

SETTLEMENT AGREEMENT AND RELEASE

The Chemical Toxin Working Group, Inc. (“CTWG”) and Tri-Union Seafoods, LLC, dba Chicken of the Sea International (“Tri-Union”) enter into this Settlement Agreement (this “Agreement”). This Agreement is effective on the date on which it is fully executed (“Effective Date”). CTWG and Tri-Union are referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1. The “Matter” arises out of the Notice of Violation of California Health & Safety Code (“HSC”) §25249.5, *et seq.* (also known as “Proposition 65”) dated October 01, 2015 (referred to as the “Notice”) that CTWG served on Tri-Union. The Notice claims that Proposition 65 warnings are required for alleged lead exposure to the product, *Van Camp’s by Chicken of the Sea Fancy Smoked Oysters in Oil* (the “Covered Product”), which is distributed and/or sold by Tri-Union. CTWG represents and warrants that with respect to this Matter, no public enforcer court action has been commenced “in the public interest”. Tri-Union denies all of the claims alleged in the Notice.

2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Matter and for the purpose of avoiding litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law, or violation of law including but not limited to Proposition 65. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability. This Section 2 shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. Lead Standards; Warnings.

3.1 On and after the date that is ninety (90) days after the Effective Date, Tri-Union shall not distribute into California or directly sell in the State of California any Covered Product which does not qualify as a Reformulated Covered Product under Section 3.3, unless such Covered Product complies with the warning requirements of Section 3.2. As used in this Agreement, the term “distribute into California” shall mean Tri-Union directly ships the Covered Product into California for sale in California or sells the Covered Product to a distributor or retailer that will sell, or informs Tri-Union that it intends to sell the Covered Product in California.

3.2 On the Covered Product that Tri-Union distributes into California or directly sells in California that does not qualify as a Reformulated Covered Product, Tri-Union shall provide a warning that complies with the requirements of Sections 3.2.1, 3.2.2, or 3.2.3. The warning shall be displayed on the packaging of the Covered Product with such conspicuousness, as compared with other words, statements, or designs, so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Product. The 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 warning appear in a type size smaller than 6-point type.

3.2.1 Option 1.

WARNING: This product contains a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.


The bracketed term “cancer and” is optional.

3.2.2 Option 2.

WARNING: Consuming this product can expose you to the chemical lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov/food.

3.2.3 Option 3.

The warning may state:

 **WARNING: [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov.**

The bracketed term “cancer and” is optional.

The pictogram specified in Section 3.2.3 shall be in yellow with a black exclamation mark; *provided, however*, the pictogram may be in white instead of yellow if the Covered Product label does not contain the color yellow.

3.3 Calculation of Lead Levels; Reformulated Covered Product.

A Reformulated Covered Product is one for which the average daily exposure level does not exceed 0.5 micrograms of lead per day as determined by the formula, testing and quality control methodology described in Section 3.4. Such Reformulated Product does not require warnings required in Section 3.2 above, unless required pursuant to Section 3.4 below. As used in this Agreement “no more than 0.5 micrograms of lead per day” means that the samples of the testing under Section 3.4 yield an average daily exposure of no more than 0.5 micrograms of lead (with average daily exposure calculated pursuant to Section 3.4 of this Agreement). If the Covered Product causes exposure in excess of 0.5 micrograms of lead per day, Tri-Union shall provide one of the warnings set forth in Section 3.2 on the Covered Product. For purposes of determining which warning, if any, is required pursuant to Section 3.2, the average concentration utilizing the geometric mean of lead detection results of five (5) samples of these products with different lot numbers, randomly selected by Tri-Union will be controlling.

3.4 Formula, Testing and Quality Control Methodology.

3.4.1 For purposes of this Agreement, average daily exposure levels shall be measured in micrograms per day, and shall be calculated using the following formula: the average concentration of lead in the product in micrograms per gram, multiplied by grams of product per serving of the product (using the serving size appearing on the product label), multiplied by frequency of consumption of once every fourteen (14) days. The testing requirements for this Section 3.4.1 do not apply to a Covered Product for which Tri-Union has provided a warning as specified in Section 3.2.

3.4.2 Tri-Union shall not be required to engage in testing pursuant to this Agreement unless Tri-Union determines that it will “distribute into California” the Covered Product without a warning. All testing pursuant to this Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, limit of quantification, accuracy, and precision and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method subsequently agreed upon in writing by the Parties.

3.4.3 All testing pursuant to this Agreement shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the United States Food & Drug Administration, and pursuant to the requirements of Section 3.4.2. Testing shall be performed prior to Tri-Union’s first distribution into California or direct sale in California of any Covered Product ordered for production after the Effective Date, and testing shall continue thereafter at least once per year for four (4) consecutive years after the Effective Date (the “**Testing Period**”), after which time, no further testing shall be required unless, after the Testing Period, Tri-Union changes suppliers for the Covered Product, then Tri-Union shall test the Covered Product at least once after such change is made

3.5 **Products No Longer in Tri-Union’s Control**

Tri-Union and the Releasees (as defined in Section 5.1 below) shall have no obligation or liability with respect to any Covered Product that is sold and/or distributed in California after the date of the Notice, except as otherwise set forth in this Agreement.

4. In consideration for the mutual promises recited in this Agreement, Tri-Union shall pay to CTWG the total sum of \$257,500, in readily available funds (the “**Total Settlement Payment**”) to be wired, as permitted, to CTWG on or before the end of day on December 29, 2016 (the “**Due Date**”). CTWG’s legal counsel shall send its client trust bank account wire instructions to Tri-Union’s legal counsel upon CTWG’s execution of this Agreement.

