

## **SETTLEMENT AND RELEASE AGREEMENT**

### **1. INTRODUCTION**

#### **1.1. Clean Product Advocates, LLC and Dongwon Industries, Ltd.**

This Settlement Agreement is entered into by and between Clean Product Advocates, LLC (“CPA”), on the one hand, and Dongwon Industries, Ltd. (“Dongwon”), on the other hand, with CPA and Dongwon collectively referred to as the “Parties.”

#### **1.2. General Allegations**

CPA alleges that Dongwon manufactured and distributed and offered for sale in the State of California “Venus Clam and Seaweed Soup” containing Lead and Cadmium, 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 and Cadmium under Proposition 65 as chemicals 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 Venus Clam Seaweed Soup that Dongwon 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 June 16, 2022, CPA sent Dongwon, DW Global Inc., H Mart, H Mart Companies, Inc., and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, a document entitled “60-Day Notice of Violation” (“Notice”) that provided Dongwon and such public enforcers with notice that Dongwon 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 and Cadmium. 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 the disputed claim between them as set forth herein and in the Notice. Dongwon denies the material factual and legal allegations contained in CPA’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 all other applicable statutory, regulatory, common law or equitable doctrines. Nothing in this

Settlement Agreement shall be construed as an admission by Dongwon of any fact, conclusion of law, issue of law or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Dongwon, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, agents, distributors or retailers in any administrative or judicial proceeding or litigation in any court, agency, or forum. This Section shall not, however, diminish or otherwise affect Dongwon obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6. Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Settlement Agreement is fully executed.

### **2. INJUNCTIVE RELIEF**

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

As of the Effective Date, Dongwon, agrees to provide a clear and reasonable Proposition 65 warning on the Products to comply with Proposition 65 warning regulations, including Cal. Code Regs. tit. 27, § 25600 *et seq.* This warning requirement shall only be required for Products that are manufactured, distributed, marketed, imported, sold, shipped for sale or offered for sale to consumers by Dongwon in the State of California.

#### **2.2. Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2.1 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 5 of this Settlement Agreement.

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

In full satisfaction of all potential civil penalties and attorneys’ fees, costs and any other expenses incurred by CPA or its counsel, Dongwon agrees to pay the total settlement amount of twenty-five thousand dollars (\$25,000) (“Settlement Amount”) as set forth below.

#### **3.1. Civil Penalties Pursuant to Health & Safety Code 25249.7(B)**

One thousand and five hundred dollars (\$1,500) of the Settlement Amount shall be considered a “civil penalty” pursuant to California’s Health and Safety Code. Dongwon shall issue two separate checks within ten (10) days of the Effective Date for a total amount of one thousand and five hundred dollars (\$1,500) as follows, and all payments shall be delivered to the addresses listed below.

3.1(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 and twenty-five dollars (\$1,125), representing 75% of the total civil penalty; and

3.1(b). One check payable to "Clean Product Advocates, LLC" in the amount of three hundred and seventy-five dollars (\$375), representing 25% of the total civil penalty.

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

Twenty-three thousand and five hundred dollars (\$23,500) of the total Settlement Amount shall be paid to Cliffwood Law Firm, PC within ten (10) days of the Effective Date, as CPA's attorneys, for reasonable investigation fees, and costs, attorneys' fees, and any other cost incurred as a result of investigating and bringing this matter to Dongwon's attention.

## **4. PAYMENT PROCEDURES**

### **4.1. Payments**

All payments owed to OEHHA under section 3.1(a) herein shall be delivered directly to OEHHA (memo line to read: "Prop 65 Penalties NOV #2022-01260") 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

All payments owed to CPA under section 3.1(b) herein shall be delivered to:

c/o CPA  
Attn: Elham Shabatian  
Cliffwood Law Firm, PC  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025

All payments owed to Cliffwood Law Firm, PC under section 3.2 herein shall be delivered to:

Cliffwood Law Firm, PC  
Attn: Elham Shabatian  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025

## **4.2. Proof of Payment**

A copy of the check payable to OEHHA shall be mailed to Cliffwood Law Firm, PC, along with the payment to Cliffwood Law Firm, PC at the address set forth in section 4.1 herein, as proof of payment to OEHHA.

