

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Kallander (“Kallander”) on the one hand, and Supervalu Inc. (“Supervalu”) on the other hand. Kallander and Supervalu shall each be referred to as a “Party” and collectively as the “Parties.” Kallander is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Kallander alleges that Supervalu 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 section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Kallander alleges that Supervalu manufactures, sells, and/or distributes for sale in California, Salt and Pepper Shakers with PVC components containing the phthalate chemical Di-n-Butyl Phthalate (“DBP”). DBP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Kallander alleges that Supervalu failed to provide the health hazard warning required by Proposition 65 for exposures to DBP.

1.3 Product Description

The products covered by this Settlement Agreement are specifically defined as, and limited to, the “*Supervalu Salt & Pepper Shakers*,” UPC: 8 40169 31205 3, Item No.: 79148 manufactured, sold, or distributed for sale in California by Supervalu (hereinafter the “Products”).

1.4 Notice of Violation

On March 27, 2023 Kallander served Winco Foods, LLC, Supervalu Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”),

alleging that the notice recipients violated Proposition 65 by failing to warn customers and consumers in California of the health hazards associated with exposures to DBP from the Products.

No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Supervalu denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Supervalu 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 Supervalu of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Supervalu. This Section shall not, however, diminish or otherwise affect Supervalu'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 June 20, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products containing DBP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodologies utilized by federal or state agencies for the purpose of determining the DBP content in a solid substance.

2.2 Reformulation/Warning Commitment


As of 60 days after the Effective Date, Supervalu shall not sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 or contain a warning as set forth in Section 2.3 below. The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DBP from the Products.

2.3 Warnings

As of 60 days after the Effective Date, all Products Supervalu sells and/or distributes for sale in California that do not qualify as Reformulated Products, shall bear a clear and reasonable warning pursuant to this Section. Supervalu further agrees that the warning shall be prominently placed with such conspicuousness when 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 of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, for Products sold in California and containing one of the following statements:

 **WARNING:** Reproductive Harm- www.P65Warnings.ca.gov

OR

 **WARNING:** This product can expose you to chemicals, including DBP, which are known to the State of California to cause birth defects and other reproductive harm. For more information go to www.P65Warnings.ca.gov

The above warning statements shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING.”

If Supervalu sells Products via its own proprietary internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; (c) on one or more web pages displayed to a California purchaser prior to completion of the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

The parties acknowledge that the warnings required by this section are not the exclusive methods of providing Proposition 65 warnings and agree that Supervalu may utilize “safe harbor” warning language and methods of transmission promulgated by the Office of Environmental Health Hazard Assessment without being deemed in breach of this Settlement Agreement, including but not limited to a product-specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point of display of the product.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and as consideration for the releases contained in Sections 4.1 and 4.2 below, Supervalu agrees to pay \$2,000 in civil penalties no later than 10 days after the Effective Date. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Kallander. Supervalu shall make its payment in two checks,

delivered to the address in Section 3.3, as follows: (1) to “OEHHA” in the amount of \$1,500; and (2) to “Audrey Kallander” in the amount of \$500.

3.2 Attorneys’ Fees and Costs

The Parties acknowledge that Kallander and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to her counsel, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Supervalu expressed a desire to resolve Kallander’s fees and costs. The Parties reached an accord on the compensation due to Kallander’s counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Supervalu agrees to pay, no later than 10 days after the Effective Date, \$16,000, in the form of a check made payable to “Voorhees & Bailey, LLP,” for all fees and costs incurred investigating, bringing this matter to the attention of Supervalu’s management, and negotiating a settlement.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Kallander’s Release of Proposition 65 Claims

Kallander acting on her own behalf, and not on behalf of the public, releases Supervalu, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Supervalu directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative

members, importers, licensees, and their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, and attorneys, from all claims for violations of Proposition 65 through the Effective Date relating to unwarned exposures to DBP in the Products. The Parties further understand and agree that this Section 4.1 release shall extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Supervalu, and such upstream entities, distributors, and suppliers' parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, and attorneys. The entities set forth in this Section 4.1 and to whom the release applies are collectively "Releasees."

4.2 Kallander's Individual Release of Claims

Kallander, in her individual capacity only and not in her representative capacity, provides a 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 Kallander of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DBP in the Products manufactured, imported, distributed, or sold by Releasees prior to the Effective Date.

4.3 Supervalu's Release of Kallander

Supervalu, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Kallander and her attorneys and other representatives, for any and all actions taken or statements made by Kallander and her attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. RIGHT TO CURE

If Kallander determines at a future date that a violation of this Settlement Agreement has occurred, Kallander shall provide notice to Supervalu. Prior to bringing any action to enforce any requirement of this Settlement Agreement, Kallander shall provide Supervalu with written notice of the grounds for such allegation (“Notice of Breach”) together with supporting information including, but not limited to, (a) one or more photos that clearly identify the Product at issue, (b) a copy of the purchase receipt, and (c) copies of any test results showing that the Product sold without a warning is not a Reformulated Product as defined by Section 2.1. Supervalu shall have 30 days to cure the violation alleged in the Notice of Breach and provide counsel for Kallander with written documentation of the steps taken for such cure. Should such attempts to cure the violation fail, Kallander may file her lawsuit to enforce the terms of this Settlement Agreement and California’s Proposition 65.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Supervalu may provide written notice to Kallander of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

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 Supervalu:

Andrew Dosdall
Taft Stettinius & Hollister LLP
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402-2157

For Kallander:

Audrey Kallander
c/o Voorhees & Bailey, LLP
Proposition 65 Coordinator
535 Ramona St.; Suite 5
Palo Alto, CA 94301

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)

Kallander and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 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 of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: _____

Date: June 19, 2023

By: _____
Audrey Kallander

By: ~Adam Luebke
United Natural Foods, Inc., sole parent
company of and on behalf of Supervalu
Inc.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: June 19. 2023

Date: _____

By: _____
Audrey Kallander

By: _____
United Natural Foods, Inc., sole parent
company of and on behalf of Supervalu
Inc.