

## **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 Lotus Foods, Inc. (“Lotus Foods”), on the other hand, with EHA and Lotus Foods 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 Lotus Foods 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 Lotus Foods manufactures, sells, and/or distributes for sale in California, ramen 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 harm.

#### **1.3 Product Description**

The products covered by this Settlement Agreement are defined as, and expressly limited to Buckwheat Shiitake Rice Ramen (“Covered Products”), that are manufactured, sold and/or distributed for sale in California by Lotus Foods.

#### **1.4 Notice of Violation**

On or around November 22, 2024, EHA served Lotus Foods, 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 Lotus Foods had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to lead contained in 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**

Lotus Foods denies the material, factual, and legal allegations in the Notice 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 Lotus Foods 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 Lotus Foods of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Lotus Foods. This Section shall not, however, diminish or otherwise affect Lotus Foods' 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" means 30 days after the Effective Date.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard**

Beginning on or before the Compliance Date, Lotus Foods 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 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 by multiplying the recommended serving size in Covered Product by the concentration of lead 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 Lotus Foods knows will sell Covered Products in California.

## 2.2 General Warning Requirements

Commencing on the Compliance Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this § 2.2 must be provided for all Covered Products that Lotus Foods manufacturers, imports, distributes, sells, or offers for sale in California that are not reformulated pursuant to paragraph 2.1. There shall be no obligation for Lotus Foods to provide an exposure warning for Covered Products that entered the stream of commerce prior to the Compliance Date. The warning shall consist of either of the following **Warning** or **Alternative Warning** statements:

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

**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](http://www.P65Warnings.ca.gov/food).

- (b) **Alternative Warning:** Lotus Foods may, but is not required to, use the alternative short-form warning (“**Alternative Warning**”) as follows:<sup>1</sup>

**WARNING:** [Cancer and ]Reproductive Harm. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

Lotus Foods shall use the phrase “cancer and” in the Warnings if it has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead determined pursuant to the quality control methodology set forth in Section 2.1 or if Lotus Foods has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. The 2.2(a) Warning shall reflect at least one chemical present in the Covered Products, but if there is a chemical present at a level that requires a cancer warning, the chemical requiring use of the phrase “cancer and” in the Warning shall always be identified. For the Section 2.2(b) Alternative

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<sup>1</sup> A short form warning on a Covered Product manufactured and labeled after January 1, 2028, shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

Warning, the entire Alternative Warning 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 the Alternative Warning appear in a type size smaller than 6-point type. Additionally, for the Alternative Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the Alternative Warning, in a size no smaller than the height of the word “WARNING.” Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white.

The Warnings shall be provided through one of the following methods: (1) a product specific warning provided on a posted sign, shelf tag, or shelf sign, for the Covered Product at each point of display of the product; or (2) a product-specific warning provided via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the Covered Product at brick-and-mortar locations, without requiring the purchaser to seek out the warning; or (3) a warning on the label that is securely affixed to or printed upon the label and complies with this Section. If the warning is printed upon the label of the Covered Product, it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet, the warning shall appear prior to check-out on the Covered Product’s primary display page, or as a pop-up when a California zip code is input into the shipping instructions, or on the checkout page when a California delivery address is indicated for any purchase of any Covered Product.

Where a warning subject to this section is provided solely on the checkout page, an asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the warning. The warning may be provided with a conspicuous hyperlink stating “WARNING” in all capital and bold letters so long as the hyperlink goes directly to a page prominently displaying the warning without content that detracts from the Warning.

If a Covered Product is being sold by an online third-party seller or downstream reseller customer (collectively referred to as “Third-Party Seller(s)”), who are subject to Proposition 65 and known to and authorized to sell such Covered Product by Lotus Foods, and Lotus Foods cannot

itself post the warning on the authorized Third-Party Seller's website because Lotus Foods lacks control over such authorized Third-Party Seller's website, then Lotus Foods must notify the authorized Third-Party Seller and/or its authorized agent, in writing, of the authorized Third-Party Seller's duty to provide an internet warning as part of the condition of sale of the Covered Product. Lotus Foods shall comply with this obligation to notify authorized Third-Party Sellers by complying with 27 C.C.R. § 25600.2 (2024) including, but not limited to, by providing the information required by 27 C.C.R. § 25600.2 (2024), including labels, labeling, shelf signs, or tags bearing the Warning, and all other necessary warning materials, to any such authorized Third-Party Seller (or its authorized agent). The written notice required by this Section shall instruct the Third-Party Seller that the labels, labeling, shelf signs, or tags bearing the Warning must be displayed on or in proximity to the Covered Products with such conspicuousness, as compared with other words, statements or designs as to render the warning likely to be seen, read, and understood by an ordinary individual prior to sale. Confirmation of receipt of the written notice and any renewed written notices must be received electronically or in writing from the Third-Party Seller, or its authorized agent, to which the manufacturer, producer, packager, importer, supplier, or distributor of the product sent the written notice.

The warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label and the word "WARNING" shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of the warning on the average lay person shall accompany the warning. Further no statements may accompany the warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

Lotus Foods must display the above warnings with such conspicuousness, as compared with other words, statements or designs on the label, or on its website, if applicable, to render the warnings likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product. Where a sign or label used to provide the warning for a Covered Product includes consumer information about the Covered Product in a language other than

English, the warning must also be provided in that language in addition to English.

For purposes of this Settlement Agreement, the term “label” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper.

If subsequently enacted changes to Proposition 65 or its implementing regulations require the use of additional or different information on any warning specifically applicable to the Covered Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe Harbor warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this Section.

The Parties agree that Lotus Foods shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with the regulations adopted by the State of California’s OEHHA applicable to the Product and the exposure at issue.

(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, Lotus Foods 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 Lotus Foods will not thereafter be a breach of this Agreement.

**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 4.1. 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.

### **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 Notice or referred to in this Settlement Agreement, Lotus Foods agrees to pay two thousand (\$2,000.00) 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. Lotus Foods 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 \$1,500.00 to OEHHA, due fourteen (14) days after the Effective Date.
- One payment of \$500.00 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, Lotus Foods agrees to pay eighteen thousand dollars (\$18,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Lotus Foods, and negotiating a settlement. The eighteen thousand (\$18,000.00) is due fourteen (14) days after the Effective Date.

All payments required under this Section shall be delivered to:

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

### **3.3 Tax Documentation**

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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 EHA's Release of Lotus Foods**

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 Lotus Foods 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 Lotus Foods 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 Lotus Foods



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 iHerb, LLC), 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 Lotus Foods 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 Lotus Foods 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 Lotus Foods, before the Effective Date.

#### **4.2 Lotus Foods’ Release of EHA**

Lotus Foods, 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 Lotus Foods 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 Lotus Foods each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

#### **5. PUBLIC BENEFIT**

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

Matt Orr  
Amin Wasserman Gurnani, LLP  
515 South Flower Street, 18th Floor  
Los Angeles, CA 90071  
morr@awglaw.com

For EHA:

NoamGlick  
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.

**AGREED TO:**

**AGREED TO:**

Date: 4/18/25

Date: **4/17/25**

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
LOTUS FOODS, INC.