

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Woodland Foods, Ltd., reorganized and now operating as Woodland Foods, LLC (“Woodland”), on the other hand, with EHA and Woodland 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. EHA alleges that Woodland 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 Woodland either manufactures, sells, offers for sale, and/or distributes for sale in California, or some combination of the foregoing, certain dried mushroom products that contain lead and that it does so without first providing the health hazard warning required by Proposition 65. “Lead” and “lead and lead compounds” (collectively, “Lead”) are listed pursuant to Proposition 65 as chemicals known to the State of California to cause cancer, or birth defects or other reproductive harm.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are defined as, and expressly limited to “Williams-Sonoma Dried Wild Mushroom Blend” (“Covered Products”), that Woodland either manufactured, sold, offered for sale and/or distributed for sale and that were directly or indirectly sold in California, or that Woodland will either manufacture, sell, offer for sale and/or distribute for sale in California and that are directly or indirectly sold in California.

#### **1.4 Notice of Violation**

On or around November 7, 2022, EHA served Williams-Sonoma, Inc., the California

Attorney General, and certain other public enforcement agencies (EHA believes required) with a 60-Day Notice of Violation of Proposition 65 (“Notice”).

On or around February 17, 2023, EHA served Woodland, Williams-Sonoma, Inc., the California Attorney General, and certain other public enforcement agencies (EHA believes required) with an Amended 60-Day Notice of Violation of Proposition 65 (“Amended Notice” and collectively referred to as “Notices”). The Notices alleged that Woodland and others had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to Lead contained in Covered Products.

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

### **1.5 No Admission**

Woodland denies the material, factual, and legal allegations in the Notices and maintains that all of the products it sold and/or distributed for sale in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission against interest by Woodland 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 against interest by Woodland of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Woodland. This Section shall not, however, diminish or otherwise affect Woodland'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 the date both Parties have notice that this Settlement Agreement is executed by the Parties.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard**


For Covered Products manufactured after thirty (30) days after the Effective Date, Woodland agrees that it shall not distribute for sale in California, or directly sell 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 Product complies with the warning requirements of Section 2.2. The “Daily Lead Exposure Level” shall be calculated by multiplying the recommended serving size on the label of the Covered Product by the concentration of Lead in Covered Product. As used in this Section 2, “distributed for sale in California” means to directly ship Covered Products into California or to sell Covered Products to a distributor Woodland knows will sell Covered Products in California.

## 2.2 General Warning Requirements

For Covered Products manufactured after thirty (30) days after the Effective Date, Woodland agrees any Covered Product that is not reformulated or otherwise meets the warning standard of Section 2.1 shall contain a Proposition 65 warning. Woodland agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before use.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Products shall consist of one of the following warnings affixed to either the consumer-ready packaging, label, tag, or directly on each Covered Product (the “Packaging”) directly sold or distributed for sale in California by Woodland:

- 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).

OR

- 2)  **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

OR

- 3) Any form of “safe harbor” warning promulgated by

OEHHA in effect at the time the Covered Product is manufactured that governs warnings for Lead in foods, provided Woodland adheres to the safe harbor methods and content for such warning.

The warning statement shall be prominently displayed on the Packaging, and the warning statement must be in a type size no smaller than the largest type size used for other “consumer information” (as defined for purposes of Proposition 65) on the Packaging. In no case shall a warning statement displayed on the Covered Products’ Packaging appear in a type size smaller than 6-point type. The same warning shall be visible on any websites under the exclusive control of Woodland where Woodland sells Covered Products to consumers in California.

(i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Covered Products and the chemical at issue, which are different than those set forth above, Woodland shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted providing that Proposition 65 warnings as to Lead in the Covered Product are no longer required, a lack of warning by Woodland will not thereafter be a breach of this Agreement.

**2.3 Grace Period for Existing Inventory of Covered Products**

The warning requirements of Section 2 shall not apply to Covered Products that are or were manufactured on or prior to the date that is thirty (30) days after the Effective Date. All such Covered Products are expressly subject to the releases provided in Section 4. For the avoidance of doubt, such Covered Products are deemed to be in the stream of commerce and specifically include, but are not limited to, all such Covered Products in the process of manufacture, in inventory, in transit, in the possession or custody of any downstream Releasee (as defined below) and regardless of when they are sold in California, or by whom.

### **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, Woodland agrees to pay two thousand dollar (\$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. Woodland shall issue two separate checks for the civil penalty payment to: (a) “OEHHA” and (b) Environmental Health Advocates, Inc. as follows:

- One payment of \$1,500.00 to OEHHA, due 14 (fourteen) days after the Effective Date.
- One payment of \$500.00 to EHA, due 14 (fourteen) days after the Effective Date.

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, Woodland agrees to pay twenty-eight thousand dollars (\$28,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of Woodland, and negotiating a settlement. The twenty-eight thousand dollars (\$28,000.00) in Attorney's Fees and Costs shall be payable to Entorno Law, LLP, and is due fourteen (14) days after the Effective Date.

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**

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

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

### **4.1 EHA's Release of Woodland**

This Settlement Agreement is a full, final, and binding resolution of all claims between EHA, on its own behalf and not on behalf of the public, and Woodland for all claims that can or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, predecessors, successors and assignees, against Woodland and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, predecessors or successors, and any entity, including, but not limited to, each entity to whom Woodland directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, and expressly including Williams-

Sonoma, Inc. and its corporate affiliates (collectively, “Releasees”), based on the failure to warn about exposures to Lead required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale in California by Woodland on and before the Effective Date, as alleged in the Notice, or for any other reason.

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, predecessors, 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 Woodland 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 the Covered Products up through and including the Effective Date.

#### **4.2 Woodland's Release of EHA**

Woodland, 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 Products up through and including the Effective Date.

#### **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 Products will develop or be discovered. EHA on behalf of itself only, on one hand, and Woodland 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 and including 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.**

EHA and Woodland each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**5 PUBLIC BENEFIT**

It is the Parties' understanding that the commitments Woodland has agreed to herein, and actions to be taken by Woodland under this Settlement Agreement confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Woodland's alleged failure to provide a warning concerning actual or alleged exposure to Lead prior to use of the Covered Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that Woodland is in material compliance with this Settlement Agreement.

**6. 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.

**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. This Settlement Agreement does not govern



Covered Products that are not sold in California or to California consumers.

**8. 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. This Settlement Agreement is enforceable solely by the Parties hereto. As between the Parties, on and after the Effective Date EHA agrees that Woodland's compliance with this Settlement Agreement constitutes compliance with Proposition 65 with regard to warnings for Lead in the Covered Products, regardless of when such Covered Products are sold or by whom.

**9. 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 Woodland:

Judith M. Praitis  
Faegre Drinker Biddle & Reath LLP  
1800 Century Park East, Suite 1500  
Los Angeles, CA 90067  
judith.praitis@faegredrinker.com

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.

**10. 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.

**11. 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).

**12. MODIFICATION**

This Settlement Agreement may be modified only by written agreement 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: 06/19/2023

Date: 06/28/23

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By: Daniel Kucera  
WOODLAND FOODS, LLC