

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Agreement**”) between The Chemical Toxin Working Group, Inc. (“**CTWG**”) and Winneram International, Inc. (“**Winneram**”) is effective on the date on which it is fully executed (“**Effective Date**”). CTWG and Winneram are referred to individually as a “**Party**” and collectively as the “**Parties**.” The Parties agree as follows:

1. This Agreement is intended to fully resolve all claims, demands, and allegations set forth in or related to the Notice of Violation of California Health & Safety Code section 25249.5 *et seq.* (also known as “**Proposition 65**”) that CTWG served on Winneram on or about February 12, 2018 (the “**Notice**”) with regard to Searam Brand Baby Clams (the “**Covered Product**” or “**Covered Products**”):

2. The Parties enter into this Agreement in order to settle the claims as stated in Section 1 (collectively the “**Matter**”) and for the purpose of avoiding prolonged litigation. Winneram denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products that it has sold or distributed for sale in California, including the Covered Products, have been, and are, in compliance with all laws and are completely safe for their intended use. Nothing in this Agreement shall be construed as an admission by Winneram of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Winneram of any fact, issue of law, or violation of law. Nothing in this Agreement or any document referred to herein 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 shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

### 3. **INJUNCTIVE RELIEF, REFORMULATION, TESTING, AND WARNINGS**

In consideration of the following covenants of Winneram, and the other conditions contained in this Agreement, CTWG releases Winneram as set forth in Section 6 below.

3.1 Beginning on the Effective Date, Winneram shall not manufacture for sale in the State of California, “[d]istribute into the State of California,” or directly sell in the State of California, any Covered Products which expose a person to more than 0.5 micrograms of lead based on the recommended serving size on the Covered Product’s label and the method of calculating exposure set forth in Section 3.4 below, unless each such unit of the Covered Product bears a warning meeting the requirements of Section 3.2.

3.1.1 As used in this Settlement Agreement and Release, the term “Distribute into the State of California” shall mean to directly ship a Covered Product into California for sale in California, or to sell a Covered Product to a distributor that Winneram knows will sell the Covered Product in California.

### 3.2 Clear and Reasonable Warnings

For Covered Products sold by Winneram in California after the Effective Date that require a Proposition 65 warning under this Settlement Agreement, Winneram shall utilize one of the following warning statements (“Warning”).

For Covered Products manufactured through August 31, 2018, Winneram may use any one of the three warning statements below (Options 1, 2 or 3), or Option 4. For Covered Products manufactured after August 31, 2018, Winneram may only use the warning statements in Options 2 or 3 below, or Option 4:

#### 3.2.1 Option 1

[California Proposition 65] **WARNING:** This product contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

#### 3.2.2 Option 2

[California Proposition 65] **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).

. If the warning is printed on the label, the warning shall be set off from other surrounding information in the label and enclosed in a box.

#### 3.2.3 Option 3

[California Proposition 65] **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

#### 3.2.4 Option 4

Any warning authorized by any Proposition 65 law or regulation effective on or after the Effective Date. Respecting the warnings defined in Sections 3.2.1, 3.2.2, and 3.3.3, the warning must be displayed with such conspicuousness as compared with other consumer information so as to render the warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use. In no case shall the warning appear in a type size smaller than 6-point type. Language in brackets is optional.

### 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, 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” 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 per day (with average daily exposure calculated pursuant to Section 3.4 of this Agreement). For Covered Products that cause

exposures in excess of 0.5 micrograms of lead per day, Winneram shall provide the warnings set forth in Section 3.2. For purposes of determining whether a warning is required pursuant to Section 3.2, the average concentration utilizing the geometric mean of lead detection results of five (5) samples of the relevant product, randomly selected by Winneram, will be controlling.

### **3.4 Testing and Quality Control Methodology**

3.4.1 To the extent that Winneram decides to sell Reformulated Covered Products in California after the Effective Date, Winneram shall arrange, prior to any such sale, for at least two (2) consecutive years and at least once per year, for the lead testing of five (5) randomly-selected samples of five separate lots (or the maximum number of lots available if less than five) for each Covered Product to confirm whether the exposure to lead from the maximum serving size is more or less than 0.5 micrograms of lead per day. For purposes of this Agreement, 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 based on the five test results 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 (1/14). The testing requirements of this Section 3.4.1 do not apply to any of the Covered Products for which Winneram is providing a warning as specified in Section 3.2. Further, Winneram is only required to test or produce information under this paragraph if it is selling Reformulated Covered Products in California.

3.4.2 The Parties agree that Reformulated Covered Products may be offered for sale in California without the warning stated in Section 3.2.

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 or an independent third-party laboratory that is registered with the United States Food & Drug Administration or other state governmental agency.

3.4.4 Testing for lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg (10 parts per billion) or any other testing method agreed upon in writing by the Parties.

3.4.5 Nothing in this Agreement shall limit Winneram's ability to conduct or require that others conduct additional testing of the Covered Products, including raw materials used in their manufacture. No such other testing must be produced to plaintiff hereunder.

