

SETTLEMENT AGREEMENT AND RELEASE

The Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc. (“HLF”) and Island Creek Oysters, Inc. (“Island Creek”) enter into this Settlement Agreement (this “Agreement”). HLF and Island Creek 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 Island Creek on August 12, 2021 (AG2021-01978) (the “Notice”). (Island Creek 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 and (2) Conservas de Cambados small scallops in Galician Sauce in Marinade, produced, purchased, distributed, or sold by Island Creek (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. Island Creek 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 As used in this Settlement, the term "Distributing into the State of California" or “Distributes into the State of California” shall mean to sell in the State of California, ship Covered Products to California or for sale in California, sell a Covered Products to a Distributor that will sell the Covered Products in California.

2. Island Creek’s Duties

2.1 Any Covered Products that Island Creek 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, Island Creek 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), 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, the average lead concentration of three (3) samples of the Covered Products randomly selected from different lot numbers by Island Creek (or from as many lots as are available for testing if there are fewer than three (3)) will be determined. HLF reserves the right to test reformulated products and, if the results are violative of Section 2.2.1, assert any new claims that may arise, subject to the provisions of Section 5, for any Covered Products that are not properly labeled under Proposition 65.

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 Island Creek's first distribution into California or sale in California of any Covered Products produced or purchased by Island Creek after the Compliance Date, and testing shall continue at least once per year thereafter for as long as Island Creek 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 Island Creek has provided a warning as specified in Section 2.3.

2.2.7 For any Covered Products that Island Creek has currently in its possession and control as of the Effective Date that do not meet the requirements of Section 2.2, Island Creek shall not Distribute into the State of California these Covered Products, unless they contain a warning pursuant to Section 2.3.

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 Island Creek 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 Island Creek's internet/online sales, in addition to the warning on the internet product display page described above, Island Creek 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, Island Creek shall pay a total settlement amount of **\$60,000.00** (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 Island Creek 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 Island Creek with a completed W-9 form. The Settlement Amount shall be allocated as follows:

3.2. **\$12,000.00** shall be considered a "civil penalty", of which HLF shall remit **\$9,000.00**, 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 \$3,000.00 as its twenty-five percent (25%) share

3.3 **\$48,000.00** 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 Island Creek, 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. HLF hereby releases, waives all claims against, and discharges Island Creek 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.

4.2 HLF, on its own behalf only, and Island Creek, 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 Island Creek 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 Island Creek 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 Island Creek 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 Island Creek after the Compliance Date.

5. Resolution of Disputes

5.1 If HLF alleges that Island Creek has failed to comply with this Agreement, prior to filing an action or notice of violation as to any Releasee, HLF shall first provide Island Creek thirty (30) days' advance written notice of the alleged violation(s). HLF shall provide all testing results, lot numbers, photographs of the Covered Products packaging, and purchase receipts for the Covered Products at issue. 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 Island Creek 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.

7.3 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 Island Creek believes warrants a modification to this Agreement, Island Creek may notify HLF of its intent to modify the Agreement and the Parties shall meet and confer to discuss any appropriate modification. HLF shall not unreasonably withhold approval of changes consistent with new law or regulation.

7.4 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 Island Creek:

Jon Welner
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
44 Montgomery Street, 36th Floor,
San Francisco, CA 94104
Tel: +1.415.432.6093
Email: JWelner@mintz.com

AGREED TO BY:

DATED: 9.14.22

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

By: 

Name: David Steinman

Title: Chief Officer

DATED: 9/14/2022

ISLAND CREEK OYSTERS, INC.

By: 

Name: CHRISTOPHER G. SHERMAN

Title: CEO