

# SETTLEMENT AND RELEASE AGREEMENT

## 1. INTRODUCTION

### 1.1. Ecological Alliance, LLC and Smart & Final LLC

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Smart & Final LLC ("Smart & Final"), on the other hand, with Ecological and Smart & Final collectively referred to as the "Parties."

### 1.2. General Allegations

Ecological alleges that Smart & Final manufactured and distributed and offered for sale in the State of California First Street chopped ocean clams containing Lead and/or Cadmium, and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed Lead and/or Cadmium under Proposition 65 as chemicals known to the State of California to cause cancer, birth defects or other reproductive harm. Smart & Final denies all allegations.

### 1.3. Product Description

The products that are covered by this Settlement Agreement are defined as First Street chopped ocean clams that Smart & Final has 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 or about June 8, 2021, Ecological served Amerifoods Trading Co., Smart & Final, 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 Smart & Final and such public enforcers with notice that Smart & Final

was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to Lead and/or Cadmium. 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 Smart & Final's compliance with Proposition 65. Smart & Final denies the material factual and legal allegations contained in Ecological's Notice and maintains that the Products that it has sold, offered for sale or distributed in California, have been and are in compliance with Proposition 65. Smart & Final also maintains that the Products are exempt from Proposition 65 as the alleged Lead and/or Cadmium are naturally occurring. Nothing in this Settlement Agreement shall be construed as an admission by Smart & Final 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 Smart & Final of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Smart & Final on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Smart & Final 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: WARNINGS**

Within 12 months following the full execution of the Agreement, Smart & Final may, in its sole discretion, either cease selling, offering for sale or distributing the Products in California,

or may manufacture, import, or otherwise source for authorized sale in California only Products labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.1 below.

However, notwithstanding anything to the contrary herein, Products supplied or contracted to be supplied to third parties by Smart & Final, or supplied and contracted to be supplied to Smart & Final by third parties, at any time before 12 months elapse after full execution of this Agreement, shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.`

**2.1. Warning Language**

Per Section 2 above, Smart & Final shall provide Proposition 65 warning on the Product's label if sold in California as required by California law. If Proposition 65 warnings for Lead and/or Cadmium should no longer be required, Smart & Final 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, Smart & Final 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 the California Office of Environmental Health Hazard Assessment ("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, Smart & Final shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Smart & Final's attention. Smart & Final shall pay Ecological's counsel \$19,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

By January 31, 2022, O'Hagan Meyer LLP's client trust account, shall make a total payment of Twenty Thousand Dollars (\$20,000) 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.: 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 Smart & Final, 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 respective owners, principals, shareholders, officers, directors, employees, parents, subsidiaries, its past and current agents, representatives, attorneys, successors and/or assignees (collectively, "Releasers"), hereby waive all rights to institute or participate in, directly or indirectly, any form of legal action and fully release all claims relating to the Products, including, without limitation, claims relating to or arising under California Health & Safety Code section 25249.6, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,

finances, 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) Smart & Final, together with all other entities or organizations identified on the Notice, including without limitation, Amerifoods Trading Co., (b) each of Smart & Final's downstream distributors in the stream of commerce, manufacturers, sourcers, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, (c) Smart & Final's parent companies, corporate affiliates, subsidiaries, doing business as entities ("DBAs"), successor companies, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and (d) any upstream vendor(s)/supplier(s) or third-party re-seller(s) who manufactured, sold, offered for sale or distributed the Products in California, whether such actions were authorized by Smart & Final or unauthorized; (e) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors and assigns of any of the entities identified in subsection (a) through (d), above (collectively "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 herein which shall be effective as a full and final accord and satisfaction, 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 Smart & Final 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 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.

**6.2. Smart & Final's Release of Ecological**

Smart & Final 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 Smart & Final 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 Smart & Final: Samuel Y. Edgerton III, Esq.  
O'Hagan Meyer  
1601 Pacific Coast Highway Suite 290  
Hermosa Beach, CA 92654

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.

**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**

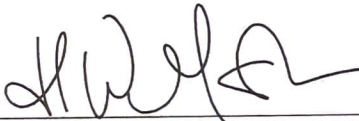
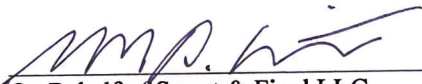
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**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: January <u>20</u>, 2022</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: January <u>24</u>, 2022</p> <p>By:  On Behalf of Smart &amp; Final LLC</p>
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