

## SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

LIBERTY GOLD FRUIT COMPANY, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Liberty Gold Fruit Company, Inc. (“Liberty”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding potentially prolonged and costly litigation, and to settle CAG’s allegations that Liberty violated Proposition 65. CAG and Liberty are collectively referred to as the “Parties.” The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”).

### **1.0 Introduction**

1.1 CAG is a California-based entity that seeks to improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 Liberty previously manufactured, distributed, and/or sold in California, at various times, Canned Squid, including but not limited to ““Ligo;” “CALIFORNIA Squid in Natural Ink;” “NET WT 15 OZ (425g);” “PRODUCT OF THE PHILIPPINES;” “Distributed by: LIBERTY GOLD FRUIT CO. LP So. San Francisco CA, 94080 U.S.A.;;” “LQII35B4 D4B;” “EXPIRY: 17 OCT 2020;” “0 72810 29712 3”” (referred to throughout as the “Covered Products”).

The Covered Products are limited to those sold only by Liberty direct to California consumers, or sold by Liberty to Downstream Releasees as defined pursuant to Section 2.1.

1.3 CAG alleges that the Covered Products contain Cadmium and Cadmium Compounds (“Cadmium”), and that Liberty did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* (“Proposition 65”)).

1.4 On October 1, 1987, the Governor of California added Cadmium to the list of chemicals known to the State to cause cancer, and on May 1, 1997, the Governor added Cadmium and Cadmium compounds to the list of chemicals known to the State to cause developmental and male reproductive toxicity. These additions took place more than twenty (20) months before CAG served Liberty with its “Sixty-Day Notice of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” which is further described below.

1.5 Cadmium and Cadmium compounds are referred to hereafter as the “Listed Chemical.”

1.6 On or about March 14, 2019, CAG served Liberty; Arko Foods; Arko Foods International; Arko Foods Market; Arko Foods International, Inc.; Liberty Gold Fruit Co.; Liberty Gold Fruit Co. LP.; Liberty Gold Fruit Company LLC. and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And

Toxic Enforcement Act of 1986” alleging that Covered Products contain the Listed Chemical (the “Notice”).

1.7 The Notice (Attorney General Notice #2019-00533) alleges that Liberty and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products allegedly exposes persons to the Listed Chemical.

1.8 The Parties enter into this Settlement Agreement to resolve disputed claims concerning the Covered Products’ compliance with Proposition 65 (the “Dispute”).

1.9 Liberty expressly maintains that all products it sells, including the Covered Products, comply with all laws, including but not limited to Proposition 65, and are completely safe for their intended use. Liberty further maintains that the Covered Products are manufactured in conformance with good manufacturing practices, that the Listed Chemical is not added to Covered Products, and that to the extent the Listed Chemical is present in Covered Products it is “naturally occurring” as that term is used in 27 Cal. Code of regs §25501. By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of

any admission, or evidence of fault, wrongdoing, or liability by Liberty, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or Liberty may have in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

## **2.0 Release**

2.1 This Settlement Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity, on the one hand, and: (a) Liberty, its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively "Releasees"); and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to third party distributors, wholesalers, customers, retailers (including but not limited to Arko Foods International, Inc. and its affiliates), franchisees, cooperative members, and licensees ("Downstream Releasees"), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any other statutory or common law claim that has been, could have been, or may in the future be asserted against the Releasees and Downstream Releasees regarding actual or alleged exposures to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising in connection with Covered Products manufactured, shipped, and/or otherwise distributed by Liberty

prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date.

CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) (collectively "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect of any Covered Products manufactured, distributed, and/or sold up to the Effective Date to the extent that such Claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

CAG acknowledges that it is familiar with Section 1542 of Civil Code, which provides as follows:

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

CAG, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the Covered Products. The release in this section shall have no force or effect until the full amount of payments set forth in Section 4.0 below are paid in full.

**2.2. Public Benefit.** It is Liberty's understanding that the commitments it has agreed to herein, and actions to be taken by Liberty under this Settlement Agreement, confer a significant benefit to the general public as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Liberty that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Liberty's alleged failure to provide a warning concerning actual or alleged exposure to the Listed Chemical prior to use of the Covered Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that Liberty is in material compliance with this Settlement Agreement.

### **3.0 Liberty's Duties**

3.1 Liberty agrees, promises, and represents that after the Effective Date Liberty shall either reformulate any Covered Products manufactured after the

Effective Date and offered for sale in California to a point where the level of Cadmium in the Covered Products does not exceed 45ppb, or provide a Proposition 65 warning for such products sold in California as set forth in Section 3.2 below. CAG agrees that Covered Products that are either reformulated hereunder or that carry a Proposition 65 warning as set forth in Section 3.2 below comply with Proposition 65.

