

SETTLEMENT AGREEMENT AND RELEASE

BETWEEN

KEY SCIENCES LLC

AND

PACIFIC COAST PRODUCERS

1.0 INTRODUCTION

The Settling Parties:

1.1 Key Sciences LLC (“Key Sciences”) and Pacific Coast Producers (herein referred to as “PCP”), (Key Sciences and PCP collectively referred to as the “Parties” and each individually as a “Party”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle Key Sciences’ allegations that PCP violated the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* (“Proposition 65”).

1.2 Key Sciences is a limited liability corporation whose mission is to ensure accuracy of labeling for the benefit and protection of consumers of packaged goods through rigorous scientific testing.

1.3 PCP is an agricultural marketing cooperative owned by 165 family farmers, which packages fresh fruits from its owners into shelf stable products for sale to consumers and foodservice distributors throughout the United States.

1.4 For purposes of this Settlement Agreement, PCP is alleged to be a person in the course of doing business in California and therefore subject to the provisions of Proposition 65.

Effective Date:

1.5 The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”).

The Dispute:

1.6 Key Sciences alleges that the Covered Products (defined below) expose individuals to Mercury, and that PCP did not first provide a clear and reasonable warning to those individuals prior to the exposure thus violating Proposition 65. PCP disputes the alleged presence of Mercury in the Covered Products, and therefore disputes any obligation to provide warnings or take other steps under Proposition 65.

The Covered Products:

1.7 The products covered by this Settlement Agreement are Great Value Fruit Cocktail (15 oz) and O Organics Sliced Peaches - Yellow Cling (15 oz) (referred to throughout as the “Covered Products”). The Covered Products are limited to those sold or supplied by PCP only. The Covered Products are packaged seasonally as part of PCP’s fresh packing cycle, which runs approximately mid-July to end of August for Sliced Peaches, and mid-July to mid-September for Fruit Cocktail.

The Chemicals at Issue:

1.8 Mercury is referred to hereafter as the “Listed Chemical(s)”.

1.9 On July 1, 1990, the Governor of California added Mercury and mercury compounds to the list of chemicals known to the State to cause

developmental reproductive toxicity. This addition took place more than twelve (12) months before Key Sciences served 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.

Notice of Violations:

1.10 On or about March 6, 2020, Key Sciences served, Walmart, Inc., 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” designated with Attorney General number 2020-00580 regarding Great Value Fruit Cocktail (15 oz) containing the Listed Chemical.

1.11 On or about March 6, 2020, Key Sciences served, Safeway, Inc., 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” designated with Attorney General number 2020-00583 regarding O Organics Sliced Peaches - Yellow Cling (15 oz) containing the Listed Chemical.

1.12 Key Sciences subsequently became aware that PCP accepted tender requests from its customers regarding the above Sixty Day Notices and as to the Listed Chemical, and discussions to resolve the matter ensued between the Parties.

1.13 On or about August 7, 2020, Key Sciences served, PCP 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” designated with Attorney General number 2020-01970 regarding Great Value Fruit Cocktail (15 oz) containing the Listed Chemical.

1.14 On or about August 7, 2020, Key Sciences served, PCP 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” designated with Attorney General number 2020-01972 regarding O Organics Sliced Peaches - Yellow Cling (15 oz) containing the Listed Chemical.

1.15 The Sixty-Day Notices at paragraphs 1.10-1.11 and 1.13-1.14 (referred to as the Notices”) alleged that the noticed parties (and post-tender PCP as well) violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Listed Chemical.

The Dispute and No Admissions by the Parties:

1.16 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning PCP’s compliance with Proposition 65 as to the Covered Products’ (the “Dispute”).

1.17 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 an admission or evidence of fault, wrongdoing, or liability by PCP, 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 Key Sciences or PCP may have against one another 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 Key Sciences, acting in its individual capacity, on the one hand, and (a) PCP, and 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 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Walmart Inc. and Safeway, Inc. (“Downstream Releasees”), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any 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 exposing persons to

the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising only in connection with the Covered Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered Products are limited to those sold by PCP.

2.2 Key Sciences, 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 to any Covered Products 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.

2.3 Key Sciences 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.

Key Sciences, 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 released matters. 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.

2.4 PCP 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, and fully releases and discharges Key Sciences and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, principals, officers, directors, insurers, attorneys, predecessors, successors, agents, and assigns from any and all Claims including unknown and unsuspected claims as described in paragraph 2.3 above, that arise from the institution, prosecution, assertion, or settlement of the Notice(s) or the claims asserted therein.

