

SETTLEMENT AGREEMENT AND RELEASE

The Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc. (“HLF”) and Tony Caputo’s Market & Deli (“Caputo’s”) enter into this Settlement Agreement (this “Agreement”). HLF and Caputo’s are referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1. Introduction

1.1 The “Matter” arises out of the Notice of Violations of California Health & Safety Code §25249.5, *et seq.* (also known as “Proposition 65”) that HLF served to Caputo’s, on August 11, 2021 (AG2021-01969) (the “Notice”) (Caputo’s referred to as the “Noticed Company”). In the Notice, HLF alleges that the following products require warnings for lead and lead compounds (collectively “lead”) under Proposition 65: (1) Conservas de Cambados mussels from Galicia, (2) Espinaler Mussels in marinade, (3) Espinaler Mussels in pickled sauce, and (4) Ramon Pena Mussels in Pickled Sauce produced, purchased, distributed, or sold by Caputo’s (collectively the “Covered Products”).

1.2 The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Notice and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, assumption, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law, or violation of law including but not limited to Proposition 65. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fact, fault, wrongdoing or liability. Caputo’s denies the claims in the Notice and denies any liability under Proposition 65. No Party will offer this Agreement as evidence of any fact in any lawsuit between the Parties except in an action to enforce the terms of this Agreement.

1.3. “Effective Date” is the date on which this Agreement is fully executed by the Parties.

1.4. “Compliance Date” refers to the date that is 30 days after the Effective Date.

1.5. “Distributor” is and includes any entity or individual that sells Covered Products.

1.6 “Distribute into the State of California” means to directly or indirectly sell Covered Product in California; ship Covered Product for sale in California, including to sell Covered Product to a Distributor that Company knows, or for which it is Reasonably Foreseeable that such distributor will sell Covered Product in California.

1.7. “Reformulated Product” is an identical Product in substance and labeling to Covered Product(s), but with a product’s component(s) harvested in different location(s) or grown/manufactured with different (from Covered Product(s)) methods that have resulted in reduced or eliminated presence of the violative chemical- lead and lead compounds, below the level specified in Section 2.2.1 of this Agreement.

1.8. The term “Reasonably Foreseeable” means that a reasonable inquiry would have revealed to the Company that a Distributor could sell Covered Products to California. Some, but not all examples of such circumstances include: where the Distributor sells products online/over the internet, telephone, telephone applications (apps), or mail-order; maintains or intends to maintain storage, warehouse(s), brick-and-mortar retail establishment(s) located in California.

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2. Injunctive Relief

2.1 Any Covered Products that Caputo's Distributes into the State of California after the Compliance Date, shall either (1) meet the requirements under Section 2.2 or (2) comply with the warning requirements of Section 2.3.

2.2. Covered Products; Testing

2.2.1 Beginning as of the Compliance Date, Caputo's shall not manufacture for sale in the State of California, Distribute into the State of California, or sell in the State of California, any Covered Products that exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day, unless it meets the warning requirements under Section 2.3.

2.2.2 Daily Lead Exposure Level: For purposes of this Agreement, the "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of 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 recommended daily servings appearing on the label or in marketing materials of Caputo's), which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

2.2.3 For purposes of determining if a warning is required pursuant to Section 2.3, Caputo's shall randomly select and test three (3) samples of the Covered Products from different lot numbers by Caputo's (or, if fewer than 3 lots are available for testing, from as many lots as are available). Caputo's must consider the highest level in determining if the product can be sold without a warning.

2.2.4 All testing pursuant to this Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, limit of quantification, accuracy, and precision and meets the following criteria: 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 subsequently agreed upon in writing by the Parties.

2.2.5 All testing pursuant to this Agreement shall be performed by an independent third party laboratory accredited to perform lead testing using the methodology in Section 2.2.4. Testing shall be performed prior to Caputo's first distribution into California or sale in California of any Covered Products produced or purchased by Caputo's after the Compliance Date, and testing shall continue at least annually for three years thereafter as long as Caputo is in possession of test results compliant with this agreement for three years in a row. If the latter is not true, then testing shall continue at least once per year thereafter for as long as Caputo's sells the Covered Products.

