never been a part of this Settlement Agreement.

**15. CONSTRUCTION**

In construing this Settlement Agreement, none of the Parties hereto shall have any term or provision, or any uncertainty or ambiguity as to any term or provision herein, construed against such party solely by reason of such party having drafted the same, as a result of the manner of the preparation of this Settlement Agreement, or otherwise.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: December 5, 2022</p> <p>By: </p> <p>On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p style="text-align: center;">12/07/2022</p> <p>Date: December __, 2022</p> <p>By:  8D799CB0325E457...</p> <p>On Behalf of Hormel Foods Corporation</p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin-top: 10px;"> <p style="text-align: center;"><b>HFC LEGAL</b></p> <p style="text-align: center; font-size: small;">Approval Expires 12-31-2022</p> <p style="text-align: center; font-size: x-small;">Unauthorized use of this approval stamp is fraudulent and makes the Contract voidable.</p> </div>
--	--