

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Clean Product Advocates, LLC and OFD Foods, LLC

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

1.2. General Allegations

CPA alleges that OFD manufactured and distributed and offered for sale in the State of California “Creamy Macaroni & Cheese” containing Lead, 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 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 Creamy Macaroni & Cheese that OFD has manufactured, 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 March 03, 2023 CPA served OFD Foods, LLC; Amazon.com, Inc.; Amazon.com Services 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 Violation” (“Notice”) that provided OFD and such public enforcers with notice that OFD 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 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 OFD’s compliance with Proposition 65. OFD denies the material, factual, and legal allegations contained in the Notice and maintains that all of the Product that it has sold and/or distributed for sale in California have been and are in compliance with Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by OFD 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 OFD of any fact, binding, conclusion, issue of law, or violation of law, such being specifically denied by OFD on its

behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of OFD 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, OFD shall conduct periodic testing of the Product, no less than twice a year, to determine whether the Product exceeds the Lead maximum allowable daily limit of 0.5 micrograms per day, calculated pursuant to Cal. Health & Safety Code §25821. To the extent that OFD’s testing indicates that the Product exceeds the maximum allowable daily limit for Lead, OFD shall, at its sole discretion, 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 Sections 2.2 and 2.3 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 (“Reformulated Products”). Products that were supplied or contracted to be supplied to third parties by OFD 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 in the Product shall be calculated pursuant to Cal. Health & Safety Code §25821 (“For exposures to consumer products, the level of exposure shall be calculated using the reasonably anticipated rate of intake or exposure for average users of the consumer product.”).

2.2. Warning Option

For Products that are determined to exceed the maximum allowable daily limit of 0.5 micrograms of Lead per day, OFD agrees to include a clear and reasonable Proposition 65 warning label, as described in Section 2.3 below. This warning requirement shall only be required as to Products that are or sold by OFD to consumers 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 OFD 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, OFD shall display one of the following warning statements, with a black box around the warning label on the packaging label of the Products:

 **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

OR

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

OFD may use “cancer and” in the warning at its option. OFD may include the names of additional chemicals in the warning if they are present in the Products at a level that OFD 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. OFD 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 should no longer be required, OFD shall have no further obligations pursuant to this Settlement Agreement.

(d) INTERNET - Product that is sold by OFD on the Internet to persons located in California shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product.

(e) FOREIGN LANGUAGE - If the Product has consumer information in a foreign language, then the package must also contain the warning label in 2.3(a) in that foreign language.

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, and in settlement of all claims alleged in the Notice or

referred to in this Settlement Agreement, OFD agrees to pay Nine Thousand Five Hundred Dollars (\$9,500) (the “Settlement Amount”) as set forth below.

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

Five Hundred Dollars (\$500) of the Settlement Amount shall be considered a “civil penalty” pursuant to California Health and Safety Code Section 25249.7(b)(2). In accordance with California Health and Safety Code Sections 25249.12(c)(1) & (d), OFD shall issue two separate checks within fourteen (14) days of the Effective Date for a total amount of Five Hundred Dollars (\$500) as follows.

(a) One check made payable to the State of California’s Office of Environmental Health Hazzard Assessment (“OEHHA”) in the amount of Three Hundred Seventy-Five Dollars (\$375), representing 75% of the total civil penalty; and

(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.

All payments shall be delivered to the addresses listed in Section 4 below.

3.2. Attorney’s Fees and Costs:

Nine Thousand Dollars (\$9,000) of the total Settlement Amount shall be paid to Cliffwood Law Firm, PC within fourteen (14) days of the Effective Date, 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 OFD’s attention.

4. PAYMENT PROCEDURES

4.1. Addresses

All Payments owed to OEHHA, pursuant to section 3.1(a), shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties NOV #2023-00799”) 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

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

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

4.2. 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.

4.3. Tax Documentation

OFD agrees to provide a completed IRS 1099 for its payments to, and CPA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that OFD cannot issue any settlement payments pursuant to Section 3 until after OFD receives the requisite W-9 forms from CPA's counsel.

5. RELEASE OF ALL CLAIMS

5.1. Release of OFD, 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, 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) OFD (b) each of OFD's downstream distributors in the stream of commerce (including but not limited to Amazon.com, Inc.; Amazon.com Services 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) OFD'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 OFD and the Releasees.

5.2. OFD’s Release of CPA

OFD, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against CPA and its attorneys and other representatives, for any and all actions taken or statements made by CPA and/or 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 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 OFD, 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 thereof. 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 OFD 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 OFD 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 OFD Foods, LLC:

Dana Cook-Milligan, Esq.
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111

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. SEVERABILITY

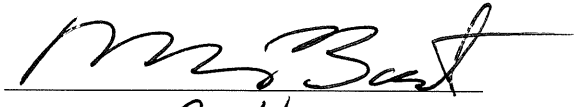
If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

12. 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:

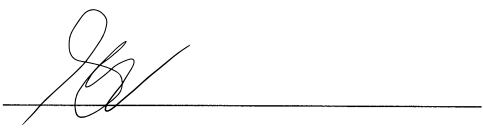
Date: August 13, 2024

Signature: 

Name: Marc Barth

Title: CFO

Date: August 14, 2024

Signature: 

Name: **Deki Yangzom**

Title: **Director**