

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 Quality Pasta Company LLC (“QPC”), on the other hand, with EHA and QPC 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 QPC 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 QPC manufactures, sells, and/or distributes for sale in California, macaroni and cheese products that contain cadmium and that it does so without first providing the health hazard warning required by Proposition 65. Cadmium is listed pursuant to Proposition 65 as a chemical known to cause developmental and reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to Muscle Mac pasta products (“Covered Products”), that are manufactured, sold and/or distributed for sale in California by QPC.

1.4 Notices of Violation

On or around November 17, 2023, EHA served QPC, 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 QPC had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to cadmium contained in Covered Products.

On or around January 18, 2024, EHA served QPC, the California Attorney General, and

certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (the “Amended Notice”). Collectively, the Notice and the Amended Notice are referred to hereafter as the “Notices.”

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

QPC 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 Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by QPC 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 QPC of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by QPC. This Section shall not, however, diminish or otherwise affect QPC'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 this Settlement Agreement is executed by the Parties.

1.7 Compliance Date

For purposes of this Settlement, the term “Compliance Date” shall mean one hundred twenty (120) days following the execution of the Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Standard

Beginning on or before the Compliance Date, QPC shall be permanently enjoined from manufacturing, distributing, or directly selling in the State of California, any Covered Product that exposes 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 serving size in Covered Product by the concentration of cadmium 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 QPC knows will sell Covered Products in California.

For purposes of measuring and determining compliance with the Daily Cadmium Exposure Level, the average cadmium level of four (4) randomly selected samples of the Covered Product shall be controlling so long as the exposure level in each of the samples is below 150 percent of the Daily Cadmium Exposure Level. A “sample” for this purpose shall be a composite of one complete sales unit of the Covered Product.

2.2 General Warning Requirements

Commencing on the Compliance Date, QPC agrees any Covered Product sold that was not reformulated pursuant to paragraph 2.1 shall contain a Proposition 65 warning. QPC 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 QPC, 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 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

2) WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

One of the above warning statements shall be prominently displayed on the Covered Products that do not meet the standards in paragraph 2.1, 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, as that term is defined in Cal. Code Regs. Tit. 27, §25600.1 . 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 QPC where Covered Products are sold into California. Such warning shall constitute compliance with Proposition 65 with respect to cadmium in the Covered Products for any Covered Products in existing inventory that had not been reformulated and were distributed and/or sold by QPC or any of the Releasees after the Compliance Date. There shall be no obligation for QPC 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.

(i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment, or a different lead agency designated in the future by the Governor to oversee or implement Proposition 65, 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, QPC 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 this product are no longer required, or if a court of competent jurisdiction finds that Proposition 65 warnings for exposures to cadmium in food products are no longer required or that a different standard than the one required by this Agreement applies, a lack of warning by QPC that is

consistent with such revised regulations, legislation or standard will not thereafter be a breach of this Agreement. QPC 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 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 alleged in the Notices or referred to in this Settlement Agreement, QPC agrees to pay three thousand (\$3,000.00) 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. QPC 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 \$2,250.00 to OEHHA, due 45 (forty five) days after the Effective Date.
- One payment of \$750.00 to EHA, due 45 (forty five) 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, and may also, alternatively, be made by wire:

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 the following address, and may also, alternatively, be made by wire:

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, QPC agrees to pay twenty five thousand dollars (\$25,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of QPC, and negotiating a settlement. This payment shall be due forty-five (45) days after the Effective Date and shall be payable to Entorno Law, LLP as follows:

All payments required under this Section shall be delivered to the following address, and may also, alternatively, be made by wire:

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

3.3 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of QPC

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 QPC for all claims that can or could have been asserted by EHA, on its own behalf, on behalf of its past and current officers, directors, members, agents, representatives, attorneys, successors and assignees, against QPC and each of its respective parents, subsidiaries, affiliated entities under common ownership, joint ventures, directors, officers, members, employees, attorneys, and any entity, including, but not limited to each entity to whom QPC directly or indirectly distributes or sells the Covered Products, including, but not limited to, its upstream suppliers, downstream distributors, wholesalers, customers, retailers (including but not limited to Sprouts Farmers Market, Inc.), franchisees, cooperative members and licensees, as well as all of the aforementioned entities' past, present and future directors, officers, members, employees, agents, representatives, attorneys, insurers, successors and assigns ("Releasees"), based on the failure to warn about exposures to cadmium required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale in California by QPC before the Compliance Date, as alleged in the Notices, 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, 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 QPC 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 cadmium required under Proposition 65 in the Covered Products manufactured, distributed, sold or offered for sale by QPC, before the Compliance Date.

4.2 QPC's Release of EHA

QPC, 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.

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 Notices and relating to the Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and QPC 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 Compliance 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 QPC each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5 PUBLIC BENEFIT

It is QPC's understanding that the commitments it has agreed to herein, and actions to be taken by QPC 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 QPC 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 QPC's alleged failure to provide a warning concerning actual or alleged exposure to cadmium 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 QPC 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 QPC:

Sophie Castillo
Keller and Heckman LLP
Three Embarcadero Center, Suite 1420
San Francisco, CA 94111
castillo@khlaw.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). The Parties agree in good faith to use their best efforts to resolve any concerns of the California Attorney General as to any term in this Settlement Agreement, in a timely manner, and so as to protect the benefit of the bargain, acknowledging the terms that are agreed to herein as the basis of the Settlement Agreement. Should any of these terms need to be modified significantly from what is agreed to herein, the Parties acknowledge that the Settlement Agreement may need to be re-negotiated in full and any monies paid, refunded, if no agreement can be reached.

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: 5/15/2024

Date: 5/16/2024

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
QUALITY PASTA COMPANY LLC