

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

FUSION GOURMET, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Fusion Gourmet, Inc. (“Fusion Gourmet”), (CAG and Fusion Gourmet collectively referred to as, the “Parties”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that Fusion Gourmet violated Proposition 65. The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”). The compliance date of this Settlement Agreement shall be a date thirty (30) days from the Effective Date (the “Compliance Date”).

1.0 Introduction

1.1 CAG is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 Fusion Gourmet previously sold, at various times, Ginger Chews, including but not limited to those containing the following notations on product packaging “Bali’s Best”; “MADE WITH REAL GINGER”; “Ginger CHEWS”; “SWEET & SPICY CHEWY CANDY”; “Zesty LEMON”; “5.08 oz (144g)”; “Distributed by Fusion Gourmet”; “BEST BY: 11 MAY 2025”; “UPC 819529007960” (referred to throughout as the “Covered Products”). The Covered

Settlement Agreement Between
Consumer Advocacy Group, Inc. and MSM International, Inc.

Products are limited to those distributed for sale in California by Fusion Gourmet only. As used herein, “distributed/ing for sale in California” means to directly ship Covered Products into California or to sell Covered Products to a distributor Fusion Gourmet actually knows will sell Covered Products in California.

1.3 CAG alleges that Covered Products contain Lead and Lead Compounds in excess of established “safe harbor” levels and that Fusion Gourmet did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* (“Proposition 65”)).

1.4 On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and male reproductive toxicity. On October 1, 1992, the Governor of California added lead and lead compounds to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). CAG alleges that pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of lead and lead compounds to the list of chemicals known to the State to cause cancer and reproductive toxicity, lead and lead compounds became fully subject to Proposition 65 warning requirements and discharge prohibitions.

1.5 Lead and Lead Compounds are referred to hereafter as the “Listed Chemical”.

1.6 On or about March 14, 2024 (Attorney General Notice # 2024-01073), CAG served Fusion Gourmet, Marshalls, Marshalls of MA, Inc., Marshalls of CA, LLC, The TJX Companies, Inc., and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” regarding Covered Products allegedly containing the Listed Chemical.

1.7 On or about April 16, 2024 (Attorney General Notice # 2024-01483), CAG served Fusion Gourmet, Marshalls, Marshalls of MA, Inc., Marshalls of CA, LLC, The TJX Companies, Inc., and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” regarding Covered Products allegedly containing the Listed Chemical.

1.8 The Sixty-Day Notices (referred to as “Notice”) alleged that Fusion Gourmet and the other noticed parties violated Proposition 65 by failing to warn consumers in California that Covered Products unlawfully expose persons to the Listed Chemical.

1.9 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties’ and the Covered Products’ compliance with Proposition 65 (the “Dispute”).

1.10 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory,

regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Fusion Gourmet, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or Fusion Gourmet may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

2.0 Release

2.1.1. This Settlement Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity, on the one hand, and (a) Fusion Gourmet, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively “Releasees”) and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, online marketplaces, franchisees, cooperative members, and licensees (“Downstream Releasees”), on the other hand, of any violation(s) or

claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising only in connection with the Covered Products manufactured, shipped, and/or otherwise distributed prior to the Compliance Date, even if distributed or sold by Downstream Releasees after the Compliance Date. The Covered Products are limited to those distributed for sale in California by Fusion Gourmet.

2.1.2. CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action, 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) (collectively "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect of any Covered Products distributed for sale in California up to the Compliance Date, only to the extent that such Claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

2.1.3. CAG acknowledges that it is familiar with Section 1542 of Civil Code, 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.

2.1.4. CAG, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. The release in this section shall only have force or effect if the payments set forth in Section 4.0 below are paid in full.

3.0 Fusion Gourmet's Duties

3.1 Fusion Gourmet agrees, promises, and represents that after the Compliance Date, Fusion Gourmet shall be enjoined from distributing for sale in California any Covered Product that expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of the Listed Chemical based on a single serving per day unless such Covered Products comply with the warning

requirements set forth below. The “Daily Lead Exposure Level” shall be calculated by multiplying the recommended serving size in the Covered Product by the concentration of the Listed Chemical in the Covered Products (“Reformulation Standard”) or provide Proposition 65 warnings as specified herein.

