

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Blue Water Cosaint, LLC (“Blue Water”) and Lee Kum Kee, Inc. (“LKK”). Blue Water and LKK are collectively referred to as the “Parties.” Blue Water is an entity located in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Blue Water alleges LKK is a person in the course of doing business for purposes of the California Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Blue Water alleges LKK and Tawa Supermarket, Inc. (“Tawa”) have exposed individuals in the State of California to Lead from its sales of certain products without first providing consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity. LKK denies that Blue Water’s allegations that it has exposed individuals in the State of California to Lead from its sales of certain products without first providing consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65.

1.3 Product Description. The products covered by this Settlement Agreement are all Lee Kum Kee Shrimp Sauce, of any size (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by LKK.

1.4 Notice of Violation. On March 23, 2023, Blue Water served LKK and Tawa and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided LKK and Tawa and such others, including public enforcers, with notice that alleged that LKK and Tawa were in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to Lead. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. LKK denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Products, have been and comply with all laws. Nothing in this Settlement Agreement shall be construed as an admission by the LKK 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 the LKK of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by LKK. However, this § 1.5 shall not diminish or otherwise affect the 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 this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: Clear & Reasonable Warnings or Reformulation

2.1 Compliance with Proposition 65 Warning Regulations. As of the Effective Date¹, LKK will provide a Proposition 65 warning label on the Products. The warning shall consist of either the Warning or Alternative Warning described in §§ 2.1(a) or (b), respectively:

Warning. The “Warning” shall consist of the statement:

- (a) **⚠️WARNING:** This product can expose you to lead, which is known to the State of California to cause cancer and reproductive harm. For more information go to www.P65Warnings.ca.gov
- (b) **Alternative Warning:** LKK may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“Alternative Warning”) as follows:

⚠️WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2.2 A Warning or Alternative Warning provided pursuant to § 2.1 must have the term “**WARNING:**” printed in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling

¹ LKK contends it has already added the warnings as contained in §2.1-2.3.

and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

2.3 Internet Warnings

If, after the Effective Date, LKK sells Products, via the internet, through its own website, affiliated websites or a third party website, to consumers located in California or to customers with nationwide distribution and e-commerce websites, LKK shall provide warnings for each Product both on the Product label in accordance with Section 2.2, and by prominently displaying, or requiring the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, to the consumer during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “WARNING” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Products for which it is given in the same type size or larger than other consumer information provided for the Products. To the extent that the current Proposition 65 requirements for Internet Warnings are changed, LKK may elect to adhere to any such changes in lieu of that which is set forth herein. Where LKK sells, ships, or distributes Products to third-party retailers or e-commerce marketplaces, LKK will advise them, in writing, of the internet Warning requirements under this Agreement as a condition of sale of the Products

2.4 Testing the Product for Lead. In the alternative, LKK may sell or distribute (and/or sell or cause to be sold) Product without the warning mentioned in §2.1 if it tests the Product subject to the Notice of Violation for the presence of Lead, and if 0.5 micrograms of Lead is not exceeded by a

consumer's average daily consumption of the Product, or such other safe harbor level adopted by OEHHA from time to time.

2.5 Compliance with Regulations. LKK shall be deemed to comply this Settlement Agreement by either adhering to §§ 2.1-2.3 of this Settlement Agreement or by complying with warning requirements and/or safe harbor levels adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA").

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement LKK shall pay \$2,000 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Blue Water. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, LKK shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

3.1 Civil Penalty. LKK shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500 (75%); and to (b) "Law Offices of George Rikos in Trust for Charles Blue Water" in the amount of \$500 (25%). The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. The Civil Penalty payments herein shall be paid within 10 calendar days of the Effective Date.

