

## SETTLEMENT AGREEMENT

### **1. INTRODUCTION**

#### **1.1 Parties**

This settlement agreement (“Settlement Agreement”) is entered into by and between CalSafe Research Center, Inc., (“CRC”), on the one hand, and Sunny Dell Foods LLC (“Sunny”) on the other hand, with CRC and Sunny, each individually referred to as a “Party” and collectively as the “Parties”.

#### **1.2 General Allegations**

CRC alleges in a 60-Day Notice of Violation dated June 3, 2022 (2022-01510), that Sunny, Stater Bros. Markets and TOPCO sell and/or distribute Culinary Tours, Nonpareil Capers, UPC #011225245206 in California that contain lead without a warning required by Health and Safety Code §§ 25249.5 *et seq.* (“Proposition 65”) (the “Notice”). Lead is listed, pursuant to Proposition 65, as a chemical known to cause cancer and birth defects or other reproductive harm.

#### **1.3 Product Description**

The product covered by this Settlement Agreement is defined as, and expressly limited to, Culinary Tours, Nonpareil Capers, UPC# 011225245206, (hereinafter collectively the “Product”) that contains lead and that is manufactured, sold or distributed for sale in California by Sunny, Stater Bros. Markets and TOPCO.

#### **1.4 Notice of Violation**

On June 3, 2022, CRC served the Notice on Stater Bros. Markets and TOPCO, the California Attorney General and the other requisite public enforcers, alleging that and Stater Bros. Markets and TOPCO and others violated Proposition 65 when they failed to warn consumers in California of the alleged exposures to lead from the Product.

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

#### **1.5 No Admission**

Sunny, Stater Bros. Markets and TOPCO deny the material, factual and legal allegations in the Notice and maintain that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Sunny, Stater Bros. Markets and TOPCO or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Sunny, Stater Bros. Markets and TOPCO or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Sunny, Stater Bros. Markets and TOPCO. This Section shall not, however, diminish or otherwise affect Sunny, Stater Bros. Markets and TOPCO’s obligations, responsibilities, and duties under this Settlement Agreement.

## **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date on which a complete and fully executed copy of this Settlement Agreement is exchanged by the Parties’ counsel.

## **2. INJUNCTIVE RELIEF**

### **2.1 Clear and Reasonable Warnings**

Beginning on the Effective Date, unless it meets the warning requirements under Sections 2.3, Sunny shall be permanently enjoined from manufacturing for sale in the State of California, “Distributing into the State of California” (in person or online), purchasing for sale or directly selling in the State of California, any Product that exposes a person to an exposure level of more than 0.5 micrograms of lead per serving, with serving size measured by the serving size specified on the label of the Product.

As used in this Settlement Agreement, the term “Distributing into the State of California” shall mean to directly ship Product into California for sale in California or to sell Product to a distributor that Sunny knows or had reason to know will sell the Product in California. The injunctive relief in Section 2 does not apply to Product that has left the possession and is no longer under the control of Sunny prior to the Effective Date and all claims as to such Product is released in this Settlement Agreement.

### **2.2 General Warning Requirements**

Sunny agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product shall consist of a warning affixed to the packaging, label, tag, or directly to each of the Product sold or distributed in California by Sunny that contain one of the following statements:

- 1) WARNING: Consuming this product can expose you to chemicals including Lead which is known to the State of California to cause cancer, 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).

The warning shall be offset in a box with black outline. The same warning shall be posted on any websites where the Product is sold in California.

(i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Sunny shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations, legislation or judicial rulings are enacted or issued providing that a Proposition 65 warning for the product is no longer required, a lack of warning will not thereafter be a breach of this Agreement.

**2.3 Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2 shall not apply to Product that is already in the stream of commerce as of the Effective Date, which Product is expressly subject to the releases provided in Section 4.1.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Total Settlement Penalty**

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, Sunny, Stater Bros. Markets and TOPCO shall make a total settlement payment of Thirty-Seven Thousand Dollars and 00/100 (**\$37,000.00**) ("Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty, Attorney's Fees and Costs, and a Cost Reimbursement as set forth in Sections 3.2, 3.3, 3.4 and 3.5 below.

**3.2 Civil Penalty Payment**

Pursuant to Health and Safety Code§ 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Sunny, Stater Bros. Markets and TOPCO agree to pay Three Thousand, Seven Hundred Dollars and 00/100 (**\$3,700.00**) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code§§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by CRC. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, Sunny, Stater Bros. Markets and TOPCO shall issue two separate checks for the civil penalty payment to: (a) "OEHHA" in the amount of Two Thousand, Seven Hundred Seventy-Five Dollars and 00/100 (**\$2,775.00**) and (b) CRC in the amount of Nine Hundred, Twenty-Five Dollars and 00/100 (**\$925.00**).

