

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties.

This Settlement Agreement is entered into by and between EnviroProtect, LLC (“EP”) on the one hand and Nuts.com, Inc. (“NUTS.COM”) on the other hand, with NUTS.COM and EP each individually referred to as a “Party” and collectively as the “Parties.”

#### 1.2 Introduction and General Allegations.

1.2.1 EP asserts that it is a limited liability company duly organized and existing in the State of California, and that it seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.2.2 EP alleges that NUTS.COM employs ten or more persons, and EP alleges that NUTS.COM 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”).

1.2.3 EP alleges that NUTS.COM imported, sold, and/or distributed for sale in California Covered Products, as defined below, that contained lead, a chemical pursuant to Proposition 65 listed by the State of California to cause developmental toxicity, reproductive toxicity, and cancer. EP further alleges that NUTS.COM failed to provide the health hazard warning required by Proposition 65 for exposures to lead from the Covered Products. NUTS.COM disputes the allegations and contends that it has and continues to be in full compliance with all laws.

#### 1.3 Product Description.

The products covered by this Settlement Agreement are the dried Chili Mango products, specifically item number 1119, imported, sold and/or distributed for sale in California by NUTS.COM (“Covered Products”).

#### **1.4 60 Day Notice of Violation and Exchange of Information.**

On June 6, 2024, EP served NUTS.COM and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), related to the Covered Products, alleging that NUTS.COM violated Proposition 65. The Notice alleged that NUTS.COM had failed to warn their customers and consumers in California of exposures to lead from the import, sale and/or distribution of the Covered Products.

EP subsequently provided NUTS.COM with test results in EP’s possession concerning its allegations. NUTS.COM provided EP with sales data related to the Covered Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission.**

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties’ and the Covered Products’ compliance with Proposition 65. Specifically, EP alleges that NUTS.COM imported, manufactured, sold or distributed for sale in the state of California, Covered Products which contained lead without first providing the clear and reasonable exposure warning required by Proposition 65. NUTS.COM denies that such a warning is required under Proposition 65 or any otherwise applicable law.

NUTS.COM further denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has imported, manufactured and/or sold and distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by NUTS.COM 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 NUTS.COM of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by NUTS.COM. This Section shall not, however, diminish or otherwise affect NUTS.COM’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 the Agreement is fully executed by the Parties.

2. **INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

2.1 **Reformulation Standard.** Commencing as of the Effective Date, NUTS.COM shall not import or distribute for consumer sale into the State of California any Covered Product that subsequently exposes a person to more than 0.5 micrograms of lead per day without providing a warning as set forth in Sections 2.3 -2.6, unless otherwise exempted in this Agreement. For the purpose of this Agreement, the amount of lead a person is exposed to from a Product per day shall be calculated using the following formula: the micrograms of lead per gram of Product when analyzed pursuant to AOAC Official Method 2015.01 (excluding naturally occurring amounts of lead pursuant to Cal Code of Regs., tit. 27 § 25501), multiplied by grams of Product per serving size of the Product. A reformulated Covered Product ("Reformulated Product") is one for which the amount of lead a person is exposed to from a Product per day is no more than 0.5 micrograms of lead using the foregoing calculation ("Reformulation Standard").

Covered Products that comply with the Reformulation Standard shall not require any warnings. For any Covered Products manufactured after the Effective Date and imported or distributed into California after the Effective Date or later that do not meet the Reformulation Standard, NUTS.COM shall provide the warning set forth in Section 2.3-2.6.

As long as NUTS.COM complies and remains in compliance with the requirements of Section 2.1 – 2.5 for each of the Covered Products, the Parties agree that such Covered Products shall be deemed to comply with Proposition 65 with respect to lead, and that compliance with this Settlement Agreement shall fully and completely satisfy NUTS.COM's obligations under Proposition 65 to provide warnings for such Covered Products with respect to the presence of lead, regardless of when distributed or sold.

2.2 **Warning Option.** Covered Products that are not reformulated or do not meet the Reformulation Standard set forth in Section 2.1 above shall be accompanied by a warning as



described in Section 2.3 below. This warning shall only be required as to Covered Products that are manufactured, sold or shipped out by NUTS.COM to consumers, retailers, or distributors in California after the Effective Date. No Proposition 65 warning for lead shall be required as to any Covered Products that are already manufactured or in the stream of commerce as of the Effective Date.

**2.3 Warning Language.** Commencing on the Effective Date, NUTS.COM shall ensure that any unreformulated Covered Products manufactured after the Effective Date and that it ships to California retailers or for sale in California include a clear and reasonable warning. The warning shall be affixed to the packaging or labeling using language similar to the warnings below:

**[California Proposition 65] WARNING:** Consuming this product can expose you to [chemicals including] lead, which is/[are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

OR

**[California Proposition 65] WARNING:** [Cancer and] Reproductive Harm - [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

The warning shall be prominently displayed 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 is reasonably likely to understand to which specific Product the warning applies, so as to minimize the risk of consumer confusion. If the product contains consumer information in a language other than English, the company must provide the warning in the other language(s). In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, NUTS.COM shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Agreement.

**2.4 Internet Sales.** For any Covered Products sold by NUTS.COM through a website owned, operated, or maintained by NUTS.COM to California purchasers, the relevant

warnings shall comply with the requirements of 27 Cal. Code Regs. § 25602(b), effective August 30, 2018.

