

SETTLEMENT AGREEMENT AND RELEASE

The Chemical Toxin Working Group, Inc. (“CTWG”) and Atlapac Trading Company, Inc. (“Atlapac”) enter into this Settlement Agreement and Release (this “**Agreement**”). This Agreement is effective on the date on which it is fully executed (“**Effective Date**”). CTWG and Atlapac are referred to individually as a “Party” and collectively as the “Parties.”

Now, therefore, the Parties agree as follows:

1. The “**Matter**” shall mean all claims, obligations or rights, of any nature whatsoever, which may arise out of the Notices of Violations of California Health & Safety Code §25249.5, *et seq.* (also known as “**Proposition 65**”) that CTWG served on Atlapac on or about January 31, 2017 (2017-00119), March 23, 2017 (2017-00390), April 04, 2017 (2017-00463), December 20, 2017 (2017-02635) and April 20, 2018 (2018-00618) (collectively referred to as the “**Notices**”). The Notices variously claim that Proposition 65 warnings are required for alleged **lead**, **cadmium**, and **arsenic** exposures to certain products, as applicable, that have been tested by CTWG. The following products manufactured, distributed and/or sold by Atlapac are “Covered Products” under this Agreement:

- i. **California Girl Whole Oysters;**
- ii. **California Girl Baby Clams Water and Salt Added;**
- iii. **California Girl Smoked Oysters in Cottonseed Oil Salt Added;**
- iv. **California Girl Sardines in Tomato Sauce; and**
- v. **California Girl Smoked Oysters with Red Chili Pepper in Cottonseed Oil.**

Atlapac denies the claims, including each of the allegations, in the Notices and maintains that the Covered Products are and have been labeled as required under Proposition 65 or do not require warnings thereunder, as in the case of California Girl Sardines in Tomato Sauce (the “**Sardines**”).

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 arising under this Agreement.


3. Lead, Cadmium and Arsenic Standards; Warnings.

3.1 Any Covered Product(s) that Atlapac manufactures or causes to be manufactured after the Effective Date that it thereafter distributes into California or directly sells in California shall either (1) qualify as a Reformulated Covered Product under Section 3.3, including for this purpose the Sardines, which are to be treated as a Reformulated Covered Product for all purposes and times under this Agreement, subject to the testing requirements in Section 3.3 and Section 3.4 below; or (2) comply with the warning requirements of Section 3.2.

3.1.1 As used in this Agreement, the term “distribute(s) into California” shall mean Covered Products which Atlapac directly ships into California for sale in California or sells to a distributor or retailer that Atlapac knows will sell the Covered Product(s) in California.


3.2 On and after ninety (90) days after the Effective Date, Atlapac shall provide on the Covered Product (to the extent it does not constitute a Reformulated Covered Product) distributed into California, sold in California, or for which Atlapac has been informed will be sold into California, a warning that complies with the requirements of one of Sections 3.2.1, 3.2.2, 3.2.3, or 3.2.4. The warning shall be displayed on the packaging of such 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. On and after August 30, 2018, the requirements of this Agreement respecting internet sales shall be governed by the Proposition 65 law and regulations in force on or after that date. Respecting the warnings defined in Sections 3.2.1, 3.2.2, and 3.3.3, the warning must be in a type size no smaller than the largest type size used for other consumer information on the product, however, in no case shall the warning appear in a type size smaller than 6-point type.

3.2.1 Option 1

 **WARNING:** This product can expose you to chemicals, including lead, [cadmium], or arsenic 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/food.

The bracketed term “cancer and” is optional, except, for arsenic violations, which must include “cancer” but omit “birth defects or other reproductive harm”.

3.2.2 Option 2


 **WARNING:** Consuming this product can expose you to chemicals, including lead, [cadmium], [arsenic], 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/food.

The bracketed term “cancer and” is optional, except, for arsenic violations, which must include “cancer” but omit “birth defects or other reproductive harm”.

3.2.3 Option 3

For the Covered Product, the warning may state, as applicable, either:

 **WARNING: Reproductive Harm – www.P65Warnings.ca.gov;**

 **WARNING: Cancer – www.P65Warnings.ca.gov (required for arsenic violations); or**

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

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.

3.2.4 Option 4

Any warning authorized by any Proposition 65 law or regulation effective on or after the Effective Date.

3.3 Calculation of Levels; Reformulated Covered Products. A Reformulated Covered Product is one for which the average daily exposure level does not exceed 0.5 micrograms of lead per day, no more than 4.1 micrograms of cadmium per day, and no more than 10 micrograms of arsenic per day, as determined by the formula, testing and quality control methodology described in Section 3.4. As used in this Agreement, “no more than 0.5 micrograms of lead per day”, “no more than 4.1 micrograms of cadmium per day”, and “no more than 10 micrograms of arsenic per day” mean that the samples of the testing under Section 3.4 yield an average daily exposure of no more than 0.5 micrograms of lead, no more than 4.1 micrograms of cadmium, and no more than 10 micrograms of arsenic, respectively, with average daily exposure calculated pursuant to Section 3.4 of this Agreement. For the Covered Product(s) that cause exposures in excess of 0.5 micrograms of lead per day, in excess of 4.1 micrograms of cadmium per day, or in excess of 10 micrograms of arsenic per day, Atlapac shall provide the warnings set forth in Section 3.2, as applicable. For purposes of determining which warning, if any, is required pursuant to Section 3.2, the average concentration utilizing the geometric mean of lead and cadmium detection results of five (5) samples of these products, randomly selected by Atlapac, 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, cadmium, and arsenic 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 of this Section 3.4.1 do not apply to any of the Covered Products for which Atlapac has provided a warning as specified in Section 3.2.