3.2 Liberty agrees, promises, and represents that, as of the Effective Date, to the extent it ships or sells any Covered Products in California or distributes to any entity that it reasonably understands may sell or cause the Covered Products to be sold in California which have not been reformulated as set forth in Section 3.1 above, it will provide warnings for such Covered Products sold in California that comply with Proposition 65. The warnings shall be provided in such a manner that they are likely to be read, seen, or heard by the California consumer prior to or at the time of the sale, or purchase. The Parties agree that product labeling stating either:

[California Proposition 65] **WARNING:** This product can expose you to chemicals including Cadmium and Cadmium Compounds, 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).

Or

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

shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products that are not

reformulated and that are manufactured, distributed and/or sold after the Effective Date. Language in brackets is optional.

#### 4.0 Payments

4.1 In complete resolution of all claims of any kind for damages, penalties, restitution, attorney's fees, investigative expenses, testing expenses, or any other monetary relief of any kind related to claims that were raised or that could have been raised in the Notice, Liberty agrees, to pay a total of fifty-two thousand dollars (\$52,000) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Penalty: In complete resolution of any claim for civil penalties of any kind related to the claims raised in the Notice, Liberty shall issue two separate checks for a total amount of twelve thousand dollars (\$12,000) as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of nine thousand dollars, (\$9,000), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of three thousand dollars (\$3,000), representing 25% of the total penalty.

OEHHA's check shall be delivered by Liberty or its agents to:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010



For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

CAG's check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Additionally, two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA at one of the addresses listed above (EIN: 68-0284486) in the amount of \$9,000. The second 1099 shall be issued in the amount of \$3,000 to CAG and delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

4.1.2 Attorneys' Fees and Costs: Forty thousand dollars (\$40,000) of such payment shall be paid to Yeroushalmi & Yeroushalmi, as CAG's attorneys, for any and all attorney's fees, investigation fees and costs, and any other fees, costs, and/or expenses of any kind incurred as a result of investigating and bringing this matter to Liberty's attention, and negotiating this Settlement Agreement. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Yeroushalmi shall provide Liberty with its Employer Identification Number for purposes of issuing a 1099 to the attention of Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100

Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

Nothing in this Section is intended to affect either Party's right to recover its attorney's fees and costs related to a motion to enforce this Settlement Agreement consistent with Section 11.1.

**5.0 Authority to Enter Into Settlement Agreement**

5.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

5.2 Liberty represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Liberty to this Settlement Agreement.

**6.0 Report of the Settlement Agreement to the Office of the Attorney General Of California**

6.1 CAG shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' full execution of this Settlement Agreement.

**7.0 Execution in Counterparts and Facsimile**

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute one and the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original.

**8.0 Entire Agreement**

8.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings are

merged herein. No other agreements, oral or otherwise, exist to bind any of the Parties.

**9.0 Modification of Settlement Agreement**

9.1 Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

**10.0 Application of Settlement Agreement**

10.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, CAG and the Releasees and Downstream Releasees identified in Section 2 above.

**11.0 Enforcement of Settlement Agreement**

11.1 Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 11.2 and 11.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

11.2 Except as set forth in Section 11.2.1, no action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against Liberty by CAG, unless the party seeking enforcement or alleging violation provides written notice to the other party of the specific acts alleged to breach this Settlement Agreement at least 60 days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 11.3 below. Any notice to Liberty must contain: (a) the name of the

product; (b) specific dates when the product was sold after the Effective Date in California without reformulation or a warning; (c) the California store or other place at which the product was available for sale to consumers; and (d) any other evidence or support for the allegations in the notice.

11.2.1. Notwithstanding the above, CAG may bring an action to enforce any breach of the monetary settlement terms in Section 4.0, above, upon five (5) business days written notice by CAG to Liberty of the alleged breach in accordance with the notification requirements set forth in Section 12.0, below.

11.3 Within 30 days of receiving the notice described in Section 11.2, Liberty shall either: (1) send the California store or other place at which the product was available for sale to the public a letter or other written communication directing that the offending product be immediately removed from sale in California and returned to Liberty for full credit, including shipping costs; or (2) refute the information provided to Liberty by CAG under Section 11.2. Should Liberty fail to send a letter pursuant to this section 11.3(1) and the parties be unable to resolve a dispute under Section 11.3(2), any party may seek relief under Section 11.1.

## **12.0 Notice Requirements**

12.1 Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

Reuben Yeroushalmi, Esq.  
YEROUSHALMI & YEROUSHALMI  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

For Liberty:

Mr. Ralph Battat, President  
Liberty Gold Fruit Company, LP  
So. San Francisco, CA 94080

With Copy to:

J. Robert Maxwell  
ROGERS JOSEPH O'DONNELL, a Professional Law Corporation  
311 California Street, 10th floor  
San Francisco, CA 94104

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

### **13.0 SEVERABILITY**

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

### **14.0 GOVERNING LAW**

14.1 The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered

Products, then Liberty shall provide written notice to CAG 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 Covered Products are so affected.

CONSUMER ADVOCACY GROUP, INC.

Dated: 10/01/19


By: 

Printed Name: Michael Marcus

Title: Director

LIBERTY GOLD FRUIT COMPANY, INC.

Dated: 9-23-2019

By: 

Printed Name: RALPH BATAI

Title: President