

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Ecological Alliance, LLC (“Plaintiff” or “EA”), and Maui Tropics Food & Beverage LLC (“Maui Tropics”) and Maui and Sons, Inc. (“Maui and Sons”) (collectively “Maui” or “Defendant”). EA and Maui are each sometimes individually referred to as a “Party,” and collectively as the “Parties.” EA alleges that it is a corporation in the State of California who seeks to improve human health by reducing or eliminating listed chemicals in consumer products. Plaintiff alleges that Maui employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

EA alleges that Maui manufactures, imports, distributes, sells, and/or offers for sale in California, certain dried tropical fruit products containing lead without first providing a Proposition 65 warning. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are defined as dried fruit products, including, but not limited to Maui & Sons Dried Tropical Fruit, UPC No. 745109980371, Item No. 400225344840 (“the Products”), that have been manufactured, imported, distributed, sold, and/or offered for sale in California by Maui (collectively the “Products”).

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

On May 28, 2021, EA served Maui and Sons, Ross Stores, Inc. (“Ross”), the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Maui failed to warn consumers in California that the Products may expose consumers to lead. Maui Tropics is the actual importer of the product subject to the Notice. To the best of the

Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

Maui enters into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notice as to itself and its affiliates, and solely to avoid prolonged and costly litigation. Maui denies the material factual and legal allegations contained in the Notices, maintains that it is not a person subject to Proposition 65, and that all products that it has sold and/or distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Maui of any fact, finding, issue of law, or violation of law, including but not limited to any fact or conclusions of law suggesting or demonstrating that Maui has violated Proposition 65. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Maui may have in this or any other future legal proceeding. This Settlement Agreement is the product of negotiation and compromise and is accepted by Maui solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.5 shall not diminish or otherwise affect the Parties' obligations, responsibilities and duties under this Settlement Agreement.

### **1.6 Effective Date**

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

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation of Products**

As of the Effective Date, and continuing thereafter, Products that Maui or its affiliates directly manufacture, import, distribute, sell, or offer for sale in California shall either be: (a) Reformulated Products pursuant to § 2.2 below; or (b) labeled with a clear and reasonable Proposition 65 warning pursuant to §§ 2.3 and 2.4 below. For purposes of this Settlement Agreement, a "Reformulated Product" is a Product that is in compliance with the Reformulation

Standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product.

## **2.2 Reformulation Standard**

“Reformulated Products” shall mean Products that contain an “Average Concentration Level” less than or equal to .5 micrograms of lead per package serving size when analyzed pursuant to methodologies utilized by federal or state government agencies for the purpose of determining the lead content in food products. The Average Concentration Level will be determined after analyzing three to five randomly selected Products from separate lots (if available) that are sold or offered for sale in California. Maui shall be entitled to rely on its own testing or testing performed by its suppliers of the Products to determine whether the Products are Reformulated Products. Nothing in this Settlement Agreement obligates Maui to perform its own testing or obtain supplier testing for the Products if the Products contain or have Proposition 65 warnings provided as set forth in Sections 2.3 and 2.4 below

## **2.3 Clear and Reasonable Warning**

As of the Effective Date, and continuing thereafter, a clear and reasonable warning as set forth in Sections 2.3 and 2.4 shall be provided for all Products that Maui manufactures, imports, distributes, sells, and/or offers for sale in California that are not Reformulated Products. There shall be no obligation for Maui to provide a warning hereunder for Products that entered the stream of commerce prior to the Effective Date, as they have been included in the calculation of civil penalties pursuant to Section 3.1. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

- (a) **Warning.** The “Warning” shall consist of the following statement:

[California Prop 65] **WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause [cancer,] birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

Language in brackets is optional.

Or

- (b) **Alternative Warning.** Maui may, but is not required to, use the following alternative short-form warning (“Alternative Warning”):

[California Prop 65] **WARNING:** [Cancer and] Reproductive Harm-  
[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

Language in brackets is optional.

**2.4.** The warning pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and bold font, followed by a colon. The warning must be placed in a box if provided in the artwork on the packaging. The warning shall be affixed to or printed on the Product itself, or on the Product’s packaging, container, labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warning may be contained in the same section of the packaging, or labeling that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

If Maui sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning or a clearly marked hyperlink to the warning using the word(s) “[California Prop 65] **WARNING**” (language in brackets optional) appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the

warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

**2.5. Compliance with Warning Regulations.** The Parties agree that Maui shall be deemed to be in compliance with this Settlement Agreement by adhering to §§ 2.2, 2.3 and 2.4 of this Settlement Agreement. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission for lead different than those set forth above, Maui shall be entitled to use such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement.

### **2.6 Public Benefit**

It is Maui's understanding that the commitments it has agreed to herein, and actions to be taken by Maui under this Settlement Agreement, confer a significant benefit on the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Maui that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Maui or its affiliates' alleged failure to provide a warning concerning actual or alleged exposures to lead prior to use of the Products Maui has manufactured, imported, distributed, sold, or offered for sale in California, or will import, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Maui and/or its affiliates are in material compliance with the terms of this Settlement Agreement.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims for monetary relief of any kind related to the Notice, alleged in the Notice or referred to in this Settlement Agreement (except for Plaintiff's attorney's fees and expenses set forth in Section 3.2 below), Maui agrees to pay a total of five hundred dollars (\$500) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75%

of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EA. Within thirty (30) days of the date this Settlement Agreement is fully executed by the Parties, Maui shall issue two separate checks for the civil penalty payment to: (a) “OEHHA” in the amount of three hundred and seventy-five dollars (\$375) and (b) Ecological Alliance, LLC in the amount of one hundred and twenty-five dollars (\$125). The settlement checks required under this Section shall be delivered to the address specified in Section 3.3 below. Plaintiff shall be solely responsible for transmitting to OEHHA the settlement check made payable to OEHHA.

