

## 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 Texas Star Nut and Food Co., Inc. ("TSN") on the other hand. CRC and TSN are each individually sometimes referred to as a "Party" and collectively as the "Parties."

#### **1.2 General Allegations**

CRC alleges in a 60-Day Notice of Violation dated May 25, 2023 (AG No. 2023-01460), that TSN sells and/or distributes Nature's Eats, Chili Mango and other dried mango products in California allegedly containing lead without a warning as required by Health and Safety Code §§ 25249.5 *et seq.* ("Proposition 65") (the "Notice"). Lead is a chemical listed pursuant to Proposition 65.

#### **1.3 Product Descriptions**

The products covered by this Settlement Agreement are Nature's Eats, Chili Mango and other dried mango products (the "Product" or "Products") that contain lead and that are manufactured, imported, sold or distributed for sale in California by TSN.

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

On May 25, 2023, CRC served the Notice on TSN, the California Attorney General and the other requisite public enforcers, alleging that TSN and others violated Proposition 65 when they failed to warn consumers in California that the Products can cause an exposure to lead.

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**

TSN enters into this Settlement Agreement as a full and final settlement of all claims that were raised or that could have been raised in the Notice, and solely to avoid potentially prolonged and costly litigation. TSN denies the material factual and legal allegations contained in the Notice, maintains that it is not a person subject to Proposition 65, that it is not subject to personal jurisdiction in California, and that all products that it has sold and/or distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission against interest by TSN of any fact, finding, issue of law, or violation of law; including, but not limited to any fact or conclusion of law suggesting or demonstrating that TSN has sold any products in California, or that it has violated Proposition 65, or that it is subject to personal jurisdiction in California, nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by TSN of any of the above, such being specifically denied by TSN. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense TSN may have in this or any other future legal proceedings, including TSN's position that it is not a person in the course of doing business under Proposition 65, nor that it is not subject to personal jurisdiction in California. This Settlement Agreement is the product of negotiation and compromise and is accepted by TSN solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.5 shall not diminish or otherwise affect the Parties' obligations, responsibilities and duties under this Settlement Agreement.

### **1.6 Effective Date/Compliance 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. The "Compliance Date" shall be 30 days after the Effective Date.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard/Clear and Reasonable Warnings**

Beginning on or before the Compliance Date, TSN shall be permanently enjoined from manufacturing, importing, distributing, or directly selling in the State of California, any Products that expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of Lead based on the package label serving size unless such Products comply with the warning requirements of Section 2.2. The "Daily Lead Exposure Level" shall be calculated by multiplying the recommended package label serving size for the Products by the concentration of lead in the Products. TSN shall be able to calculate the Daily Lead Exposure Level by averaging up to five randomly drawn samples, all taken from the same production lot, or rely on the testing of a single sample if it tests under the Daily Lead Exposure Level in determining whether a warning is required for that particular lot of Product under Section 2.2. As used in this Section 2, "distributed for sale in California" means to directly ship Products into California or to sell Products to a distributor TSN knows will sell the Products in California. Products that do not cause a Daily Lead Exposure Level of more than .5 micrograms of Lead based on the package label serving size are "Reformulated Products" and do not require a Proposition 65 warning for Lead hereunder.

### **2.2 General Warning Requirements**

TSN agrees that each Proposition 65 warning for Products that require a warning hereunder shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, as to render it reasonably 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 the 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 Product sold or distributed in California by TSN that contains one of the following statements:

1) [California Prop 65] **WARNING:** Consuming this product can expose you to chemicals including lead 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) [California Prop 65] **WARNING:** Cancer and Reproductive Harm-  
[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

If the warning is on the Product label the warning shall be offset in a box. Language in brackets is optional.

For internet purchases on any website controlled by TSN, the warning must also be provided by including either the warning or a clearly marked hyperlink using the word "**WARNING**" on the Product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase.

For Product that TSN provides for a downstream entity where TSN has actual knowledge that such entity will offer the Product for sale in California on the internet, TSN shall include an instruction that the entity comply with the warning requirements of this section if such Product requires a Proposition 65 warning hereunder.

Where a consumer product label used to provide a warning hereunder includes “consumer information” as defined in the applicable Proposition 65 safe harbor regulations in language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

(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, TSN 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 or legislation are enacted or issued providing that a Proposition 65 warning for the Products 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 manufactured and/or in the stream of commerce as of the Compliance Date, which Product is expressly subject to the releases provided in Section 4.

**2.4 Public Benefit**

It is the Parties’ understanding that the commitments TSN has agreed to herein, and actions to be taken by TSN under this Settlement Agreement 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 the Parties that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to TSN’s alleged failure to provide a warning concerning actual or alleged exposure to lead prior to use of the Products it has manufactured, imported, 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 TSN is in material compliance with this Settlement Agreement. The Parties agree that TSN’s compliance with the terms of this settlement agreement is compliance with Proposition 65 with respect to actual or alleged exposures to lead in the Products.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Total Settlement Payment**

In full satisfaction of all potential civil penalties, attorneys’ fees, expenses, and/or claims for monetary relief of any kind related to the claims alleged in the Notice and/or resolved through this Settlement Agreement, TSN shall make a total settlement payment of Twenty-Two Thousand and Six Hundred Dollars (**\$22,600**) (“Total Settlement Amount”). The Total Settlement Amount shall be apportioned into a Civil Penalty and Attorney’s Fees and expenses as set forth in Sections 3.2 and 3.3 below.

