

## **SETTLEMENT AGREEMENT AND RELEASE**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement and Release (“Settlement Agreement”) is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Hometown Food Company (“Hometown”), on the other hand, with EHA and Hometown each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in 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. Hometown 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 Hometown manufactures, sells, and distributes for sale in California, flax seeds that contains cadmium and that it does so without first providing the health hazard warning required by Proposition 65. Cadmium is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

#### **1.3 Product Description**

The product covered by this Settlement Agreement is defined as, and expressly limited to, Arrowhead Mills Organic Flax Seeds (“the Product”), that EHA alleges contains cadmium and that is manufactured, sold or distributed for sale in California by Hometown.

#### **1.4 Notice of Violation and Complaint**

On March 8, 2022, EHA served Arrowhead Mills, Inc., Hometown Food Company, iHerb, LLC, AMI Operating, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Hometown and others violated Proposition 65 when they failed to warn its customers and consumers in California of the health risks associated with exposures to cadmium from the Product.

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**

Hometown denies the material, factual, and legal allegations in the Notice and maintains that all of the Product it sold 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 Hometown 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 Hometown of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Hometown. This Section shall not, however, diminish or otherwise affect Hometown'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 one hundred twenty (120) days following the execution of this Settlement Agreement by the Parties.

## **2. INJUNCTIVE RELIEF**

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

Commencing on the Effective Date, and continuing thereafter, Hometown agrees to include a clear and reasonable Proposition 65 warning, as set forth in Section 2.2, for all Products that Hometown sells in California.. If the Product contains more than 4.1 micrograms of cadmium per day, the same warning shall be posted on any websites under the exclusive control of Hometown where the Product is sold into California. Hometown shall instruct any third-party website to which it sells the Product to include the same warning as a condition of selling the Product, but only if the Product contains more than 4.1 micrograms per day.

### **2.3 General Warning Requirements**

For Covered Products that contain cadmium in a concentration exceeding the "Daily Exposure Level" of 4.1 micrograms set forth in section 2.1 above, and which are manufactured and packaged for distribution for authorized sale or use in California on or after the Effective Date, Hometown shall

provide one of the following warning statements on Products sold in California:

**⚠️WARNING:** Consuming this product can expose you to chemicals including cadmium, which is 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).

Or (alternate form of warning):

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

For selling Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears: (a) on the same web page on which the Products are displayed and/or described; (b) on the same page as the price for the Products; or (c) on one or more web pages displayed to a purchaser prior to completing an online purchase. 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 Products, 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.

#### **2.4 Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date, which Products are expressly subject to the releases provided in Section 4.

### **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 Notice or referred to in this Settlement Agreement, Hometown agrees to pay two thousand five hundred dollars (\$2,500.00) 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 fourteen (14) days of the date this Settlement Agreement is fully executed by the Parties, Hometown shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of one thousand eight hundred and seventy-five dollars (\$1,875.00) and (b) Environmental Health Advocates, Inc., in the amount of six hundred twenty-five dollars (\$625.00).

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 Attorney 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, Hometown agrees to pay the total of twenty-two thousand five-hundred dollars (\$22,500.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Hometown and negotiating a settlement. Hometown's payment shall be delivered in the form of one check for twenty-two thousand five-hundred dollars (\$22,500.00) payable to "Entorno Law, LLP".

### **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**

Hometown 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 Hometown cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Hometown receives the requisite W-9 forms from EHA's counsel.

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

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

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 Hometown 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 Hometown and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by Hometown, and each entity to whom Hometown directly or indirectly distributes or sells the Product including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to cadmium required under Proposition 65 in the Product manufactured, sold or distributed for sale in California by Hometown before the Effective Date, as alleged in the Notice. This release does not extend to any third-party retailers selling the Product on a website who, after receiving instruction from Hometown to include a warning as set forth above in Section 2.3, if the Product contains more than 4.1 micrograms of cadmium per day, do not include such a warning.

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 Hometown 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 cadmium required under Proposition 65 in the Product manufactured, distributed, sold or offered for sale by Hometown, before the Effective Date.

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

Hometown, 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 Notice and relating to the Product will develop or be discovered. EHA on behalf of itself only, on one hand, and Hometown 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.

**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; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Hometown:

Dana L. Cook-Milligan  
Winston & Strawn LLP  
101 California Street 35<sup>th</sup> Floor  
San Francisco, CA 94111-5840

For EHA:

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

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 referenced 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: 09/12/2022

Date: 9/13/22

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
HOMETOWN FOOD COMPANY