## **4.3. Tax Documentation**

Dongwon agrees to provide an IRS 1099 form for each payment under this Settlement Agreement, and CPA agrees to provide an IRS W-9 form for each payee under this Settlement Agreement. The Parties acknowledge that Dongwon cannot issue any settlement payments pursuant to sections 3.1 and 3.2 herein until Dongwon receives the requisite W-9 forms from CPA. The Parties further acknowledge that they will work together in good faith to extend Dongwon's payment deadlines, as set forth in sections 3.1 and 3.2 herein, if CPA fails timely to provide the requisite W-9 tax forms to Dongwon.

Nothing in this Settlement Agreement shall alter the Parties' obligations to be liable for their own taxes or impose any obligations relating to taxes due on the payments made under this Settlement Agreement. CPA, its attorneys, and OEHHA shall remain responsible for any taxes due or owing by them on any payments received under this Settlement Agreement.

## **5. RELEASE OF ALL CLAIMS**

### **5.1. Release of Dongwon, 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 herein, CPA, 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, the "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, the "Claims"), against all of the following: (i) Dongwon, including, without limitation, its owners, subsidiaries, affiliates, doing-business-as entities (i.e., "DBAs"), sister and related companies, (ii) each of Dongwon's downstream distributors in the stream of commerce (including, but not limited to, DW Global, Inc., H Mart, and H Mart Companies, 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 re-sellers, and users, and (iii) all employees, agents, indemnitees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors and assigns of the entities identified in subsections (i) and (ii) of this section 5.1. The persons and

entities described in subsections (i), (ii), and (iii) of this section 5.1 are collectively referred to herein as the “Releasees.”

CPA and its attorneys represent and warrant that they have not filed and are not contemplating filing, that they are not aware of any other person who has filed or is contemplating filing, and that they have not engaged and do not intend to engage in any advertising or solicitation to locate additional persons to file, any form of complaint against the Releasees.

## **5.2. CPA’s California Civil Code Section 1542 Release**

CPA, on behalf of itself, its past and current owners, managers, members, agents, representatives, attorneys, successors and assignees 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.**

CPA, on behalf of itself, its past and current owners, managers, members, agents, representatives, attorneys, successors and 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 Settlement Agreement shall constitute compliance by any Releasee with Proposition 65.

## **5.3. Dongwon’s Release of CPA**

Dongwon waives any and all claims against CPA, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CPA 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.

## **5.4. Binding Settlement Agreement**

This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of CPA and the Releasees.

## **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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Dongwon shall have no further obligations pursuant to this Settlement Agreement.

## **7. NOTICES**

Unless otherwise 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 electronic mail or overnight courier as follows:

**To Dongwon:**

Joe Ward  
Baker & McKenzie LLP  
10250 Constellation Blvd., Suite 1850  
Los Angeles, California 90067  
joe.ward@bakermckenzie.com

**To CPA:**

Elham Shabatian  
Cliffwood Law Firm, PC  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025  
ellie@cliffwoodlaw.com

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.

## **8. 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.

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

CPA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

## **10. 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 any of the Parties.

## **11. SEVERABILITY & MODIFICATION**

If after 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.

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

## **12. AUTHORIZATION**


Each Party represents that its signatory to this Settlement Agreement has full legal authority to enter into and legally bind it to the terms herein. Each Party further represents that it has read, understood, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 9/9/2022

Date: 9/13/2022

By:   
ON BEHALF OF CLEAN PRODUCT  
ADVOCATES, LLC  
ELHAM SHABATIAN, ESQ.  
CLIFFWOOD LAW FIRM, PC

By: /s/ James J. Ward  
ON BEHALF OF DONGWON INDUSTRIES,  
LTD.