

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Agreement**”) between Public Health and Safety Advocates, LLC (“**PHSA**”), on the one hand, and Q’s American Best Trading Inc. (“**Q’S BEST**”), on the other hand, is effective on the date on which it is fully executed (“**Effective Date**”). PHSA and Q’S BEST are referred to individually as a “**Party**” and collectively as the “**Parties.**” The Parties agree as follows:

RECITALS

A. The parties are aware that the Attorney General’s Office is currently prosecuting an action in the Alameda County Superior Court, bearing Case No. RG20085046, with respect to, inter alia, Lead and Cadmium in fresh and frozen seafood (the “**AG Action**”). The Parties, and each of them, recognize that they have the option to enter into a tolling agreement and wait for a resolution of the AG Action. The Parties, however, have agreed to enter into this private out-of-court Settlement for the purpose avoiding costly and prolonged litigation.

B. On July 19, 2021, PHSA served on Q’S BEST one (1) Notice of Violations of California Health & Safety Code, section 25249.5 *et seq.* (also known as “**Proposition 65**”), specifically Notice of Violation No.: 2021-01765 (the “**Notices**”), asserting that Goby Fish (“**Covered Product**”), including the exemplar product – **UPC: 8-93850901573-2**, offered for sale by Q’S BEST in California exposed California consumers to Lead without a clear and reasonable warning.

C. Q’S BEST disputes that the Covered Product contains Lead, and asserts that even if Lead were present in the Covered Product, that when accounting for consumption and frequency amounts, the resulting exposure was less than 0.5 microgram per day for Lead (i.e., below the “safe harbor” levels).

E. Plaintiff represents and warrants that, in accordance with its obligations under the relevant regulations, as well as the Attorney General’s authority to review all settlements, PHSA will submit this Agreement to the Attorney General’s office within Five (5) days of full execution of this agreement by the parties. Should the Attorney General’s Office object to this Settlement, the parties agree to supplement this Settlement Agreement in good faith.

AGREEMENT

1. **No Admission.** Nothing in this Agreement shall be construed as an admission by Q’S BEST of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Q’S BEST 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 Q’S BEST 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. This Agreement shall be inadmissible for all purposes, except in an action or motion to enforce its terms.

2. **Entire Agreement.** This Agreement is intended by the parties as the final expression of their rights, obligations and liabilities to each other described herein and is intended as a complete statement of their agreement concerning the subject matter hereof. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and

discussions. Each of the Parties hereto covenants that it has not entered into this Agreement as a result of any representation, agreement, inducement or coercion, except to the extent specifically provided herein. Each Party hereto further covenants that the consideration recited herein is the only consideration for entering into this Agreement, and that no promises or representations of other or further consideration have been made by any person. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by Parties.


3. **Injunctive Relief; Reformulation; Testing; and Warnings.** In consideration of the following covenants of Q’S BEST, and the other conditions contained in this Agreement, PHSA releases Q’S BEST as set forth in Section 6 below. For the purposes of this Settlement agreement, the term “Effective Date” shall mean January 3rd, 2022.

3.1 Beginning on the Effective Date, Q’S BEST 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 per day (“**Maximum Exposure Level**”), as calculated by the method set forth in Section 3.3, 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 Q’S BEST knows will sell the covered Product in California.

3.2 **Clear and Reasonable Warnings.** For Covered Product(s) that require a Proposition 65 warning under this Settlement Agreement, Q’S BEST shall utilize one of the following warnings statements (“**Warnings**”):

3.2.1 **Option 1:**

 **WARNING:** Consuming this product can expose you to chemicals including Lead, 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.

3.2.2 **Option 2:**

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov/food.

3.2.3 **Option 3:** Any warning authorized by any Proposition 65 law or regulation effective on or after the Effective Date.

3.2.4. **Size:** With respect to the short-form warning under Section 3.2.2 above, the warning must appear 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.

3.3 Calculation of Exposure Level.

3.3.1 The Exposure Level is one for which the average daily exposure level (“**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.

3.3.2 For the Covered Product that causes exposures in excess of 0.5 micrograms of Lead per day, Q’S BEST shall provide the warnings set forth in Section 3.2, the average concentration of Lead detection results of five (5) samples of the relevant product, randomly selected by Q’S BEST, will be controlling.

3.4 Testing and Quality Control Methodology.

3.4.1 Q’S BEST shall arrange, for each year that it is selling Covered Product in California, and at least once per year, commencing six months from the Effective Date (the “**First Testing Date**”), for 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 (“**Exposure Level Testing**”) to confirm whether the Exposure Level from the stated serving size is more or less than 0.5 micrograms of Lead per day (the “**Exposure Level Test Result**”). 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 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.