2.2.6 The requirements of Section 2.2 (including but not limited to the testing requirements in Section 2.2.5) do not apply to any of the Covered Products for which Caputo's has provided a warning as specified in Section 2.3.

2.2.7 For any Covered Products that Caputo's has currently in its possession and control as of the Effective Date that do not meet the requirements of Section 2.2, Caputo's shall not Distribute into the State of California these Covered Products, unless they contain a warning pursuant to Section 2.3. The injunctive relief set forth in Section 2 shall not apply to any Covered Products that are in the stream of commerce prior to the Effective Date as long as Caputo provides the written notice attached hereto as Exhibit A to each Distributor. Confirmation of receipt of the notice must be received electronically or in writing from the entity or an authorized agent for the entity to which Company sent the notice.

2.3 Warnings

For Covered Products that require a Proposition 65 warning under this Agreement, the warning must follow these requirements:

2.3.1. Warning Statement

A) Option 1, Long-Form Warning:

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.

B) Option 2, Short-Form Warning:

The font size of this short-form warning must be a minimum of 6 points, and it cannot be smaller than the largest size font used for other consumer information (as defined in 27 Cal. Code Regs. § 25600.1(c) included on the label:

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

2.3.2 Warning Method of Transmission

A) The warning statement shall be prominently displayed for the Covered Products (1) on the label of the Covered Product, or (2) on a placard, shelf tag, or sign, provided that the statement is 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 prior to sale.

B) If the warning statement is displayed on the Covered Product's label, it must be set off from other surrounding information and enclosed in a text box.

C) If the warning statement is displayed on a placard, shelf tag, or sign where the Covered Products is offered for sale in a physical store, the warning placard or sign must enable an ordinary individual to determine which Covered Products the warning applies to.

D) Where the Covered Products' sign, label, or shelf tag used to provide a warning includes consumer information about a product in a language other than English, the warning must also be provided in that language in addition to English.

E) For any Covered Products sold by Caputo's over the internet, the warning shall be prominently displayed as follows: (a) on the primary display page for the Covered Product; (b) as a clearly marked hyperlink using the word "WARNING" in all capital and bold letters on the Covered Product's primary display page; (c) on the checkout page or any other page in the checkout process when a California delivery address is indicated for any purchase of any Covered Products and with the warning clearly associated with the Covered Products to indicate that the product is subject to the warning; or (d) by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. For Caputo's internet/online sales, in addition to the warning on the internet product display page described above, Caputo's must also ensure a warning under Section 2.3.1 appears on the label of the Covered Product.

3. Settlement Payments

3.1 In satisfaction of all claims for civil penalties and attorneys' fees and costs related to the Notice, Caputo's shall pay a total settlement amount of **\$70,000.00** (the "Settlement Amount") within 10 days of the Effective Date by wire transfer to HLF's counsel escrow account, for which HLF's counsel will give Caputo's the necessary account information.

HLF shall be solely responsible for allocating the Settlement Amount pursuant to Section 3. Upon request, HLF or its legal counsel shall supply Caputo's with a completed W-9 form. The Settlement Amount shall be allocated as follows:

3.2. **\$14,000.00** shall be considered a "civil penalty", of which HLF shall remit **\$10,500.00**, or seventy-five percent (75%), to the "Safe Drinking Water and Toxic Enforcement Fund" managed by the State of California's Office of Environmental Health Hazard Assessment. HLF shall retain **\$3,500.00** as its twenty-five percent (25%) share.

3.3 **\$56,000.00** shall be considered reimbursement of HLF's attorneys' fees and costs related to the Matter.

3.4 Except as expressly set forth in this Section 3 and 13 below, the Parties shall bear their own costs, expenses, and attorneys' fees related to this Matter.