3.2 Fusion Gourmet agrees, promises, and represents that, as of the Compliance Date, it shall sell or otherwise distribute for sale in California only Covered Products that satisfy the “Reformulation Standard” or provide Proposition 65 warnings, as specified herein.

3.3 As to Covered Products manufactured after the Compliance Date, if such Covered Products do not meet the Reformulation Standard, Fusion Gourmet shall provide warnings consistent with Title 27 California Code of Regulations, §§ 25600, et. seq for cancer and reproductive toxicity. Should Fusion Gourmet sell any Covered Products online, the warning will be posted in the manner provided for with respect to internet sales, as provided for in Title 27, California Code of Regulations, §§ 25601 and 25602, including as they may be subsequently amended. Where the Covered Product includes consumer information as defined by California Code of Regulations Title 27, California Code of Regulations §25600.1(c) in a language other than English, the warning if required must also be provided in that language in addition to English.

4.0 Payments

4.1 Fusion Gourmet agrees, to send a total of seventy-five thousand dollars (\$75,000.00) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Penalty: Fusion Gourmet shall issue two separate checks for a total amount of twenty thousand dollars (\$20,000) as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of fifteen thousand dollars, (\$15,000), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of five thousand dollars (\$5,000), representing 25% of the total penalty. OEHHA's check shall be delivered to Office of Environmental Health Hazard Assessment P.O. Box 4010 Sacramento, CA 95812-4010, Attn: Mike Gyurics. CAG's check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Additionally, two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010 Sacramento, CA 95812-4010, Attn: Mike Gyurics (EIN: 68-0284486). The second 1099 shall be issued to CAG and delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212. Yeroushalmi & Yeroushalmi shall issue IRS W-9 forms for each of the payees under this Settlement Agreement prior to the payment deadlines stated herein

4.1.2 Attorneys' Fees and Costs: Fifty-five thousand dollars (\$55,000) of such payment shall be paid to Yeroushalmi & Yeroushalmi, as CAG's attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Fusion Gourmet's attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Yeroushalmi shall provide Fusion Gourmet with its Employer Identification Number.

5.0 Authority to Enter Into Settlement Agreement

5.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

5.2 Fusion Gourmet represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Fusion Gourmet to this Settlement Agreement.

6.0 Report of the Settlement Agreement to the Office of the Attorney General Of California

6.1 CAG shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement and comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f)..

7.0 Execution in Counterparts and Facsimile

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original.

8.0 Entire Agreement

8.1 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.

9.0 Modification of Settlement Agreement

9.1 Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

10.0 Application of Settlement Agreement

10.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, CAG and the Releasees and Downstream Releasees identified in Section 2 above.

11.0 Enforcement of Settlement Agreement

11.1 Any party may file suit before the Superior Court of the County of Los Angeles to enforce the terms and conditions contained in this Settlement

Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

12.0 Notification Requirements

12.1 Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

Reuben Yeroushalmi, Esq.
YEROUSHALMI & YEROUSHALMI
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212

For Fusion Gourmet:

Sherry E. Jackman, Esq.
Sedina L. Banks, Esq.
GREENBERG GLUSKER LLP
2049 Century Park East, Suite 2600
Los Angeles, CA 90067

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

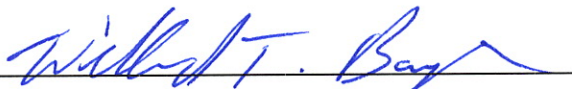
13.0 SEVERABILITY

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


14.0 GOVERNING LAW

14.1 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, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Products, then Fusion Gourmet shall provide written notice to CAG 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, the Covered Products are so affected.

CONSUMER ADVOCACY GROUP, INC.

Dated: 9-5-24 By: 
Printed Name: Willard T. Bayer
Title: President

FUSION GOURMET, INC.

Dated: September 5, 2024 By: 
Printed Name: Stephen Liaw
Title: President