

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Necoichi Inc. now named MOON-X USA, Inc. (“Necoichi”). Espinoza and Necoichi are sometimes individually referred to as a “Party” and collectively referred to as the “Parties.” Espinoza is an individual who resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Espinoza alleges that Necoichi is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Espinoza alleges in its 60-Day Notice of Violation dated September 3, 2024 that certain Necoichi raised pet bowls, UPC # 4580471860502, can expose California consumers to lead without first providing a Proposition 65 warning as required by Health and Safety Code §§ 25249.5 et seq. (“Proposition 65”) (the “Notice”). Lead is a chemical listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are Necoichi raised pet bowls including but not limited to Necoichi raised bowl UPC # 4580471860502 that have been manufactured, imported, distributed, offered for sale and/or sold in California by Necoichi (the “Products”).

1.4 Notice of Violation. On or about September 3, 2024, Espinoza served the Notice on Necoichi, the California Attorney General, and various public enforcement agencies alleging that Necoichi and others violated Proposition 65 by failing to warn California consumers that use of the Covered Products can expose them to lead. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Necoichi 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 Notice, and solely to

avoid potential prolonged and costly litigation. Necoichi denies the material, factual, and legal allegations contained in the Notice and maintains that it is not a person subject to Proposition 65, that it is not subject to personal jurisdiction in California, and that all of the products it sells and/or distributes for sale in California, including the Covered Products, 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 Necoichi of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Necoichi of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Necoichi. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Necoichi may have in this or any other future legal proceeding, including its 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 Necoichi solely for purposes of settling, compromising, and resolving issues disputed in the Notice. Notwithstanding the allegations in the Notice, Necoichi maintains that it has not knowingly manufactured, imported, distributed for sale, or caused the sale of Products in California in violation of Proposition 65. However, this § 1.5 shall not diminish or otherwise affect the 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 on which a complete and fully executed copy of this Settlement Agreement is exchanged by the Parties’ counsel.

2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS


2.1 Reformulation of Products. Commencing within ninety (90) days after the Effective Date (“Compliance Date”), and continuing thereafter, Products that Necoichi directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 - 2.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product

that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 - 2.4 shall not apply to any Reformulated Product.

2.2 Reformulation Standard. “Reformulated Products” are defined as those Products that (1) contain no more than 90 parts per million (“ppm”) lead in any decoration, colored artwork, designs and/or marking on the surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; or (b) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol; or (c) yield a result of non-detect (defined as no more than 25 ppm by weight of lead) for any decorations when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content in a solid substance. Necoichi may rely on testing it conducts, or that it has been provided from any supplier(s) of Products, to comply with this Section..

2.3 Clear and Reasonable Warning. Commencing within 90 days after the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Necoichi manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Necoichi to provide an exposure warning for Products that entered the stream of commerce within 90 days after the Effective Date. For purposes of this Settlement Agreement, “enter the stream of commerce” means the Product is no longer in the custody of Necoichi. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 [California Prop 65] **WARNING:** This product can expose you to chemicals including lead, which is 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.

(b) **Alternative Warning:** Necoichi may, but is not required to, use the alternative short-form warning¹ as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

⚠ [California Prop 65] **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Language in brackets is optional.

2.4 A Warning or Alternative Warning provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process only if such electronic device or automatic process provides the **Warning** or **Alternative Warning** without the purchaser having to seek it out, provided that the **Warning** or **Alternative Warning** 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 under customary conditions of purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings. If “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Necoichi shall also provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by the State of California’s Office of Environmental Health Hazard Assessment (“**OEHHA**”). Alternatively, the content and method of transmission may be provided in any form as authorized by Proposition 65 law or regulation effective on or after the Effective Date. There shall be no obligation for Necoichi to provide a warning for Products that

¹ An **Alternative Warning** on a Product manufactured and labeled after January 1, 2028 shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

entered the stream of commerce prior to the Compliance Date, and the Section 5 release applies to all such Products.

In addition to affixing the **Warning** or **Alternative Warning** to the Product's packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Necoichi offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word "[California Prop 65] **WARNING**," appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase (language in brackets optional). To comply with this Section, Necoichi shall post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers where Necoichi controls the content of the display page. If Necoichi has actual knowledge a third-party website is offering Products for sale in California, Necoichi shall comply with Title 27, California Code of Regulations, Section 25600.2

2.5 Compliance with Warning Regulations. The Parties agree that Necoichi shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning regulations adopted by the State of California's OEHHA applicable to the Product and the exposure at issue. In the event that OEHHA promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Products and the chemical at issue, which are different than those set forth above, Necoichi 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 Necoichi will not thereafter be a breach of this Settlement Agreement.

2.6 Grace Period. The injunctive requirements of Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date or within 90 days of the Effective Date, which Products are expressly subject to the releases provided in Section 5. For the avoidance

of doubt, Products in the stream of commerce specifically include, but are not limited to, Products in the process of manufacture.

3. MONETARY SETTLEMENT TERMS

3.1 Total Settlement Payment

In full satisfaction of all claims for monetary relief of any kind, including but not limited to claims for potential civil penalties, attorneys' fees, and costs, Necoichi shall make a total settlement payment of \$13,000 ("Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty and Attorney's Fees and Costs as set forth in Sections 3.2 and 3.3 below.

