

CONFIDENTIAL SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Ecological Alliance, LLC and Delta Space Corporation dba Continental Processors

This Settlement Agreement is entered into by and between Ecological Alliance, LLC (“Ecological”), on the one hand, and Delta Space Corporation, a California corporation doing business as Continental Processors (“Continental”), on the other hand, with Ecological and Continental collectively referred to as the “Parties.”

1.2. General Allegations

Ecological alleges that Five Star Gourmet Foods, Inc. (“Five Star”) manufactured and distributed and offered for sale in the State of California Simply Fresh sweet kale superfood salads containing Cadmium, and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* and its implementing regulations (“Proposition 65”). California has identified and listed Cadmium under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

Continental is a vegetable processor and the vendor for the kale used in Five Star’s Simply Fresh sweet kale superfood salads.

1.3. Product Description

The products that are covered by this Settlement Agreement are defined as Simply Fresh sweet kale superfood salads that Five Star manufactured, imported, sold, offered for sale or

distributed in California using kale supplied by Continental. All such items shall be referred to herein as the “Products.”

1.4. Notice of Violation

On December 27, 2021, Ecological served Five Star, Target Corporation (“Target”), and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Five Star and such public enforcers with notice that Five Star was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to Cadmium. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Continental, Five Star and Target’s compliance with Proposition 65. Continental denies the material factual and legal allegations contained in Ecological’s Notice and maintains that all products that it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Continental or any other party of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Continental or any other party of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by

Continental on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Continental under this Settlement Agreement.

1.6. Effective & Compliance Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Settlement Agreement is fully executed by all Parties. “Compliance Date” shall mean six (6) months after the Effective Date.

2. REFORMULATION; SETTLEMENT PAYMENT

As of the Compliance Date, Continental agrees to manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.1 below.

2.1. Reformulation Standards

The Products shall be deemed to comply with Proposition 65 with regard to Cadmium and be exempt from any Proposition 65 warning requirements for Cadmium if the level of Cadmium in kale sold by Continental in California does not exceed 20 ppb (parts per billion) (“Reformulated Products”). Such Products that Continental, Five Star or Target manufactured, shipped or contracted to be shipped for California sale, or otherwise caused to enter the stream of commerce prior to the Compliance Date shall be deemed exempted from the requirements of this Section 2 and Continental shall have no obligation to warn.

2.2. Settlement Payment

Within five (5) days of the Effective Date, Continental shall make a payment to Ecological in the sum of Twelve Thousand Dollars (\$12,000) in full and final settlement of any and all claims (“Settlement Payment”). The payment shall be made by wire transfer to Plaintiff’s counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325149324377

Beneficiary: Custodio & Dubey LLP

Ecological and its counsel agree to provide completed IRS W9 forms in connection with payment being made.

2.3 Allocation of Settlement Payment – Civil Penalty / Attorneys’ Fees

The Settlement Payment is allocated as follows: (a) One Thousand Dollars (\$1,000) of the Settlement Payment is a civil penalty in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to OEHHA and the remaining 25% of the penalty remitted to Ecological. Ecological’s counsel shall be responsible for delivering OEHHA’s portion of any penalty payment made under this Settlement Agreement; and (b) the remaining Eleven Thousand Dollars (\$11,000) of the Settlement Payment shall be paid to Ecological’s counsel for all attorneys’ fees, expert and investigation fees, and related costs associated with this matter and the Notice. The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Continental is reimbursing Ecological’s counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Continental, Five Star and Target.

3. RELEASE OF ALL CLAIMS

3.1. Release of Continental, Five Star, Target and all Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payment to be made pursuant to Section 2 above, Ecological, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, parents, subsidiaries its past and current agents, representatives, attorneys, successors and/or assignees (collectively, "Releasors"), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and fully releases all claims relating to the Notice and / or the Products, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Continental, (b) Five Star, and (c) each of Continental and Five Star's downstream distributors or retailers in the stream of commerce, including but not limited to Target, and any other upstream or downstream entities in the distribution chain for the Products, including, but not limited to, manufacturers, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, including but not limited to Target, owners, purchasers, third-party re-sellers, and users, and (d) Continental, Five Star and Target's parent companies, corporate affiliates, subsidiaries, doing business as entities ("DBAs"), successor companies, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and (e) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys,

predecessors, successors and assigns of any of the entities identified in subsection (a), (b), (c) and (d) above (collectively "Releasees").

Ecological also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Continental, Five Star, Target and the Releasees. Ecological acknowledges that it is familiar with California Civil Code section 1542, 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.

