

SETTLEMENT AND GENERAL RELEASE AGREEMENT

1. INTRODUCTION

1.1 Parties

For the consideration herein stated and intending to be legally bound hereby, this Settlement and General Release Agreement (“Agreement”) is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Blue Chip Group, LLC (“BCG”), on the other hand, with EHA and BCG 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 BCG 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 BCG manufactures, sells, and/or distributes for sale in California, dehydrated vegetables 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 and reproductive/developmental harm.

1.3 Product Description

The products covered by this Agreement are defined as, and expressly limited to, Augason Farms - Dehydrated Diced Carrots, that are manufactured, imported, sold, distributed, and/or offered for sale or distribution in or into California by BCG (collectively, the “Covered Products”).

1.4 Notice of Violation

On or around February 13, 2024, EHA served BCG, 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 BCG had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to lead contained in the 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

BCG denies the material, factual, and legal allegations in the Notice and maintains that all of its products sold and/or distributed for sale in California, including Covered Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall be construed as an admission by BCG of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by BCG of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by BCG. This Section shall not, however, diminish or otherwise affect BCG's obligations, responsibilities, and duties under this Agreement.

1.6 Effective Date

For purposes of this Agreement, the term "Effective Date" shall mean the date this Agreement is fully executed by the Parties.

1.7 Compliance Date

For purposes of this Agreement, the term "Compliance Date" means 120 days from the Effective Date.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

Commencing on the Compliance Date, BCG shall cease manufacturing, distributing, or directly selling in the State of California any of the Covered Products that expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of Lead per day unless such Covered Products comply with the warning requirements of Section 2.2. The "Daily Lead Exposure Level" shall be calculated using the following formula: micrograms of Lead per gram of Covered Product, multiplied by grams of Covered Product per serving of the Covered Product (using the largest service size appearing on the product label), multiplied by services of the Covered Product per day (using the largest number of servings in recommended dosage appearing on the product label), which equals micrograms of Lead exposure per day. 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 BCG knows will sell Covered Products in California.

2.2 General Warning Requirements

Commencing on the Compliance Date, BCG agrees any Covered Product sold that was not reformulated pursuant to paragraph 2.1 shall contain a Proposition 65 warning. BCG 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 Agreement, a clear and reasonable warning for the Covered Products shall consist of a warning affixed to the packaging label of the Covered Products sold in California by BCG, 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.

OR

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

This warning statement shall be prominently displayed on the Covered Products, on the packaging label 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. Covered Product that is sold by BCG on the Internet to persons located in California shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Covered Product. 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 BCG or any of the Releasees after the Effective Date. There shall be no obligation for BCG 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. BCG 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. Notwithstanding any other provision or requirement in this Section 2.2, the Parties recognize and agree that the warning requirements listed herein are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. BCG shall be deemed to be in compliance with the warning requirements of this Agreement by either adhering to this Section 2.2. or by complying with the Proposition 65 warning requirements adopted by the State of California Office of Environmental Health Hazard Assessment as of or after the Effective Date.

(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, BCG 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 Covered Product are no longer required, a lack of warning by BCG will not thereafter be a breach of this Agreement.

BCG 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 and covered by 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 as of the Compliance Date.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

In full satisfaction of all potential civil penalties and attorney's fees, costs, and any other expenses incurred by EHA or its counsel or otherwise related to the Covered Product or the Notice, BCG shall pay the total settlement amount of \$26,000.00 (the "Settlement Amount") within thirty (30) days of the Effective Date by wire transfer or check delivered to EHA through its counsel, Noam Glick. EHA shall be solely responsible for allocating the Settlement Amount pursuant to this Section 3, which shall be allocated as follows: Pursuant to Health and Safety Code § 25249.7(b)(2), BCG 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.

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

2.2 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, BCG agrees to pay twenty three thousand dollars (\$23,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of BCG, and negotiating a settlement.

The Settlement Amount under this Section shall be delivered to Noam Glick (as set forth below), who shall also have the responsibility to allocate and distribute the Settlement Amount as set forth above:

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

3.3 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of BCG

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 BCG 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, successors and assignees, against BCG and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and any entity, including, but not limited to each entity to whom BCG 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 Amazon.com, Inc.), franchisees, cooperative members and licensees (“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 BCG 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, 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 BCG 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 manufactured, distributed, sold or offered for sale by BCG, before the Effective Date.

4.2 BCG's Release of EHA

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

5 PUBLIC BENEFIT

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

Joshua D. Baker
Metz Lewis Brodman Must O'Keefe
444 Liberty Ave., Suite 2100
Pittsburgh, PA 15222
jbaker@metzlewis.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.

14. REPRESENTATIONS AND WARRANTIES

14.1 The Parties represent and warrant to each other that each has the full power, capacity, authority, and right to enter into this Agreement, and that none of them has done or permitted anything to be done that may curtail or impair any of the rights of any other Party under this Agreement.

14.2 EHA and its counsel represents and warrants that it has not assigned or otherwise transferred, or attempted to assign or transfer, any claim or claims against Releasees and that no other person or legal entity has any interest in any such claim or claims except as otherwise specified herein.

14.3 EHA represents and warrants that it (i) has not filed any complaint or other claims in any court relating or similar to the allegations in the Notice; (ii) is not aware of any other individuals or entities who has or may have claims against the Releasees involving or similar to the allegations in the Notice; (iii) is not aware of any other plaintiff or attorney who intends to bring litigation against the Releasees involving or similar to the allegations in the Notice; and (iv) has not directly or indirectly, alone or by, with or through others, caused, induced, participated, encouraged or provided assistance to any other person or entity to bring any claim, action, proceeding or litigation against the Releasees involving or similar to the allegations in the Notice.

14.4 EHA's legal counsel herein represents and warrants that, other than EHA, it (i) has not been retained or consulted by any other individuals or entities in connection with or similar to

the subject matter in the Notice; (ii) is not aware of any other plaintiff or attorney who intends to make demands or bring litigation based upon or similar to the subject matter in the Notice; (iii) has not been notified or otherwise informed of any intention or consideration to bring litigation against the Releasees based upon or similar to the subject matter in the Notice; and (iv) has not, directly or indirectly, alone or by, with or through others, caused, induced, participated, encouraged or provided assistance to any other person or entity to bring any claim, action, proceeding or litigation against the Releasees involving or similar to the allegations in the Notice. Nothing in this Section shall be construed to restrict the right of EHA’s legal counsel to practice law in contravention of the laws or rules of professional conduct of any U.S. state.


14.5 As a further condition of settlement, EHA and its legal counsel represent and warrant that they have no present plan or present intention, as of the date of the execution of this Agreement, to serve as plaintiff or claimant or represent any other clients, or refer any other clients to any other attorney regarding any claims against Releasees regarding any product manufactured, sold, or distributed by BCG.


AGREED TO:

AGREED TO:

Date: 06/11/2024

Date: 6/11/2024

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
618A1714DA8040D...
BLUE CHIP GROUP, LLC