3.0 VALIDATION TESTING

3.1 Validation Testing: Following the Effective Date, to ensure compliance with this section, PCP shall begin Validation Testing of the Covered Products as set forth in this Section 3.0 et seq.

3.2 Maximum Mercury Limit: The Maximum Mercury Limit is a test result for the concentration of Mercury in a Covered Product of less than 15 parts per billion, with a reporting limit or limit of quantitation of 10 parts per billion or less.

3.3 Sampling Protocol: PCP shall conduct Validation Testing on five samples of finished product selected randomly of each of the Covered Products drawn from two manufacturing lots during the fresh packing cycle described in Section 1.7 above. PCP at its option may choose which manufacturing lots to conduct Validation Testing on pursuant to this Section.

3.4 Validation Testing: The Validation Testing shall be two years. PCP shall conduct the first Validation Testing during the fresh packing cycle during the summer of 2021, and the second Validation Testing during the summer of 2022 fresh packing cycle.

3.5 Mercury Testing Protocol: In accordance with this Section 3 et seq., to ascertain a Covered Product's concentration of Mercury, PCP shall test or cause to be tested the Covered Product using one of the following protocols: (1) the protocol set forth in EPA Method 7471A; (2) the protocol set forth in EPA Method 7473; or (3) the protocol set forth in EPA Method 6020 or 6020A (as modified for mercury). For each of the protocols listed above, the sample

preparation shall be in conformity with EPA Method 3015A or 3052 as appropriate.

3.6 Additional Testing Protocols: In the event that equally or more accurate testing methods are developed or identified and accepted by the scientific community as accurate enough to allow for detection and quantification of Mercury to ascertain compliance under this Settlement, any Party may seek to modify this Settlement as set forth in Section 9 herein, to allow testing by such equally or more accurate testing method in addition to the methods authorized herein.

3.7 Qualified Laboratory: All Validation Testing shall be conducted by a Qualified Laboratory. A "Qualified Laboratory" shall mean a laboratory that has demonstrated proficiency to conduct Mercury analysis on the Covered Products using Inductively Coupled Plasma Mass Spectrometry ("ICP-MS") using one of the methods identified in Section 3.5 above. A Qualified Laboratory shall meet the standards of the American Association for Laboratory Accreditation for Chemical Testing, ISO/IEC 17025, or another organization with equivalent standards. Laboratories should be experienced in (1) testing methodologies for Mercury levels in foods, including but not limited to the requirements for written procedures, requirements for laboratory control processes, requirements for laboratory methods and examination, record retention policies, and other laboratory requirements. A Qualified Laboratory shall be prepared to share the laboratory reports, data and test results that it obtains or generates pursuant to this Settlement Agreement with Key Sciences. For purposes of this Settlement

Agreement, the Parties agree that, as of the Effective Date, IEH Laboratories & Consulting Group (and its related entities), and Ellipse Analytics are Qualified Laboratories.

3.8 Covered Products That Exceed Maximum Mercury Level: If the results of Validation Testing performed pursuant to Section 3.3 indicates that the average of the 5 randomly selected samples of a Covered Product exceeds the Maximum Mercury Level ("non-compliant Covered Product"), PCP shall engage in a further round of Validation Testing in accordance with this Settlement Agreement. PCP shall do so using a Covered Product retained from the manufacturing lot sampled in the first instance under Sections 3.3 and 3.4 above. If such further round of Validation Testing results in an average of test results that comply with Section 3.2, then no further action will be required by PCP and the initial test result shall be deemed anomalous. If such further round of Validation Testing results in an average of test results that exceed the Maximum Mercury Level, then PCP shall engage in a root cause analysis, and investigate the potential cause of the exceedance. The components of such root cause analysis shall be identified and performed at the sole direction of PCP, and may consist of among other things, investigation of grower fields and raw product utilizing U.S. Department of Agriculture (USDA) sampling protocols, review of juices and syrups used for the Covered Products, and with respect to Fruit Cocktail, analysis of other fruit components. Such root cause analysis shall be shared with Key Sciences upon completion. If a Covered Product exceeds the Maximum Mercury Level in both the initial Validation Testing and re-testing in both years identified at Sec. 3.4

above, then PCP shall notify Key Sciences of this fact and the Parties shall meet and confer for a period of no less than 30 days to discuss additional measures to address the issue and potential modification of this Settlement Agreement under Section 9 et seq. below to include any additional injunctive relief.

