

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Consumer Rights Advocates, LLC (“CRA”) on the one hand, and Wismettac Asian Foods, Inc. (“WAF”) on the other hand, with CRA and WAF, each individually referred to herein as a “Party” and collectively as the “Parties.”

1.2 General Allegations

CRA alleges that WAF imports, distributes, and/or sells certain Somen products in California containing lead without warning under California Health and Safety Code sections 25249.5 *et seq.* (“Proposition 65”). Lead is listed pursuant to 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 covered by this Settlement Agreement are defined below. All such items shall be referred to herein as the “Covered Products”

- Shirakiku Fresh Japanese Style Somen Spicy, UPC No. 0-7441041103-9

1.4 Notice of Violation

On February 10, 2023, CRA served WAF and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the State of California, one (1) 60-Day Notice of Violation pursuant to Cal. Health & Safety Code § 25249.5, *et seq.*, Notice of Violation No. 2023-00394 (“Notice”) alleging that WAF was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to unlawful amounts of lead. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

The Parties enter into this Settlement Agreement to settle the disputed claim between them as set forth herein and in the Notice. WAF denies the material factual and legal allegations in the Notice and maintains that all the products they have manufactured for sale in California, including the Covered products, have been and are in compliance with Proposition 65 and all other applicable statutory, regulatory, common law, or equitable doctrines. Nothing in this Settlement Agreement shall be construed as an admission by WAF or any of their officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, licensors, joint venture partners, 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 WAF or any of their officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, licensors, joint venture partners, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by WAF. Neither the existence nor terms of this Settlement Agreement shall be offered or

admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. This Section shall not, however, diminish or otherwise affect WAF'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: WARNINGS AND REFORMULATION

As of the Effective Date, WAF shall not manufacture for sale in the State of California, "distribute into the State of California," or directly sell in the State of California, any Covered Products that expose a person to more than 0.5 micrograms of lead per day based on the recommended serving size on the Covered Products' label, unless the Covered Products bears a warning meeting the warning requirements under Section 2.1 & 2.2.

For the purpose of this Settlement Agreement, exposure level shall be measured in micrograms and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product as stated on the label, multiplied by servings of the product per day stated on the label, which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

As used in this Settlement Agreement and Release, the term "Distribute into the State of California" shall mean to directly ship a Covered Products into California for sale in California or to sell a Covered Products to a distributor that WAF knows will sell the Covered Products in California.

2.1 CLEAR AND REASONABLE WARNINGS

As of the Effective Date and to the extent that WAF is required to provide a warning, WAF agrees to provide a clear and reasonable warning on the Covered Products in compliance with the requirements of Proposition 65. This requirement shall only be required for Covered Products that are manufactured, distributed, marketed, imported, sold, shipped for sale, or offered for sale to consumers by WAF in the State of California.

The injunctive requirements of this Section shall not apply to any Covered Products that are already in the stream of commerce as of the Effective Date; claims concerning those Covered Products are nonetheless expressly subject to the releases provided in Section 4 of this Settlement Agreement.

2.2 GENERAL WARNING REQUIREMENTS

WAF 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 confusion to consumers.

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

OPTION 1:

WARNING: Consuming this product can expose you to chemicals, including Lead which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

OPTION 2:

WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov/food

OR

OPTION 3: Any warning authorized under the Proposition 65 laws or regulations effective on or after the Effective Date.

(the “Warning”).

The Warning shall be securely affixed to or printed upon the label of each product, and it must be set off from other surrounding information and enclosed in a box. In addition, the same warning shall be posted on any website under the exclusive control of WAF, where the Covered Products are sold to consumers located in California. The warning requirements of this section shall be satisfied if the forgoing warning appears either (a) on the same web page on which Covered Products are displayed and/or described by providing a clearly marked hyperlink using the word “WARNING”; (b) on the same page as the price for the Covered Products, or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label, and the word "WARNING" shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average layperson shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

2.3. CHANGES IN WARNING REGULATIONS, STATUTES OR OTHER GOVERNING AUTHORITY

In the event that (a) the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations, (b) legislation is enacted by the California legislature, United States Congress or the voters, or (c) a published opinion is issued by a court of competent jurisdiction in the State of California, requiring, permitting or establishing warning text and/or methods of transmission different than those set forth above or an alternative means of calculating exposure for purposes of Proposition 65 other than that set forth herein. WAF shall be entitled to use, at its discretion, such other warning text, method of transmission, or means of calculating exposure, 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.

3. CONSIDERATION

3.1 Total Settlement Amount

In settlement of all the claims referred to in this Settlement Agreement, the Parties reached an accord on the compensation due, under the private attorney general doctrine and principles of contract law. Under these legal principles, WAF shall pay a total of \$22,500 (Total Settlement Amount) as settlement and for fees and costs, incurred as a result of investigating and bringing this matter to WAF's attention. No other payment is required by WAF under this Settlement Agreement.

