

# SETTLEMENT AGREEMENT AND RELEASE

BETWEEN

KEY SCIENCES LLC

AND

PRETZELS, LLC

## 1.0 INTRODUCTION

### **The Settling Parties:**

1.1 Key Sciences LLC (“Key Sciences”) and Pretzels, LLC (herein referred to as “Pretzels, LLC”), (Key Sciences and Pretzels, LLC 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 Pretzels, LLC 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 Pretzels, LLC is alleged to be a person in the course of doing business in California and subject to the provisions of Proposition 65.

### **Effective Date:**

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 Alleged Violations:**

1.5 Key Sciences alleges that the Covered Products exposure individuals to Acrylamide and that Pretzels, LLC did not first provide a clear and reasonable warning to those individuals prior to the exposure thus violating Proposition 65.

**The Covered Products:**

1.6 The products covered by this Settlement Agreement are 7 Select Peanut Butter Filled Pretzels (3 oz), 7 Select Mini Sticks Pretzels (3 oz), and 7 Select Mini Twists Pretzels (3 oz) (referred to throughout as the “Covered Products”). The Covered Products are limited to those sold or supplied by or on behalf of Pretzels, LLC.

**The Chemicals 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 June 5, 2020, Key Sciences served 7-Eleven, 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 numbers 2020-

01359, 2020-01358, 2020-01357 regarding 7 Select Peanut Butter Filled Pretzels (3 oz), 7 select Mini Sticks Pretzels (3 oz), and 7 Select Mini Twists Pretzels (3 oz) containing the Listed Chemical. October 14, 2020, Key Sciences served, Pretzels, 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 numbers 2020-02694, 2020-02695, 2020-02696 regarding 7 Select Peanut Butter Filled Pretzels (3oz), 7 Select Mini Twists Pretzels (3 oz), and 7 Select Mini Sticks Pretzels (3 oz) containing the Listed Chemical.

1.10 The Sixty-Day Notices (referred to as “Notices”) alleged that Pretzels, LLC 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:**

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

1.12 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 Pretzels, LLC, 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 Pretzels, LLC 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) Pretzels, LLC, 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, and any of their respective predecessors, successors, and assigns, including without limitation, 7-Eleven, 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.

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 Pretzels LLC, on behalf of itself and any persons acting on behalf of or through it, hereby releases and discharges Key Sciences, and any persons acting on behalf of or through it, from any and all Claims against Key Sciences, to the extent arising out of Key Science's Claims as set forth in this Settlement Agreement.

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 Pretzels, LLC or Key Sciences becomes aware of any impact to or change in the requirements for Pretzels, LLC's 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:** Pretzels, LLC agrees, promises, and represents that commencing on the Effective Date, and continuing thereafter, Pretzels, LLC will only manufacture, distribute, sell, or offer for sale in California (a) Covered Products that are Reformulated Products pursuant to Section 3.2, or (b) Covered Products that are labeled with a clear and reasonable warning pursuant to Section 3.3. Covered Products subject to such requirement shall include Covered Products in Pretzels, LLC's inventory as of the Effective Date.

3.2 **Reformulation Standard:** "Reformulated Products" are those Covered Products for which the average level of Listed Chemical does not exceed 250 parts per billion ("ppb") by weight, 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, whichever is the most favorable to Pretzels, LLC, in the Covered Products ("Reformulation Standard").

3.2.1. This Reformulation Limit is significantly below similar compliance limits in court-approved consent judgments, which allow average levels of

acrylamide of 280 to 299 ppb and maximum levels of acrylamide in individual units of 350 to 490 ppb. This includes consent judgments entered in the following cases: *Environmental Health Advocates, Inc. v. Ferrara Candy Co.*, Alameda County Case No. RG20079914, *Van Patten v. Kellogg, et. al.*, San Diego County Case No. 37-2020-00008328-CU-MC-CTL, *CEH v. Save Mart Supermarkets, et al.*, Alameda County Case No. RG 15-782610, *CEH v. Think Food Group, LLC, et al.*, Alameda County Court No. RG 17-881940, and *CEH v. Galleria Market, LP*, Alameda County Case No. RG18928947.