All payments owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Delivery Service:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS 19B  
Sacramento, CA 95812-4010

For Non-United States Postal Delivery Service:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street MS #19B  
Sacramento, CA 95814

All penalty payments owed to CRC shall be sent via wire to:

**Wire & ACH Instructions:**

Account Name: The Law Offices of Joseph R. Manning  
Bank Name: First Citizens Bank  
Bank Address: 28641 Marguerite Parkway, Mission Viejo, CA 92692  
ACH Routing / ABA Number: 122037760  
Wire Routing / ABA Number: 053100300  
Account Number: 001064978459

**For Further Benefit of: Civil Penalty Payment – P65-0247**

**3.3 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to CRC and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within ten (10) days of the date this Settlement Agreement is executed by the Parties, Sunny, Stater Bros. Markets and TOPCO agree to pay Thirty-Three Thousand Three Hundred Dollars and 00/100 (**\$33,300.00**) its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Sunny, Stater, Bros. Markets and TOPCO and negotiating a settlement. The (**\$33,300.00**) Attorney's Fees and Costs shall be paid via wire or check made payable to "Manning Law, APC".

**Wire & ACH Instructions:**

Account Name: The Law Offices of Joseph R. Manning  
Bank Name: First Citizens Bank  
Bank Address: 28641 Marguerite Parkway, Mission Viejo, CA. 92692  
ACH Routing / ABA Number: 122037760  
Wire Routing / ABA Number: 053100300  
Account Number: 001064978459

**For Further Benefit of: Attorney's Fees and Costs – P65-0247**

**3.4 Payment Address**

All payments required under this section to Manning Law APC shall be delivered to:

Manning Law, APC (Taxpayer Identification Number: 83-0502205)  
26100 Towne Centre Drive  
Foothill Ranch, CA 92610

### **3.5 Tax Documentation**

Sunny, Stater Bros. Markets and TOPCO agree to provide a completed IRS 1099 form for its payments to, and CRC and Manning Law agree to provide IRS W-9 forms to Sunny, Stater Bros. Markets and TOPCO. The Parties acknowledge that Sunny, Stater Bros. Markets and TOPCO cannot issue any settlement payments pursuant to Section 3 above until after Sunny, Stater Bros. Markets and TOPCO receive the requisite W-9 forms from CRC's counsel.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 CRC's Release of Sunny, Stater Bros. Markets and TOPCO and other Releasees**

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges Sunny, Stater Bros. Markets and TOPCO and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, and all entities to which Defendant Releasees directly or indirectly distribute or sell the Product, and any other distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees, (collectively, the "Released Parties" and individually, a "Released Party"). CRC, on behalf of itself and its officers, directors, shareholders, employees, agents, parent companies, subsidiaries and divisions hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted based on or related to the handling, use, sale, distribution or consumption of the Product in California, as to any alleged violation of Proposition 65 or its implementing regulations, including without limitation any failure to provide Proposition 65 warnings on the Products with respect to exposures to lead.

### **4.2 Sunny, Stater Bros. Markets and TOPCO's Release of CRC**

Sunny, Stater Bros. Markets and TOPCO on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all claims against CRC and its attorneys and other representatives, for any and all actions taken, or statements made by CRC and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

### **4.3 California Civil Code Section 1542**

It is possible that other claims not known to the Parties, arising out of the Notice or relating to the Products, will develop or be discovered. CRC on behalf of itself only, and Sunny, Stater Bros. Markets and TOPCO on behalf of itself only, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action, therefore. CRC and Sunny, Stater Bros. Markets and TOPCO 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 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.

**5. SEVERABILITY**

In the event that any of the provisions of this Settlement Agreement are held by a court of competent jurisdiction to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California, without regard to its conflicts of law principals.

**7. NOTICE**

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class mail or electronic mail to the address set forth in this Paragraph. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by certified mail, return receipt requested. Said change shall take effect on the date the return receipt is signed by the Party receiving the change.

Notices shall be sent to:

For CRC

Joseph R. Manning, Jr.  
Manning Law, APC  
26100 Towne Centre Drive  
Foothill Ranch, CA 92610

For Topco, Stater and Sunny Dell Foods

Robert S. Niemann  
Keller & Heckman LLP  
Three Embarcadero Center, Suite 1420  
San Francisco, CA 94111

**8. COUNTERPARTS: FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

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9. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7(f)

CRC and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code §25249.7(f).

10. MODIFICATION

The Settlement Agreement may be modified only by written agreement of the Parties.

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party.

12. INTERPRETATION

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of Civil Code § 1654. It is conclusively presumed that the Parties participated equally in the drafting of this Agreement.

13. 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:

5/25/23

By:

  
Eric Fairon  
CALSAFE RESEARCH  
CENTER, INC.

AGREED TO:

Date:

5/25/2023

By:

  
SUNNY DELL FOODS LLC