

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 The Parties**

This Settlement Agreement is hereby entered into by and between Evelyn Wimberley (“Wimberley”) and Lazzari Fuel Company, LLC (hereinafter “Lazzari”), with Wimberley and Lazzari collectively referred to as the “Parties” and each of them as a “Party.” Wimberley is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

#### **1.2 Allegations and Representations**

(a) Wimberley alleges that Lazzari is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code § 25249.6 et seq., and offered for sale in the State of California and that Lazzari’s customers, Orchard Supply Company, LLC (“Orchard”) and Smart & Final Stores, LLC (“Smart & Final”) among others, have sold in California “Lazzari Mesquite Charcoal” that when used as intended produces combustion byproduct soot, and that such sales have not been accompanied by Proposition 65 warnings. Soot is listed under Proposition 65 as a chemicals known to the State of California to cause cancer. Wimberley has cited UPC075997007318 and UPC10075997007216 as specific examples of the Lazzari Mesquite Charcoal that is the subject of her allegations.

(c) Lazzari does not admit and denies the material, factual and legal allegations contained in the Notices, and maintains that all products sold, distributed or offered for sale in California have been and are in compliance with all laws, including, without limitation, Proposition 65.

(d) The Parties enter into this Settlement Agreement to resolve all Proposition 65 claims concerning Lazzari’s products set forth in Wimberley’s Notice, including claims against Lazzari’s customers, distributors and retailers, including but not limited to Orchard and Smart & Final who received the Notice alleging violations of Proposition 65 resulting from their

labeling 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 prior to sale. The warning may be contained in the same section that states other safety warnings concerning the use of the product, if any, and shall be at least the same size as those other safety warnings.

The warning provided pursuant to Section 2.1 shall be required for Lazzari Products that are: 1) manufactured, distributed or sold within California by Lazzari beginning 90 days after the Execution Date (“Effective Date”); or 2) Obtained in California by persons or entities other than Lazzari on or after the Effective Date. The warning provided pursuant to Section 2.1 shall not be required under the terms of this Settlement Agreement for Lazzari Products previously sold and distributed by Lazzari to downstream customers i.e., such Products are in the downstream customer’s inventory and in the stream of commerce prior to the Effective Date, and outside the control of Lazzari. Absent non compliance with this Settlement Agreement, no recall of Lazzari Products shall be required under the terms of this Settlement Agreement

### **3. CIVIL PENALTY & REIMBURSEMENT OF FEES AND COSTS**

3.1 Payment Pursuant to Health & Safety Code Section 25249.7(b). Lazzari Shall pay a Civil Penalty of \$500.00 to be apportioned in accordance with California Code of Regulations Title 11 Division 4 – Proposition 65 Private Enforcement with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Wimberley, as provided by California Health & Safety Code Section 25249.7.

3.2 Lazzari shall pay Wimberley’s counsel \$20,000.00 for attorneys’ fees, expert and investigation fees, and related costs associated with this matter and the Notice and incurred as a result of investigating, bringing this matter to Lazzari’s attention, and negotiating a settlement. Lazzari shall provide said monies via bank wire to the “Law Offices of Stephen Ure, PC” (tax identification number 42-1641673) no later than two (2) business days following the Execution

Date. The Law Offices of Stephen Ure, PC will provide Lazzari with tax identification and bank wire information on the Execution Date. Other than the payment specified hereunder, each side is to bear its own attorneys' fees and costs.

3.3 Time is of the essence with regard to the receipt of payments specified in Article 3. If payments are not made as agreed, this agreement shall, in its entirety, be null and void.

**4. CLAIMS COVERED AND RELEASED**

**4.1 Release of Lazzari and Downstream Customers**

Wimberley, on behalf of herself, releases Lazzari, and all entities and persons from whom they obtain and to whom they directly or indirectly distribute or sell the Products, including but not limited to each of its manufacturers, distributors, marketplace hosts, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Orchard, Smart & Final and their Parents and all their affiliates and subsidiaries), franchisees, dealers, customers, owners, purchasers, and users, and their respective parent companies, corporate affiliates, subsidiaries, officers, directors, attorneys, representatives, shareholders, agents, successors, and employees, and sister entities (collectively "Releasees") from all claims for violations of Proposition 65 up through the Execution date based on exposure to soot from the Products

