

SETTLEMENT AGREEMENT AND RELEASE

BETWEEN

KEY SCIENCES LLC

AND

ELLA’S KITCHEN, INC.

1.0 INTRODUCTION

The Settling Parties:

- 1.1 Key Sciences LLC (“Key Sciences”) and Ella’s Kitchen, Inc. (“Ella’s”) (Key Sciences and Ella’s are collectively referred to as the “Parties” and each individually as a “Party”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle Key Sciences’ allegations that Ella’s violated the California Safe Drinking Water and Toxic Enforcement Act, *Cal. Health & Safety Code § 25249.5, et seq.* (“Proposition 65”).
- 1.2 Key Sciences maintains that it is a limited liability corporation whose mission is to ensure accuracy of labeling for the benefit and protection of consumers of packaged goods through rigorous scientific testing.
- 1.3 Ella’s is alleged to be a person in the course of doing business in California and subject to the provisions of Proposition 65.

Effective Date:

- 1.4 The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”).

The Alleged Violations:

- 1.5 Key Sciences alleges that the Covered Products expose individuals to lead and lead compounds, and that Ella's did not first provide a clear and reasonable warning to those individuals prior to the exposure thus violating Proposition 65.

The Covered Products:

- 1.6 The products covered by this Settlement Agreement are Ella's Kitchen Fruit + Veggie Puree Pouch - Organic Apples, Sweet Potatoes, Pumpkin + Blueberries (the "Covered Product" or "Covered Products").

The Chemicals at Issue:

- 1.7 Lead and lead compounds are referred to hereafter as the "Listed Chemical."
- 1.8 On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause reproductive toxicity. On October 1, 1992, the Governor of California added lead and lead compounds to the list of chemicals known to the State to cause cancer. These additions took place more than twelve (12) months before Key Sciences served its "Sixty-Day Notice of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" which is further described below.

Notice of Violations:

- 1.9 On or about April 8, 2021, Key Sciences served Ella's 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" designated with Attorney General number 2021-00858 regarding Ella's

Kitchen Fruit + Veggie Puree Pouch - Organic Apples, Sweet Potatoes, Pumpkin + Blueberries (3.5 oz) containing the Listed Chemical (the “Notice”).

- 1.10 The Notice alleges that Ella’s 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.

The Dispute and No Admissions by the Parties:

1.11 Ella’s denies the allegations in the Notice and denies that Proposition 65 warnings are required for any lead or lead compounds in the Covered Products.

1.12 The Parties enter into this Settlement Agreement to settle all disputed claims between the Parties regarding alleged exposures to the Listed Chemical in the Covered Product and the Covered Product’s compliance with Proposition 65 (the “Dispute”).

1.13 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any alleged 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 by the Parties 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 or evidence of fault, wrongdoing, or liability by Ella’s, its officers, directors, employees, 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 Key Sciences or Ella's 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 Key Sciences, acting in its individual capacity, on the one hand, and (a) Ella's, and Ella's officers, directors, shareholders, employees, agents, parent companies, affiliates, subsidiaries, and divisions (collectively "Ella's Releasees"), (b) all entities to whom Ella's 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 ("Downstream Releasees"), and the (c) predecessors, successors, and assigns of any of them (the entities and individuals in subsections (a), (b) and (c), above are collectively the "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 Releasees regarding any exposure to the Listed Chemical in the Covered Products, or the failure to warn about any exposure to the Listed Chemical in the Covered Products, for the Covered Products manufactured, shipped, and/or otherwise

distributed by any of the Releasees prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date.

2.2 The Parties agree that compliance with the terms of this Agreement shall be deemed to constitute compliance with Proposition 65 by any Releasee regarding alleged exposures to the Listed Chemical in the Covered Products after the Effective Date.

2.3 Key Sciences, on behalf of itself and its past and current agents, representatives, owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, principals, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively, the “Key Sciences Releasers”), 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 claims, 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”), whether known or unknown, or suspected or unsuspected, against Releasees that arise under Proposition 65 or under any other statute or common law that were or could have been asserted regarding any exposure to the Listed Chemical in the Covered Products, or the failure to warn about any exposure to the Listed Chemical in the Covered Products, for the Covered Products manufactured, shipped, and/or otherwise

distributed by any of the Releasees prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date.

2.4 Key Sciences 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.

Key Sciences, on behalf of itself and its past and current agents, representatives, owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, principals, officers, directors, insurers, attorneys, predecessors, successors and assigns, 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.

2.5 Ella's, on behalf of itself and its past and current agents, representatives, attorneys, parent companies, subsidiaries, affiliates, successors, and/or assignees, hereby waives and releases with respect to the Covered Products all rights to

institute or participate in any form of legal action (directly or indirectly) as to, and fully releases and discharges, Key Sciences and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, principals, officers, directors, insurers, attorneys, predecessors, successors, agents, and assigns from any and all Claims whether known or unknown, or suspected or unsuspected as described in paragraph 2.4 above, that arise from the institution, prosecution, assertion, or settlement of the Notice or the claims asserted therein.

3.0 ELLA’S DUTIES

3.1 Beginning on the Effective Date, Ella’s shall not manufacture, or purchase from another manufacturer, for “Distribution in California,” the Covered Product, unless pursuant to a modification under Section 9.

3.2 Beginning on the Effective Date, Ella’s shall not directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Ella’s knows or has reason to know will sell the Covered Product in California, unless pursuant to a modification under Section 9.