3.4.2.1 Any Exposure Level Test Result shall be conclusively deemed the Exposure Level for the Covered Product until such time as another Exposure Level Testing is conducted.

3.4.2.2 In the event Exposure Level Testing shows a Maximum Exposure Level over 0.5 microgram Lead per day, Q’S BEST shall, within forty-five (45) days after receipt of such test results (“**Warning Date**”), affix Warnings to its packaging for all Covered Product placed into the stream of commerce in California. Q’S BEST shall not be required to retroactively affix Warning to any product placed into the stream of commerce in California prior to the Warning Date.

3.4.2.3 It is agreed that Covered Product that is placed in the stream of commerce prior to the First Testing Date bears an irrebuttable presumption of having an Exposure Level of less than 0.5 microgram Lead per day, and does not require a warning.

3.4.2 The testing requirements of this Section 3.4.1 do not apply to any of the Covered Products for which Q’S BEST has provided a warning as specified in Section 3.2. Further, Q’S BEST is only required to conducting the testing detailed above if it is selling Covered Products in California without the warning specified in Section 3.2.

3.4.2 The Parties agree that Covered Products with a Maximum Exposure Level of less than 0.5 microgram of Lead per day, as calculated above, may be offered for sale in California without the warning stated in Section 3.2.

3.4.3 All testing pursuant to this Agreement shall be performed by an independent laboratory certified by the State of California or accredited by the State of California, a federal agency, the National Environmental Laboratory Accreditation Program or similar nationally recognized accrediting organization to perform the particular method of detection and analysis set forth above.

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 Q'S BEST's ability to conduct or require that others conduct additional testing of the Covered Product.

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, Q'S BEST shall pay the total Settlement amount of Twenty-Eight Thousand Dollars (\$28,000) (the "**Settlement Amount**") as set forth below.

4.1 **Civil Penalties Pursuant To Health & Safety Code § 25249.7(B):** Two Thousand Dollars (\$2,000) of the Settlement Amount shall be considered a "civil penalty" pursuant to California Health and Safety Code. Q'S BEST shall issue two separate checks within ten (10) days of the Effective Date for a total amount of Two Thousand Dollars (\$2,000) as follows, and all payments shall be delivered to the addresses listed below.

4.1.1. One check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of One Thousand Five Hundred Dollar (\$1,500), representing 75% of the total civil penalty; and

4.1.2 One check made payable to "Public Health and Safety Advocates, LLC." in the amount of Five Hundred Dollars (\$500), representing 25% of the total civil penalty.

4.2 **Attorneys' Fees and Costs:** Twenty-Six Thousand Dollars (\$26,000) of the total Settlement Amount shall be paid to Law Offices of Danialpour & Associates within ten (10) days of the Effective Date, 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 Q'S BEST'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 NOV # 2021-01765") 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 STE 400
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 STE 400
Beverly Hills, CA 90211

5.4 **Proof of Payment** A copy of each check payable to OEHHA, shall be mailed to Law Offices of Danialpour & Associates, 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: (a) Q'S BEST, and each of its owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, affiliates (including those companies that are under common ownership and/or common control), successors, assigns, insurers, and legal representatives; (b) each entity to whom Q'S BEST 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; and (c) upstream entities from whom Q'S BEST purchases goods and/or services incident to the acquisition, preparation and distribution of Covered Product (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 Proposition 65, up through and including the Effective Date based on alleged failure to provide warnings for alleged exposure to Lead and Cadmium, or for causing alleged exposure to Lead and Cadmium, from the Covered Product.

6.2 PHSA and Q'S BEST 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 Q'S BEST, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Effective 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 or Cadmium in the Covered Product.

6.5 In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 5 above, PHSA, on behalf of itself, its 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 any chemical known to the State of California to cause cancer or reproductive harm, including but not limited to the Lead and Cadmium, in the Covered Products, or the failure to warn regarding the same.

7. Resolution of Dispute

7.1 If PHSA alleges that Q'S BEST has failed to comply with this Agreement, prior to filing an action or motion relating to enforcement, PHSA shall first provide Q'S BEST 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 Q'S BEST marks or labels a Covered Product with such a statement, Q'S BEST 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. **Continuing Obligations.** Nothing herein shall be construed as diminishing Q'S BEST's continuing obligations to comply with Propositions 65.

9. **Notice.** All notices required by this Agreement to be given to either Party shall be in writing and sent to the following agents listed below via first-class mail, with courtesy copies via electronic mail.

