

## SETTLEMENT AND RELEASE AGREEMENT

### 1. **INTRODUCTION**

#### 1.1. **Ecological Alliance, LLC and Forever Green Food Inc.**

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Forever Green Food, Inc. ("Forever"), on the other hand, with Ecological and Forever collectively referred to as the "Parties," and each individually as a "Party."

#### 1.2. **Ecological's Allegations**

Ecological alleges that Forever manufactured, distributed and offered for sale in the State of California Paradise Green mango chips and Paradise Green dried mango that contain Lead, and that these items did not include warnings 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"). California has identified and listed Lead under Proposition 65 as a chemical 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 mango chips and dried mango that Forever has manufactured, imported, sold, offered for sale or distributed in California. All such items shall be referred to herein as the "Products."

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

On March 23, 2021, Ecological served Forever, Ross Stores, Inc., 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

provided Forever and such public enforcers with notice that Forever was allegedly in violation of California Health & Safety Code section 25249.6 for sales in California of “Paradise Green mango chips, including but not limited to Item #400223408414; and Paradise Green dried mango, including but not limited to Item #400223408391” by failing to warn that the Products exposed users in California to Lead. 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 Forever's compliance with Proposition 65. Forever denies the 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 and all other statutory, regulatory, common law or equitable requirements or doctrines. Nothing in this Settlement Agreement is or shall be construed as an admission by Forever 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 Forever of any fact, finding, conclusion, issue of law, or violation of law. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Forever under this Settlement Agreement.

**1.6. Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

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

As of the Effective Date, Forever, 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 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 does not exceed 10 ppb (parts per billion) (“Reformulated Products”). Products that were supplied or contracted to be supplied to third parties by Forever prior to 6 months after the Effective Date shall be exempt from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

If a standard for Lead is adopted by the State of California that would allow levels higher than those set forth in this Agreement, whether by statute, regulation, or in a consent judgment agreed to by the California Attorney General and approved by a court, then Forever will not be in breach of this Agreement if the Products meet such standard.

### **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 Forever in the State of California. No Proposition 65 warning shall be required for any Products that are supplied or contracted to be

supplied to third parties by Forever prior to 6 months after the Effective Date, and all such Products are hereby deemed to be exempt from Proposition 65 enforcement.

**2.3. Warning Language**

(a) Where required to meet the criteria set forth in Section 2.2, Forever shall display one of the following warning statements, enclosed in a box, on the packaging 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 chemicals including 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).

Forever may include the names of additional chemicals in the warning if they are present in the Products at a level that Forever 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. Forever 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, Forever 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, Forever shall pay a total of \$1,000 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, Forever shall reimburse Ecological's counsel for fees and costs incurred as a result of investigating and bringing this matter to Forever's attention. Forever shall pay Ecological's counsel \$14,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

By December 1, 2021, Forever shall make a total payment of Fifteen Thousand Dollars (\$15,000) for the civil penalties and attorney's fees / costs set forth in this Agreement. Payment shall be made by wire transfer to Plaintiff's counsel Custodio & Dubey LLP as follows:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325132729125

Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

**6. RELEASE OF ALL CLAIMS**

**6.1. Release of Forever, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ecological, on behalf of itself and its owners, principals, shareholders, officers, directors, employees, parents, subsidiaries, its 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 action, and fully releases all claims relating to, the Products, 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) of any kind or nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Forever, (b) each of Forever's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, third-party re-sellers, and users, (c) each of Forever's upstream vendors, manufacturers, suppliers, importers, (d) Ross Stores, Inc. and its parents, subsidiaries, corporate affiliates, successors, and each of their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and (d) Forever's parents, subsidiaries, corporate affiliates,

successors, and each of their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (the entities identified in subsections (a) through (d) are referred to collectively as "Releasees").

Ecological also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release which shall be effective as a full and final accord and satisfaction, and a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, penalties, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Forever and 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, in its individual capacity only, and on behalf of itself, 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 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.

## **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, and without regard to its conflicts of law principles. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by



reason of law generally, or as to the Products, then Forever shall have no further obligations pursuant to this Settlement Agreement.

**8. NOTICES**

Unless specified 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 Forever:	Matthew Kaplan, Esq. Tucker Ellis LLP 515 South Flower Street Forty Second Floor Los Angeles, CA 90071 matthew.kaplan@tuckerellis.com
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For Ecological:	Vineet Dubey, Esq. Custodio & Dubey LLP 445 S. Figueroa St., Suite 2520 Los Angeles, CA 90071 dubey@cd-lawyers.com
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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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as an original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 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**

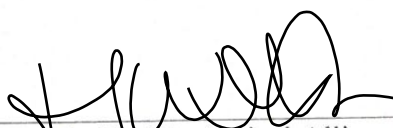

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party. No other agreements, oral or otherwise, exist to bind either of the Parties.

**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.

<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: October <u>21</u>, 2021</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: October <u>19</u>, 2021</p> <p>By:  On Behalf of Forever Green Food Inc.</p>
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