

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 Oaktown Spice Shop, LLC (“Oaktown”) on the other hand, with EHA and Oaktown 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. Oaktown 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 Oaktown manufactures, sells, and distributes for sale in California, a mushroom 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. Oaktown denies Plaintiff’s allegations that any of its products require Proposition 65 warnings.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to Oaktown Spice Shop Chanterelle Mushrooms (“the Covered Product”), that EHA alleges contain lead and that is manufactured, sold or distributed for sale in California by Oaktown.

1.4 Notice of Violation and Complaint

On September 13, 2022, EHA served Oaktown Spice Shop, LLC, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Oaktown 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 the Covered Product.

On December 1, 2022, EHA served Oaktown Spice Shop, LLC, Woodland Foods, Ltd. the California Attorney General and other requisite public enforcers with a 60-Day Amended Notice of Violation (“Amended Notice”). According to EHA, this amendment corrected the manufacturer of the Covered Product to Woodland Foods, Ltd. and included updated supporting documents.

To the best of the Parties’ knowledge, no public enforcer has commenced or is otherwise diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Oaktown denies the material, factual, and legal allegations in the Notice and Amended Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Covered Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Oaktown 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 Oaktown of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Oaktown. This Section shall not, however, diminish or otherwise affect Oaktown’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 February 16, 2023. “Compliance Date” shall mean thirty (30) days after the Effective Date.

2. REFORMULATION AND WARNINGS

2.1 Reformulation

Beginning on the Compliance Date, Oaktown shall not manufacture, supply or distribute, for sale or use in the State of California, any Covered Product that, when placed into individual packaging units for sale to consumers, exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day, unless the Covered Product complies with the warning requirements set forth in Section 2.2. As used in this Section 2, to “distribute” for sale or use in California means to directly ship Covered Products into California or to sell Covered Products to a distributor Oaktown knows will sell Covered Products in California.

2.2 Clear and Reasonable Warnings

If Oaktown is required to provide a warning pursuant to Section 2.1, Oaktown may provide any of the following warnings:

- 1) **WARNING:** Consuming 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.
- 2) **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.cs.gov/food.

Oaktown shall use the phrase “cancer and” in the warning statement if Oaktown has reason to believe that the Daily Lead Exposure Level is greater than 15 micrograms of lead or if Oaktown has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. If Oaktown elects, the bolded and capitalized words “**CALIFORNIA PROPOSITION 65,**” “**CA PROP. 65**” or “**PROPOSITION 65**” may be added prior to the word “**WARNING.**”

This warning statement shall be prominently displayed on the 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 placed on a food product label, the warning statement must be set off from other surrounding information and enclosed in a box.

If the warning statement is displayed on the Covered Product’s packaging, it must be in a type size no smaller than the largest type size used for other consumer information on the Covered Product. In no case shall the warning statement displayed on the Covered Product’s packaging appear in a type size smaller than 6-point type.

The requirements for warnings, set forth 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. Oaktown shall be deemed to be in compliance with the warning requirements of this Settlement Agreement by either adhering to this Section 2.2 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 Compliance Date.

2.3 Point of Sale and Internet Warnings

If Oaktown sells Covered Product via its own proprietary internet website to customers located in California, the warning requirements of this Section, and Section 2.2, shall be satisfied if the warning described in Section 2.2 appears either: (a) on the same web page on which a Covered Product is displayed and/or described, including the “product details” portion of the web page; (b) on the same web page as the price for the Covered Product; (c) through a clearly marked hyperlink using the words “**CALIFORNIA PROPOSITION 65 WARNING,**” “**CA PROP. 65 WARNING**”, “**PROPOSITION 65 WARNING**” or “**WARNING**” in all capital and bold letters. If a hyperlink is utilized, the hyperlink must link directly to a web page or pop-up that clearly and prominently displays the warning statement; or (d) displays the warning statement to a California purchaser prior to completion of the checkout process.

2.4 Grace Period for Existing Inventory of Product

The requirements of this Section 2 shall not apply to the Covered Product that is already manufactured and labeled as of the Compliance Date, which Covered Product is expressly subject to the releases provided in Section 4.1.

2.5 Compliance with Proposition 65

The Parties agree and intend for compliance with the terms of this Section 2 to constitute compliance with Proposition 65 with respect to exposures to lead from the Covered Products.

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 and Amended Notice or referred to in this Settlement Agreement, Oaktown 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 fifteen (15) days of the Effective Date, Oaktown shall issue two separate checks for the civil penalty payment to (a) “OEHHA” in the amount of one thousand 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 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 delivered to:

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, within fifteen (15) days of the Effective Date, Oaktown agrees to pay the total of eighteen thousand dollars (\$18,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Oaktown and negotiating a settlement. Oaktown's payment shall be delivered in the form of one check in the amount of eighteen thousand dollars (\$18,000.00) payable to "Entorno Law, LLP". Other than this payment, each side is to bear its own attorneys' fees and costs.

All payments required under this Section 3.2 shall be delivered to:

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

3.3 Tax Documentation

EHA agrees to provide Oaktown with IRS W-9 forms for each of the payees under this Settlement Agreement. The Parties acknowledge that Oaktown cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Oaktown receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Oaktown

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 Oaktown 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 Oaktown and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Covered Product, or any ingredients therein, were purchased by Oaktown (including, but not limited to, Woodland Foods, Ltd., reorganized and now operating as Woodland Foods, LLC, and its respective parents,

subsidiaries, and affiliated entities under common ownership), each entity from whom any upstream entity purchased the Covered Products, or any ingredients therein, and each entity to whom Oaktown directly or indirectly distributes or sells the Covered Product including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (collectively the "Releasees"), for any alleged violations of Proposition 65, or any other alleged violation of statutory or common law, arising from alleged exposures to lead in relation to the Covered Product manufactured, sold or distributed for sale by Oaktown and Releasees before the Compliance Date, as alleged in the Notice.

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 Oaktown 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 out of the alleged or actual exposure to lead or cadmium in the Covered Product manufactured, distributed, sold or offered for sale by Oaktown and Releasees before the Compliance Date.

4.2 Oaktown's Release of EHA

Oaktown, 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 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 the Covered Product will develop or be discovered. EHA on behalf of itself only, on one hand, and Oaktown 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

Compliance 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. The Parties further acknowledge that they are familiar with California Civil Code section 1542 which reads and 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.

4.4 Public Benefit

The Parties enter into this Settlement Agreement with the understanding that the commitments made herein, and actions to be taken by Oaktown under this Settlement Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is Oaktown's intent by entering into this Settlement Agreement that to the extent any other private party initiates an action against Oaktown alleging a violation of Proposition 65 with respect to failure to provide a clear and reasonable warning concerning exposure to lead from the Covered Products manufactured, distributed, sold or offered for sale by Oaktown in California prior to the Compliance Date, and subject to Oaktown's material compliance with this Settlement Agreement, such action by another private party would not confer a significant benefit on the general public as to those Covered Products and Proposition 65-listed chemicals addressed under this Agreement.

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. In the event that Proposition 65 is repealed or is

otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then Oaktown shall have no further obligations pursuant to this Settlement Agreement.

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 Oaktown:

Rohit Sabnis
Keller & Heckman LLP
Three Embarcadero Center
Suite 1420, Drumm St.
San Francisco, CA 94111

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. 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.

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.

AGREED TO:

AGREED TO:

Date: 02/02/2023

Date: 2/2/23

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
OAKTOWN SPICE SHOP, LLC

4857-0477-9854, v. 1