4. In full satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorney's fees, costs, and any other expenses incurred by Plaintiff or its counsel, Winneram shall make a total settlement payment of \$45,000 ("**Total Settlement Payment**") by

wire transfer to CTWG's escrow account or by check within 10 days of the Effective Date ("**Due Date**"), for which CTWG will give Winneram the necessary account information if payment is by wire transfer. The Total Settlement Payment shall be allocated as follows:

4.1 \$5,000 shall be considered a civil penalty pursuant to California Health and Safety Code, section 25249.7, subdivision (b)(1). CTWG shall be solely responsible for remitting 75% (\$3,750) of the civil penalty to the Office of Environmental Health Hazard Assessment ("**OEHHA**") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code, section 25249.12, subdivision (c). CTWG will retain the remaining 25% (\$1,250) of the civil penalty.

4.2 \$40,000 shall be considered reimbursement of all of CTWG's attorneys' fees and costs related to the Matter, and CTWG shall be solely responsible for remitting those fees to its counsel.

4.3 In the event that Winneram fails to remit the Total Settlement Payment owed under Section 4 of this Settlement Agreement on or before the Due Date, Winneram shall be deemed to be in material breach of its obligations under this Agreement.

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

## 6. **Binding Effect; Claims Covered and Released**

6.1 CTWG, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, successors, assigns, and legal representatives, fully releases and discharges Winneram, its owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, affiliates (including those companies that are under common ownership and/or common control), successors, assigns, and legal representatives, and each entity who supplies or to whom Winneram directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees (collectively referred to as "**Covered Releasees**") from any and all claims, actions, suits, demands, liabilities, damages, penalties, fees, costs and expenses (collectively, "**Claims**") asserted or that could have been asserted for alleged violations of Proposition 65 related to Covered Products manufactured, imported, distributed, or sold up through and including the Effective Date, based on failure to provide warnings for alleged exposure to lead, or for causing alleged exposure to lead, from the Covered Products.

6.2 CTWG and Winneram further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice.

6.3 It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice or relating to the Covered Products will develop or be discovered. CTWG on behalf of itself only, on the one hand, and Winneram, on behalf of itself only, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims for Covered Products manufactured, imported, distributed, or sold up through and including the Effective Date, including all rights of action therefore, and further acknowledge that the claims released in this section 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 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 on behalf of itself only, on the one hand, and Winneram, on the other hand, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code, section 1542.

6.5 Compliance with the requirements of Section 3 of this Agreement shall be deemed to constitute compliance by any Covered Releasee with Proposition 65 with respect to any alleged lead in the Covered Products.

6.6 CTWG, on its own behalf, on one hand, and Winneram, on the other hand, release and waive any claims they may have against each other, and their shareholders, officers, directors, members, managers, employees, agents, representatives, and attorneys for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice.

6.7 Nothing in this Release is intended to apply to any occupational or environmental exposures arising under Proposition 65, except as otherwise provided in this Agreement.

7. Nothing herein shall be construed as diminishing Winneram's continuing obligations to comply with Proposition 65.

8. All notices required to be given to either Party to this Agreement by the other shall be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via electronic mail may also be sent.

**FOR WINNERAM INTERNATIONAL, INC.:**

Raphael Lei  
President  
Winneram International, Inc.

1860 Tyler Ave.  
South El Monte  
CA 91733

With a copy to:

James Robert Maxwell  
Rogers Joseph O'Donnell  
Robert Dollar Building  
311 California St., 10th Floor  
San Francisco, CA, 94104  
(415) 956-2828  
jmaxwell@rjo.com

**FOR THE CHEMICAL TOXIN WORKING GROUP, INC.:**

The Chemical Toxin Working Group, Inc.  
c/o Khansari Law Corp., APC  
11845 W. Olympic Blvd., Suite 1000  
Los Angeles, California 90064  
Tel: (424) 248-6688  
Fax: (424) 248-6689  
Email: [andre@khansarilaw.com](mailto:andre@khansarilaw.com)

9. After executing this Agreement, CTWG will submit to the California Attorney General a Report of Settlement. In addition, CTWG will provide to the California Attorney General a signed copy of this Agreement.

10. 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.

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

12. 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.

13. If any provision, term, or section of this Agreement is found to be invalid, illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full force and effect and remain binding on the Parties. If any provision, term, or section of this Agreement is

determined to be unenforceable, then such provision, term, or section may be modified so that the unenforceable provision, term, or section is enforceable to the greatest extent possible provided that both parties agree to such modification.

14. 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.

15. 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.

17. Any legal action to enforce this Agreement shall be brought in the county of Alameda of the State of California. The prevailing party in any such legal action may be entitled to recover its reasonable attorneys' fees that are necessary and required to enforce the agreement pursuant to and to the extent consistent with California Code of Civil Procedure section 1021.5 in addition to any other legally recoverable costs. Before any Party takes action to enforce the terms of this Agreement it shall provide the other Party with written notice of any alleged violation and a reasonable opportunity to cure. In furtherance of this requirement, before filing any action to enforce this Agreement, the Parties shall meet and confer in good faith to resolve any dispute for at least 30 days after written notice is provided of any alleged violation.

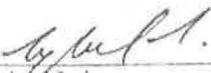
18. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail, copy of this Agreement, or any other legally admissible counterpart, shall be deemed to be an original.

19. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

*[Signatures Appear on the Following Page]*

DATED: 2/1/2019

WINNERAM INTERNATIONAL, INC.

By:   
Raphael Lei  
President

DATED: 2-1-19

THE CHEMICAL TOXIN WORKING GROUP, INC.

By:   
David Steinman, Executive Director