

# SETTLEMENT AGREEMENT AND RELEASE

## BETWEEN

KEY SCIENCES LLC

## AND

SPROUT FOODS, INC.

### **1.0 The Parties and Background**

1.1 Key Sciences LLC (“Key Sciences”) and Sprout Foods, Inc. (herein referred to as “Sprout Foods”), (Key Sciences and Sprout Foods 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 and in order to fully and finally resolve any and all claims, demands, and allegations of Key Sciences regarding any alleged noncompliance of the Sprout Foods Covered Products (as defined below) with 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 stated mission is to ensure accuracy of Proposition 65 labeling in the public interest pursuant to *Cal. Health & Safety Code* § 25249.7(d).

1.3 Sprout Foods is a corporation alleged by Key Sciences to be a person in the course of doing business in California and alleged to be subject to the provisions of Proposition 65 during the relevant time periods that it has met the requirements of Proposition 65, including having the minimum number of employees required, to have the statute be applicable.

1.4 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 effective date of the remedial activities needed pursuant to this Settlement Agreement shall be nine months from the Effective Date (“Remediation Effective Date”).

1.5 Key Sciences alleges that the Covered Products (defined below) expose individuals to Acrylamide and that Sprout Foods did not first provide a clear and reasonable warning to those individuals prior to the exposure thus allegedly violating Proposition 65.

**The Covered Products:**

1.6 The products tested by or on behalf of Key Sciences and covered by this Settlement Agreement are Sprout Organic Baby Food Pouch - Homestyle Vegetables & Pear (3.5 oz), Sprout Organic Baby Food Pouch - Root Vegetables, Apple with Beef (4 oz), and Sprout Organic Crinklez Popped Veggie Snacks - Cheesy Spinach (1.48 oz) (referred to throughout as the “Covered Products”). The Covered Products are limited to those sold or supplied by or on behalf of Sprout Foods only.

**The Chemical at Issue:**

1.7 Acrylamide is referred to hereafter as the “Listed Chemical”.

1.8 On January 1, 1990, the Governor of California added Acrylamide to the list of chemicals known to the State to cause cancer, and on February 25, 2011 the Governor added Acrylamide to the list of chemicals known to the State to cause developmental mal reproductive toxicity. These additions 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:**

1.9 On or about April 10, 2020, Key Sciences served, Sprouts Farmer’s Market, 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” designated with Attorney General number 2020-00975 regarding Sprout Organic Baby Food Pouch - Homestyle Vegetables & Pear (3.5 oz) supplied by Sprout Foods, which Key Sciences claimed to contain the Listed Chemical.

1.10 On or about April 10, 2020, Key Sciences served, Sprouts Farmer’s Market, 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” designated with Attorney General number 2020-00976 regarding Sprout Organic Baby Food Pouch - Root Vegetables, Apple with Beef (4 oz) supplied by Sprout Foods, which Key Sciences claimed to contain the Listed Chemical.

1.11 On or about June 15, 2020, Key Sciences served, Sprouts Farmer’s Market, 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” designated with Attorney General number 2020-01432 regarding Sprout Organic Crinklez Popped Veggie Snacks -

Cheesy Spinach (1.48 oz) supplied by Sprout Foods, which Key Sciences claimed to contain the Listed Chemical.

1.12 On or about August 7, 2020, Key Sciences served Sprout Foods 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 2020-01974 regarding the Sprout Organic Baby Food Pouch - Homestyle Vegetables & Pear (3.5 oz), which Key Sciences claimed to contain the Listed Chemical.

1.13 On or about August 7, 2020, Key Sciences served Sprout Foods 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 2020-01977 regarding Sprout Organic Baby Food Pouch - Root Vegetables, Apple with Beef (4 oz), which Key Sciences claimed to contain the Listed Chemical.

1.14 On or about August 7, 2020, Key Sciences served, Sprout Foods 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 2020-01978 regarding Sprout Organic Crinklez Popped Veggie Snacks - Cheesy Spinach (1.48 oz), which Key Sciences claimed to contain the Listed Chemical.

1.15 The Sixty-Day Notices above (referred to collectively as the “Notices”) alleged that Sprout Foods and the other noticed parties 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 fully and finally resolve and settle any and all claims, demands, and allegations of Key Sciences concerning the Parties' and the Covered Products' compliance with Proposition 65 (the "Dispute"), as set forth below.

