

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is entered and effective as of September 29, 2016 between the Center for Environmental Health (“CEH”) and Food Castle, Inc. (“Food Castle”) (together, the “Parties”).

1. INTRODUCTION

1.1. On September 2, 2015, CEH, a non-profit corporation acting in the public interest, provided a “Notice of Violation of Proposition 65” to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Food Castle regarding the presence of lead and lead compounds (collectively, “Lead”) in crystallized ginger that is sold in California by Food Castle (the “Notice”).

1.2. The Notice alleges that crystallized ginger sold by Food Castle contains Lead. The Notice alleges that such Covered Products expose people who consume them to Lead, a chemical known to the State of California to cause cancer, birth defects or other reproductive harm, without first providing clear and reasonable warning to such persons regarding the carcinogenic or reproductive hazards associated with Lead. The Notice alleges that such conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65.

1.3. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Covered Products manufactured, distributed and/or sold in California by Food Castle. By executing this Agreement, the Parties do not admit any facts or conclusions of law. Nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

2. DEFINITIONS

2.1. “Covered Products” means products made primarily with ginger that is processed with sugar or a sugar substitute (commonly known as “crystallized ginger”) and that are sold or offered for sale in California by Food Castle or others.

2.2. “Effective Date” means the date on which this Agreement is executed by both Parties.

2.3. “Lead Limits” means the maximum concentrations of Lead by weight specified in Section 3.2.

2.4. “Supplier” means a person or entity that manufactures, imports, distributes or supplies a Covered Product to Food Castle.

3. INJUNCTIVE RELIEF

3.1. Specification Compliance Date. To the extent it has not already done so, no more than thirty (30) days after the Effective Date, Food Castle shall provide the Lead Limits to its Suppliers of Covered Products and shall instruct each Supplier to only provide Covered Products to Food Castle that comply with the Lead Limits.

3.2. Lead Limits. After the Effective Date, Food Castle shall not purchase, manufacture, ship, sell or offer for sale any Covered Products that contain a concentration of more than seventeen (17) parts per billion (“ppb”) Lead by weight, such concentration to be determined by use of a test performed by an accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment with a level of detection of at least ten (10) ppb that meets standard laboratory QA/QC requirements.

4. SETTLEMENT PAYMENTS

4.1. Payments by Settling Defendant. In consideration of the mutual covenants and releases provided in this Agreement, Food Castle shall pay a total of \$17,500 as a settlement payment. Any failure by Food Castle to comply with the payment terms herein shall be subject to a stipulated late payment fee of \$100 per day, which amount shall be recoverable by CEH,

together with its reasonable attorneys' fees and costs, in an enforcement proceeding brought pursuant to Section 6. This total payment shall be made in three installments according to the following schedule: (a) within five (5) days of the Effective Date, Food Castle shall pay \$7,500 as a settlement payment; (b) within thirty (30) days of the Effective Date, Food Castle shall pay \$5,000 as a settlement payment; and (c) within sixty (60) days of the Effective Date, Food Castle shall pay \$5,000 as a settlement payment. Each of these payments shall be made payable and allocated as follows, as set forth below in Sections 4.2-4.4:

4.2. Civil Penalty. Food Castle shall pay a total of \$2,133 as a penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the total OEHHA portion of the civil penalty payment shall be \$1,599. \$699 of this amount shall be included with the first payment due within five (5) days of the Effective Date, \$450 of this amount shall be included with the second payment due within thirty (30) days of the Effective Date, and \$450 of this amount shall be included with the third payment due within sixty (60) days of the Effective Date. These payments shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486, and shall be delivered as follows:

For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The total CEH portion of the civil penalty payment shall be \$534. \$234 of this amount shall be included with the first payment due within five (5) days of the Effective Date, \$150 of this amount shall be included with the second payment due within thirty (30) days of the Effective Date, and \$150 of this amount shall be included with the third payment due within sixty (60) days of the Effective Date. These payments shall be made payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981, and shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

4.3. Monetary Payment in Lieu of Civil Penalty. Food Castle shall pay \$3,200 as payment to CEH in lieu of a civil penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). \$1,400 of this amount shall be included with the first payment due within five (5) days of the Effective Date, \$900 of this amount shall be included with the second payment due within thirty (30) days of the Effective Date, and \$900 of this amount shall be included with the third payment due within sixty (60) days of the Effective Date. These payments shall be made payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981, and shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117. CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. In addition, as part of its *Community Environmental Action and Justice Fund*, CEH will use four percent of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund.

