

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (the “Settlement Agreement”) is entered into by and between Environmental Health Advocates, Inc. (“Plaintiff” or “EHA”), on the one hand, and San Francisco Herb Company (“Defendant” or “SF Herb”) on the other. EHA and SF Herb are each sometimes individually referred to as a “Party,” and collectively as the “Parties.” EHA alleges that it is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to listed chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. EHA alleges that SF Herb 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 SF Herb manufactured, sold, offered for sale, and/or distributed for sale in California certain flax seed products that allegedly contain cadmium without first providing a Proposition 65 warning. Cadmium is a listed chemical pursuant to Proposition 65.

1.3 Product Description

The products covered by this Settlement Agreement are defined as flax seed products allegedly containing cadmium, including but not limited to the noticed Flax Seed, Whole – 1 Lb bag, that are manufactured, imported, sold, offered for sale, and/or distributed for sale in California by SF Herb (the “Covered Products”).

1.4 Notices of Violation

On or about October 12, 2023 and November 9, 2023 EHA served SF Herb, the California Attorney General, and certain other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (the “Notices”). The Notices alleged that SF Herb violated Proposition 65 when it failed to sufficiently warn consumers in California that the Covered Products can expose consumers to cadmium. 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

SF Herb enters into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notices, and any other claim by plaintiff concerning alleged cadmium in the Covered Products, solely to avoid prolonged and costly litigation. SF Herb denies the material factual and legal allegations contained in the Notices, maintains that it is not a person in the course of doing business that is subject to Proposition 65, that it is not subject to personal jurisdiction in California, and that all products that it has sold and distributed in California, including the Covered Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission against interest by SF Herb of any fact, finding, issue of law, or violation of law; including, but not limited to any fact or conclusion of law suggesting or demonstrating that SF Herb has violated Proposition 65, or that it is a person in the course of doing business for purposes of Proposition 65. Nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by SF Herb of any of the above, such being specifically denied by SF Herb. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense SF Herb may have in this or any other future legal proceeding, including SF Herb's position that it is not a person in the course of doing business under Proposition 65, nor that it is not subject to personal jurisdiction in California. This Settlement Agreement is the product of negotiation and compromise and is accepted by SF Herb solely for purposes of settling, compromising, and resolving issues disputed in the Notices. However, this Section 1.5 shall not diminish or otherwise affect the Parties' 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 this Settlement Agreement is fully executed by the Parties.

1.7 Compliance Date

For purposes of this Settlement Agreement, the term “Compliance Date” means 30 days after the Effective Date.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

Beginning on or before the Compliance Date, SF Herb shall be permanently enjoined from manufacturing, importing, distributing, or directly selling in the State of California, any Covered Products that expose a person to a “Daily Cadmium Exposure Level” of more than 4.1 micrograms of Cadmium based on a single serving per day unless such Covered Products comply with the warning requirements of Section 2.2. The “Daily Cadmium Exposure Level” shall be calculated by multiplying the recommended package serving size for the Covered Product by the concentration of Cadmium in Covered Products. 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 SF Herb knows will sell Covered Products in California. Covered Products that do not cause a Daily Cadmium Exposure Level of more than 4.1 micrograms of cadmium are “Reformulated Covered Products” and do not require a Proposition 65 warning for cadmium hereunder.

2.2 General Warning Requirements

Commencing on the Compliance Date, SF Herb agrees that any Covered Product sold in California that is not reformulated pursuant to paragraph 2.1 shall contain a Proposition 65 warning. SF Herb agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it reasonably 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 or directly to each Covered Product sold in California by SF Herb, or on a placard, shelf tag, sign or electronic device or automatic process that contains one of the following statements:

1) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:”**: Consuming this product can expose you to chemicals, including cadmium, 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.

or

SHORT FORM

2) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:”** Risk of cancer and reproductive harm from exposure to cadmium. See www.P65Warnings.ca.gov/food.

or

SHORT FORM

3) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:”** Can expose you to cadmium, a carcinogen and reproductive toxicant. See www.P65Warnings.ca.gov/food.