### **3.2 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to EA and its counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Maui shall reimburse EA’s counsel the total amount of \$9,500 for any and all of EA’s attorney’s fees and expenses, including but not limited to all investigative, expert, and testing expenses, incurred as a result of investigating and bringing this matter to Maui’s attention, and negotiating this settlement in the public interest. Within thirty (30) days of the date this Settlement Agreement is fully executed by the Parties, Maui agrees to pay nine thousand five hundred dollars (\$9,500) payable to “Custodio & Dubey LLP”.

### **3.3 Payment Address**

All payments required under Sections 3.1 and 3.2 shall be delivered to:

Vineet Dubey, Esq.  
Custodio & Dubey LLP  
445 S. Figueroa Street, Suite 2520  
Los Angeles, CA 90071

### **3.4 Tax Documentation**

Maui agrees to provide a completed IRS 1099 for its payments to, and EA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Maui cannot issue any settlement payments pursuant to Sections 3.1 and 3.2 above until after Maui receives the requisite W-9 forms from EA’s counsel.

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 EA's Release of Maui**

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EA, on its own behalf, and Maui and its affiliates of any actual or alleged violation of Proposition 65 that was or could have been asserted by EA, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors and assignees, against Maui, its suppliers of the Products, and each of Maui's respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees and attorneys of each of them, and each entity from whom or to whom Maui or any of its affiliates directly or indirectly purchase, import, distribute, or sell the Products, including, but not limited to, any downstream distributors, wholesalers, customers, retailers (including but not limited to Ross Stores, Inc.), franchisees, cooperative members, licensors, and licensees (collectively "Releasees"), based on the actual or alleged failure to warn about alleged exposures to lead in the Products manufactured, imported, sold or distributed for sale in California by Maui or any of its affiliates before the Effective Date.

In further consideration of the promises and agreements herein contained, EA on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Maui and the Releasees, including without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses and expenses, including but not limited to, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the Products.

##### **4.2 Maui's Release of EA**

Maui, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against EA and its attorneys and other representatives, for any and all actions taken or statements made by EA and its

attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **4.3 Mutual Release of Known and Unknown Claims**

It is possible that other claims not known to the Parties, including but not limited to those arising out of the facts alleged in the Notice, or relating to other products manufactured, imported, distributed and/or sold by or for Maui and its affiliates through the Effective Date will develop or be discovered. EA on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees only, on the one hand, and Maui and its affiliates on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims against the Releasees for any products manufactured imported, distributed and/or sold by or for Maui and its affiliates up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released herein, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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.**

Maui and EA expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by the provisions of 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 they may lawfully waive such rights or benefits pertaining to the released matters.

#### **4.4 Deemed Compliance with Proposition 65**

The Parties agree, on behalf of themselves only, that compliance by Maui and its affiliates with this Settlement Agreement constitutes compliance with



Proposition 65 with respect to actual or alleged exposures to lead from use or consumption of the Products.

**5. SEVERABILITY**

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

**6. 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 or limited by reason of law generally, or as to the Products, Maui shall provide written notice to EA 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 Products are so affected.

**7. NOTICES**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Maui Tropics Food & Beverage LLC:

President  
Maui Tropics Food and Beverage LLC  
6965 El Camino Real, #105-576  
Carlsbad, CA 92009

For Maui & Sons, Inc.:

President  
Maui and Sons, Inc.  
17383 Sunset Blvd #400  
Pacific Palisades, CA 90272

With Copy to:

James Robert Maxwell, Esq.  
Rogers Joseph O'Donnell, PC.  
Robert Dollar Building  
311 California St., 10th Floor  
San Francisco, CA, 94104

For EA:

Vineet Dubey, Esq.  
Custodio & Dubey LLP  
445 S. Figueroa, Suite 2520  
Los Angeles, CA 90071

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

**8. ENFORCEMENT**

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. EA shall not bring an enforcement action or institute a judicial proceeding or seek any other relief of any kind if Maui provides evidence that it has complied with the requirements of Section 2 and takes reasonable steps to cure the alleged breach. Maui shall be able to rebut any alleged violation by performing and/or producing testing consistent with Section 2.2 showing that the Average Concentration Level of lead in the Products does not exceed .5 micrograms per serving, or by producing evidence that warnings were provided for Products manufactured, imported, distributed, or offered for sale in California after the Effective Date. Maui is entitled to designate any such information provided hereunder as confidential under an appropriate confidentiality agreement. In the event that meet-and-confer efforts are unsuccessful, the Party alleging a violation may initiate a judicial proceeding to enforce this Settlement Agreement no earlier than 30 days after issuing the written notice specified herein.

**9. JOINT PREPARATION**

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

**10. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**11. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

EA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**13. MODIFICATION**

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

**14. 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.

**AGREED TO:**

Date: April 12, 2022

By:   
ECOLOGICAL ALLIANCE, LLC

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
MAUI & SONS, INC.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
MAUI TROPICS FOOD & BEVERAGE LLC

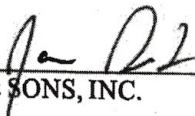
**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ECOLOGICAL ALLIANCE, LLC

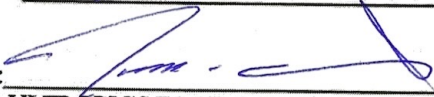
**AGREED TO:**

Date: April 13, 2022

By:   
MAUI & SONS, INC.

**AGREED TO:**

Date: April 14<sup>th</sup> 2022

By:  P.O.  
MAUI TROPICS FOOD & BEVERAGE LLC