3.2 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all the claims for monetary relief of any kind related to the Notice, alleged in the Notice, or referred to in this Settlement Agreement, (except for Plaintiff's attorney's fees and expenses set forth in Section 3.3 below), Necoichi shall pay \$500 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Balabbo. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.3 Civil Penalty

Within fifteen (15) business days of the Effective Date, Necoichi shall issue two (2) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375; and (b) "Gabriel Espinoza" in the amount of \$125. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.2 Payment Procedures.

(a) Issuance of Payments. Payments shall be delivered as follows:

(i) All payments owed to Espinoza, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHHA (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

(b) Copy of Payments to OEHHHA. Necoichi agrees to provide Espinoza's counsel with a copy of the checks payable to OEHHHA, simultaneous with its penalty payments to Espinoza, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHHA.

(c) Tax Documentation. Necoichi agrees to provide a completed IRS 1099 for its payments to, and Espinoza agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Gabriel Espinoza" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) "Brodsky Smith" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) "Office of Environmental Health Hazard Assessment" 1001 I Street,
Sacramento, CA 95814.

Gabriel Espinoza and his counsel recognize that without the W-9s set forth herein
Necoichi cannot process the required Settlement Payments.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Espinoza and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Espinoza and his counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Necoichi shall reimburse Espinoza's counsel a total of \$12,500 for any and all attorney's fees and expenses incurred, including but not limited to all investigative, expert, and testing expenses, as a result of investigating and bringing this matter to the attention of Necoichi, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, Necoichi shall issue a check payable to "Brodsky Smith" in the amount of \$12,500 for delivery to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Necoichi and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution of all claims between Espinoza, acting on his own behalf, and Necoichi, for all claims that can or could have been asserted by Espinoza or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") against Necoichi and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity from whom Necoichi obtains the Products, and to whom Necoichi directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers and retailers, including but not limited to Necoichi, its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition

65 for Products manufacturers through the Effective Date or manufactured within 90 days after the Effective Date based on exposure to lead from use of the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Espinoza, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising from the sale or out of the alleged or actual exposure to lead from use of the Products manufactured through the Effective Date, or manufactured within 90 days of the Effective Date.

5.2 Necoichi's Release of Espinoza. Necoichi, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Espinoza, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Espinoza and/or his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to exposure to lead from the Covered Products.

5.3 California Civil Code § 1542: . 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 Notice or relating to the products manufactured, imported, distributed, and/or sold by or for Necoichi and its affiliates through the Effective Date, or 90 days after the Effective Date, will develop or be discovered. Espinoza on behalf of himself and his past and current agents, representatives, attorneys, successors, and/or assignees on one hand, and Necoichi 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 Necoichi and its affiliates up through the Effective Date or within 90 days of the Effective Date, including all rights of action

therefor. The Parties acknowledge that the claims for products manufactured, imported, distributed, and/or sold by or for Necoichi and its affiliates 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.

Espinoza and Necoichi 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 .

5.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Necoichi with this Settlement Agreement constitutes compliance by Necoichi with Proposition 65 with respect to exposure to lead from use of the Products.

5.5. Public Benefit. It is the Parties' understanding that the commitments it has agreed to herein, and actions to be taken by Necoichi 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 Necoichi that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Necoichi's alleged failure to provide a warning concerning exposure to lead prior to use of the 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 Products addressed in this Settlement Agreement, provided that Necoichi is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Covered Products, Necoichi shall provide written notice to Espinoza of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Covered Product is so affected.

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. Espinoza shall not bring an enforcement action or institute a judicial proceeding or seek any other relief of any kind if Necoichi demonstrates that it has complied with the requirements of Section 2 and/or produces a test result from an accredited laboratory showing the Product meets the reformulation standard 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 in accordance with applicable law.

9. NOTICES

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class mail or electronic mail to the address set forth in this paragraph. Any Party

may modify the person and address to whom the notice is to be sent by sending the other Party notice by certified mail, return receipt requested. Said change shall take effect on the date the return receipt is signed by the Party receiving the change.

Notices shall be sent to:

For Necoichi:

Masashi Enya, Director of Business Development
Necoichi, Inc.
21250 Hawthorne Blvd., Ste. 500
Torrance, CA 90503

With copy to:

J. Robert Maxwell
Rogers Joseph O'Donnell
311 California St., 10th Fl.
San Francisco, CA 94104

For Espinoza:

Evan J. Smith
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Either party, from time to time, may specify in writing to the other party 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. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Espinoza agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

13. MODIFICATION

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

14. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding 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. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party.

15. INTERPRETATION

No inference, assumption or presumption shall be drawn, and no provision of this Settlement Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Settlement Agreement. The Parties waive the provisions of Civil Code § 1654. It is conclusively presumed that the Parties participated equally in the drafting of this Settlement Agreement.

16. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

Date:

4/15/25

AGREED TO:

Date:

4/4/2025

By:

Gabriel Espinoza

By:

Necoichi Inc. now named
MOON-X USA, Inc.