

# SETTLEMENT AND RELEASE AGREEMENT

## 1. **INTRODUCTION**

### 1.1. **Ecological Alliance, LLC and Mikey's LLC**

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

### 1.2. **General Allegations**

The "Matter" arises out of the Notices of Violations of California Health & Safety Code § 25249.5, *et seq.* ("Proposition 65) that Ecological served to Mikey's on October 8, 2021 (the "Notice"). In the Notice, Ecological alleges that Mikey's supergreens tortillas Mikey's manufactured and distributed and offered for sale in the State of California required a warning for lead under Proposition 65. Mikey's denies the claims in the Notice and denies any liability under Proposition 65.

### 1.3. **Product Description**

The products that are covered by this Agreement are defined as Mikey's supergreens tortillas that Mikey's 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 October 8, 2021, Ecological served Mikey's, Sprouts Farmers Market, 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 Mikey's and such public enforcers with notice that Mikey's 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. 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 Agreement to resolve all claims between them as set forth herein and in the Notice concerning Mikey's compliance with Proposition 65 for the purpose of avoiding prolonged litigation. Mikey's 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 and/or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Agreement shall be construed as an admission by Mikey's of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Mikey's of any fact, finding, conclusion, issue of law, or violation of law, including but not limited to Proposition 65. Nothing in this Agreement or any document referenced shall be construed as giving rise to any presumption or inference of admission or concession by the Mikey's as to any fault, wrongdoing or liability. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Mikey's under this Agreement.

**1.6. Effective Date**

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

### **1.7. Compliance Date**

For purposes of this Agreement, the term “Compliance Date” shall mean 70 days after the Effective Date.

### **1.8. Distribute into the State of California**

For the purposes of this Agreement, the term “Distribute into the State of California” means that the actual sale of the Covered Product has occurred in California.

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

As of the Effective Date, Mikey’s, 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. Sales in California.**

Should Mikey’s decide to cease selling, offering for sale or distributing the Products in California, Products manufactured, supplied, or contracted to be supplied to third parties by Mikey’s within 6 months after the Effective Date shall be permitted to be sold as previously manufactured, packaged and labeled.

### **2.2. 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 results in exposures to consumers in California less than 0.5 micrograms of lead per day (“Reformulated Products”). Products that were supplied or contracted to be supplied to third parties by Mikey’s prior to 6 months after the Effective Date 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.

### **2.3. Warning Option**

Products that do not meet the warning exemption standard set forth in Section 2.2 above shall be accompanied by a warning as described in Section 2.4 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 Mikey's 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 Mikey's prior to 6 months after the Effective Date, and all such Products are hereby deemed to be exempt from Proposition 65 enforcement.

### **2.4. Warning Language**

(a) Where required to meet the criteria set forth in Section 2.3, Mikey's shall display one of the following warning statements on the packaging label of the Products that do not meet the warning exemption standard set forth in Section 2.2 above:

**WARNING:** Consuming this product can expose you to chemicals including Lead, which [is] are 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)

The Parties recognize that these requirements for warnings are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. Mikey's shall be deemed to be in compliance with the warning requirements of this Agreement by either adhering to this Section 2.4 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, Mikey’s shall have no further obligations pursuant to this Agreement.

### **3. SETTLEMENT PAYMENTS**

#### **3.1. Settlement amount**

In satisfaction of all the claims for civil penalties and attorneys’ fees and costs related to the Notice, Mikey’s shall pay a total settlement amount of \$29,000 (the “Settlement Amount”) to Ecological’s counsel within 10 business days of the Effective Date. Ecological shall be solely responsible for allocating the Settlement Amount pursuant to Section 4. Upon request, Ecological or its legal counsel shall supply Mikey’s with a completed W-9 form. The Settlement Amount shall be allocated as follows:

#### **3.2. Penalties pursuant to Health & Safety Code Section 25249.7(b)**

In settlement of all the claims referred to in this Agreement, Mikey’s 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 “Safe Drinking Water and Toxic Enforcement Fund” managed by the State of California’s 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 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, Mikey's shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Mikey's's attention. Mikey's shall pay Ecological's counsel \$28,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Within 10 business days of the Effective Date, Mikey's shall make a total payment of Twenty-Nine Thousand Dollars (\$29,000) 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 Mikey's, 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 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, 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 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Mikey's and its parents, subsidiaries, affiliates, (b) each of Mikey's's downstream distributors in the stream of commerce (including but not limited to Sprouts Farmers Market, Inc.) and any other upstream or downstream entities in the distribution chain for the Products, including, but not limited to, manufacturers, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, third-party resellers, and users, (c) Mikey's's parent companies, corporate affiliates, subsidiaries, affiliates, 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) 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, 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 Mikey's 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. Mikey's Release of Ecological**

Mikey's 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 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 Mikey's shall have no further obligations pursuant to this Agreement.



**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this 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 Mikey's: Steven Steinborn, Esq.  
Hogan Lovells US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004

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 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**


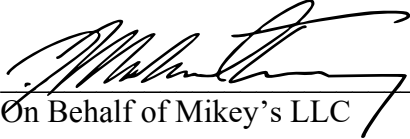
This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**12. MODIFICATION**

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

**13. AUTHORIZATION**

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

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| <p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: May <u>10</u>, 2022</p> <p>By: <br/>On Behalf of Ecological Alliance, LLC</p> | <p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: May <u>17</u>, 2022</p> <p>By: <br/>On Behalf of Mikey's LLC</p> |
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