

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Agreement**”) between Public Health and Safety Advocates, LLC (“**PHSA**”), on the one hand, and Wismettac Asian Foods, Inc., and Wismettac Foods, Inc. (collectively hereinafter referred to as “**WISMETTAC**”), on the other hand, is effective on 4/20/2021 (“**Effective Date**”). PHSA and WISMETTAC 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 Violations of California Health & Safety Code, section 25249.5 *et seq.* (also known as “**Proposition 65**”) that PHSA served on WISMETTAC Notices of Violation No.: 2020-00925 & 2020-01032 (“**Notice**”) with regards to the following product identified below (referred to as the “**Covered Product**”):

- **Shirakiku Prepared Shredded Squid (Plain) – UPC: 074410751197**
- **Shirakiku Prepared Shredded Squid (Hot) – UPC: 074410751524**

2. The Parties enter into this Agreement in order to achieve a Settlement of the claims as stated in Section 1 (collectively “**this Matter**”) and for the purpose of avoiding prolonged litigation. WISMETTAC denies all allegations contained in the Notice. Nothing in this Agreement shall be construed as an admission by WISMETTAC of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by WISMETTAC 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 WISMETTAC 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.

Furthermore, the parties have been advised that the Attorney General’s Office is currently litigating with respect to fresh and frozen seafoods, and that the parties have the option to opt-in the Attorney General’s litigation case as the outcome may vary or affect distributors. The parties have agreed to enter into this private out-of-court Settlement for the purpose of avoiding prolonged litigation.

3. **Injunctive Relief; Reformulation; Testing; and Warnings.**

In consideration of the following covenants of WISMETTAC, and the other conditions contained in this Agreement, PHSA releases WISMETTAC as set forth in Section 6 below. For the purposes of this Settlement agreement, the term “**Compliance Date**” shall mean July 20, 2021.

3.1 Beginning on the Compliance Date, WISMETTAC shall not manufacture for sale in the State of California, “distribute into the State of California,” or directly sell in the State of California, any Covered Product which expose a person to more than 0.5 micrograms of Lead based on the recommended serving size on the Covered Product’s label, unless each such unit of the Covered Product bears a warning meeting the warning requirements under 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 WISMETTAC knows will sell the covered Product in California.

3.1.2 For the Purpose of this Agreement, the amount of Lead a person is exposed to form the Covered Product shall be calculated using the following formula: micrograms of Lead per gram of product, multiplied by grams of product per serving

of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in recommended dosage appearing on the product label), which equals micrograms of Lead exposure per day.

3.2 **Clear and Reasonable Warnings.**

For Covered Product(s) that require a Proposition 65 warning under this Settlement Agreement, WISMETTAC shall utilize one of the following warnings statements (“Warnings”);

3.2.1 Option 1

WARNING: 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.

3.2.2 Option 2

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

3.2.3 Option 3

WARNING: Cancer and Reproductive Harm – 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 Section 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. In no case shall the warning appear in a type size smaller than 6-point type.

Alternatively, at WISMETTAC’s option, the warning may be modified to include a warning that complies with 27 Cal. Code Regs. § 25607.2. 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.

3.3 **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 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 the Covered Product that causes exposures in excess of 0.5 micrograms of Lead per day, WISMETTAC shall provide the warnings set forth in 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 WISMETTAC, will be controlling.

3.4 Testing and Quality Control Methodology.

3.4.1 To the extent that WISMETTAC decides to sell Reformulated Covered Product, WISMETTAC shall arrange, for at least two (2) consecutive years and at least once per year, commencing one year from the Effective Date, 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) each year 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 purpose 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 in the product in micrograms per gram, multiplied by grams of the 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 WISMETTAC has provided a warning as specified in Section 3.2 Further, WISMETTAC is only required to produce information under this paragraph if it is selling Reformulated Covered Products in California.

3.4.2 The Parties agree that the Reformulated Covered Product may be offered for sale in California without the Warnings Statements 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 and Cadmium 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 or any other testing method agreed upon in writing by the Parties.

3.4.5 Nothing in this Agreement shall limit WISMETTAC's ability to conduct or require that others conduct additional testing of the Covered Product, including raw material used in their manufacture.

3.5 Sell-Through Period

Notwithstanding anything else in this Agreement, Covered Products that were manufactured before the Compliance Date shall be subject to a full release of all liability pursuant to this Settlement Agreement, without regard to when such Covered Products were, or are in the future, distributed or sold to customers. The obligations of Covered Releasees do not apply to Covered Products manufactured before the Compliance Date. Claims concerning those earlier manufactured products are released nonetheless.

4. Payments

In full satisfaction of all potential civil penalties and attorney's fees, costs, and any other expenses incurred by PHSA or its counsel, WISMETTAC shall pay the total Settlement amount of \$20,000 (the "**Settlement Amount**") as set forth below.

4.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(B)

\$1,500 shall be considered a "civil penalty" pursuant to California Health and Safety Code. WISMETTAC shall issue two separate checks within ten (10) days of the Effective Date for a total amount of One Thousand Five Hundred Dollars (\$1,500) as follows, and all payments shall be delivered to the addresses listed below.

- a) One check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of \$1,125, representing 75% of the total penalty; and
- b) One check made payable to "Public Health and Safety Advocates, LLC." in the amount of \$375, representing 25% of the total penalty.