**2.5 Warnings By Notice To Businesses Who Sell Or Receive The Covered Products.** For purposes of this Settlement, NUTS.COM may also satisfy the warning requirement by complying with the requirements of 27 Cal. Code Regs. §25600.2 including providing the required information to any business or retailer that is subject to Proposition 65, to which it sells or transfers the Covered Products.

**3. CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

NUTS.COM shall pay a civil penalty of \$500.00 to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to EP. NUTS.COM shall issue two separate checks for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment (“in Trust for OEHHA”) in the amount of \$375.00 representing 75% of the initial civil penalty and (b) one check to “Kawahito Law Group in Trust for EnviroProtect” in the amount of \$125.00, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The payment shall be delivered on or before October 10, 2024 to the following address:

James Kawahito, Esq.  
AXS Law Group LA LLP  
6080 Center Dr. Suite 210  
Los Angeles, CA 90045

Payment may also be made by wire or ACH or wire transfer. Instructions will be provided separately upon request.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that EP and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee

reimbursement issue to be resolved after the material terms of the agreement had been settled. The parties reached an accord on the compensation due to EP and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. More specifically, NUTS.COM shall pay the total amount of \$14,500.00 for fees and costs incurred by EP as a result of investigating, bringing this matter to the attention of NUTS.COM, and negotiating a settlement. NUTS.COM shall wire the funds (instructions will be provided upon request) or make payment by check payable to “Kawahito Law Group APC.” The payment shall be delivered on or before October 10, 2024 to the following address:

James Kawahito, Esq.  
AXS LAW GROUP LA LLP  
6080 Center Dr. Suite 210  
Los Angeles, CA 90045

## **5. RELEASE OF ALL CLAIMS**

### **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

EP, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, releases NUTS.COM of any violation of Proposition 65 that was or could have been asserted by EP against NUTS.COM, and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensors, each manufacturer or other entity supplying NUTS.COM with the Covered Products, and each entity to which NUTS.COM directly or indirectly distributes, ships or sells the Covered Products, including, but not limited, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively “Releasees”) for any and all claims based on their alleged or actual failure to warn about alleged exposures to lead contained in the Covered Products that were allegedly manufactured, imported, distributed, sold and/or offered for sale by NUTS.COM (either directly or through the Releasees) in California before the Effective Date. The Release shall also cover any Covered Products that were manufactured or in the stream of commerce prior to the Effective Date. However, no Products manufactured after the Effective Date shall be shipped to



or distributed in California by Defendant that are not Reformulated Products or contain the warnings set forth in Sections 2.2 and 2.3. This release is provided in EP's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, EP on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims against NUTS.COM and Releasees that it or they may have including, without limitation, all actions, and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigative fees, expert fees, and attorneys' fees for any and all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to lead in the Covered Products allegedly manufactured, sold, or distributed for sale before the Effective Date by NUTS.COM or Releasees.

**5.2 NUTS.COM'S Release of EP.**

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

**5.3 California Civil Code § 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 Products will develop or be discovered. EP on behalf of itself only, on one hand, and NUTS.COM, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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 HER OR HER FAVOR AT THE TIME OF EXECUTING THE

RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

EP and NUTS.COM each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

### **5.3 Public Benefit.**

It is NUTS.COM's contention that the commitments it has agreed to herein, and actions to be taken by NUTS.COM under this Settlement Agreement, would 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 NUTS.COM that to the extent any other private party initiates any action alleging a violation of Proposition 65 with respect to NUTS.COM and/or the Releasees relating to the Covered Products they have manufactured, distributed, sold, or offered for sale in California and that are subject to this Settlement, such private party action would not confer a significant benefit on the general public provided that NUTS.COM is in material compliance with this Settlement Agreement.

### **5.4 Enforcement of Settlement Agreement.**

Any party may file suit before the Superior Court of the County of Los Angeles to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

## **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.



**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; (c) a recognized overnight courier; or (d) by email to designated agent of Party indicated below, to the other Party at the following addresses:

For Notices to NUTS.COM:           NUTS.COM Inc.  
125 Moen Street  
Cranford, NJ 07016

with a copy to:                       Joe Orzano, Esq.  
Seyfarth Shaw LLP  
Seaport East. Two Seaport Lane, Suite 1200  
Boston, MA 02210

For Notices to EP:                    EnviroProtect, LLC.  
3142 W. 59<sup>th</sup> Pl.  
Los Angeles, CA 90043  
Email: [enviroprotectca@gmail.com](mailto:enviroprotectca@gmail.com)

with a copy to:                       James K. Kawahito, Esq.  
AXS Law Group LA, LLP  
Attn. EP v. NUTS.COM  
6080 Center Dr. Suite 210  
Los Angeles, CA 90230  
[james@axslawgroup.com](mailto:james@axslawgroup.com)

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)**

EP and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**11. MODIFICATION**

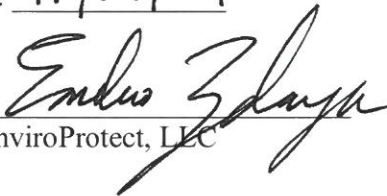
This Settlement Agreement may be modified only by written agreement of the Parties.

**12. 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:**

Date: 11/21/24

By:   
EnviroProtect, LLC

**AGREED TO:**

Date: 11/21/2024

By:   
Nuts.com, Inc.