

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Lotus Foods, Inc. (“Lotus Foods”). Together, Espinoza and Lotus Foods are collectively referred to as the “Parties.” Espinoza is an individual who resides 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. Espinoza alleges that Lotus Foods is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

**1.2 General Allegations.** Espinoza alleges that Lotus Foods has exposed individuals to lead from its sales of *Lotus Foods*® traditional pho rice noodles, UPC # 708953641072 without first providing users and 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 birth defects or other reproductive harm.

**1.3 Product Description.** The products covered by this Settlement Agreement are *Lotus Foods*® traditional pho rice noodles, UPC # 708953641072 (the “Products”) that have been manufactured, imported, distributed, offered for sale and/or sold in California by Lotus Foods.

**1.4 Notice of Violation.** On May 31, 2023, Espinoza served Albertsons Companies, Inc., Albertsons Companies, LLC (collectively, “Albertsons”), Lotus Foods, 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 Lotus Foods and such others, including public enforcers, with notice that alleged that Lotus Foods was 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.** Lotus Foods 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 are in compliance with Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Lotus Foods 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 Lotus Foods of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Lotus Foods. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Lotus Foods maintains that it has not knowingly manufactured, imported, distributed, offered for sale or sold, or caused to be manufactured, imported, distributed, offered for sale, or sold the Products for sale in California in violation of Proposition 65.

**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: REFORMULATION/WARNINGS**

**2.1 Reformulation of Products.** Commencing sixty (60) days after the Effective Date (the “Compliance Date”), and continuing thereafter, Products that Lotus Foods directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 - 2.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 - 2.4 shall not apply to any Reformulated Product.

**2.2 Reformulation Standard.** “Reformulated Products” shall mean Products that expose a person to an exposure level of not more than 0.5 micrograms of lead per day. For the purpose of this Agreement, the amount of lead a person is exposed to from a Product shall be calculated using the following formula: micrograms of lead per gram of Product, multiplied by grams of Product per serving size 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 a recommended dosage

appearing on the label), which equates to micrograms of lead exposure per day. If the Product label contains no recommended daily servings, then the the daily rate of intake shall be calculated pursuant to the provisions of section 25821 of title 27 of the California Code of Regulations.

**2.3 Clear and Reasonable Warning.** Commencing on the Compliance Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Lotus Foods manufacturers, imports, distributes, sells, or offers for sale in California that are not reformulated pursuant to paragraph 2.2. There shall be no obligation for Lotus Foods to provide an exposure warning for Products that entered the stream of commerce prior to the Compliance Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

- (a) **Warning.** The “Warning” shall consist of the statement:

**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).

- (b) **Alternative Warning:** Lotus Foods may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows: <sup>1</sup>

**WARNING:** [Cancer and ]Reproductive Harm. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

**2.4** Lotus Foods shall use the phrase “cancer and” in the Warnings if it has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead determined pursuant to the quality control methodology set forth in Section 2.2 or if Lotus Foods has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. The Section 2.2(a) Warning shall reflect at least one chemical present in the Products, but if there is a chemical present

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<sup>1</sup> A short form warning on a Product manufactured and labeled after January 1, 2028, shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

at a level that requires a cancer warning, the chemical requiring use of the phrase “cancer and” in the Warning shall always be identified. For the Section 2.3(b) Alternative Warning, the entire Alternative Warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the Alternative Warning appear in a type size smaller than 6-point type. Additionally, for the Alternative Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the Alternative Warning, in a size no smaller than the height of the word “WARNING.” Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The Warnings shall be provided through one of the following methods: (1) a product specific warning provided on a posted sign, shelf tag, or shelf sign, for the Product at each point of display of the product; or (2) a product-specific warning provided via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the Product at brick-and-mortar locations, without requiring the purchaser to seek out the warning; or (3) a warning on the label that is securely affixed to or printed upon the label and complies with this Section 2.4. If the warning is printed upon the label of the Product, it must be set off from other surrounding information and enclosed in a box. In addition, for any Product sold over the internet, the warning shall appear prior to check-out on the Product’s primary display page, or as a pop-up when a California zip code is input into the shipping instructions, or on the checkout page when a California delivery address is indicated for any purchase of any Product.

Where a warning subject to this section is provided solely on the checkout page, an asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the warning. The warning may be provided with a conspicuous hyperlink stating “WARNING” in all capital and bold letters so long as the hyperlink goes directly to a page prominently displaying the warning without content that detracts from the Warning.

If a Product is being sold by an online third-party seller or downstream reseller customer (collectively referred to as “Third-Party Seller(s)”), who are subject to Proposition 65 and known to and authorized to sell such Product by Lotus Foods, and Lotus Foods cannot itself post the warning

on the authorized Third-Party Seller's website because Lotus Foods lacks control over such authorized Third-Party Seller's website, then Lotus Foods must notify the authorized Third-Party Seller and/or its authorized agent, in writing, of the authorized Third-Party Seller's duty to provide an internet warning as part of the condition of sale of the Product. Lotus Foods shall comply with this obligation to notify authorized Third-Party Sellers by complying with 27 C.C.R. § 25600.2 (2024) including, but not limited to, by providing the information required by 27 C.C.R. § 25600.2 (2024), including labels, labeling, shelf signs, or tags bearing the Warning, and all other necessary warning materials, to any such authorized Third-Party Seller (or its authorized agent). The written notice required by this Section shall instruct the Third-Party Seller that the labels, labeling, shelf signs, or tags bearing the Warning must be displayed on or in proximity to the Products with such conspicuousness, as compared with other words, statements or designs as to render the warning likely to be seen, read, and understood by an ordinary individual prior to sale. Confirmation of receipt of the written notice and any renewed written notices must be received electronically or in writing from the Third Party Seller, or its authorized agent, to which the manufacturer, producer, packager, importer, supplier, or distributor of the product sent the written notice.