OR

**SHORT FORM
ONLY ON A
PRODUCT
MANUFACTURED/
LABELED PRIOR
TO 1/1/28,
REGARDLESS OF**

4) **CALIFORNIA WARNING: Cancer and Reproductive Harm** – www.P65Warnings.ca.gov/food.

Pursuant to Cal. Code Regs. Title 27, Section 25607.1, where the warning is provided on the food product label, it must be set off from other surrounding information and enclosed in a box but does not require a warning triangle. Where a specific food product sign, label, placard, or shelf

tag is used to provide a warning, it must be displayed with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably likely to be read and understood by an ordinary individual prior to sale or use. In no case shall a warning statement appear in a type size smaller than 6-point font. Where labeling, or a label as defined in Section 25600.1 is used to provide a warning that includes “consumer information” about a product in a language other than English, the warning must also be provided in that language in addition to English.

As set forth in Cal. Code Regs. Tit. 27, § 25602(b)(Consumer Product Exposure Warnings – Methods of Transmission), to the extent Covered Products are sold online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603 must be provided via one of the following methods:

“(A) A warning on the product display page; (B) A clearly marked hyperlink using the word “**WARNING**” or the words “**CA WARNING**” or “**CALIFORNIA WARNING**” on the product display page that links to the warning; or (C) An otherwise prominently displayed warning provided to the purchaser prior to completing the purchase. If a warning is provided using the short-form label content pursuant to Section 25602(a)(4), the warning provided on the website may use the same content. For purposes of this subsection, the warning is not prominently displayed if the purchaser must search for it in the general content of the website. (2) For internet purchases made prior to January 1, 2028, a retail seller is not responsible under Section 25600.2(e)(4) for conspicuously posting or displaying the new warning online until 60 calendar days after the retailer receives a warning or a written notice under Section 25600.2(b) and (c) which updates a short-form warning compliant with Section 25603(c) with content compliant with Section 25603(b).”

See 27 Cal. Code of Regs. § 25602(b)(1) and (2). These requirements extend to any websites under the exclusive control of SF Herb where Covered Products are sold into California. In addition, SF Herb shall, if it has the ability to do so, instruct any third-party website to which it directly sells its Covered Products to include the same online warning, as set forth above, as a condition of selling the Covered Products in California.

There shall be no obligation for SF Herb to provide a warning for Covered Products that entered the stream of commerce prior to the Compliance Date, and the Section 4 release applies to all such Covered Products.

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, SF Herb 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 cadmium in Covered Products are no longer required, a lack of warning by SF Herb will not thereafter be a breach of this Agreement. SF Herb shall not be restricted by this Settlement Agreement from providing Proposition 65 warnings for any other listed chemical(s) that may be contained in the Covered Products.

2.3 Grace Period for Existing Inventory of Covered Products

The injunctive requirements of Section 2 shall not apply to Covered Products that are already in the stream of commerce as of the Compliance Date, which Covered Products are expressly subject to the releases provided in Section 4. 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 for monetary relief of any kind related to the claims alleged in the Notices or referred to in this Settlement Agreement (except for Plaintiff's attorney's fees and expenses set forth in Section 3.2 below), SF Herb agrees to pay two-thousand five hundred dollars (\$2,500) in civil penalties. The civil 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. SF Herb shall issue two separate checks for the civil penalty payment to: (a) “OEHHA”; and (b) Environmental Health Advocates, Inc. as follows:

- One check of \$1,875 made payable to OEHHA, due fourteen (14) days after the Effective Date.
- One check of \$625 made payable to EHA, due fourteen (14) 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, SF Herb shall reimburse EHA’s counsel the total amount of twenty-thousand dollars (\$20,000) for all attorney’s fees and expenses incurred in this matter, including but not limited to all fees and

expenses incurred in investigating, testing, consulting with experts, bringing this matter to the attention of SF Herb, and negotiating a settlement in the public interest. The twenty-thousand (\$20,000) in attorney's fees and expenses shall be payable to Entorno Law, LLP as noted below, and is due fourteen (14) days after the Effective Date.

