

## SETTLEMENT AGREEMENT

### **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 Boiling Point Group, Inc. (“Boiling Point”), on the other hand, with EHA and Boiling Point 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 Product. Boiling Point 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 Boiling Point manufactures, sells, and distributes for sale in California, a mushroom powder product that contains lead and that it does so without first providing the health hazard warning required by Proposition 65. Lead 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 BP Mushroom2 Powder (“Covered Product”), that EHA alleges contains lead and that is manufactured, sold or distributed for sale in California by Boiling Point.

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

On July 7, 2022, EHA served Boiling Point, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Boiling Point and others violated Proposition 65 when they failed to warn its customers and consumers in California of the health risks associated with exposures to lead from Covered 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**

Boiling Point denies the material, factual, and legal allegations in the Notice and maintains that all of Covered Product is sold and/or distributed for sale in California, including Covered Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Boiling Point 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 Boiling Point of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Boiling Point. This Section shall not, however, diminish or otherwise affect Boiling Point 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 Reformulation or Clear and Reasonable Warnings**

Beginning thirty (30) days after the Effective Date, Boiling Point shall be permanently enjoined from manufacturing, distributing, or directly selling in the State of California, any Covered Product that exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead based on a single serving per day unless such Covered Products comply with the warning requirements of Section 2.2. The "Daily Lead Exposure Level" shall be calculated by multiplying the recommended serving size in Covered Product by the concentration of lead in Covered Products. As used in this Section 2, "distributed for sale in CA" means to directly ship Covered Products into California or to sell Covered Products to a distributor Boiling Point knows will sell Covered Products in California.

### **2.2 Clear and Reasonable Warnings**

As of the Effective Date, and continuing thereafter, if and only if the Daily Lead Exposure Level in Covered Product is more than 0.5 micrograms, a clear and reasonable Proposition 65 warning as set forth below must be provided for Covered Product that Boiling Point sells in California.

If required, Boiling Point shall provide one of the following warning statements:

- 1) **⚠WARNING:** This product can expose you to chemicals including lead, 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).
- 2) **⚠WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.cs.gov/food](http://www.P65Warnings.cs.gov/food).

This warning statement shall be prominently displayed on Covered Product label, 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 Covered Product's packaging, it must be in a type size no smaller than the largest type size used for other consumer information on Covered Product. In no case shall a warning statement displayed on Covered Product's packaging appear in a type size smaller than 6-point type. If Covered Product contains more than 0.5 micrograms of lead per day, the same warning shall be posted on any websites under the exclusive control of Boiling Point where Covered Product is sold into California. Boiling Point shall instruct any third-party website to which it sells Covered Product to include the same warning as a condition of selling Covered Product, but only if Covered Product contains more than 0.5 micrograms of lead per day.

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

The requirements of Sections 2.1 and 2.2 shall not apply to Covered Product that is already manufactured and labeled 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 Notice or referred to in this Settlement Agreement, Boiling Point agrees to pay two thousand dollars (\$2,000.00) 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 of the date this Settlement Agreement is executed by the Parties, Boiling Point shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of one thousand and five hundred dollars (\$1,500.00) and (b) Environmental Health Advocates, Inc., in the amount of five hundred dollars (\$500.00).

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 Non-United States Postal Service 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:

Isaac Fayman  
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, Boiling Point agrees to pay eighteen thousand dollars (\$18,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of Boiling Point, and negotiating a settlement. The eighteen thousand dollars (\$18,000.00) in Attorney's Fees and Costs shall be paid in six (6) separate installments as follows:

- The First Installment shall be in the amount of three thousand dollars (\$3,000.00), payable to Entorno Law, LLP within ten (10) days of the date this Settlement Agreement is fully executed ("First Installment").
- The Second Installment shall be in the amount of three thousand dollars (\$3,000.00), payable to Entorno Law, LLP within forty (40) days of the date this Settlement Agreement is fully executed ("Second Installment").
- The Third Installment shall be in the amount of three thousand dollars (\$3,000.00), payable to Entorno Law, LLP within seventy (70) days of the date this Settlement Agreement is fully executed ("Third Installment").
- The Fourth Installment shall be in the amount of three thousand dollars (\$3,000.00), payable to Entorno Law, LLP within one hundred (100) days of the date this Settlement Agreement is fully executed ("Fourth Installment").
- The Fifth Installment shall be in the amount of three thousand dollars (\$3,000.00), payable to Entorno Law, LLP within one hundred and thirty (130) days of the date this Settlement Agreement is fully executed ("Fifth Installment").
- The Sixth Installment shall be in the amount of three thousand dollars (\$3,000.00), payable to Entorno Law, LLP within one hundred and sixty (160) days of the date this Settlement Agreement is fully executed ("Sixth Installment").

### **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**

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

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

### **4.1. EHA's Release of Boiling Point**

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 Boiling Point 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 Boiling Point and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom Covered Product was purchased by Boiling Point, and each entity to whom Boiling Point directly or indirectly distributes or sells Covered 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 lead required under Proposition 65 in Covered Product manufactured, sold or distributed for sale in California by Boiling Point before the Effective Date, as alleged in the Notice. This release does not extend to any third-party retailers selling Covered Product on a website who, after receiving instruction from Boiling Point to include a warning as set forth above in Section 2.2, if Covered Product contains more than 0.5 micrograms of lead 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 Boiling Point 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 lead required under Proposition 65 in Covered Product manufactured, distributed, sold or offered for sale by Boiling Point, before the Effective Date.

#### **4.2 Boiling Point Release of EHA**

Boiling Point, 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 Covered 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 Covered Product will develop or be discovered. EHA on behalf of itself only, on one hand, and Boiling Point 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 Boiling Point:

Tommy SF Wang  
Wang IP Law Group, P.C.  
18645 E. Gale Ave., Suite 205  
City of Industry, CA 91748

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: 5/4/2023

Date: 5/4/2023

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
BOILING POINT GROUP, INC.