

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Ecological Alliance, LLC and Carbonaut

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

#### 1.2. General Allegations

Ecological alleges that Carbonaut manufactured and distributed and offered for sale in the State of California Carbonaut gluten free bagels containing Lead, 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.* and its implementing regulations ("Proposition 65"). California has identified and listed Lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

#### 1.3. Product Description

The products that are covered by this Settlement Agreement are defined as Carbonaut gluten free bagels that Carbonaut 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 May 23, 2022, Ecological served Carbonaut, 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 Carbonaut and such public enforcers with notice that Carbonaut 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 Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Carbonaut's compliance with Proposition 65. Carbonaut 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 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Carbonaut 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 Carbonaut of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Carbonaut on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Carbonaut under this Settlement Agreement.

**1.6. Effective & Compliance Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed. "Compliance Date" shall mean six (6) months after the Effective Date.

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

As of the Compliance Date, Carbonaut, 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. 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 sold by Carbonaut in California does not exceed 10 ppb (parts per billion) (“Reformulated Products”). Such Products that Carbonaut manufactured, shipped or contracted to be shipped for California sale, or otherwise caused to enter the stream of commerce prior to the Compliance Date shall be deemed exempted from the requirements of this Section 2 and Carbonaut shall have no obligation to warn.

**2.2. Warning Option**

Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 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 Carbonaut in the State of California. No Proposition 65 warning shall be required for any Products that are manufactured, supplied or contracted to be supplied to third parties by Carbonaut prior to the Compliance Date, and all such Products are hereby deemed to be exempt from Proposition 65 enforcement.

**2.3. Warning Language**

- (a) Where required to meet the criteria set forth in Section 2.2, Carbonaut 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 2.1 above:

(1) **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).

(2) **WARNING:** [Cancer and] Reproductive Harm--

[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

Carbonaut may use “cancer and” in the warning at its option. This section does not preclude Carbonaut from including in the warning the names of other Proposition 65 chemicals.

(b) The requirements for warnings, set forth in subsection (a) above, are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. Carbonaut shall be deemed to be in compliance with the warning requirements of this Settlement Agreement by either adhering to this Section 2.3 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, Carbonaut shall have no further obligations pursuant to this Settlement Agreement.

## **2.4 Online Sales**

If Carbonaut sells Products via an internet website it controls to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; (c) on one or more web pages displayed to a California purchaser prior to purchase during the checkout process; or (d) via a hyperlink taking the customer to a separate page containing the warning language, provided that the hyperlink appears on the same page as either the product description or product price are displayed, or appears prior to completion of the sale at checkout. 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 Product, 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.

## **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Carbonaut 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 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, Carbonaut shall reimburse Ecological's counsel for fees and costs, incurred as a result

of investigating and bringing this matter to Carbonaut's attention. Carbonaut shall pay Ecological's counsel \$14,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

By January 6, 2023 Carbonaut shall make a payment of Fifteen Thousand Dollars (\$15,000), 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.: 325149324377

Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

Ecological and its counsel agree to provide completed IRS W9 forms in connection with payment being made.

**6. RELEASE OF ALL CLAIMS**

**6.1. Release of Carbonaut, 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) Carbonaut, (b) each of Carbonaut's downstream distributors or retailers 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, including but not limited to Sprouts Market, owners, purchasers, third-party re-sellers, and users, (c) Carbonaut's parent companies, corporate affiliates, subsidiaries, doing business as entities ("DBAs"), successor companies, including Carbonaut USA, Inc. and Vibrant Health Products USA, Inc., 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 Carbonaut 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. Carbonaut's Release of Ecological**

Carbonaut 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 Carbonaut 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 Carbonaut: Dennis Raglin, Esq.  
Steptoe & Johnson LLP  
633 West Fifth Street, Suite 1900  
Los Angeles, CA 90071

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.


<b>AGREED TO:</b> Date: December <u>15</u> , 2022 By:  On Behalf of Ecological Alliance, LLC	<b>AGREED TO:</b> Date: December __, 2022 By: _____ On Behalf of Carbonaut LLC .
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12. **MODIFICATION**

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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.

<b>AGREED TO:</b> Date: December __, 2022  By: _____ On Behalf of Ecological Alliance, LLC	<b>AGREED TO:</b> Date: December 15, 2022  By:  On Behalf of Carbonaut LLC .
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