All payments required under Section 3.2 shall be delivered by check to:

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

3.3 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of SF Herb

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 general public, and SF Herb for all claims that can or could have been asserted by EHA, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors and assignees, against SF Herb, its suppliers, and each of SF Herb's respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys of each of them, and, with the exception of Capitol Distribution Company, LLC, any entity from whom or to whom SF Herb directly or indirectly purchases, imports, distributes or sells the Covered Products, including, but not limited to, its suppliers, downstream distributors, wholesalers, customers, retailers (including but not limited to, Hanscomb & Marra Inc., and its affiliates), franchisees, cooperative members, licensors, and licensees (collectively, the "Releasees"), based on the failure to warn about actual or alleged exposures to cadmium in the Covered Products manufactured, sold or distributed for sale in

California by SF Herb before the Compliance Date, as alleged in the Notices. EHA does not release Capitol Distribution Company, LLC, or any of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, and/or attorneys as part of this Settlement Agreement.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and assignees (but not on behalf of the general public), 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 SF Herb and the Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses of any kind, including but not limited to, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to cadmium in the Covered Products manufactured, imported, distributed, sold or offered for sale by SF Herb before the Compliance Date.

4.2 SF Herb 's Release of EHA

SF Herb, 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 the claims resolved herein, or 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; Mutual Release of Known and Unknown Claims

It is possible that other claims not known to the Parties including but not limited to those arising out of the facts alleged in the Notices and relating to products manufactured, imported, distributed, and/or sold by SF Herb and its affiliates through the Compliance Date will develop or be discovered. EHA on behalf of itself, its past and current agents, representatives, attorneys,

successors, and/or assignees only, on the one hand, and SF Herb on behalf of itself and its affiliates on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims for products manufactured, imported, distributed, and/or sold by or for SF Herb and/or its affiliates up through the Compliance Date, including all rights of action therefore. 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.

SF Herb and EHA, on their own behalf, and on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of 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 they may lawfully waive such rights or benefits pertaining to the released matters. EHA and SF Herb each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.3 Deemed Compliance with Proposition 65

The Parties agree that compliance by SF Herb with this Settlement Agreement constitutes compliance with Proposition 65 with respect to actual or alleged exposure to cadmium from use or consumption of the Covered Products.

5. PUBLIC BENEFIT

It is the Parties's understanding that the commitments SF Herb has agreed to herein, and actions to be taken by SF Herb 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 SF Herb 's alleged failure to provide a warning concerning actual or alleged exposure to cadmium prior to use of the Covered Products it has manufactured, imported, 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 SF Herb is in material compliance with the terms of 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

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. EHA shall not bring an enforcement action or institute a judicial proceeding or seek any other relief of any kind if SF Herb demonstrates that it has complied with the requirements of Section 2. In the event that meet-and-confer efforts are unsuccessful, the Party alleging a violation may initiate a judicial proceeding to enforce this Settlement Agreement no earlier than 30 days after issuing the written notice specified herein. In the event that a Party initiates such a judicial proceeding, the prevailing Party shall be entitled to recover 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 SF Herb:

President
San Francisco Herb Co.
250 14th Street
San Francisco, CA 94103

With Copy to:

J. Robert Maxwell
Rogers Joseph O'Donnell, PC
311 California Street, 10th Floor
San Francisco, CA 94104
jmaxwell@rjo.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. JOINT PREPARATION

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

11. 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.

12. 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.

13. 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).

14. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

15. 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: April 14, 2025

Date: April 11 2025

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: Daniel Rejas Daniel Rejas
SAN FRANCISCO HERB COMPANY