3.9 Records: The testing reports and results of the Validation Testing performed pursuant to this Settlement Agreement shall be retained by PCP for two (2) years after the last Validation Testing and made available to Key Sciences upon request within 45 days of such request.

3.10 Good Faith Commitment: Consistent with this Settlement Agreement, and notwithstanding PCP disputing the alleged presence of Mercury in the Covered Products, PCP shall continue to undertake good faith and commercially reasonable efforts to as appropriate, address identified Mercury levels in the Covered Products with a goal of reducing those levels to a consistent level not to exceed the Maximum Mercury Limit. Consistent with Section 3.8, these efforts may include, efforts to further adjust recipes and formulas that will reduce alleged Mercury content in Covered Products and attempts to secure Covered Product ingredients with lower Mercury content, if applicable. Nothing in this section prevents PCP from conducting any other type of root cause analysis to further reduce the Mercury levels in the Covered Products.

4.0 PAYMENTS

4.1 PCP agrees, to pay a total of twenty thousand dollars (\$20,000.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Civil Penalty: PCP shall pay ten thousand dollars (\$10,000.00) as civil penalties pursuant to Health & Safety Code § 25249.12. This payment shall be made via two separate checks:

(a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of seven thousand five hundred dollars (\$7,500.00), representing 75% of the total penalty; and

(b) one check to Key Sciences LLC in the amount of two thousand five hundred dollars (\$2,500.00), representing 25% of the total penalty.

Additionally, two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$7,500.00. The second 1099 shall be issued in the amount of \$2,500.00 to Key Sciences and delivered to: Kyle Wallace, Davitt, Lalley, Dey & McHale, P.C., 1971 E Beltline Ave., Suite 106, Grand Rapids, MI 48925. By the Effective Date, Key Sciences shall provide PCP with Key Sciences' Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: PCP shall pay ten thousand dollars (\$10,000.00) to "Davitt, Lalley, Dey & McHale, P.C." (herein "DLDM"),

as Key Sciences' attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to PCP's attention. By the Effective Date, DLDM shall provide PCP with its Employer Identification Number.

4.1.3 Delivery of Payment:

(a) OEHHA's check shall be delivered to:

Office of Environmental Health Hazard Assessment
Attn: Mike Gyurics
1001 I Street, Mail Stop 12-B
Sacramento, CA 95812-4010

Concurrently with the payment to OEHHA, PCP shall provide Key Sciences with written confirmation that the payment to OEHHA was delivered.

(b) All checks for Key Sciences' and DLDM shall be delivered to:

Kyle Wallace
Davitt, Lalley, Dey & McHale, P.C.
1411 Cortez Street #21948
Denver, CO 80221

5.0 AUTHORITY TO ENTER INTO SETTLEMENT AGREEMENT

5.1 Each of the Parties represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind each Party to this Settlement Agreement.

6.0 REPORT OF THE SETTLEMENT AGREEMENT TO THE OFFICE OF THE ATTORNEY GENERAL OF CALIFORNIA

6.1 Key Sciences shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' 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 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. 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. Key Sciences shall report any written modification of this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of the written modification.

10.0 APPLICATION OF SETTLEMENT AGREEMENT

10.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, Key Sciences 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 Sacramento, 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 in any such enforcement action shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

11.2 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 PCP by Key Sciences, unless the party seeking enforcement or alleging violation notifies 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 PCP must contain the name of the Covered Product and sufficient detail regarding the alleged breach such that PCP may respond, and/or cure.

11.3 Should the parties be unable to resolve the dispute, any party may seek relief under Section 11.1.

12.0 NOTIFICATION 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 (an email shall be sent advising that such notice is being provided):

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Settlement Agreement and Release Between
Key Sciences LLC and Pacific Coast Producers

For Key Sciences:

Kyle Wallace
Davitt, Lalley, Dey & McHale, P.C.
1411 Cortez Street #21948
Denver, CO 80221
Email: kyle.wallace@dldmlaw.com

For PCP :

Robert L. Hines, Esq.
Farella Braun + Martel LLP
Russ Building
235 Montgomery Street
18th Floor
San Francisco, CA 94104
Email: rhines@fbm.com

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 PCP shall provide written notice to Key Sciences 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.

AGREED TO:

KEY SCIENCES LLC

Dated: 6/2/21

By:  _____

Printed Name: Lao Tizer

Title: Owner

AGREED TO:

PACIFIC COAST PRODUCERS

Dated: 6.2.21

By: Mona Shulman

Printed Name: Mona Shulman

Title: Vice President