If the Total Settlement Payment is paid through other method due to inability to wire transfer, then such other method shall be payment in readily available funds, including certified domestic bank check, to be delivered no later than 11:00 am (PST) on the Due Date, and made payable to “Khansari Law Corporation – Client Trust Account” on behalf of CTWG, and sent to:

The Chemical Toxin Working Group, Inc.
C/o Khansari Law Corp., APC
11845 W. Olympic Blvd., Suite 1000
Los Angeles, CA 90064

CTWG shall be solely responsible for allocating the payment pursuant to Sections 4.1 and 4.2. Upon request, CTWG’s legal counsel or CTWG, as applicable, shall supply Tri-Union with a completed W9 form.

4.1 \$180,110 shall be considered a civil penalty.

4.2 \$77,390 shall be considered reimbursement of all of its attorneys’ fees and costs related to the Matter.

4.3 Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys’ fees related to this Matter.

5. Binding Effect; Claims Covered and Released.

5.1 CTWG, on behalf of itself and its respective founders, owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, successors, assigns, and legal representatives (collectively referred to as “**CTWG Releasors**”) waives any right to participate (directly or indirectly) in any litigation against and fully releases (i) Tri-Union and their respective equity owners, parents, subsidiaries, affiliates, sister and related companies, (b) their upstream suppliers and all downstream entities in the stream of commerce including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (including but not limited to Amazon.com Inc. and Big Lots Stores, Inc.) (the entities identified in this subsection (b) are collectively referred to as “**Downstream Releasees**”), and (c) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors, and assigns of any of the entities identified in subsections (a) and (b), above (the entities identified in subsections (a), (b) and (c), above, are collectively referred to as “**Releasees**”) from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees (including but not limited to attorneys’ fees, investigator fees, and expert fees), costs, and expenses (collectively referred to as “**Claims**”) that were asserted, or that could have been asserted, for any alleged violations of Proposition 65, or any other alleged violations under statutory or common law, arising from alleged exposures to lead and lead compounds in the Covered Product.

5.2 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 Product will develop or be discovered. CTWG on behalf of itself and the CTWG Releasors, acknowledges that this

Agreement is expressly intended to cover and include all such claims, including all rights of action therefore, and further acknowledges that the claims released in this section may include unknown claims, and nevertheless waives any and all rights it may have under any applicable statute, including, but not limited to California Civil Code §1542 or common law principle which would limit the effect of the release in Section 5.1 to those claims actually known or suspected to exist as of the Effective Date. California Civil Code (“CC”) §1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

CTWG acknowledges and understands the significance and consequences of this specific waiver of CC §1542.

5.3 The Parties agree that compliance with the terms of this Agreement shall constitute compliance by any Releasee with Proposition 65 regarding alleged exposures to lead, and lead compounds in the Covered Product.

6. Resolution of Disputes.

6.1 If CTWG alleges that Tri-Union has failed to comply with this Agreement, prior to filing an action relating to enforcement, CTWG shall first provide Tri-Union thirty (30) days’ advance written notice of the alleged violation. CTWG shall provide testing results, lot numbers, photographs of the Covered Product packaging, and purchase receipts for the Covered Product at issue in 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 without the need for litigation.

6.2 Notwithstanding the provisions of Section 3, CTWG may not issue any notice under Section 6.1 if the packaging of the Covered Product is marked or labeled with the statement “Not for Sale in California” or substantially similar language as long as such statement is prominently placed upon such Covered Product’s label or other labeling as compared with other words or statements on the label or labeling as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. If Tri-Union chooses to mark or label a Covered Product with such a statement, Tri-Union shall additionally notify its customers by letter that the Covered Product may not be sold in California.

7. This Agreement contains the entire agreement between the Parties with regard to resolution of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by the Parties. Notwithstanding the foregoing, Tri-Union shall be entitled, at its option, to modify any warning that it provides under Section 3.2 to

conform with any change in the Proposition 65 warning regulations set forth in Title 27 of the California Code of Regulations that may be adopted after the Effective Date.

8. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, and assigns.

9. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

10. This Agreement shall be deemed to have been entered into in the State of California, and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

11. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

12. Any legal action to enforce this Agreement shall be brought in the County of Alameda of the State of California.

13. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail (.pdf), copy of this Agreement, or any other counterpart, shall be deemed to be an original.

14. In the event that any of the provisions of this Agreement is held by a court to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

15. All notices required to be given to either Party by this Agreement by the other shall be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified mail; (b) overnight courier; or (c) overnight delivery. Courtesy copies by email may also be sent.

FOR CTWG:

The Chemical Toxin Working Group, Inc.
C/o Khansari Law Corp., APC
11845 W. Olympic Blvd., Suite 1000
Los Angeles, CA 90064
Tel: 424.248.6610
Fax: 424.248.6689

FOR TRI-UNION:

Christianna M.L. Reed
Chicken of the Sea International
9330 Scranton Road, Suite 500
San Diego, CA 92121
Tel: 858.597.4215
Fax: 858.362.9215

With a copy to:

Robert B. Bader
Sacks, Ricketts & Case LLP
177 Post Street, Suite 650
San Francisco, CA 94108
Tel: 415.504.3148
Fax: 415.549.0640

16. Each of the individuals who executes this Agreement represents and warrants he/she has the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and has read, understood, and agreed to all the terms and conditions in this Agreement.

DATED: December 28, 2016

THE CHEMICAL TOXIN
WORKING GROUP, INC.

By: [Signature]

Name: David Steinman

Title: President

DATED: December 29, 2016

TRI-UNION SEAFOODS, LLC

By: Christianna M.L. Reed

Name: Christianna M.L. Reed

Title: Vice President, Legal