

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Green Initiative, LLC and Sprout Foods, Inc.

This Settlement Agreement is entered into by and between Green Initiative, LLC ("Green"), on the one hand, and Sprout Foods, Inc. ("Sprout"), on the other hand, with Green and Sprout collectively referred to as the "Parties" and individually, each as a "Party."

1.2. General Allegations

Green alleges that Sprout manufactured and distributed and offered for sale in the State of California Sprout Organic Pasta & Veggie sauce containing 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 Cadmium 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 product that is covered by this Settlement Agreement is defined as Sprout Organic Pasta & Veggie Sauce that Sprout has manufactured, imported, sold, offered for sale or distributed in California. All such items shall be referred to herein as the "Product."

1.4. Notice of Violation

On December 5, 2022, Green served Sprout, 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 Sprout and such public enforcers with notice that Sprout was allegedly

in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Product exposed users in California to 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 disputed claims between them as set forth herein and in the Notice concerning Sprout's compliance with Proposition 65. Sprout denies the material factual and legal allegations contained in Green'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 Sprout 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 Sprout of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Sprout on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Sprout 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 by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

As of the Compliance Date, Sprout, at its sole discretion, agrees to either (a) cease selling, offering for sale or distributing the Product in California, (b) manufacture, import, or otherwise source for authorized sale in California only Reformulated Product, as defined

pursuant to Section 2.1 below, or (c) provide a clear and reasonable Proposition 65 warning on the Product pursuant to Section 2.2 below.

2.1. Reformulation Standards


The Product shall be deemed to comply with Proposition 65 with regard to Cadmium and be exempt from any Proposition 65 warning requirements for Cadmium if the level of Cadmium in the Product does not exceed 25 ppb (parts per billion) (“Reformulated Products”) based upon the average daily consumption rates.

2.2. Warning Option

Any Product that does 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 any Product that is manufactured, distributed, marketed, imported, sold, shipped for sale or offered for sale to consumers by Sprout in the State of California. No Proposition 65 warning shall be required for any Product that is supplied or contracted to be supplied to third parties by Sprout if the Product was supplied prior to 90 days after 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, Sprout 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 Cadmium, 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

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

www.P65Warnings.ca.gov/food

Sprout may use “cancer and” in the warning at its option. Sprout may include the names of additional chemicals in the warning if they are present in the Products at a level that Sprout reasonably believes would require a Proposition 65 warning.

(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. Sprout 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 Cadmium should no longer be required, Sprout shall have no further obligations pursuant to this Settlement Agreement.

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

In settlement of all the claims referred to in this Settlement Agreement, Sprout shall pay a total of \$100 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 Green. Green'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 Green and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Sprout shall reimburse Green's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Sprout's attention. Sprout shall pay Green's counsel \$11,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

By August 20, 2023, Sprout shall make, Sprout shall make a payment of Eleven Thousand One Hundred Dollars (\$11,100), 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.

6. RELEASE OF ALL CLAIMS

6.1. Release of Sprout, Downstream Retailers and Distributers 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, Green, 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, "Releasors"), hereby releases, discharges and waives all rights arising from or relating to its purchase and use of the Products, including without limitation all rights to file, prosecute, 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 including without limitation those arising from the Notice (collectively "Claims"), against (a) Sprout, (b) each of Sprout's downstream distributors and retailers in the stream of commerce (including but not limited to Sprout 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, owners, purchasers, third-party re-sellers, and users, (c) Sprout's parent companies, corporate affiliates, subsidiaries, doing business as entities ("DBAs"), successor companies, 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 (all of the foregoing persons and entities identified in categories (a) – (d), collectively "Releasees").

Green 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 Sprout and the Releasees. Green 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.

Green, 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. Sprout's Release of Green

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

by Green and its attorneys and other representatives, in the course of investigating claims and seeking enforcement of Proposition 65 against it in this matter, 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 Product, then Sprout 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 Sprout: Elizabeth McNulty, Esq.
Evans Fears Schuttert McNulty Mickus
4440 Von Karman Avenue, Suite 250
Newport Beach, CA 92660

For Green: 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)

Green 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.

<p style="text-align: center;">AGREED TO:</p> <p>Date: July <u>26</u>, 2023</p> <p>By: <u></u> On Behalf of Green Initiative, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: July __, 2023</p> <p>By: _____ On Behalf of Sprout Foods, Inc.</p>
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AGREED TO:	AGREED TO:
Date: July __, 2023	Date: July __, 2023
By: _____ On Behalf of Green Initiative, LLC	By: 850335F263FE4CF _____ On Behalf of Sprout Foods, Inc.