In addition to the foregoing, Wimberley, on behalf of herself, her past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other claims, actions, causes of action, demands, rights, suits, liabilities, damages, losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future that she could make against Lazzari or the other Releasees relating to the alleged violations of Proposition 65 related to or arising from the Products. With respect to the foregoing waiver and release in this paragraph, Wimberley hereby specifically waives any and all rights and benefits which she now has, or in the future may have, conferred by virtue of Section 1542 of the California Civil Code, which provides:

**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.**

**4.2 LAZZARI's Release of Wimberley**

Lazzari waives any and all claims against Wimberley, her attorneys and other representatives, for any and all actions taken or statements made by Wimberley and her attorneys and other representatives in the course of investigating the claims or otherwise seeking enforcement of Proposition 65 against it in this matter with respect to the Products.

**5. SEVERABILITY AND MERGER**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this document are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**6. GOVERNING LAW**

6.1 This Settlement Agreement shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State of California, USA without regard to conflicts of law principles. This Settlement Agreement resolves any issue, now or in the future, with the requirements of Proposition 65 with respect to alleged exposures to soot arising from the Products. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Lazzari shall provide written notice to Wimberley 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, the Products are so affected.

6.2 This Settlement Agreement shall apply to and be binding upon Wimberley and Lazzari, its divisions, subdivisions, and subsidiaries, if any, and the Parties' successors and assigns.

6.3 The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. 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.

7. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

For LAZZARI Fuel Company, LLC:

Daniel J. Herling, Esq.  
Mintz Levin Cohn Ferris Glovsky & Popeo, PC  
44 Montgomery St. Suite 36  
San Francisco, CA 94104

and

For Wimberley:

Stephen Ure, Esq.  
Law Offices of Stephen Ure, PC.  
11622 El Camino Real, Suite 100  
San Diego, California 92130

Any 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.

8. **COUNTERPARTS; FACSIMILE SIGNATURES**

The stipulations to this Settlement Agreement may be executed in counterparts and by means of facsimile and/or portable document format (pdf), which taken together shall be deemed to constitute one document

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

Wimberley agrees to promptly comply with the requirements set forth in California Health & Safety Code §25249.7(f).

**10. MODIFICATION**

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

**11. ENFORCEMENT OF SETTLEMENT AGREEMENT**

Either Party may bring an action to enforce the terms of this Settlement Agreement. A Party who unsuccessfully brings or contests an action arising out of this Settlement Agreement may be ordered by the court to pay the prevailing Party's reasonable attorney's fees and costs.

**13. ENTIRE AGREEMENT**

This Settlement 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. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party hereto. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Settlement 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.

**14. 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 document.

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

Mintz Levin

By: \_\_\_\_\_

Daniel J. Herling  
Attorneys for Lazzari Fuel Company, LLC

Dated: \_\_\_\_\_

LAW OFFICES OF STEPHEN URE, PC

By: \_\_\_\_\_

Stephen Ure  
Attorneys for Plaintiff,  
EVELYN WIMBERLEY

**AGREED TO:**

Date: \_\_\_\_\_

Date: March 20, 2018

By: \_\_\_\_\_

EVELYN WIMBERLEY

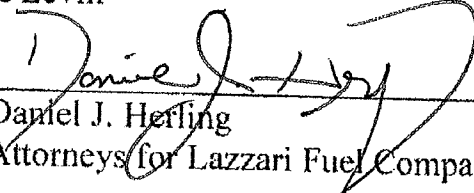
By: \_\_\_\_\_

Robert Colbert  
Lazzari Fuel Company, LLC

**APPROVED AS TO FORM:**


Dated: 21 Mar 18

Mintz Levin

By:   
Daniel J. Herling  
Attorneys for Lazzari Fuel Company, LLC

Dated: 3/20/2018

LAW OFFICES OF STEPHEN URE, PC

By:   
Stephen Ure  
Attorneys for Plaintiff,  
EVELYN WIMBERLEY

**AGREED TO:**

Date: 3/20/2018

Date: \_\_\_\_\_

By:   
EVELYN WIMBERLEY

By: \_\_\_\_\_  
Robert Colbert  
Lazzari Fuel Company, LLC