

SETTLEMENT AGREEMENT

1. **INTRODUCTION**

1.1 The Parties. This Settlement Agreement is entered into by and between Victoria Jamison (“Jamison”) and Wincrest Bulk Foods, Inc.. (“Wincrest”). Together, Jamison and Wincrest are collectively referred to as the “Parties.” Jamison is an individual that resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Jamison alleges that Wincrest is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Jamison alleges Wincrest has exposed individuals in the State of California to acrylamide from its sales of Blackstrap Molasses without first providing consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. Acrylamide is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 Product Description. The products covered by this Settlement Agreement are all Golden Barrel Molasses, of any size (the “Products”) that contain acrylamide and have been imported, distributed, offered for sale and/or sold in California by Wincrest.

1.4 Notice of Violation. On September 18, 2020, Jamison served Wincrest and Walmart, Inc. (“Walmart”) and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Wincrest and Walmart and such others, including public enforcers, with notice that alleged that Wincrest and Walmart are in violation of California Health & Safety Code § 25249.6 for failing to warn California consumers and customers that use of the Products will expose them to acrylamide. Wincrest is the supplier/manufacturer of the Products. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. Wincrest and Walmart deny the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Products, have been and are in compliance with


all laws. Nothing in this Settlement Agreement shall be construed as an admission by Wincrest or Walmart of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Wincrest or Walmart of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Wincrest and Walmart. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Wincrest and Walmart maintain that they have not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.


2. INJUNCTIVE RELIEF: Clear & Reasonable Warnings

2.1 Compliance with Proposition 65 Warning Regulations. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.1 and 2.2 must be provided for the Product. There shall be no obligation for such an exposure warning to be provided for Products that entered the stream of commerce prior to the Effective Date. Stream of commerce shall mean and refer to any Product that is manufactured, labeled, sold and/or distributed prior to the Effective Date. The warning shall consist of either the Warning or Alternative Warning described in §§ 2.1(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to Acrylamide which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** Wincrest may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“Alternative Warning”) as follows:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2.2 A Warning or Alternative Warning provided pursuant to § 2.1 must have the term “**WARNING:**” printed in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black

outline, except that if the label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

2.3 Compliance with Warning Regulations. Wincrest shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.1 and 2.2 of this Settlement Agreement or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Wincrest shall pay \$3,000 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Jamison. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, Wincrest shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

3.1 Civil Penalty. Wincrest shall issue two separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$2,250 (75%); and to (b) “Law Offices of George Rikos in Trust for Victoria Jamison” in the amount of \$750 (25%). The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. The Civil Penalty payments herein shall be paid by March 1, 2021.

3.2 Payment Procedures.

(a) Issuance of Payments. Payments shall be delivered as follows:

(i) All payments owed to Jamison, pursuant to § 3.1 shall be delivered to the following payment address within 10 calendar days of the execution of this agreement:

George Rikos
Law Offices of George Rikos
555 West Beech, Suite 500
San Diego, CA 92101

(ii) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHHA (Memo Line “Prop 65 Penalties”) at the following addresses, and shall be sent no later than by March 1, 2021:

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

(b) Copy of Payments to OEHHHA. Wincrest agrees to provide Jamison’s counsel with a copy of the checks payable to OEHHHA, simultaneous with its penalty payments to Jamison, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHHA.

(c) Tax Documentation. Jamison agrees to provide IRS W-9 forms for each of the following payees under this Settlement Agreement along with her executed copy of the Settlement Agreement:

(i) “Law Offices of George Rikos” at the address provided in Section 3.2(a)(i); and

(ii) “Office of Environmental Health Hazard Assessment” at 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

Wincrest shall reimburse Jamison's counsel \$20,000 for fees and costs incurred as a result of investigating and bringing this matter to Wincrest's attention, and negotiating a settlement in the public interest. The check for fees and costs shall be made payable by check to "Law Offices of George Rikos" in the amount \$20,000 for delivery to the address identified in § 3.2(a)(i), above. The reimbursement of attorney fees and costs shall be paid by March 1, 2021.

5. RELEASE OF ALL CLAIMS

5.1 Release of Wincrest and All Downstream Retailers. This Settlement Agreement is a full, final and binding resolution between Jamison, acting on her own behalf, and Wincrest, of any violation of Proposition 65 that was or could have been asserted by Jamison or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns ("Releasors") for failure to provide warnings for alleged exposures to acrylamide contained in the Product, and Releasors hereby release any such claims against Wincrest and Walmart, and each of their past and present parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors, assignees and downstream retailers (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn of alleged exposure to the chemical acrylamide from use of the Product.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Jamison, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemical acrylamide in the Products.

5.2 Wincrest's Release of Jamison. Wincrest, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims

against Jamison, her attorneys and other representatives, for any and all actions taken or statements made by Jamison and/or her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Jamison on behalf of herself only, on one hand, and Wincrest, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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.

Jamison and Wincrest each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. Compliance by Wincrest with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to acrylamide from use of the Products.

5.5. Public Benefit. It is Wincrest's understanding that the commitments it has agreed to herein, and actions to be taken by Wincrest under this Settlement Agreement, would 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 Wincrest that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Wincrest's failure to provide a warning concerning exposure to acrylamide prior to use of the 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 Products addressed in this Settlement Agreement, provided that Wincrest is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Wincrest shall provide written notice to Jamison 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, a Product is so affected.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For Wincrest Bulk Foods, Inc:

Robert J. Rock, Esq.
Tully Rinckey, PLLC
441 New Karner Road
Albany, NY 12205

For Jamison:

George Rikos
LAW OFFICES OF GEORGE RIKOS
555 West Beech, Suite 500
San Diego, CA 92101

Either party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Jamison agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

14. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Wincrest may ask Jamison, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Jamison agrees to reasonably cooperate with Wincrest and to use her best efforts, and that of her counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Wincrest will reimburse Jamison and her counsel

for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$25,000, exclusive of fees and cost that may be incurred on appeal. Wincrest will remit payment to the Law Offices of George Rikos, at the address set forth in Section 3.2(a) above. Such additional fees shall be paid by Wincrest, within ten(10) days after its receipt of any invoice from Jamison for work performed under this paragraph. Wincrest understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph.

AGREED TO:

Date: February 3, 2021

Nicole Markle

Authorized Representative of Wincrest Bulk Foods,
Inc.

AGREED TO:

Date: February 3, 2021

Victoria Jamison

Victoria Jamison