

SETTLEMENT AGREEMENT AND RELEASE

BETWEEN

KEY SCIENCES LLC

AND

LEISURE FOODS LIMITED

1.0 INTRODUCTION

The Settling Parties:

1.1 Key Sciences LLC (“Key Sciences”) and Leisure Foods Limited (herein referred to as “Leisure Foods”), (Key Sciences and Leisure 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 to settle Key Sciences’ allegations that Leisure Foods 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 Leisure Foods 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:

Page 1 of 13

Settlement Agreement and Release Between
Key Sciences LLC and Leisure Foods Limited

1.5 Key Sciences alleges that the Covered Products exposure individuals to Acrylamide, and that Leisure Foods 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 Baby Mum-Mum Organic Rice Rusks - Sweet Potato & Carrot (1.76 oz) and Baby Mum-Mum Organic Rice Rusks – Blueberry & Goji (1.76 oz) (together referred to throughout as the “Covered Products”). The Covered Products are limited to those sold or supplied by Leisure Foods only.

The Chemicals at Issue:

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

1.8 On or about July 7, 2021, Key Sciences served, Leisure 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 2021-01626 regarding the Covered Products containing the Listed Chemical.

1.9 The Sixty-Day Notice (referred to as “Notice”) alleged that Leisure 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:

1.10 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”).

1.11 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 Leisure Foods, 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



Leisure 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) Leisure Foods, 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 ("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 Leisure Foods.

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 Leisure Foods 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 INJUNCTIVE RELIEF

3.1 **Remedial Duties:** Leisure Foods agrees, promises, and represents that commencing on the November 1, 2021, and continuing thereafter, Leisure Foods 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 Leisure Foods's inventory after November 1, 2021. Covered Products subject to such requirement shall no include Covered Products that have left



Leisure Foods' possession, custody, and control and are in the chain of distribution, as of the Effective Date.

3.2 **Reformulation Standard:** "Reformulated Products" are those Covered Products for which the level of Listed Chemical does not exceed 100 parts per billion ("Reformulation Standard").

3.3 **Clear and Reasonable Warnings:** Leisure Foods 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.”

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

4.0 PAYMENTS

4.1 Leisure Foods agrees, to pay a total of thirty-two thousand dollars (\$32,000.00) within twenty (20) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Civil Penalty: Leisure Foods shall pay sixteen thousand dollars (\$16,000.00) 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 twelve thousand dollars (\$12,000.00), representing 75% of the total penalty; and

(b) one check to Key Sciences LLC in the amount of four thousand dollars (\$4,000.00), representing 25% of the total penalty.

4.1.2 Attorneys' Fees and Costs: Leisure Foods shall pay sixteen thousand dollars (\$16,000.00) 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 Leisure Foods’s attention. By the Effective Date, DLDM shall provide Leisure Foods 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, Leisure Foods 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 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 Leisure 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 Leisure 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, Leisure 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 Leisure Foods for full credit, including shipping costs, or (2) refute the information provided under Section 11.2. 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.
1411 Cortez Street #21948
Denver, CO 80221

For Leisure Foods :

Ian Stewart, Esq.
Wilson Elser Moskowitz Edelman & Dicker LLP
555 South Flower Street
Suite 2900
Los Angeles, CA 90071

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 Leisure 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:

KEY SCIENCES LLC


Dated: 9/10/21

By: 
Printed Name: Lao Tizer
Title: Owner

AGREED TO:

LEISURE FOODS LIMITED

Dated: SEPT. 10, 2021.

By: 
Printed Name: PHILIP MEI.
Title: DIRECTOR.