

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Clean Product Advocates, LLC and Southwind Foods, LLC

This Settlement Agreement is entered into by and between Clean Products Advocates, LLC ("CPA"), on the one hand, and Southwind Foods, LLC ("Southwind"), on the other hand, with CPA and Southwind collectively referred to as the "Parties."

#### 1.2. General Allegations

CPA alleges that Southwind manufactured and distributed and offered for sale in the State of California the following Products: (1) "Great American Raw Peeled & Deveined Shrimp Tail Off"; and (2) "Great American Scallops." CPA further alleges that the Great American Raw Peeled & Deveined Shrimp Tail Off contain lead, and that the Great American Scallops contain cadmium. CPA further alleges 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.

Southwind generally denies CPA's allegations, and specifically denies that such sales have not included warnings pursuant to Proposition 65.

#### 1.3. Product Description

The products that are covered by this Settlement Agreement are defined as Great American Raw Peeled & Deveined Shrimp Tail Off and Great American Scallops that Southwind has manufactured, imported, sold, offered for sale or distributed in California. All such items shall be referred to herein as the "Products."

#### 1.4. Notices of Violation

On or about July 6, 2022 CPA served Southwind Foods, LLC; Great American Seafood Imports, LLC; WEEE! Inc. 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 Intent to Sue" ("Shrimp Notice") that provided Southwind and such public enforcers with notice that Southwind 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. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Shrimp Notice.

On or about March 16, 2023 CPA served Southwind Foods, LLC; Great American Seafood Imports, LLC; Smart & Final LLC 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 Intent to Sue" ("Scallops Notice") that provided Southwind and such public enforcers with notice that Southwind 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.

On or about June 11, 2023 CPA served Southwind Foods, LLC; Great American Seafood Imports, LLC; Smart & Final LLC 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 Intent to Sue," which purported to amend the Scallops Notice to correct the product UPC number (the "Amended Scallops Notice").

Collectively, the Shrimp Notice, Scallops Notice, and Amended Scallops Notice shall be referred to herein as the "Notices." To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in any of the Notices.

### **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 Southwind's compliance with Proposition 65. Southwind 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 and all other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Southwind 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 Southwind of any fact, binding, conclusion, issue of law, or violation of law, such being specifically denied by Southwind on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Southwind under this Settlement Agreement.

### **1.6. Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed and delivered.

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

As of the Effective Date, Southwind, at its sole discretion, agrees to either (a) cease selling, offering for sale or distributing the Products in California, (b) manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.1 below, or (c) comply with Proposition 65's warning requirements by any means permissible under Proposition 65 and its regulations.

## 2.1. Reformulation Standards

The Products shall be deemed to comply with Proposition 65 with regard to lead and cadmium and be exempt from any Proposition 65 warning requirements for lead and cadmium if the Products do not exceed 0.5 micrograms of lead per day and 4.1 micrograms of cadmium per day ("Reformulated Products"). Products that were supplied or contracted to be supplied to third parties by Southwind 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 the purpose of this Agreement, the amount of lead and cadmium a person is exposed to from the Products shall be calculated using the following formula: micrograms of lead 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).

## 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 by any means permissible under Proposition 65 and its regulations; provided, however, that if Southwind provides warnings on the Product packaging the warning shall be 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 Southwind 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 Southwind 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) Nothing herein shall require Southwind to provide a warning by any particular method, and when a warning is required for the Products, or either of them, Southwind may provide the warning by any means permissible under Proposition 65 and its regulations. If, however, Southwind chooses to provide a warning on the Product packaging, Southwind 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) **WARNING:** Consuming this product can expose you to chemicals including [lead or cadmium], which [is] are 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](http://www.P65Warnings.ca.gov/food)"

(2) **WARNING:** [Cancer and] Reproductive Harm- [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

Southwind may use "cancer and" in the warning at its option. Southwind may include the names of additional chemicals in the warning if they are present in the Products.

(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. Southwind 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 cadmium should no longer be required, Southwind shall have no further obligations pursuant to this Settlement Agreement.

### **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 Southwind shall pay the total Settlement Amount of Eight Thousand Dollars (\$8,000.00) (the "Settlement Amount") as set forth below. Payments shall be made within ten (10) business days of the later to occur of: (1) the Effective Date; or (2) the delivery by CPA to Southwind of executed IRS Form W-9s for CPA and Cliffwood Law Firm, PC.

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

Five Hundred Dollars of the Settlement Amount shall be considered a "civil penalty" pursuant to California Health and Safety Code. Southwind shall issue two separate checks for a total amount of Five Hundred Dollars (\$500) 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 Three Hundred Seventy-Five Dollars (\$375), representing 75% of the total civil penalty; and

3.1 (b) One check payable to "Clean Product Advocates, LLC" in the amount of One Hundred Twenty-Five Dollars (\$125), representing 25% of the total civil penalty.

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

Seven Thousand Five Hundred Dollars (\$7,500) of the total Settlement Amount shall be paid to Cliffwood Law Firm, PC, as CPA'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 Southwind's attention.

### **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 #2022-01473") 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

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 3.2, 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, simultaneous with payment 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 Southwind, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 above, CPA, 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, "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) Southwind (b) each of Southwind's downstream distributors in the stream of commerce (including but not limited to Great American Seafood Imports, LLC; WEEE! Inc., Smart & Final LLC, 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 re-sellers, and users, (c) the parent companies, corporate affiliates, 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 of any of the entities identified in subsection (a) and (b), above, and (d) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors and assigns of any of the entities identified in subsections (a), (b), and (c), above (collectively "Releasees"). CPA 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 Southwind and the Releasees.

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

Southwind, 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 Southwind, 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 Southwind 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 Southwind 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 Southwind Foods, LLC.:**

Sean M. Sherlock, Esq.  
Snell & Wilmer L.L.P.  
600 Anton Boulevard, Suite 1400  
Costa Mesa, CA 92626-7689  
ssherlock@swlaw.com

### **For Clean Product Advocates, LLC:**

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

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: AUG 30, 2023

SOUTHWIND FOODS, LLC

By: Sam Galleggi  
Its: President

Date: 9/4, 2023

CLEAN PRODUCTS  
ADVOCATES, LLC

By: N-ESMA  
Its: Narjes Esmailzadeh  
Director