

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("**Agreement**") between Public Health and Safety Advocacy, LLC ("**PHSA**"), on the one hand, and North Atlantic, Inc. ("**NORTH ATLANTIC**"), on the other hand, is effective on the date on which it is fully executed ("**Effective Date**"). PHSA and NORTH ATLANTIC are referred to individually as a "**Party**" and collectively as the "**Parties**." The Parties agree as follows:

The parties have agreed to enter into this private out-of-court Settlement for the purpose of avoiding prolonged litigation. Should the Attorney General's Office object to this settlement, the parties agree to make a good faith effort to reach an agreement that will address the objection of the Attorney General's Office.

1. This Agreement is intended to fully resolve all claims, demands, and allegations set forth in or related to the Notice of Violations of California Health & Safety Code, section 25249.5 *et seq.* (also known as "**Proposition 65**") that PHSA served on Walmart, Inc., Wal-Mart Stores, Inc., and Walmart.com USA, LLC on October 27, 2021, Notice of Violation No.: 2021-02654 (the "**Notice**") with regards to the following product identified below (referred to as the "**Covered Product**"): • **Swordfish Stakes – UPC: 0-7874212660-9**

2. The Parties enter into this Agreement in order to achieve a settlement of the claims as described in Section 1 (collectively "**this Matter**") and for the purpose of avoiding prolonged litigation. NORTH ATLANTIC denies all allegations contained in the Notice. Nothing in this Agreement shall be construed as an admission by NORTH ATLANTIC of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by NORTH ATLANTIC of any fact, issue of law, or violation of the law. Nothing in this Agreement or any document referred to herein shall be construed as giving rise to any presumption or inference of admission or concession by NORTH ATLANTIC as to any fault, wrongdoing, or liability. This Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. **Injunctive Relief; Reformulation; Testing; and Warnings.**

In consideration of the following covenants of NORTH ATLANTIC, and the other conditions contained in this Agreement, PHSA releases NORTH ATLANTIC as set forth in Section 6 below.

3.1 Beginning on the Effective Date, NORTH ATLANTIC shall not package for sale in the State of California, Distribute into the State of California (as that term is defined in section 3.1.1 below), or directly sell in the State of California, any Covered Product which exposes a person to more than 4.1 micrograms of Cadmium from the consumption of the recommended serving size on the Covered Product's label, unless each such unit of the Covered Product bears a warning that meets the requirements of Section 3.2 below.

3.1.1 As used in this Settlement Agreement and Release, the term "Distribute into the State of 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 NORTH ATLANTIC knows will sell the covered Product in California.

3.1.2 For the purpose of this Agreement, the amount of Cadmium a person is exposed to from the Covered Product shall be calculated using the following formula: micrograms of Cadmium per gram of product, multiplied by the number of grams of product per serving (using the largest serving size appearing on the product label), which equals micrograms of Cadmium exposure per day.

### 3.2 Clear and Reasonable Warnings.

For Covered Product(s) that require a Proposition 65 warning under this Settlement Agreement, NORTH ATLANTIC shall utilize one of the following warnings statements ("**Warnings**");

#### 3.2.1 Option 1

**WARNING:** Consuming this product can expose you to chemicals including 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/food](http://www.P65Warnings.ca.gov/food).

#### 3.2.2 Option 2

**WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

#### 3.2.3 Option 3

Any warning authorized by any law or regulation related to Proposition 65 effective on or after the Effective Date.

With respect to the short-form warning under Section 3.2 above, the warning must appear in a type size no smaller than the largest type size used for other consumer information on the product. Consumer information shall not include the name or brand of the product, such as "Sam's Choice, All Natural, Wild Caught, Swordfish Steaks, Skin on Filet." In no case shall the warning appear in a type size smaller than 6-point type.

### 3.3 Calculation of Levels; Reformulated Covered Products.

A "**Reformulated Covered Product**" is one for which the average daily exposure level does not exceed 4.1 micrograms of Cadmium per day, as determined by the formula, testing, and quality control methodology described in Section 3.4. As used in the Agreement, "no more than 4.1 micrograms of Cadmium per day" means that the samples of the testing under Section 3.4 yield an average daily exposure of no more than 4.1 micrograms of Cadmium per day (with average daily exposure calculated pursuant to Section 3.4 of this Agreement).

For the Covered Product that causes exposure in excess of 4.1 micrograms of Cadmium per day, NORTH ATLANTIC shall provide the warnings set forth in Section 3.2. Covered Product shall be deemed to have exceeded 4.1 micrograms if the average concentration, utilizing the geometric mean of Cadmium detection results of five (5) samples of Covered Product selected by NORTH ATLANTIC exceeds 4.1 micrograms.