3.2 Payment Procedures.

(a) Issuance of Payments. Payments shall be delivered as follows:

(i) All payments owed to Blue Water, pursuant to § 3.1 shall be delivered to the following payment address:

George Rikos
Law Offices of George Rikos
555 West Beech, Suite 500
San Diego, CA 92101

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following addresses, and shall be sent no later than 15 business days following the Effective Date:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

(b) Copy of Payments to OEHHA. LKK agrees to provide Blue Water’s counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Blue Water, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(C) Tax Documentation. Blue Water agrees to provide IRS W-9 forms for each of the following payees under this Settlement Agreement concurrently with along with delivery of the executed copy of the Settlement Agreement to LKK:

(i) “Law Offices of George Rikos” at the address provided in Section 3.2(a)(i); and

(ii) “Office of Environmental Health Hazard Assessment” at 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

LKK shall reimburse Blue Water’s counsel \$33,000 for all attorney’s fees and costs incurred in this matter including but not limited to as a result of investigating the claims in the Notice and negotiating a settlement. The check for fees and costs shall be made payable by check to payable to

“Law Offices of George Rikos” in the amount of for delivery to the address identified in § 3.2(a)(i), above. The payment for fees and costs shall be paid within 15 business days of the Effective date.

5. RELEASE OF ALL CLAIMS

5.1 Release of LKK. This Settlement Agreement is a full, final and binding resolution between Blue Water, acting on his own behalf, and LKK, of any violation of Proposition 65 that was or could have been asserted by Blue Water or on behalf of its past and current directors, officers, members, managers, agents, representatives, attorneys, successors, and/or assigns (“Releasers”) for failure to provide warnings for alleged exposures to any Proposition 65 chemical including but not limited to lead from in the Products, and Releasers hereby release any such claims against LKK and Tawa, and each of their past and present parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, managers, members, agents, employees, attorneys, successors and assignees (collectively, the “Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on their failure to warn of alleged exposure to any Proposition 65 chemical, including but not limited to Lead, from use of the Products. This Release does apply to any upstream party, manufacturer, producer, importer, distributor, seller or other entity in the upstream stream of commerce.

5.2 LKK’s Release of Blue Water. LKK, on behalf of themselves, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Blue Water, and its attorneys and other representatives, for any and all actions taken or statements made by Blue Water 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. Blue Water on behalf of itself only, on one hand, and LKK 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.

Blue Water and LKK each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. Compliance by LKK with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to Lead from use of the Products.

5.5. Public Benefit. It is LKK's understanding that the commitments it has agreed to herein, and actions to be taken by LKK. 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 LKK that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to failure to provide a warning concerning exposure to Lead prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, 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 LKK is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law 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 or limited by reason of law generally, or as to the Products, LKK shall provide written notice to Blue Water of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

8. 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) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses:

For LKK:

Steven Taber, Esq.
Leech Tishman
200 South Los Robles, Suite 300
Pasadena, CA 91101

For Blue Water Cosaint, LLC:

George Rikos
LAW OFFICES OF GEORGE RIKOS
555 West Beech, Suite 500
San Diego, CA 92101

Either party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent, pursuant to compliance with the terms of this Section 8.

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

11. MODIFICATION

Except as provided heriein, this Settlement Agreement may be modified only by a written agreement of the Parties.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement 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.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

14. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement LKK may ask Blue Water, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Blue Water agrees to reasonably cooperate with LKK and to use his best efforts, and that of his counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, LKK will reimburse Blue Water and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment,

in an amount not to exceed \$5,000, exclusive of fees and cost that may be incurred on appeal. The LKK will remit payment to the Law Offices of George Rikos, at the address set forth in Section 3.2(a) above. Such additional fees shall be paid by the LKK, within ten (10) days after its receipt of any invoice from Blue Water for work performed under this paragraph. The LKK understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph.

AGREED TO:

Date: August 16, 2023



Print Name:

Simon Wu
Authorized Representative of
Lee Kum Kee, Inc.

AGREED TO:

Date: August 18, 2023



Authorized Representative of Blue Water Cosaint, LLC