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 the applicability of Proposition 65 to the Covered Products, or any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement or any document referred to herein, nor compliance with the terms of the Settlement Agreement, shall constitute or be construed as an admission or concession by Key Sciences, Sprout Foods, or the Released Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement or any document referred to herein, nor compliance with this Agreement, shall constitute or be construed as giving rise to any presumption or inference of admission or concession by the Released Parties as to any fault, wrongdoing, or liability. 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 Sprout Foods, or its officers, directors, employees, or parents, subsidiaries or affiliated corporations,

or other Released Parties, including without limitation in any administrative or judicial proceeding or litigation in any court, agency, or forum. For the avoidance of doubt, Sprout Foods denies any liability in connection with any claim, demand, or allegation against it or the Covered Products and intends merely to avoid litigating and to buy peace. Except for the allegations settled and compromised, and except as may be set forth elsewhere in this Settlement Agreement, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Key Sciences or Sprout Foods 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) Sprout Foods, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, principals, officers, directors, insurers, attorneys, predecessors, successors, agents, 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/brokers, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and any of their respective predecessors, successors, and assigns, including without limitation Sprouts Farmer’s Market, LLC and United Natural Foods, Inc. (collectively, “Downstream Releasees”) (Releasees and Downstream

Releasees are collectively referred to as “Released Parties”), 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 Released Parties regarding the Listed Chemical and the alleged 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 distributed or sold by Downstream Releasees after the Effective Date, or which are undergoing or have undergone the needed remedial activities prior to the Remediation Effective Date.

2.2 Key Sciences, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive and release with respect to the Covered Products all rights to institute or participate in, directly or indirectly, and fully release and discharge the Released Parties from any and all forms of legal action, including, without limitation, all claims, actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, fees, costs, 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 manufactured, shipped, and/or otherwise distributed or sold up to the Effective Date, even if distributed or sold by Downstream Releasees after the Effective Date, or which are undergoing or have undergone the needed remedial activities prior to the Remediation 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 alleged failure by Releasees and/or Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

2.3 The Parties acknowledge and agree that the Claims released under this Agreement may include claims unknown to Key Sciences or those that Key Sciences does not suspect to exist at this time. Key Sciences acknowledges that it is familiar with and understands the provisions of 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, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, expressly, knowingly, and intentionally 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 Sprout Foods, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive and release with respect to the Covered Products all rights to institute or participate in, directly or indirectly, and fully release and discharge 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 Notices or the claims asserted therein.

2.5 Compliance with the terms of this Settlement Agreement or with the then-applicable law, regulation, or case law whichever is the most favorable to the Released Parties, shall be deemed to constitute compliance with Proposition 65 by any Released Party regarding alleged exposures to Proposition 65 listed chemicals in the Covered Products. However, if Sprout Foods or Key Sciences becomes aware of any impact to or change in the requirements for Sprout Foods' compliance with the terms of this Settlement Agreement based on the then-applicable law, regulation, or case law, whichever is the most favorable to the Released Parties, then that Party shall notify the other Party. The Parties agree to then meet and confer in good faith to determine whether the change in the required compliance is something substantially different from what the Agreement contemplates such that it requires modification under the requirements of Section 9 below. Notwithstanding the foregoing, nothing in this Agreement shall be interpreted or construed as imposing any duty or obligations on any

Released Party beyond what is required by then-current law, regulations, or case law, whichever is most favorable to the Released Parties, including any duty that is removed by a change in the law.

### **3.0 INJUNCTIVE RELIEF**

3.1 **Remedial Duties:** Sprout Foods agrees, promises, and represents that, commencing on the Remediation Effective Date, and continuing thereafter as described herein, Sprout Foods will only distribute for sale in California or offer for sale in California Covered Products that meet the requirements of this Agreement and then-current law, regulations, or case law, whichever is most favorable to the Released Parties. The injunctive relief of this Section terminates when any Covered Product is discontinued for sale or distribution in California.

3.2 **Reformulation Standard:** “Reformulated Products” are those Sprout Organic Baby Food Pouch - Homestyle Vegetables & Pear (3.5 oz), Sprout Organic Baby Food Pouch - Root Vegetables, Apple with Beef (4 oz), and Sprout Organic Crinklez Popped Veggie Snacks - Cheesy Spinach (1.48 oz) for which the level of Listed Chemical does not exceed 20 parts per billion, or the concentration level permitted without a warning by the then-in-effect requirements of Proposition 65, whether based on the regulations promulgated thereunder, or relevant case law, or occurring only through heat processing necessary for food safety, whichever is the most favorable to Sprout Foods, in the Covered Products or any ingredients thereof (“Reformulation Standard”). To the extent Sprout Foods is unable to meet the Reformulation Standard, the parties will meet and confer in good faith prior to the Remediation Effective Date to

determine any necessary modifications to this Agreement in accordance with Section 9.