### 3.4 Testing and Quality Control Methodology.

3.4.1 To the extent that NORTH ATLANTIC decides to sell Reformulated Covered Product in California, NORTH ATLANTIC shall arrange for at least two (2) consecutive years, and at least once per year, commencing one year from the Effective Date, for the Cadmium testing of five (5) samples selected from five separate lots (or the maximum number of lots available if less than five) each year to confirm whether the exposure to Cadmium from the serving size is 4.1 micrograms or

less of Cadmium per day. For the purpose of this Agreement average daily exposure levels shall be measured in micrograms per day, and shall be calculated using the following formula: the average concentration of Cadmium in the product as measured in micrograms per gram, multiplied by the grams of the product per serving, using the serving size appearing on the product label. The testing requirements of this Section 3.4.1 do not apply to any of the Covered Products for which NORTH ATLANTIC has provided a warning as specified in Section 3.2.

3.4.2 The Parties agree that the Reformulated Covered Product may be offered for sale in California without the warning stated in Section 3.2.

3.4.3 All testing pursuant to this Agreement shall be performed by an independent third-party laboratory.

3.4.4 Testing for Cadmium shall be performed at a limit of quantification of less than or equal to 0.1 mg/kg.

3.4.5 Nothing in this Agreement shall limit NORTH ATLANTIC's ability to conduct or require that others conduct additional testing of the Covered Product, including raw material used in it processing and packaging.

#### 4. **Payments**

In full satisfaction of all potential civil penalties and attorney's fees, costs, and any other expenses incurred by PHSA or its counsel, NORTH ATLANTIC shall pay the total Settlement amount of Eighteen Thousand Dollars \$18,000 (the "**Settlement Amount**") as set forth below.

##### 4.1 **Civil Penalties Pursuant To Health & Safety Code § 25249.7(B)**

One Thousand Five Hundred Dollars (\$1,500) shall be considered a "civil penalty" pursuant to California Health and Safety Code. NORTH ATLANTIC shall issue two separate checks within ten (10) days of the Effective Date for a total amount of One Thousand Five Hundred Dollars (\$1,500) as follows, and all payments shall be delivered to the addresses listed below.

- a) One check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of One Thousand One Hundred Twenty-Five Dollars (\$1,125), representing 75% of the total penalty; and
- b) One check made payable to "Public Health and Safety Advocacy, LLC." in the amount of Three Hundred Seventy-Five Dollars (\$375), representing 25% of the total penalty.

##### 4.2 **Attorneys' Fees and Costs**

Sixteen Thousand Five Hundred Dollars (\$16,500) shall be paid to Law Offices of Danialpour & Associates within ten (10) days of the Effective Date, as PHSA's attorneys, for reasonable investigation fees, and costs, attorney's fees, and any other cost incurred as a result of investigating and bringing this matter to NORTH ATLANTIC's attention.

#### 5. **Payment Procedures**

5.1 All payments owed to OEHHA, pursuant to Section 4.1.a, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties – NOV # 2021-02654") at the following address.

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

5.2 All payments owed to PHSA, pursuant to Section 4.1.b, shall be delivered to:

c/o Law Offices of Danialpour & Associates  
Attn: PHSA  
357 S. Robertson Blvd. 2<sup>nd</sup> Floor STE # 400  
Beverly Hills, CA 90211

5.3 All payments owed to Law Offices of Danialpour & Associates, pursuant to Section 4.2, shall be delivered directly to:

Attn: David D. Danialpour  
Law Offices of Danialpour & Associates  
357 S. Robertson Blvd. 2<sup>nd</sup> Floor STE # 400  
Beverly Hills, CA 90211

5.4 **Proof of Payment** A copy of each check payable to OEHHA, shall be mailed to Law Offices of Danialpour & Associates, simultaneous with payment to Law Offices of Danialpour & Associates at the address set forth above, as proof of payment to OEHHA.

6. **Binding Effect; Claims Covered and Released.**

6.1 PHSA, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, successors, assigns, and legal representative fully releases and discharges NORTH ATLANTIC, each of their owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, affiliates (including those companies that are under common ownership and/or common control), successors, assigns, and legal representatives, and each entity to whom NORTH ATLANTIC directly or indirectly distributes or sells the Covered Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees and upstream entities from whom NORTH ATLANTIC purchases goods and/or services incident to the acquisition, preparation and distribution of Covered Product (collectively referred to as "**Covered Releases**") from any and all claims, actions, suits, demands, liabilities, damages, penalties, fees, costs and expenses (collectively, "**Claims**") asserted or that could have been asserted for alleged violations of the Proposition 65, up through and including the Effective Date based on alleged failure to provide warnings for alleged exposure to Cadmium, or for causing alleged exposure to Cadmium, from the Covered Product.

