

## SETTLEMENT AND RELEASE AGREEMENT

### **I. INTRODUCTION**

#### **1.1. Clean Product Advocates, LLC and Unreal Deli Corp**

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

#### **1.2. General Allegations**

CPA alleges that Unreal manufactured and distributed and offered for sale in the State of California "Unreal Roasted Turk'y" ("Product") containing Lead and Cadmium above safe harbor levels, 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 a chemical 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 "Unreal Roasted Turk'y" that Unreal has imported, sold, offered for sale or distributed in California. All such items shall be referred to herein as the "Products."

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

On November 30, 2022 CPA served Unreal Deli Corp.; Stater Brothers Market 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 Unreal and such public enforcers with notice that Unreal 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 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 Unreal's compliance with Proposition 65. Unreal denies the material factual and legal allegations contained in CPA's Notice and maintains that all products that it has sold and distributed 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 Unreal 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 Unreal of any fact, binding, conclusion, issue of law, or violation of law, such being specifically denied by Unreal on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Unreal 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.

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

As of the Effective Date, Unreal 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) provide a clear and reasonable Proposition 65 warning on the Products pursuant to Section 2.2 below.

### **2.1. Reformulation Standards**

The Products shall be deemed to comply with Proposition 65 with regard to Lead and be exempt from any Proposition 65 warning requirements for Lead in the Products does not exceed 0.5 micrograms of Lead per day and for Cadmium 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 Unreal 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/or Cadmium a person is exposed to from the Covered 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 distributed, marketed, imported, sold, shipped for sale or offered for sale to consumers by Unreal 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 Unreal prior to 6 months after the Effective Date, (hereafter, "Compliance Period") 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, Unreal 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 Cadmium, which 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)

Unreal may use "cancer and" in the warning at its option. Unreal may include the names of additional chemicals in the warning if they are present in the Products at a level that Unreal 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. Unreal 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 at or below the levels said contaminants are shown to be present in the Product should no longer be required, Unreal 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. Unreal shall pay the total Settlement amount of Nineteen Thousand and Five Hundred Dollars (\$19,500) (The "Settlement Amount") as set forth below.

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

One Thousand and Five Hundred Dollars (\$1,500) of the Settlement Amount shall be considered a "civil penalty" pursuant to California Health and Safety Code. Unreal shall issue two separate checks within ten (10) days of the Effective Date for a total amount of One Thousand and Five Hundred Dollars (\$1,500) 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 One Thousand and One Hundred and Twenty Five Dollars (\$1125), representing 75% of the total civil penalty; and

3.1 (b) One check payable to "Clean Product Advocates, LLC" in the amount of Three Hundred and Seventy Five Dollars (\$375), representing 25% of the total civil penalty.

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

Eighteen Thousand Dollars (\$18,000) 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 Unreal's attention according to the following payment schedule: two monthly payments of \$9,000 each, payable on June 1, 2023 and July 1, 2023.

**3.3 Compliance with Health & Safety Code §25249.7(f)**

CPA agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f)

**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 #2022-02854") 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 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, 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 Unreal 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, 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) Unreal (b) each of Unreal's downstream distributors in the stream of commerce (including but not limited to Stater Brothers Market 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) Unreal's 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, 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, 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 Unreal and the Releasees.

#### 5.2 Unreal's Release of CPA

Unreal, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against CPA, her 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 her 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 Notice and relating to the Products will develop or be discovered. CPA on behalf of itself only, on one hand, and Unreal, 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 Unreal each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

### **5.4 Deemed Compliance with Proposition 65.**

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

### **5.5 Public Benefit.**

It is Unreal's understanding that the commitments it has agreed to herein, and actions to be taken by Unreal under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Unreal that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Unreal's alleged failure to provide a warning concerning exposure to Lead or Cadmium relating to use of the Products it has, distributed, sold, or offered for sale in California, or will distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Unreal is in material compliance with this Settlement Agreement.

### **5.6 Grace Period with Respect to Unreal Products**

The parties agree that, during the Compliance Period as defined in Section 2.2 of this Agreement, in order to afford Unreal a reasonable opportunity to confirm that all of its products sold in California other than the Products at issue in this claim comply with Proposition 65, CPA and its Counsel of Record, Cliffwood Law Firm, PC, will forego the commencement of any claim or lawsuit, or any referral to any other person, law firm, or other entity of any claim or lawsuit, including but not limited to a 60-day Notice of Violation under Proposition 65, with respect to

any product sold or distributed by Unreal ("Unreal Products"), whether or not any such Unreal Products were specifically addressed by the Notice of Violation discussed in Section 1.4 of this agreement. CPA and Cliffwood Law Firm, PC hereby covenant to indemnify and defend Unreal as to any such claim commenced during the Compliance Period by CPA, any other past or present client of Cliffwood Law Firm, PC, or any other person, law firm, or other entity who in any way receives a referral from CPA or Cliffwood Law Firm, PC, or any other information related to Unreal directly from CPA or Cliffwood Law Firm, PC.

## **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 Unreal 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 Unreal Deli Corp.:**

Daniel Hurwitz Esq.  
Wilson Elser Moskowitz Edelman & Dicker LLP  
555 S. Flower Street - Suite 2900  
Los Angeles, CA 90071-2407

### **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**

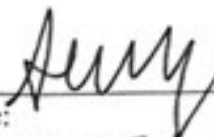
This Settlement Agreement may be modified only by a written agreement signed by the Parties.

**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. Counsel for CPA further warrants and represents that she is specifically authorized to enter into this settlement by CPA.

Agreed to:

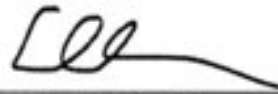
Date: May 24, 2023

  
Name: STEVEN GROSS  
Title: VP CFO COO  
Unreal Deli Corp.

Date: May 31, 2023

  
Daniel S. Hurwitz, Esq.  
Wilson Elser Moskowitz Edelman &  
Dicker, LLP, Attorney for  
Unreal Deli Corp.

Date: May 31, 2023

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