4. Binding Effect; Claims Covered and Released

4.1 This Agreement is a full, final, and binding resolution between HLF, on behalf of itself, and its respective principals, officers, directors, employees, parents, subsidiaries, executors, administrators, successors, and assigns, on the one hand, and Caputo's, on behalf of itself, and its respective owners, principals, shareholders, officers, directors, employees, parent companies, subsidiaries, heirs, executors, divisions, administrators, predecessors, successors and assigns, on the other, of any alleged violation of Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings for exposure to lead from the import, producing, manufacturing, marketing, distribution, sale or offering for sale, handling, use or consumption of the Covered Products, and fully resolves all claims that have been asserted or could have been asserted based on the Notice, for failure to provide Proposition 65 warnings from one year prior to the Notice up through and including the Effective Date. HLF hereby releases, waives all claims against, and discharges Caputo's and their respective owners, principals, shareholders, officers, directors, employees, parent companies, subsidiaries, franchisees, licensees, customers, distributors, wholesalers, retailers, downstream entities in the distribution chain for the Covered Products and the predecessors, successors and assigns of any of them (collectively, "Released Parties"), for any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses related to any alleged violation of Proposition 65 arising from any failure to provide Proposition 65 warnings for lead for the Covered Products from one year prior to the Notice up through and including the Effective Date.

4.2 HLF, on its own behalf only, and Caputo's, on its own behalf only, 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.

4.3 It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notice, and relating to the Covered Products, will develop or be discovered. HLF on behalf of itself only, and Caputo's on behalf of itself only, 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. HLF and Caputo's acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 and any federal or state law of similar effect as to any such 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.

HLF on behalf of itself only, and Caputo's on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

4.4 The Parties agree that their compliance with the terms of this Agreement shall constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to lead in the Covered Products produced, purchased, distributed, or sold by Caputo's after the Compliance Date. This release shall not apply to any Distributor who fails to provide an internet warning as required pursuant to paragraph 2.2.7.

5. Resolution of Disputes

5.1 If HLF alleges that Caputo's has failed to comply with this Agreement, prior to filing an action or notice of violation as to any of the Released Parties, HLF shall first provide Caputo's thirty (30) days' advance written notice of the alleged violation(s). HLF shall provide all test results, lot numbers, photographs of the Covered Products' packaging, and purchase receipts for the Covered Products supporting the alleged violation. The Parties shall meet and confer during such thirty (30) day period in an effort to resolve the matter informally without the need for litigation. HLF shall not file any action or notice of violation if Caputo's ceases the alleged violations by bringing the Covered Products at issue into compliance with Section 2 above within the 30-day notice period.

6. Entire Agreement

6.1 This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement.

7. Modification

7.1 Except as provided in this Section 7, this Agreement may be modified only by a written agreement of the Parties.

7.2 If, in the future, there is a Proposition 65 regulation that specifies a naturally occurring allowance for lead in the Covered Products, or there is any other change in the law that Caputo's believes warrants a modification to this Agreement, Caputo's may notify HLF of its intent to modify the Agreement and the Parties shall meet and confer to discuss any appropriate modification within 30 days of such notice. HLF shall not unreasonably withhold approval of changes consistent with new law or regulation.

7.3 If a dispute should arise concerning a modification of this Agreement, then the Parties shall meet and confer in good faith to attempt to resolve the dispute, but if it cannot be resolved in that manner, either Party may present the dispute to court for resolution.

8. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, and assigns.

9. 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.

10. If any provision, term, or section of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full force and effect and remain binding on the Parties.

11. This Agreement shall be deemed to have been entered into in 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.

12. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

13. Any legal action to enforce this Agreement or related to this Matter may be brought in any California Superior Court. In any legal action brought to enforce this Agreement, the prevailing party shall be entitled to recovery of its reasonable attorney's fees and costs.

14. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail (.pdf), copy of this Agreement, or any other counterpart, shall be deemed to be an original.

15. Each of the individuals 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.

16. All notices required to be given to either Party under this Agreement shall be in writing and sent to the following recipients by (a) first-class mail or (b) overnight delivery, and via email. Each Party can modify its contact information by providing notice to the other Party.

