

# SETTLEMENT AND RELEASE AGREEMENT

## 1. INTRODUCTION

### 1.1. Clean Product Advocates, LLC and PanaPesca USA, LLC

This Settlement and Release Agreement (“Settlement Agreement”) is entered into by and between Clean Product Advocates, LLC (“CPA”), on the one hand, and PanaPesca USA, LLC (“PanaPesca”), on the other hand, with CPA and PanaPesca collectively referred to as the “Parties.”

### 1.2. General Allegations

CPA alleges that PanaPesca manufactured and distributed and offered for sale in the State of California Products containing Lead and/or 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 Lead and Cadmium under Proposition 65 as chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

### 1.3. Product Description

The Products that are covered by this Settlement Agreement are defined as the following that PanaPesca has manufactured, imported, sold, offered for sale or distributed in California: Calamari Tubes and Tentacles, Raw Argentine Red Shrimp, Cleaned Octopus, Cooked Mussel Meats, Sea Scallops with Butter Garlic Sauce, Half Shell Clams Cooked & Frozen, Mussel Meat Cooked & IQF, New Zealand Greenshell Mussels, Scallops, Seafood Medley, Shrimp & Scallop Skewers, Seafood Mix for Rice & Spaghetti, Seafood Mix and Clam Meat. All such items shall be referred to herein as the “Products.”

### 1.4. Notice of Violation

CPA served PanaPesca; Vallarta Supermarkets; Gonzalez Food Enterprises, Inc.; VWT, Inc.; Lund’s Fisheries, Inc.; Albertsons Companies, Inc.; Vons Supermarkets; Vicente Foods, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with four documents entitled “60-Day Notice of Intent to Sue” (each a “Notice”) that provided PanaPesca and such public enforcers with notice that PanaPesca 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 Lead and/or Cadmium. The Notices that were served are Notice AG Numbers 2022-01394, 2022-01522, 2022-01523, and 2022-02693.

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 Notices concerning PanaPesca's compliance with Proposition 65. PanaPesca denies the material factual and legal allegations contained in CPA's Notices 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 PanaPesca 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 PanaPesca of any fact, binding, conclusion, issue of law, or violation of law, such being specifically denied by PanaPesca on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of PanaPesca under this Settlement Agreement.

### **1.6. Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean February 1, 2023.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

As of the Effective Date, PanaPesca, at its sole discretion, agrees to either (a) cease selling, offering for sale or distributing the Products in California, or (b) manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.1 below, or (c) provide a clear and reasonable Proposition 65 warning on the Products pursuant to Sections 2.2 and 2.3 below.

### **2.1. Reformulation Standards**

The Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements (a) for Lead if the Lead in the Products does not exceed 0.5 micrograms of Lead per day and (b) for Cadmium if the Cadmium in the Products does not exceed 4.1 micrograms of Cadmium per day ("Reformulated Products"). Products that were supplied or contracted to be supplied to third parties by PanaPesca prior to 6 months after the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

For purposes of this Agreement, the amount of Lead and/or Cadmium a person is exposed to from a Product shall be calculated using the following formula: micrograms of Lead and/or Cadmium 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 servings in recommended dosage appearing on the product label), which equals micrograms of Lead and/or Cadmium exposure per day.

## 2.2. Warning Option

Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning requirement shall only be required as to Products that are manufactured, distributed, marketed, imported, sold, shipped for sale or offered for sale to consumers by PanaPesca in the State of California. No Proposition 65 warning shall be required for any Products that are supplied or contracted to be supplied to third parties by PanaPesca prior to 6 months after the Effective Date, and all such Products are hereby deemed to be exempt from Proposition 65 enforcement.

## 2.3. Warning Language

(a) Where required to meet the criteria set forth in Section 2.2, PanaPesca shall display one of the following warning statements on the packaging label of the Products that do not meet the warning exemption standard set forth in Section 2.1 above:

(1) **CA PROP 65 WARNING:** Consuming this product can expose you to chemicals including Lead and Cadmium, which are known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

(2) **CA PROP 65 WARNING:** Reproductive Harm - [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

PanaPesca may include the names of additional chemicals in the warning if they are present in the Products at a level that PanaPesca reasonably believes would require a Proposition 65 warning.

(b) The requirements for warnings, set forth in subsection (a) above, are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. PanaPesca shall be deemed to be in compliance with the warning requirements of this Settlement Agreement by either adhering to this Section 2.3 or by complying with the Proposition 65 warning requirements adopted by the State of California Office of Environmental Health Hazard Assessment (“OEHHA”) as of or after the Effective Date.

(c) If Proposition 65 warnings for Lead and/or Cadmium should no longer be required, PanaPesca shall have no further obligations pursuant to this Settlement Agreement in regards to that specific Chemical.