4.2 **Attorneys' Fees and Costs**

Eighteen Thousand Five-Hundred dollars (\$18,500) of such payment shall be paid to Law Offices of Danialpour & Associates, as PHSA's attorneys, for reasonable investigation fees, and costs, attorney's fees, and any other cost incurred as a result of investigating and bringing this matter to WISMETTAC's attention.

5. **Payment Procedures**

5.1 All payments owed to OEHHA, pursuant to Section 4.1.a, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following address.

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

5.2 All payments owed to PHSA, pursuant to Section 4.1.b, shall be delivered to:

c/o PHSA
Law Offices of Danialpour & Associates
357 S. Robertson Blvd.
2nd Floor
Beverly Hills, CA 90211

5.3 All payments owed to Law Offices of Danialpour & Associates, pursuant to Section 4.2, shall be delivered directly to:

Attn: David D. Danialpour
Law Offices of Danialpour & Associates
357 S. Robertson Blvd.
2nd Floor
Beverly Hills, CA 90211

5.4 **Proof of Payment** A copy of each check payable to OEHHA, as well as proof of delivery of OEHHA's check, shall be mailed, simultaneous with payment, to Law Offices of Danialpour & Associates at the address set forth above, as proof of payment to OEHHA.

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

6.1 PHSA, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, successors, assigns, and

legal representative fully releases and discharges WISMETTAC, each of their 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 from whom WISMETTAC purchases or imports the Covered Product, and each entity to whom WISMETTAC directly or indirectly distributes or sells the Covered Product, 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 the Proposition 65, up through and including the Compliance Date based on alleged failure to provide warnings for alleged exposure to Lead, or for causing alleged exposure to Lead, from the Covered Product.

6.2 PHSa and WISMETTAC 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. PHSa on behalf of itself only, on the one hand, and WISMETTAC, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Compliance Date, including all rights of action therefore, and further acknowledge that the claims released this section may include unknown claims, and nevertheless waives California Civil Code, section 1542 as to any unknown claims. California Civil Code, section 1542 reads 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.

PHSa acknowledges and understands the significances and consequences of this specific waiver of California Civil Code Section 1542.

6.4 Compliance with the requirement of Section 3 of this Agreement shall be deemed to constitute compliance by any Covered Release with Proposition 65 with respect to any Lead in the Covered Product.

7. **Resolution of Dispute**

7.1 If PHSa alleges that WISMETTAC has failed to comply with this Agreement, prior to filing an action or motion relating to enforcement, PHSa shall first provide WISMETTAC thirty (30) days’ advance written notice of the alleged violation(s). PHSa shall provide testing results, lot numbers, photographs of the Covered Product packing, and purchase receipts for the Covered product at issue in the alleged violation, as applicable. The Parties shall meet and confer during such thirty (30) days period in an effort to reach agreement on an appropriate cure for the alleged violation without the need for litigation.

7.2 Notwithstanding the provisions of Section 3, PHSa may not issue any notice under Section 7.1 if the packaging of the Covered Product is marked or labeled with the statement “Not for Sale in California” or substantially similar language, 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 WISMETTAC marks or labels a Covered Product with such a statement, WISMETTAC shall additionally notify its customers/distributors by letter that the Covered Product shall not be sold in California.

7.3 In the event any litigation, arbitration, mediation, or other proceeding is initiated by any Party to enforce this Agreement, and such Party prevails in such proceeding, it shall be entitled to recover from the other Parties, as applicable, all costs, expenses, reasonable attorney's fees and expert fees, relating to or arising out of (i) such proceeding, and (ii) any post judgement or post-award proceeding including without limitation to enforce any judgement or award resulting from any such proceeding.

8. Nothing herein shall be construed as diminishing WISMETTAC's continuing obligations to comply with Propositions 65.

9. 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 WISMETTAC:

Wismettac Asian Foods, Inc.,
Wismettac Foods, Inc.
Attn: Paul Hirose & Jasmine Wetherell
Perkins Coie LLP
1888 Century Park East Suite 200
Los Angeles, CA 90067
Emails: PHirose@perkinscoie.com; JWetherell@perkinscoie.com

For PHSA:

Law Offices of Danialpour & Associates
Attn: PHSA
357 S. Robertson Blvd
2nd Floor
Beverly Hills, CA 90211
Email: david@davarlaw.com

10. PHSA shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement. In addition, PHSA will provide to the California Attorney General a signed copy of this Agreement.

11. 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 Parties.

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

13. 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.

14. 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.

15. This Agreement shall be deemed to have been entered into 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.

16. 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 Los Angeles of the State of California.

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 counterpart, shall be deemed to be an original.



19. If 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.

20. This Settlement Agreement may be modified only by written agreement of the parties.

21. Each of the individual 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.

AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all the terms and conditions of this Settlement Agreement.

<p>By: <u>Toshiyuki Nishikawa</u> Name, Title <u>President & CEO</u></p> <p> Signature</p> <p>For Wismettac Asian Foods, Inc.; Wismettac Foods, Inc.</p> <p>Dated: April <u>29</u>, 2021</p>	<p>By: <u>Dr. Shabnam Elyaszadeh</u> Name, Title</p> <p> Signature</p> <p>For Public Health and Safety Advocates, LLC</p> <p>Dated: April 26, 2021</p>
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