Ecological, in its capacity only, and on behalf of itself, 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 California Civil Code section 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 Parties agree that compliance with the terms of this Agreement shall constitute compliance by any Releasee with Proposition 65.

3.2. Continental's Release of Ecological

Continental waives any and all claims against Ecological, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Ecological and its attorneys and other representatives, whether in the course of

investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

3.3. Deemed Compliance with Proposition 65

The Parties agree that compliance by Continental with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to Cadmium from use of the Products.

4. CONFIDENTIALITY

The Parties promise and covenant not to disclose, publicize, or cause to be disclosed or publicized, directly or indirectly, the terms of this Settlement Agreement or the facts underlying the Claims, to any person or unrelated entity, except to state that the claims between the Parties have been settled. Notwithstanding the foregoing, this confidentiality provision shall not preclude the Parties or their counsel from disclosing the terms of this Settlement Agreement to third parties as required by law, or to their auditors, lenders, insurers, regulatory agencies, taxing authorities and/or administrative bodies, or as otherwise agreed upon in writing in advance of the disclosure. If served with a subpoena, court order, or other legal or administrative process requesting or requiring disclosure of the information subject to this paragraph, the served Party shall notify the other Party within five (5) business days and, if requested to do so, shall

reasonably cooperate in any effort to obtain a protective order or similar decree restricting disclosure of such information or production of this Agreement itself.

5. GOVERNING LAW

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 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Continental shall have no further obligations pursuant to this Settlement Agreement.

6. NOTICE AND OPPORTUNITY TO CURE

The Parties agree that Continental shall have 30 days from receipt of written notice detailing a specific alleged breach of the terms of this Settlement Agreement within which to cure said breach. Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) electronic mail; or (ii) overnight courier on any party by the other party at the following addresses:

For Continental: Colin A. Hardacre, Esq.
The Law Offices of Colin A. Hardacre, APC
23586 Calabasas Road, Suite 200
Calabasas, CA 91302

For Ecological: Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., Suite 2520
Los Angeles, CA 90071

Any party, from time to time, may specify in writing to the other party a change of address or electronic mail to which all notices and other communications shall be sent.

7. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

8. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

Ecological agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

9. ENTIRE AGREEMENT

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 either of the Parties.

10. MODIFICATION

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

11. AUTHORIZATION

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

12. ADDITIONAL TERMS

12.1. Except as to the reimbursement set forth in paragraph 2.3 above, each Party shall bear its own costs and attorneys' fees with respect to the Notice and any and all of Ecological's claims related to the Products, and the negotiation and drafting of this Settlement Agreement.

12.2. The Parties have entered into this Settlement Agreement freely and voluntarily, and each Party acknowledges that such Party has consulted with independent legal counsel of such Party's choice before entering into this Settlement Agreement.


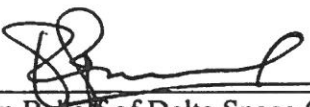
12.3. This Settlement Agreement is a product of negotiation between the Parties and is not to be interpreted more strongly in favor of one or the other in any later interpretation or action for enforcement.

12.4. The making, execution, and delivery of this Settlement Agreement has been induced by no representations, statements, warranties, or agreements other than those expressed within this Settlement Agreement.

12.5. The Parties each represent and warrant that no portion of the Claims, or any claim right, demand, action or cause of action that they have or might have against any other Party, nor any portion of any such claim, right, demand, action or cause of action to which they may be entitled, has been assigned or transferred to any other person, firm or corporation in any manner, including by way of subrogation or operation of law or otherwise. In the event that any claim, demand, or suit should be made or instituted against a Party or Parties because of a purported assignment, subrogation, or transfer, the Party who so assigned, subrogated or transferred that claim, demand, or suit agrees to indemnify and hold harmless the other Party or Parties against the claim, suit or demand and to pay and satisfy any such claim, suit or demand, including necessary expenses of investigation, attorneys' fees and costs.

12.6. This Settlement Agreement shall be binding upon the administrators, executors, receivers, trustees, related entities, successors, designees, licensees, assigns and heirs of the respective Parties hereto.

12.7. In the event that any portion of this Settlement Agreement shall be held to be void, voidable or unenforceable, the remaining portions shall remain in full force and effect.

<p style="text-align: center;">AGREED TO:</p> <p>Date: September <u>23</u>, 2022</p> <p>By: <u></u> On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: September <u>26</u>, 2022</p> <p style="text-align: center;">RICHARD PORTNOY</p> <p>By: <u></u> On Behalf of Delta Space Corporation, doing business as Continental Processors</p>
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