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 lay person 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.

Lotus Foods must display the above warnings with such conspicuousness, as compared with other words, statements or designs on the label, or on its website, if applicable, to render the warnings likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product. Where a sign or label used to provide the warning for a Product includes consumer information about the Product in a language other than English, the warning must also be provided in that language in addition to English.

For purposes of this Settlement Agreement, the term “label” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper.

If subsequently enacted changes to Proposition 65 or its implementing regulations require the use of additional or different information on any warning specifically applicable to the Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe Harbor warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this Section.

There shall be no obligation for Lotus Foods to provide warnings for Products that entered the stream of commerce prior to the Compliance Date, and the Section 5 release herein applies to all such Products. For the avoidance of doubt, Products in the stream of commerce specifically include, but are not limited to, Products in the process of manufacture.

The Parties agree that Lotus Foods shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with the regulations adopted by the State of California’s OEHHA applicable to the Product and the exposure at issue.

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

In settlement of all the claims referred to in this Settlement Agreement, Lotus Foods shall pay \$2,000.00 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 Espinoza. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below

**3.1 Civil Penalty.** Within fifteen (15) business days of the Effective Date, Lotus Foods shall issue two (2) separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and to (b) “Gabriel Espinoza” in the amount of \$500.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

**3.2 Payment Procedures.**

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

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

Evan J. Smith, Esquire  
Brodsky Smith  
Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHHA (Memo Line "Prop 65 Penalties") at the following addresses:

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 OEHHHA.** Lotus Foods agrees to provide Espinoza's counsel with a copy of the checks payable to OEHHHA, simultaneous with its penalty payments to Espinoza, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHHA.

**(c) Tax Documentation.** Lotus Foods agrees to provide a completed IRS 1099 for its payments to, and Espinoza agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Gabriel Espinoza" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) “Brodsky Smith” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

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

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Espinoza and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Espinoza and his counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Lotus Foods shall reimburse Espinoza’s counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Lotus Foods, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, Lotus Foods shall issue a check payable to “Brodsky Smith” in the amount of \$23,000.00 for delivery to the address identified in § 3.2(a)(i), above.

#### **5. RELEASE OF ALL CLAIMS**

##### **5.1 Release of Lotus Foods and Upstream and Downstream Customers and Entities.**

This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and Lotus Foods, of any violation of Proposition 65 that was or could have been asserted by Espinoza or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns (“Releasors”) for failure to provide warnings for alleged exposures to lead from use of the Products, and Releasors hereby release any such claims against Lotus Foods and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, manufacturers, importers, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Lotus Foods directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Albertsons, its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the



“Releasees”), from all claims for violations of Proposition 65 as of the Compliance Date based on exposure to lead from use of the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Espinoza, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys’ fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to lead from use of the Products.

**5.2 Lotus Foods’ Release of Espinoza.** Lotus Foods, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Espinoza, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Espinoza and/or his 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 exposure to lead from 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. Espinoza on behalf of himself only, on one hand, and Lotus Foods, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims as of the Compliance 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 HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

MATERIALLY AFFECTED HER OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.

Espinoza and Lotus Foods 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 Lotus Foods with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Products.

**6. PUBLIC BENEFIT**

It is Lotus Foods' understanding that the commitments it has agreed to herein, and actions to be taken by it 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 Lotus Foods 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 any alleged failure to provide a warning concerning actual or alleged exposure to lead from use of the Product 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 Lotus Foods is in material compliance with this Settlement Agreement.

**7. 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.

**8. 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.

**9. 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 Lotus Foods:

Matt Orr  
Amin Wasserman Gurnani  
515 S. Flower St., 18<sup>th</sup> Fl.  
Los Angeles, CA 90071

For Espinoza:

Evan J. Smith  
Brodsky Smith  
Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

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.

**10. 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.

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

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

**12. MODIFICATION**

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

**13. 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.

**14. 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.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: **March, 26, 2025** \_\_\_\_\_

By: \_\_\_\_\_  
Gabriel Espinoza

By:  \_\_\_\_\_  
Lotus Foods, Inc.

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.

**14. AUTHORIZATION**

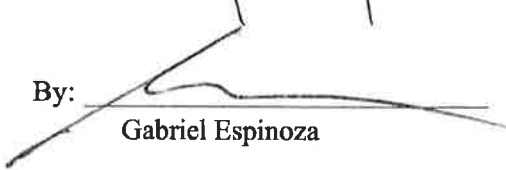
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 3 / 27 / 25

Date: \_\_\_\_\_

By:   
Gabriel Espinoza

By: \_\_\_\_\_  
Lotus Foods, Inc.