**3.2.2. Testing:** Testing for acrylamide shall be performed using either GC/MS (Gas Chromatography/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry/Mass Spectrometry), or any other testing method agreed upon by the Parties. Such testing must be performed by any laboratory accredited by the State of California, a federal agency, or a nationally-recognized accrediting organization.

**3.2.3. Averaging:** Compliance with the Reformulation Standard is determined by randomly selecting and testing at least one sample each from at least five different lots of a particular Covered Product (or the maximum number of lots available for testing if fewer than five). The mean and standard deviation shall be calculated using the sampling data. Any data points that are more than three standard deviations outside the mean must be discarded, and the mean and standard deviation recalculated using the remaining data points. The mean determined in accordance with this procedure shall be



deemed the average level for purposes of compliance with the Reformulation Standard for that product.

3.3 **Clear and Reasonable Warnings:** Pretzels, LLC shall provide clear and reasonable warnings on any Covered Products that it manufactures, distributes, sells, or offers for sale in California and that are not Reformulated Products. 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 product labeling stating that:

**"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)."

shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Product.

#### **4.0 PAYMENTS**

4.1 Pretzels, LLC agrees, to pay a total of ninety thousand dollars (\$90,000) within ten (10) business 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: Pretzels, LLC shall pay forty-five thousand dollars (\$45,000) 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 thirty-three thousand seven hundred fifty dollars (\$33,750), representing 75% of the total penalty; and

(b) one check to Key Sciences LLC in the amount of eleven thousand two hundred fifty dollars (\$11,250), representing 25% of the total penalty. Pretzels, LLC will send payment to OEHHA to:

Office of Environmental Health Hazard Assessment  
Attn: Mike Gyurics  
1001 I Street, Mail Stop 12-B  
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 95184 (EIN: 68-0284486) in the amount of \$33,750. The second 1099 shall be issued in the amount of \$11,250 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 Pretzels, LLC with Key Sciences' Employer Identification Number and any other information necessary for Pretzels, LLC to make payment.

4.1.2 Attorneys' Fees and Costs: Pretzels, LLC shall pay forty-five thousand dollars (\$45,000) 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 Pretzels, LLC's attention. By the Effective Date, DLDM shall provide Pretzels, LLC with its Employer Identification Number and any other information necessary for Pretzels, LLC to make payment.

4.1.3 Delivery of Payment:

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

Kyle Wallace  
Davitt, Lalley, Dey & McHale, P.C.  
1971 E Beltline Ave., Suite 106  
Grand Rapids, MI 48925

**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 Pretzels, LLC 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 Pretzels, LLC 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, Pretzels, LLC 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 Pretzels, LLC for full credit, including shipping costs, or (2) refute the information provided in the notice.

11.4 The parties will first attempt to resolve the matter in good faith through one or more written, oral, or both, 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, 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.  
1971 E Beltline Ave., Suite 106  
Grand Rapids, MI 48925

For Pretzels, LLC:

Steven E. Soule, Esq.  
Kirkland & Ellis LLP  
555 South Flower Street  
Los Angeles, CA 90071

and

Greg Pearson, CEO  
Pretzels, Inc.  
123 Harvest Road  
Bluffton, Indiana 46714

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.

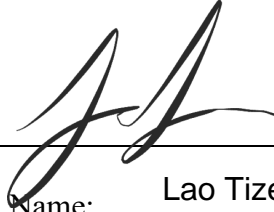
**14.0 GOVERNING LAW**

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 Pretzels, LLC 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: 4/29/2021

By:  \_\_\_\_\_

Printed Name: Lao Tizer

Title: Owner

**AGREED TO:**

PRETZELS, LLC

Dated: 4/28/2021

By:  \_\_\_\_\_

Printed Name: Greg Pearson

Title: CEO