For HLF:

Aida Poulsen
Poulsen Law P.C.
282 11th Avenue, Suite 2612
New York, New York, 10001
Tel: +1 (646) 776 5999
Tel: + 1(650) 296 1014 Direct
Email: ap@poulsenlaw.org

For Caputo's:

Deepi Miller
Greenberg Traurig, LLP
1201 K. Street, Suite 1100
Sacramento, CA 95814
Tel: +1 916.868.0608
Email: millerde@gtlaw.com

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AGREED TO BY:

DATED: _____

THE CHEMICAL TOXIN WORKING GROUP INC. DBA
HEALTHY LIVING FOUNDATION INC.

By: _____

Name: David Steinman

Title: Chief Officer

DATED: _____

TONY CAPUTO'S MARKET & DELI

By:  _____

Name: Anthony Matthew Caputo

Title: CEO

AGREED TO BY:

DATED: 11.9.22

THE CHEMICAL TOXIN WORKING GROUP INC. DBA
HEALTHY LIVING FOUNDATION INC.

By: 

Name: David Steinman

Title: Chief Officer

DATED: _____

TONY CAPUTO'S MARKET & DELI

By: _____

Name: _____

Title: _____

EXHIBIT A
Notice to Distributors, Customers, Retailers

This is to notify you that TONY CAPUTO'S MARKET & DELI ("Caputo's") has entered into a settlement with The Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc. regarding alleged violations of California Health and Safety Code §§ 25246.5 et seq. ("Proposition 65") regarding:

- (1) **Conservas de Cambados mussels from Galicia,**
- (2) **Espinaler Mussels in marinade,**
- (3) **Espinaler Mussels in pickled sauce, and**
- (4) **Ramon Pena Mussels in Pickled Sauce produced, purchased, distributed, or sold by Caputo's (collectively the "Covered Products").**

Under the terms of this settlement, Caputo's is providing the following notice to you regarding the Covered Products.

For any Covered Product sold by you or your downstream distributors, customers, retailers (collectively "Purchaser(s)") in or to California, you or the Purchaser **must provide a warning to a consumer** which meets the "Content Requirements" and "Method of Transmission" below:

Content Requirements:

1. Warning Statement

A) Option 1, Long-Form Warning:

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.

B) Option 2, Short-Form Warning:

The font size of this short-form warning must be a minimum of 6 points, and it cannot be smaller than the largest size font used for other consumer information (as defined in 27 Cal. Code Regs. § 25600.1(c) included on the label:

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

2. Warning Method of Transmission

A) The warning statement shall be prominently displayed for the Covered Products (1) on the label of the Covered Product, or (2) on a placard, shelf tag, or sign, provided that the statement is 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 prior to sale.

B) If the warning statement is displayed on the Covered Product's label, it must be set off from other surrounding information and enclosed in a text box.

C) If the warning statement is displayed on a placard, shelf tag, or sign where the Covered Products is offered for sale in a physical store, the warning placard or sign must enable an ordinary individual to determine which

Covered Products the warning applies to.

D) Where the Covered Products' sign, label, or shelf tag used to provide a warning includes consumer information about a product in a language other than English, the warning must also be provided in that language in addition to English.

E) For any Covered Products sold by you over the internet, the warning shall be prominently displayed as follows: (a) on the primary display page for the Covered Product; (b) as a clearly marked hyperlink using the word "WARNING" in all capital and bold letters on the Covered Product's primary display page; (c) on the checkout page or any other page in the checkout process when a California delivery address is indicated for any purchase of any Covered Products and with the warning clearly associated with the Covered Products to indicate that the product is subject to the warning; or (d) by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. For any internet/online sales, in addition to the warning on the internet product display page described above, you must also ensure a warning under Section 1 above appears on the label of the Covered Product.

Confirmation of receipt:

You must confirm receipt of this notice within 30 days of receiving it by filling in the requested information below and returning a signed copy to [insert email address] to acknowledge that you have received this notice and that the warnings for internet sales will be posted in accordance with these specifications.

Acknowledged by:

_____ (Signature)

_____ (Print Name)

_____ (Company)

_____ (Date)