## **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In full satisfaction of all potential civil penalties and attorney’s fees, costs and any other expenses incurred by CPA or its counsel, PanaPesca shall pay the total Settlement amount of One Hundred and Twenty-Five Thousand Dollars (\$125,000) (The “Settlement Amount”) as set forth below.

### **3.1 Civil Penalties to Health & Safety Code 25249.7(b):**

Thirteen Thousand Dollars of the Settlement Amount shall be considered a “civil penalty” pursuant to California Health and Safety Code 25249.7(b). PanaPesca shall issue two separate checks within ten (10) days of the Effective Date for a total amount of Thirteen Thousand Dollars (\$13,000) as follows, and all payments shall be delivered to the addresses listed below.

**3.1(a)** One Check made payable to the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of Nine Thousand, Seven Hundred and Fifty Dollars (\$9,750), representing 75% of the total civil penalty; and

**3.1(b)** One check payable to “Clean Product Advocates, LLC” in the amount of Three Thousand, Two Hundred and Fifty Dollars (\$3,250), representing 25% of the total civil penalty.

### **3.2 Attorney’s Fees and Costs:**

PanaPesca shall pay One Hundred and Twelve Thousand Dollars (\$112,000) of the total Settlement Amount to Cliffwood Law Firm, PC, as CPA’s attorneys, for reasonable investigation fees, and costs, attorney’s fees, and any other costs incurred as a result of investigating and bringing this matter to PanaPesca’s attention, according to the following payment schedule: four monthly payments of \$28,000 each, payable on February 24, March 24, April 24, and May 24, 2023.

## **4. PAYMENT PROCEDURES**

**4.1** All Payments owed to OEHHA, pursuant to section 3.1(a) shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties NOV #2022-03194, #2022-01522, #2022-01523, #2022-02693”) at the following address:

Attn: Mike Gyurics  
Deputy Director for Administrative Services  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

**4.2** All Payments owed to CPA, pursuant to Section 3.1(b) shall be delivered to:

c/o CPA  
Attn: Elham Shabatian  
Cliffwood Law Firm, PC  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025

**4.3** All Payments owed to Cliffwood Law Firm, PC pursuant to Section 4.3, shall be delivered to:

Cliffwood Law Firm, PC  
Attn: Elham Shabatian  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025

#### **4.4 Proof of Payment**

A copy of each check payable to OEHHA shall be mailed to Cliffwood Law Firm, PC, at the address set forth above, as proof of payment to OEHHA.

### **5. RELEASE OF ALL CLAIMS**

#### **5.1. Release of PanaPesca, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, CPA, on behalf of itself and its respective owners, members, principals, shareholders, officers, directors, employees, parents, subsidiaries, affiliates, past and current agents, representatives, attorneys, successors and/or assigns (collectively, "Releasers"), 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 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) PanaPesca, (b) each of PanaPesca's downstream distributors in the stream of commerce (including but not limited to Albertsons Companies, Inc., Vons Supermarkets, Vicente Foods, Lund's Fisheries, Vallarta Supermarkets, Gonzalez Food Enterprises Inc., VWT, Inc.) 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, owners, purchasers, third-party resellers, and users, (c) PanaPesca's members, parent companies, subsidiaries, affiliates, doing business as entities ("DBAs"), successor companies, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, and (d) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors and assigns of any of the entities identified in subsection (a) and (c), above (collectively "Releasees"). CPA also, on behalf of itself, its past and current agents, representatives, members, 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 PanaPesca and the Releasees.

## **5.2 PanaPesca's Release of CPA**

PanaPesca, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against CPA, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CPA and/or its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

## **5.3 California Civil Code § 1542.**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Products will develop or be discovered. CPA on behalf of itself only, on one hand, and PanaPesca, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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.

CPA and PanaPesca each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

## **6. 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 PanaPesca shall have no further obligations pursuant to this Settlement Agreement.

## **7. NOTICES**

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 PanaPesca USA, LLC**  
Laura L. Carroll, Esq.  
Burns & Levinson LLP  
125 High Street  
Boston, MA 02110-4704

**For Clean Product Advocates, LLC:**

Elham Shabatian, Esq.  
Cliffwood Law Firm, PC  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025

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.

**8. 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.

**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

**10. MODIFICATION**

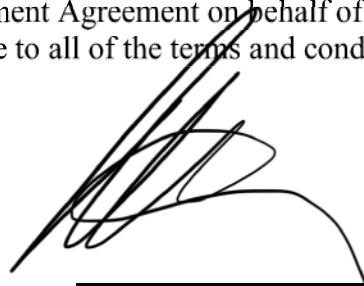
This Settlement Agreement may be modified only by a written agreement signed by the Parties.

**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.

Agreed to:

Date: January 19, 2023



Michael C. Davis, Manager  
PanaPesca USA LLC

Date: January 23 2023



Elham Shabatian, Esq.  
Cliffwood Law Firm, PC  
Attorney for  
Clean Product Advocates, LLC