For Q'S BEST:

William A. Sulentor, Esq.
Carroll, Kelly, Trotter & Franzen
111 W. Ocean Blvd, 14th Floor
P.O. Box 22636
Long Beach, CA 90801
wasulentor@cktfllaw.com

For PHSA:

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

10. **Reporting.** PHSA shall provide this Settlement Agreement to the Attorney General's office within five (5) days of the Parties' execution of this Settlement Agreement.

11. **Representations and Warranties**

11.1 The Parties recognize that their representations and warranties given herein, including and not limited to those in the Recitals hereinabove, which are incorporated herein by reference, are a material part of the consideration and a material inducement for each of the other Parties to enter into this Agreement.

11.2 PHSA represents and warrants that with respect to the releases given hereto, no portion of any claim, right, demand, action or cause of action released hereunder, and no portion of any recovery or settlement to which PHSA might be entitled based upon any such claim, right, demand, action or cause of action, has been assigned or transferred to any other person, firm or corporation, in any manner, including by way of subrogation, operation of law, attorneys' lien, or otherwise.

11.3 The Parties represent and warrant to each other that each has the right, power and authority to enter into this Agreement. Further, 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.

11.4 Each of the Parties represents and warrants that it has been, or has had the opportunity to be, represented by legal counsel of its choosing in connection with this Agreement and the settlement to which it relates, and executes it knowingly and voluntarily after receiving such legal advice. Further, that in executing this Agreement, the Parties represent and acknowledge that they have been fully advised by their legal counsel as to their rights and consequences of signing this Agreement. The Parties further represent and acknowledge that they fully understand and appreciate the meaning of each of the terms of this Agreement and that they understand that they may be waiving legal rights or claims by signing this Agreement and that they are voluntarily entering into this Agreement with a full and complete understanding of its terms and legal effect and with the intent to be legally bound by this Agreement.

11.5 Each of the Parties represents and warrants that, in executing this Agreement, it has relied solely on the statements expressly set forth herein, and has placed no reliance whatsoever on any statement, representation, or promise of any other Party, or any other person or entity, not expressly set forth herein, or upon the failure of any other Party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The discovery by any Party, subsequent to the execution of this Agreement, of any facts not heretofore known to that Party, or that the facts or law upon which any Party relied in executing this Agreement was not as that Party believed it to be (other than as expressly set forth herein), shall not constitute grounds for declaring this Agreement void, avoidable or otherwise unenforceable. This paragraph is intended by the Parties to preclude any claim that any Party was fraudulently induced to enter this Agreement, or was induced to enter this Agreement by a mistake of fact or law.

11.6 Each of the Parties represents and warrants that it has made such investigation as it deems necessary or desirable of all matters contained in or relating to this Agreement.

12. **Binding Effect.** 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. **Rules of Interpretation.** 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. **Severability.** If any provision of this Agreement shall be found to be unlawful, void or unenforceable in whole or in part for any reason, such provision or such part thereof shall be deemed separate from and shall in no way affect the validity of the remainder of this Agreement. If such provision or part thereof shall be deemed unlawful, void, or unenforceable due to its scope or breadth, such provision or part thereof shall be deemed valid to the extent of the scope or breadth permitted by law. However, if the General Releases contained above are found by a court of competent jurisdiction to be invalid or unenforceable, the Parties agree, promptly upon request, to execute a new release that is valid and enforceable to the maximum extent allowable by law. In the absence of a valid, enforceable release, this Agreement shall be null and void.

15. **Governing Law.** 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. Any legal action to enforce this Agreement shall be brought in a Court of competent jurisdiction in the county of Los Angeles of the State of California.

16. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, provided that each Party receives a signed counterpart of all the other Parties. Facsimile or otherwise electronically transmitted signatures (such as via e-mail in pdf format), or electronic signatures (such as via DocuSign®) may be used with the same force and effect as original signatures.

17. **Captions.** The captions of paragraphs contained in this Agreement are for reference only and are not to be construed in any way as a part of this Agreement.

AUTHORIZATION

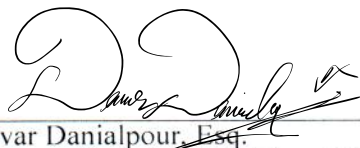
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood, and agree to all the terms and conditions of this Settlement Agreement.

Dated: January 18, 2022, 2021



William Sulentor, Esq.
Attorney for Q'S American Best Trading Inc.

Dated: 01/19/2022, ~~2021~~



Davar Danialpour, Esq.
Attorney for Public Health and Safety
Advocates, LLC