3.2 Civil Penalties Pursuant to Health & Safety Code Section 25249.7(b)

Two Thousand Five Hundred Dollars (\$2,500) of the Total Settlement Amount shall be considered a "civil penalty" under section 25249.7(b) of the California Health and Safety Code. This civil penalty payment will be allocated in accordance with sections 25249.12(c)(1) & (d) of the California Health and Safety Code. WAF shall have two separate checks issued within ten (10) days of the Effective Date, and all payments shall be made as follows:

(a) One check made payable to California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of One Thousand Eight Hundred Seventy-Five Dollars (\$1,875), which represents seventy-five percent (75%) of the civil penalties; and

(b) One check made payable to CRA in the amount of Six Hundred Twenty-Five Dollars (\$625), which represents the remaining twenty-five percent (25%) of the civil penalties.

(c) All civil penalty payments to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered to OEHHA (memo line to read: "Proposition 65 Penalties) at the following address(es):

For the United States Postal Delivery Service:

Attn: 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:

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

- (d) All civil penalty payments to CRA shall be sent to:

Cornerstone Law Firm, PC
357 S. Robertson Blvd, Second Floor
Beverly Hills, CA 90211

3.3 Reimbursement of Fees and Costs

Twenty Thousand Dollars (\$20,000) of the Total Settlement Amount shall be paid to CRA's counsel, Cornerstone Law Firm, PC, in consideration of the releases provided by Section 4, and as part of the release to WAF of any Proposition 65 liability (including penalties, costs, and attorneys' fees) in relation to the Notice, or the Covered Products. The Parties reached an accord on the compensation owed to CRA and its counsel under the private attorney general doctrine and principles of contract law. WAF shall make this payment of attorneys' fees within ten (10) business days of the Effective Date to the following address:

Cornerstone Law Firm, PC
357 S. Robertson Blvd, Second Floor
Beverly Hills, CA 90211

4. CLAIMS COVERED AND RELEASED

4.1 Release of WAF, 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 herein, CRA, 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, the "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 Covered 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, the "Claims"), against all of the following: (i) WAF, including, without limitation, its owners, subsidiaries, affiliates, doing-business-as entities (i.e., "DBAs"), sister and related companies, (ii) each of WAF's downstream distributors in the stream of commerce (including, but not limited to, Zion Market) and any other upstream or downstream entities in the distribution chain for the Covered Products, including, but not limited to, manufacturers, wholesalers, vendors, suppliers, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, third-party re-sellers, and users, and (iii) all employees, agents, indemnitees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors and assigns of the entities identified in subsections (i) and (ii) of this section 4.1. The persons and entities described in subsections (i), (ii), and (iii) of this section 4.1 are collectively referred to herein as the "Releasees."

CRA and its attorneys represent and warrant that they have not filed and are not contemplating filing, that they are not aware of any other person who has filed or is contemplating filing, and that they have not engaged and do not intend to engage in any advertising or solicitation to locate additional persons to file, any form of complaint against the Releasees.

4.2 CRA's California Civil Code Section 1542 Waiver

CRA, on behalf of itself and all other Releasors, 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.

CRA, on behalf of itself and all other Releasors, expressly waives and relinquishes any and all rights and benefits that they may have under, or which may be conferred on them, 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 Releasors may lawfully waive such rights or benefits pertaining to the released matters. The Parties agree that compliance with the terms of this Settlement Agreement shall constitute compliance by any Releasee with Proposition 65.

4.3 WAF's Release of CRA

WAF waives any and all claims against CRA, its attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by CRA 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 Covered Products.

4.4 Binding Settlement Agreement

This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of CRA and the Releasees.

4.5 Public Benefit

It is the Parties' belief that the terms of this Settlement Agreement confer a significant benefit to the general public as set forth in California Code of Civil Procedure section 1021.5 and California Administrative Code title 11, section 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging that the Covered Products are somehow in violation of Proposition 65, such private party action would not confer a significant benefit on the general public, so long as WAF is in material compliance with the terms of this Settlement Agreement.

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 Covered Products, then WAF shall have no further obligations pursuant to this Settlement Agreement

6. NOTICE

Unless otherwise specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by electronic mail or overnight courier as follows:

To CRA:

Davar Danialpour, Esq.
CORNERSTONE LAW FIRM, PC
357 S. Robertson Blvd., Second Floor
Beverly Hills, California 90211
david@davarlaw.com

To WAF:

Jasmine W. Wetherell, Esq.
Perkins Coie LLP
1888 Century Park East Suite 1700
Los Angeles, CA 90067-1721
JWetherell@perkinscoie.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 notice and other communications shall be sent.

7. COUNTERPARTS: FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature or electronically, 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, electronic, 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 California Civil Code sections 1633.1 *et seq.*

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

CRA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 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 any of the Parties.

10. SEVERABILITY & MODIFICATION

If after execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

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

11. 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 or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of California Civil Code section 1654. It is conclusively presumed that the Parties participated equally in drafting this Agreement.

12. AUTHORIZATION

Each Party represents that its signatory to this Settlement Agreement has the full legal authority to enter into and legally bind it to the terms herein. Each Party further represents that it has read, understood, and agreed to all the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

**CONSUMER RIGHTS ADVOCATES,
LLC**

WISMETTAC ASIAN FOODS, INC.

Date: October 13, 2023

Date: 10/12/2023

By: Faraz Adjnasian

By: Hyo Yamashita

Signature: 

Signature: 

Consumer Rights Advocates, LLC

Wismettac Asian Foods, Inc.