6.2 PHSA and NORTH ATLANTIC further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice.

6.3 It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice or relating to the Covered Products will develop or be discovered. PHSA, only on its own behalf, on the one hand, and NORTH ATLANTIC, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up, through and including the Effective Date, including all rights of action therefore, and further acknowledge that the claims released by this section may include unknown claims,

and nevertheless waives California Civil Code, section 1542 as to any 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.

PHSA acknowledges and understands the significance and consequences of this specific waiver of California Civil Code Section 1542.

6.5 Compliance with the requirement of Section 3 of this Agreement shall be deemed to constitute compliance by any Covered Releasee with Proposition 65 with respect to any Cadmium in the Covered Product.

7. **Resolution of Dispute**

7.1 If PHSA alleges that NORTH ATLANTIC has failed to comply with this Agreement, prior to filing an action or motion relating to enforcement, PHSA shall first provide NORTH ATLANTIC thirty (30) days advance written notice of the alleged violation(s). PHSA shall provide testing results, lot numbers, photographs of the Covered Product packing, and purchase receipts for the Covered product at issue in the alleged violation, as applicable. The Parties shall meet and confer during such thirty (30) days period in an effort to reach an agreement on an appropriate cure for the alleged violation without the need for litigation.

7.2 Notwithstanding the provisions of Section 3, PHSA may not issue any notice under Section 7.1 if the packaging of the Covered Product is marked or labeled with the statement "Not for Sale in California" or substantially similar language, such statement is prominently placed upon such Covered Product's label or other labeling as compared with other words or statements on the label or labeling as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. If NORTH ATLANTIC marks or labels a Covered Product with such a statement, NORTH ATLANTIC shall additionally notify its customers/distributors by letter that the Covered Product shall not be sold in California.

7.3 In the event any litigation, arbitration, mediation, or other proceeding is initiated by any Party to enforce this Agreement, and such Party prevails in such proceeding, it shall be entitled to recover from the other Parties, as applicable, all costs, expenses, reasonable attorney's fees, and expert fees, relating to or arising out of (i) such proceeding, and (ii) any post judgment or post-award proceeding including without limitation to enforce any judgment or award resulting from any such proceeding.

8. While compliance with the terms of this agreement shall constitute compliance with Proposition 65 as to the Covered Products with respect to cadmium, nothing herein shall otherwise be construed as diminishing NORTH ATLANTIC's continuing obligations to comply with Proposition 65.

9. All notices required to be given to either Party to this Agreement by the other shall be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via electronic mail may also be sent

**For NORTH ATLANTIC, INC.**


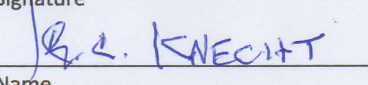
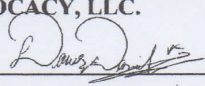

Jade Jurdi, Esq.  
Step toe & Johnson LLP  
633 West Fifth Street, Suite 1900  
Los Angeles, CA 90071

**For PHSA:**

c/o Law Offices of Danialpour & Associates  
Attn: PHSA  
357 S. Robertson Blvd. 2<sup>nd</sup> Floor STE # 400  
Beverly Hills, CA 90211

10. PHSA shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement by providing a signed copy of this Agreement.
11. This Agreement contains the entire agreement between the Parties with regards to Settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by Parties.
12. This Agreement shall be binding upon signing by the Parties and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, affiliates, officers, directors, employees, agents, successors, and assigns.
13. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.
14. If any provision, term, or section of this Agreement, with the exception of sections 6.1 through 6.5, is found to be invalid, illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full force and effect and remain binding on the Parties.
15. This Agreement shall be deemed to have been entered into in the State of California and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.
16. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.
17. Any legal action to enforce this Agreement shall be brought in the Superior Court of the State of California in and for the county of Los Angeles.
18. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail, copy of this Agreement, or any other counterpart, shall be deemed to be an original.
20. This Settlement Agreement may be modified only by the written agreement of the parties.

21. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

<b>NORTH ATLANTIC INC.</b>  _____ Signature  _____ Name Date: <u>17 JUNE 2022</u>	<b>PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.</b>  _____ Davar David Danialpour _____ Name Date: <u>06/20/2022</u>
<b>Law Offices of Danialpour &amp; Associates</b>  _____ Signature Davar David Danialpour _____ Name Date: <u>06/20/2022</u>	