

## 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 Bellway, Inc. (“Bellway”), on the other hand, with EHA and Bellway 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 Bellway 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 Bellway manufactures, sells, and/or distributes for sale in California, dietary supplements products that contain 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, developmental toxicity, and reproductive toxicity. Bellway denies EHA’s allegations.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are defined as, and expressly limited to Bellway Super Fiber + Plant Protein Powder - Vanilla, that are manufactured, sold and/or distributed for sale in California by Bellway (“Covered Products”).

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

On or around October 20, 2023, EHA served Bellway, the California Attorney General, and certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Bellway 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 Notice.

### **1.5 No Admission**

Bellway denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Bellway 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 Bellway of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Bellway. This Section shall not, however, diminish or otherwise affect Bellway'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 later of the following: (1) date this Settlement Agreement is executed by the Parties ("Execution Date"); if the Parties execute on different dates the Execution Date shall be later of the two dates, or (2) receipt by Bellway of all necessary W-9 forms for the settlement payments referenced below to (1) Entorno Law, (2) OEHHA, and (3) EHA.

### **1.7 Compliance Date**

For purposes of this Settlement, the term "Compliance Date" means 28 days from the Effective Date.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard**

Beginning on or before the Compliance Date, Bellway shall be permanently enjoined from manufacturing, distributing, or directly selling in the State of California, any Covered Product manufactured after the Compliance Date 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 Bellway knows will sell the Covered Products in California.

## **2.2 General Warning Requirements**

Commencing on the Compliance Date as to Covered Products manufactured after the Compliance Date, Bellway agrees any Covered Product that was not reformulated pursuant to paragraph 2.1 shall contain a Proposition 65 warning. Bellway 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 purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Covered Products the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Products shall consist of a warning affixed to the packaging, label, tag, directly to each Covered Products sold in California by Bellway, or on a placard, shelf tag, sign or electronic device or automatic process that contains one of the following statements:

1) **WARNING:** Consuming this product can expose you to chemicals including Lead, which 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](http://www.P65Warnings.ca.gov/food).

OR

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

This warning statement shall be prominently displayed on the Covered Products, on the packing of the Covered Products, 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 the Covered Products' packaging, it must be in a type size no smaller than

the largest type size used for other consumer information on the product. In no case shall a warning statement displayed on the Covered Products' packaging appear in a type size smaller than 6-point type. If the Covered Products' packaging contains consumer information in a foreign language, a warning statement in that language is required. The same warning shall be posted on any websites under the exclusive control of Bellway where Covered Products are sold into California. Such warning shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products in existing inventory that had not been reformulated and were distributed and/or sold by Bellway or any of the Releasees after the Effective Date. There shall be no obligation for Bellway to provide a warning for Covered Products that entered the stream of commerce prior to the Effective Date, and the Section 4 release applies to all such Covered Products.

(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, Bellway 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 this product are no longer required, a lack of warning by Bellway will not thereafter be a breach of this Agreement. Bellway shall instruct any third-party website to which it sells its Covered Products to include the same warning as a condition of selling the Covered Products.

**2.3 Grace Period for Covered Products Manufactured Before the Compliance Date**

The injunctive requirements of Section 2 shall not apply to Covered Products that are manufactured or already in the stream of commerce as of the Compliance Date, which Covered Products are expressly subject to the releases provided in Section 4.1. For the avoidance of doubt, Covered Products in the stream of commerce specifically include, but are not limited to, Covered Products in the process of manufacture.

### **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, Bellway 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. Shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” and (b) Environmental Health Advocates, Inc. as follows:

- One payment of \$1,500.00 to OEHHA, due on the Compliance Date.
- One payment of \$500.00 to EHA, on the Compliance 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:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

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, Bellway agrees to pay eighteen thousand dollars (\$18,000.00), subject to the waiver provision below, to EHA and its counsel in a series of four payments. These payments reflect compensation to EHA for all fees and costs incurred in investigating, bringing this matter the attention of Bellway,

and negotiating a settlement. This payment shall be payable to Entorno Law, LLP as follows:

- Payment 1: One payment of \$3,000.00, due on the Compliance Date.
- Payment 2: One payment of \$5,000.00, due fifty-six (56) days after the Compliance Date.
- Payment 3: One payment of \$5,000.00, due eighty-four (84) days after the Compliance Date.
- Payment 4: One payment of \$5,000.00, due one hundred twelve (112) days after the Compliance Date.

**Waiver:** If Payments 1-3, totaling thirteen thousand dollars (\$13,000.00) are timely paid in accordance with the Settlement Agreement, then Bellway's obligation to make Payment 4 of five thousand dollars (\$5,000.00) will be deemed waived in its entirety by EHA and Bellway shall have no obligation to make Payment 4 or any additional payment. For the sake of clarity the Parties expressly agree that if Payments 1-3 are timely made, Bellway shall not be liable for Payment 4 and the total payment owed by Bellway to EHA's counsel pursuant to this Settlement Agreement shall be \$13,000 and not \$18,000.

All payments required under this Section shall be delivered to:

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

### **3.3 Tax Documentation**

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

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

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

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 Bellway for all claims under Proposition 65 related to the Covered Products that can 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 Bellway and any entity, including, but not limited to each entity to whom Bellway directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including but not limited to Target Corporation), franchisees, cooperative members and licensees and each of their respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, (“Releasees”).

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 Bellway 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 violations of Proposition 65 in the Covered Products..

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

Bellway, 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 previously 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.

#### **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 Bellway 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.**

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

**5 PUBLIC BENEFIT**

It is Bellway's understanding that the commitments it has agreed to herein, and actions to be taken by Bellway 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 Bellway 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 Bellway'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 Bellway 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.

**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.

**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 Bellway:

Kristine Forderer  
Cooley LLP  
3 Embarcadero Center, 20th Floor  
San Francisco, CA 94111-4004  
kforderer@cooley.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: 5/13/2024

Date: May 13, 2024

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By: Maximilian Dresse  
Maximilian Dresse, CEO  
BELLWAY, INC.

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