4.4. Attorneys' Fees and Costs. Food Castle shall pay a total of \$12,167 to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating the alleged violations, bringing this matter to Food Castle' attention, and negotiating a settlement in the public interest. \$5,167 of this amount shall be included with the first payment due within five (5) days of the Effective

Date, \$3,500 of this amount shall be included with the second payment due within thirty (30) days of the Effective Date, and \$3,500 of this amount shall be included with the third payment due within sixty (60) days of the Effective Date. Each check pursuant to this section shall be made payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175, and shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5. MODIFICATION OF SETTLEMENT AGREEMENT

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

6. ENFORCEMENT OF SETTLEMENT AGREEMENT

6.1. Enforcement Venue and Jurisdiction. The Parties agree that any action based on violation of this Agreement shall be brought in the Superior Court of California in San Francisco County. For purposes of this Agreement, notwithstanding Section 1.3 above, the Parties agree that the Superior Court of California in San Francisco County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of San Francisco. Should a party to this Agreement prevail on any action to enforce the terms of this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

6.2. Enforcement Procedures. Prior to bringing any action to enforce the terms of this Agreement, a Party seeking to enforce shall provide the violating Party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may, by new action before the Superior Court of California in San Francisco County, seek to enforce the terms and conditions contained in this Agreement or to otherwise enforce Proposition 65.

7. APPLICATION OF SETTLEMENT AGREEMENT

7.1. This Agreement shall apply to and be binding upon the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

8. CLAIMS COVERED AND RELEASED

8.1. To the extent Food Castle has fully complied with Section 4 hereto, CEH hereby releases and discharges Food Castle and its parents, subsidiaries, directors, officers, employees, and agents (“Defendant Releasees”), and all entities to whom they distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Downstream Defendant Releasees”), with respect to any violation of Proposition 65, or any other statutory or common law claim, that was or could have been asserted against Food Castle regarding the failure to warn about exposures to Lead arising in connection with Covered Products manufactured, distributed, or sold by Food Castle on or before the execution of this Agreement.

8.2. Compliance with the terms of this Agreement by Food Castle constitutes compliance with Proposition 65 by Food Castle, Defendant Releasees, and Downstream Defendant Releasees for purposes of exposures to Lead from the Covered Products sold by Food Castle.

9. SPECIFIC PERFORMANCE

9.1. The Parties expressly recognize that Food Castle’s obligations under this Agreement are unique. In the event that Food Castle is found to be in breach of this Agreement for failure to comply with the provisions of Section 3 hereto, the Parties agree that it would be extremely impracticable to measure any resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and Food Castle expressly waives the defense that a remedy in damages will be adequate.

10. GOVERNING LAW

10.1. The terms of this Agreement shall be governed by the laws of the State of California.

11. PROVISION OF NOTICE

11.1. All notices required pursuant to this Agreement and correspondence shall be sent

by first class and electronic mail to the following:

For CEH:

Eric S. Somers
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
esomers@lexlawgroup.com

For Food Castle, Inc.:

David Bolstad
Safarian Choi & Bolstad LLP
555 S. Flower Street, Suite 650
Los Angeles, CA 90071
dbolstad@safarianchoi.com

11.2. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

11. ENTIRE AGREEMENT

11.1. This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

12. NO EFFECT ON OTHER SETTLEMENTS

12.1. Nothing in this Agreement shall preclude CEH from resolving any claim against any entity besides Food Castle on terms that are different than those contained in this Agreement.

13. EXECUTION IN COUNTERPARTS

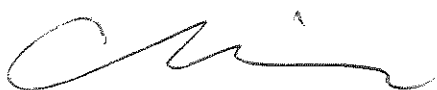
13.1. The stipulations to this Agreement may be executed in counterparts by electronic mail, which taken together shall be deemed to constitute one document.

14. AUTHORIZATION

14.1. Each signatory to this Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the Party represented and legally bind that Party. The undersigned have read, understand and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each Party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro
Associate Director

FOOD CASTLE, INC.



Eliyahu Levy

[Name]

General Manager

[Title]