3.3       **Warnings:** If the Covered Products do not meet the Reformulation Standard, Sprout Foods shall provide a warning for any Covered Products that it manufactures, distributes, sells, or offers for sale in California and that are not Reformulated Products, in accordance with Title 27, California Code of Regulations, Article, Sections 25601, *et seq.*, or the then-in-effect warning requirements of Proposition 65 to the extent applicable. The warnings shall be affixed to the packaging of or directly on the Covered Products, and be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Any warning on the packaging or label must be set off from other surrounding information and enclosed in a box. Where a Covered Product's packaging or label used to provide a warning includes Consumer Information in a language other than English, the warning must also be provided in that language in addition to English. "Consumer Information" includes warnings, directions for use, ingredient lists, and nutritional information. "Consumer Information" does not include the brand name, product name, company name, location of manufacture, or product advertising. The Parties agree that warning language and methods consistent with Title 27, California Code of Regulations, Article, Sections 25601, *et seq.* or the then-in-effect requirements of Proposition 65, including the use of

the following warning language, shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Product:

**“WARNING:** Consuming this product can expose you to chemicals including Acrylamide, 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](http://www.P65Warnings.ca.gov/food).”

Nothing in this Agreement is intended to modify, nor shall be interpreted as modifying, Sprout Foods’ obligation that it complies with then-current warning requirements of Proposition 65 with regard to the Covered Products.

#### **4.0 PAYMENTS**

4.1 Sprout Foods agrees, to pay a total of sixty-two thousand dollars (\$62,000.00) (“Total Settlement Amount”) within thirty (30) days of the Effective Date to Key Sciences LLC by electric wire transfer or check, assuming that Key Sciences has provided the necessary account and tax information as described herein, which shall be apportioned as follows:

4.1.1 Civil Penalty: Sprout Foods shall pay thirty-one thousand dollars (\$31,000.00) as civil penalties pursuant to California 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 twenty-three thousand two hundred and fifty dollars (\$23,250.00), representing 75% of the total penalty; and

(b) one check to Key Sciences LLC in the amount of seven thousand

seven hundred and fifty dollars (\$7,750.00), representing 25% of the total penalty. Sprout Foods' will send payment to OEHHA at P.O. Box 4010, Sacramento, CA 95812-4010, which shall constitute compliance with this Section 4.1.1(a). 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 95812-4010 (EIN: 68-0284486) in the amount of \$23,250.00. The second 1099 shall be issued in the amount of \$7,750.00 to Key Sciences and delivered to: Kyle Wallace, Davitt, Lalley, Dey & McHale, P.C., 1411 Cortez Street #21948, Denver, CO 80221. By the Effective Date, Key Sciences shall provide Sprout Foods with Key Sciences' Employer Identification Number and any other information necessary for Sprout Foods to make payment.

4.1.2 Attorneys' Fees and Costs: Sprouts Foods shall issue a separate check to "Davitt, Lalley, Dey & McHale, P.C." for thirty-one thousand dollars (\$31,000.00) of the Total Settlement Payment and shall be considered reimbursement to Key Sciences for the reasonable legal fees of "Davitt, Lalley, Dey & McHale, P.C." (herein "DLDM"), as Key Sciences' attorneys, including the reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Sprout Foods's attention. By the Effective Date, DLDM shall provide Sprouts Foods with its Employer Identification Number and any other information necessary for Sprout Foods to make payment.

4.1.3 Delivery of Payment:

All checks to be issued in this Section 4, except for the payment to OEHHA, shall be delivered via overnight mail 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.

**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 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 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 Sprout Foods 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 30 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

Sprout Foods 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 warning, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

11.3 Within 30 days of receiving the notice described in Section 11.2, Sprout Foods shall either (1) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to Sprout Foods for full credit, including shipping costs, or (2) refute the information provided under Section

11.2. The parties shall first attempt to resolve the matter in good faith through one or more written and/or oral meet and confer conferences prior to Key Sciences taking any further legal action. 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, by email, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For Key Sciences:

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



Email: kyle.wallace@dldmlaw.com

For Sprout Foods:

Sprout Foods, Inc.  
Attn: Capp Culver  
50 Chestnut Ridge Rd.  
Suite 205  
Montvale, NJ 07645  
Email: cculver@sproutfoods.com

With a copy to:

Amanda H. Russo, Esq.  
Goodwin Procter LLP  
601 South Figueroa Street  
41st Floor  
Los Angeles, California 90017  
Email: ARusso@goodwinlaw.com

Courtesy copies of notices sent via mail will also be sent via email. 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, in whole or in part, the validity of the enforceable provisions, or portions thereof, 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 Sprout Foods 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:**

Dated: 2/2/21

KEY SCIENCES LLC

By: 

Printed Name: Lao Tizer

Title: Owner

**AGREED TO:**

Dated: 2-2-2020

SPROUT FOODS, INC.

By: 

Printed Name: Gipp Culver

Title: CEO