3.4.2 Atlapac shall not be required to engage in testing pursuant to this Agreement unless Atlapac determines that it will distribute into the State of California the Covered Products 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 Unless warnings are affixed consistent with the requirements of Section 3.2, 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. Testing shall be performed prior to Atlapac's first distribution into California or sale in California of any Covered Products ordered for production after the Effective Date, and testing shall continue thereafter at least once per year for three (3) additional years, after which time, no further testing shall be required unless, after the four-year testing period, Atlapac changes suppliers for the Covered Products, then Atlapac shall test the Covered Product at least once after such change is made.

3.5 Atlapac and the Releasees (as defined in Section 5.1 below) shall have no obligation or liability with respect to any Covered Products that Atlapac distributed into California or directly sold in California prior to the date that is twelve (12) months after the Effective Date ("**Final Deadline**"). Any Covered Products that Atlapac distributes into California or directly sells in California on and after the Final Deadline shall either (1) qualify as a Reformulated Covered Product under Section 3.3 or (2) comply with the warning requirements of Section 3.2, irrespective of when the Covered Products were manufactured.

4. Atlapac shall pay the total settlement amount of \$87,500 (the "**Settlement Amount**") within ten (10) days of the Effective Date. Atlapac shall pay the Settlement Amount by check, made payable to "Khansari Law Corp. – 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 and for apportioning the civil penalty in Section 4.1 under Cal. Health & Safety Code § 25249.12, for which CTWG warrants and represents that it will remit applicable funds to the State of California's Office of Environmental Health and Hazard Assessment, to the extent required under applicable laws, and as applicable to this prelitigation Agreement. Upon request, CTWG's legal counsel, or CTWG, shall supply Atlapac with a completed W9 form for CTWG.

4.1. \$18,000 shall be considered a civil penalty.

4.2 \$69,500 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 owners, parents, principals, shareholders, affiliates, officers, directors, employees, agents, subsidiaries, successors, assigns, and legal representatives (collectively referred to as "**CTWG Releasors**") fully releases and waives any and all rights or "Claims" (defined below), including without limitation, the right to participate (directly or indirectly) in any litigation against (i) Atlapac Trading Company, Inc. and its parents, principals, shareholders, subsidiaries, affiliates, sister and related companies, (b) its upstream suppliers and all downstream entities in the stream of commerce including but not limited to distributors, wholesalers, customers, retailers handling or selling the Covered Products (including but not limited to Vallarta Food Enterprises, Inc., Wal-Mart Stores, Inc. and El Super), franchisees, cooperative members, and licensees, 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 all claims, actions, 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 statutory or common law, arising from alleged exposures to cadmium, lead and lead compounds, and arsenic in the Covered Products.

5.2. ~~It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Covered Products 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 this Section 5 may include unknown claims, and nevertheless waives 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 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 California Civil Code Section 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, lead compounds, cadmium, and arsenic in the Covered Products.

6. Resolution of Disputes.

6.1 If CTWG alleges that Atlapac has failed to comply with this Agreement, prior to filing an action relating to enforcement, CTWG shall first provide Atlapac sixty (60) days' advance written notice of the alleged violation. CTWG shall provide with that notice 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 sixty (60) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation without the need for litigation. The Parties agree to use good faith efforts to resolve the matter, including the consideration of any and all test results or other relevant information of Atlapac upon which it may have relied in complying or attempting to comply with this Agreement or applicable law.

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(s) 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 Atlapac marks or labels a Covered Product with such a statement, Atlapac shall additionally notify its customers by letter that the Covered Product shall not be sold in California.

7. This Agreement contains the entire agreement between the Parties with regard to settlement 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, Atlapac 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, copy of this Agreement, or any other counterpart, shall be deemed to be an original.

14. All notices required to be given to either Party under this Agreement shall be in writing and sent to the following recipients by (a) first-class mail or (b) overnight delivery.

For CTWG:

Andre A. Khansari
Khansari Law Corp., APC
11845 W. Olympic Blvd., Suite 1000
Los Angeles, California 90064

For Atlapac:

Tim Torrington
Atlapac Trading Company, Inc.
2240 South Garfield Avenue
Commerce, California 90040-1808

15. 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.

[Signatures Appear on the Following Page]

DATED: July 19, 2018

THE CHEMICAL TOXIN WORKING GROUP, INC.

By: 

Name: David Steinman

Title: President

DATED: July 19, 2018

ATLAPAC TRADING COMPANY, INC.

By: 

Name: Timothy F. Torrington

Title: President