3.3 As used in this Settlement Agreement, the term “Distribution in California” shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Ella’s knows or has reason to know will sell the Covered Product in California.

4.0 PAYMENTS

4.1 Ella’s agrees, to pay a total of fifty thousand dollars (\$50,000.00) within fourteen (14) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Civil Penalty: Ella's shall pay twenty-five thousand dollars (\$25,000.00) as civil penalties pursuant to Health & Safety Code § 25249.12. This payment shall be made via two separate checks:

(a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of eighteen thousand seven hundred and fifty dollars (\$18,750.00), representing 75% of the total penalty; and

(b) one check to Key Sciences LLC in the amount of six thousand two hundred and fifty dollars (\$6,250.00), representing 25% of the total penalty. 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 95184 (EIN: 68-0284486) in the amount of \$18,750.00. The second 1099 shall be issued in the amount of \$6,250.00 to Key Sciences and delivered to: Kyle Wallace, Davitt, Lalley, Dey & McHale, P.C., 1971 E Beltline Ave., Suite 106, Grand Rapids, MI 48925. By the Effective Date, Key Sciences shall provide Ella's with Key Sciences' Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Ella's shall pay twenty-five thousand dollars (\$25,000.00) to "Davitt, Lalley, Dey & McHale, P.C." (herein "DLDM"), as Key Sciences' attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Ella's attention. By the Effective

Date, DLDM shall provide Ella's with its Employer Identification Number.

4.1.3 Delivery of Payment:

(a) OEHHA's check shall be delivered to:

Office of Environmental Health Hazard Assessment
Attn: Mike Gyurics
1001 I Street, Mail Stop 12-B
Sacramento, CA 95812-4010

Concurrently with the payment to OEHHA, Ella's shall provide Key Sciences with written confirmation that the payment to OEHHA was delivered.

(b) All checks for Key Sciences' and DLDM shall be delivered to:

Kyle Wallace
Davitt, Lalley, Dey & McHale, P.C.
1411 Cortez Street #21948
Denver, CO 80221

5.0 AUTHORITY TO ENTER INTO SETTLEMENT AGREEMENT

5.1 Each of the Parties represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind each Party to this Settlement Agreement.

6.0 REPORT OF THE SETTLEMENT AGREEMENT TO THE OFFICE OF THE ATTORNEY GENERAL OF CALIFORNIA

6.1 Key Sciences 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

7.1 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 ENTIRE AGREEMENT

8.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the Dispute, and all related prior discussions, negotiations, commitments, and understandings regarding the Dispute. No other agreements, oral or otherwise, exist to bind any of the Parties concerning the Dispute.

9.0 MODIFICATION OF SETTLEMENT AGREEMENT

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

9.2 If there is federal legislation or a federal regulation that sets a lead concentration limit or other lead-based standard for baby food products applicable to the Covered Product, Ella's shall be entitled to modify this Settlement Agreement to incorporate such a limit or standard.

9.3 If there is any other change in law that affects the requirements of this Settlement Agreement or for which Ella's believes a modification is appropriate, Ella's may seek to modify this Settlement Agreement to bring it in conformity with such a change.

10.0 APPLICATION OF SETTLEMENT AGREEMENT

10.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, the Key Sciences Releasers and the Ella's Releasees. Nothing in this Section 10 shall limit the scope of the releases set out in Section 2.

11.0 ENFORCEMENT OF SETTLEMENT AGREEMENT

11.1 Any Party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 11.2 and 11.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing Party in any such enforcement action shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

11.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against Ella's or any Releasee by Key Sciences, unless the Party seeking enforcement or alleging violation notifies the other Party in writing of the specific acts alleged to breach this Settlement Agreement ("Section 11 Notice") at least 45 days before serving or filing any action or Notice of Violation. Any Section 11 Notice issued to Ella's alleging a violation of Section 3 must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation or warning, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

11.3 Within 30 days of receiving the notice described in Section 11.2, Ella's may either (1) send the store or other place at which the product was available for sale to the public a letter directing that the product at issue in the Section 11 Notice be immediately removed from inventory and returned to Ella's for full credit, including shipping costs and notifies Key Sciences of this corrective action within 15 days thereafter or (2) refute the alleged violation provided under Section 11.2. In the event that Ella's takes the corrective action in subsection (1) of this Section 11.3, Key Sciences shall not seek judicial relief with respect to that Notice of Violation. Should the Parties be unable to resolve the dispute in the Section 11 Notice, any Party may seek relief under Section 11.1.

12.0 NOTIFICATION REQUIREMENTS

12.1 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 Key Sciences:

Kyle Wallace
Davitt, Lalley, Dey & McHale, P.C.
1971 E Beltline Ave., Suite 106
Grand Rapids, MI 48925

For Ella's:

Sarah Esmaili, Esq.
Arnold & Porter Kaye Scholer LLP
10th Floor Three Embarcadero Center
San Francisco, CA 94111-4024

Any Party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

13.0 SEVERABILITY

13.1 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

14.1 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 Ella's shall provide written notice to Key Sciences 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.

AGREED TO:

KEY SCIENCES LLC

Dated: 6/14/21

By:  _____

Printed Name: Lao Tizer

Title: Owner

AGREED TO:

ELLA'S KITCHEN, INC.

Dated: June 14, 2021

By: 

Printed Name: Michael Broz

Title: Vice President, Legal