

## SETTLEMENT AGREEMENT

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Hoosier Hill Farm LLC (“HHF”), on the other hand, with EHA and HHF each individually referred to as a “Party” and collectively as the “Parties.”

EHA is a corporation in the State of California with a stated purpose of serving the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. HHF 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**

EHA alleges that HHF manufactures, sells, and distributes for sale in California, spinach powder that contains Arsenic, Lead and Cadmium and that it does so without first providing the health hazard warning required by Proposition 65. Arsenic, Lead and Cadmium are listed pursuant to Proposition 65 as chemicals known to cause cancer and/or birth defects or other reproductive harm.

#### **1.3 Product Description**

The product covered by this Settlement Agreement is defined as, and expressly limited to, Hoosier Hill Farm Pure Spinach Powder (the “Product”), that is manufactured, sold, offered for sale or distributed for sale in California.

#### **1.4 Notices of Violation**

On October 14, 2021, EHA served HHF, Amazon.com, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that HHF and others violated Proposition 65 when they failed to warn its customers and consumers in California of the health risks associated with exposures to Arsenic, Lead and Cadmium from the Product.

On October 21, 2021, EHA served HHF, Amazon.com, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Amended Notice”). The Amended Notice removed the allegation of exposure to Arsenic.

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 and Amended Notice (hereinafter, the “Notices”).

### **1.5 No Admission**

HHF denies the material, factual, and legal allegations in the Notices and maintains that all of the products it sold, offered for sale and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by HHF of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by HHF of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by HHF. This Section shall not, however, diminish or otherwise affect HHF’s obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean fourteen (14) days following the execution of this Settlement Agreement by the Parties.

## **2. INJUNCTIVE RELIEF**

### **2.1 Clear and Reasonable Warnings**

As of the Effective Date, and continuing thereafter, a clear and reasonable Proposition 65 warning as set forth in this Section 2 or as authorized by statute or regulation, must be provided for all Product that HHF sells in California.

### **2.2 Warning Requirements**

On or after the Effective Date, for Product that is set forth in §§ 2.1, HHF shall provide one of the following warning statements:

- 1) **WARNING:** This product can expose you to chemicals including Lead and Cadmium, 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](http://www.P65Warnings.ca.gov).

- 2) **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.cs.gov](http://www.P65Warnings.cs.gov)

This warning statement shall be prominently displayed on the Product, on the packing of the Product, or on a placard, shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Product's packaging, it must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall a warning statement displayed on the Product's packaging appear in a type size smaller than 6-point type.

### **2.3 Grace Period for Existing Inventory of Product**

The injunctive requirements of Section 2 shall not apply to Product that is already in the stream of commerce as of the Effective Date, which Product is expressly subject to the releases provided in Section 4.1.

## **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 alleged in the Notices or referred to in this Settlement Agreement, HHF agrees to pay one thousand five hundred dollars (\$1,500.00) 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 EHA. Within ten (10) days after the Effective Date, HHF shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of one thousand one hundred and twenty-five dollars (\$1,125.00) and (b) Environmental Health Advocates, Inc., in the amount of three hundred and seventy-five dollars (\$375.00).

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:



For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Federal Express 2-Day Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

All penalty payments owed to EHA shall be sent to:

Samantha Dice  
Environmental Health Advocates  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **3.2 Attorneys' Fees and Costs**

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, HHF agrees to pay thirteen thousand five hundred dollars (\$13,500.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of HHF, negotiating a settlement and reporting the settlement to the California Attorney General's Office. HHF shall provide their payment to EHA's counsel in one check for the amount thirteen thousand five hundred dollars (\$13,500.00) payable to "Entorno Law, LLP", within fourteen (14) days after the Effective Date.

### **3.3 Payment Address**

All payments required under this Section shall be delivered to:

Noam Glick  
Entorno Law, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **3.4 Tax Documentation**

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

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

### **4.1 EHA's Release of HHF**

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EHA, on its own behalf and not on behalf of the public, and HHF of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against HHF and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and each entity to whom HHF directly or indirectly distributes, offers for sale or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees including, but not limited to, Amazon.com, Inc. (collectively "Releasees"), based on the alleged failure to warn about exposures to Arsenic, Lead and Cadmium under Proposition 65 in the Product manufactured, sold, offered for sale or distributed for sale in California by HHF before the Effective Date, as alleged in the Notices.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, 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 HHF and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to Arsenic, Lead and Cadmium required under Proposition 65 in the Product manufactured, distributed, sold or offered for sale by

HHF, before the Effective Date.

#### **4.2 HHF's Release of EHA**

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

#### **4.3 California Civil Code Section 1542**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Product will develop or be discovered. EHA on behalf of itself only, on one hand, and HHF on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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.**

#### **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, preempted or is otherwise rendered inapplicable by reason of law generally, or as to Arsenic, Lead or Cadmium and/or the Product, then HHF may provide written notice to EHA 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 Product is so affected.

7. **ENFORCEMENT**

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

8. **NOTICE**

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; (c) a recognized overnight courier, or (d) via valid email on any Party by the other at the following addresses:

For HHF:

Malcolm Weiss  
Jennifer MikoLevine  
Hunton Andrews Kurth LLP  
550 South Hope Street Suite 2000  
Los Angeles, CA 90071  
MWeiss@HuntonAK.com  
JMikoLevine@HuntonAK.com

For EHA:

Noam Glick  
Entorno Law, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101  
noam@glicklawgroup.com

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.

9. **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.

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

EHA and its attorneys agree to comply with the reporting form requirements in California

Health and Safety Code § 25249.7(f).

11. **MODIFICATION**

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

12. **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:**

**AGREED TO:**

Date: *Ronan Blum*

Date: 1/24/2022

By: 1/24/2022  
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By: *Amy Weber*  
HOOSIER HILL FARM LLC