### 3.2 Civil Penalty Payment

Pursuant to Health and Safety Code§ 25249.7(b)(2), and in settlement of all claims for monetary relief of any kind alleged in the Notice or referred to in this Settlement Agreement (except for CRC's attorney's fees and expenses as set forth in Section 3.3), TSN agrees to pay Two Thousand Two Hundred and Sixty Dollars (**\$2,260.00**) 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 Effective Date, TSN shall issue a check to "OEHHA" in the amount of One Thousand Six Hundred and Ninety-Five Dollars (**\$1,695**) and shall, pursuant to the instructions below, either send a check or wire to CRC in the amount of Five Hundred and Sixty-Five Dollars (**\$565**).

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 Instructions:**

Account Name: The Law Offices of Joseph R. Manning  
Bank Name: J.P. Morgan Chase Bank, N.A.  
Bank Address: 2967 Michelson Dr, Ste A, Irvine, CA 92612  
Routing Number: 322271627  
Wire Routing / ABA Number: 021000021  
Swift Code: CHASUS33  
Account Number: 579068902

For further benefit of: Civil Penalty Payment File No. P65-0467

Alternatively, the CRC payment may be made by check sent to the following address within 10 days of the Effective Date. The check shall made payable to "Manning Law, APC Attorney-Client Trust Account", the memo line of the check shall include "Civil Penalty Payment File No. P65-0467" and the check shall be delivered via express mail or United States Postal Delivery Service to:

Manning Law, APC  
26100 Towne Centre Drive  
Foothill Ranch, CA 92610

### **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 Effective Date, TSN agrees to pay Twenty Thousand Three Hundred and Forty Dollars (**\$20,340**) to CRC and its counsel for all attorney's fees and expenses incurred in this matter, including, but not limited to all fees and expenses incurred for investigating, testing, consulting with experts, bringing this matter to the attention of TSN, and negotiating this settlement agreement in the public interest.

The payment shall be sent via wire to:

#### **Wire Instructions:**

Account Name: The Law Offices of Joseph R. Manning  
Bank Name: J.P. Morgan Chase Bank, N.A.  
Bank Address: 2967 Michelson Dr, Ste A, Irvine, CA 92612  
Routing Number: 322271627  
Wire Routing / ABA Number: 021000021  
Swift Code: CHASUS33  
Account Number: 579068902  
For further benefit of: Attorney's Fees and Costs File No. P65-0467

Alternatively, the CRC payment may be made by check sent to the following address within 10 days of the Effective Date. The check shall be made payable to "Manning Law, APC Attorney-Client Trust Account", the memo line of the check shall include "Attorney's Fees and Costs File No. P65-0467" and the check shall be delivered via express mail or United States Postal Delivery Service to:

Manning Law, APC  
26100 Towne Centre Drive  
Foothill Ranch, CA 92610

### **3.4 Tax Documentation**

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

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

### **4.1 CRC's Release of TSN**

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges TSN and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensors, licensees, customers, suppliers, distributors (the "TSN Releasees") and all entities from whom or to whom the TSN Releasees directly or indirectly acquire, distribute, or sell the Products, and any other suppliers, 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, attorneys, parent companies, affiliates, 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 Products manufactured, imported, distributed, or sold in California through the Compliance Date, 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 actual or alleged exposures to lead.

**4.2 TSN's Release of CRC**

TSN 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 Products.

**4.3 California Civil Code Section 1542**

It is possible that other claims not known to the Parties, including claims arising out of the Notice or relating to products manufactured for or sold by TSN through the Compliance Date, will develop or be discovered. CRC on behalf of itself and its past and current agents, representatives, attorneys, successors, and/or assignees only, and TSN on behalf of itself only, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims for such products manufactured, imported, or distributed for sale up through and including the Compliance Date, including all rights of action therefore. CRC and TSN 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.

CRC and TSN expressly waive and relinquish any and all rights and benefits that they may have under, or that may be conferred upon them by, the provisions of 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 they may lawfully waive such rights or benefits pertaining to the released matters.

**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 principles.

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 Center Drive  
Foothill Ranch, CA 92610  
Tel: Office (949) 200-8757 Fax: (866) 843-8309  
p65@manninglawoffice.com

For TSN

John Taylor or Current President  
Texas Star Nut and Food Co., Inc.  
206 Market Ave.,  
Boerne TX 78006  
[john@texasnut.com](mailto:john@texasnut.com)  
With Copy to:

J. Robert Maxwell, Esq.  
Rogers Joseph O'Donnell  
311 California Street, 10th Fl  
San Francisco, CA 94104  
[jmaxwell@rjo.com](mailto:jmaxwell@rjo.com)

8. **ENFORCEMENT**

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. CRC shall not bring an enforcement action or institute a judicial proceeding or seek any other relief of any kind if TSN demonstrates that it has complied with the requirements of Section 2. It shall be a defense to any claim of violation of this Settlement Agreement or Proposition 65 with respect to alleged lead in the Products provided TSN can show it has complied with the testing and/or warning requirements of Section 2. In the event that meet-and-confer efforts are unsuccessful, the Party alleging a violation may initiate a judicial proceeding to enforce this Settlement Agreement no earlier than 30 days after issuing the written notice specified herein. In the event that a Party initiates such a judicial proceeding, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs in accordance with applicable law.

9. **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 an 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.*

**10. 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).

**11. MODIFICATION**

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

**12. 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, by any Party.

**13. 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.

**14. 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: 5/31/2024

By:    
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CalSafe Research Center, Inc.

AGREED TO:

Date: 6/5/2024

By: Laura Hamel, Controller

Texas Star Nut and Food Co., Inc.