

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Pure Freeze Dry, LLC dba Peak Refuel (“Peak Refuel”). Together, Espinoza and Peak Refuel are collectively referred to as the “Parties.” Espinoza alleges he 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 further alleges that Peak Refuel 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 Peak Refuel has exposed individuals to lead from its sales of *Peak Refuel*<sup>™</sup> premium freeze dried homestyle chicken and rice, UPC # 813546022555 without first providing California users and consumers of the product with a clear and reasonable 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 *Peak Refuel*<sup>™</sup> premium freeze dried homestyle chicken and rice, UPC # 813546022555 (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Peak Refuel.

**1.4 Notices of Violation.** On February 28, 2024, Espinoza served BPS Direct, LLC, Bass Pro Shop Outdoor World, LLC (collectively, “BPS”), and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “February Notice”). The February Notice provided BPS and such others, including public enforcers, with notice that alleged that the Products distributed by Peak Refuel for retail sale in California, including by BPS, expose California consumers to lead and that no clear and reasonable warning for such exposure was provided, in violation of California Health & Safety Code § 25249.6, for . No public enforcer has diligently prosecuted the allegations set forth in the February Notice.

On March 26, 2024, Espinoza served BPS, Peak Refuel, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “March Notice”). The March Notice provided Peak Refuel and such others, including public enforcers, with notice that alleged that Peak Refuel 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 March Notice.

The February Notice and the March Notice are collectively referred to herein as, the “Notices.”

**1.5 No Admission.** Peak Refuel denies the material factual and legal allegations contained in the Notices 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 are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Peak Refuel 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 Peak Refuel of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Peak Refuel. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, Peak Refuel maintains that it has not knowingly manufactured, or caused to be manufactured, 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 AND/OR WARNINGS**

**2.1 Reformulation of Products.** Commencing within ninety (90) days after the Effective Date, and continuing thereafter, Products that Peak Refuel 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 less 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: the 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 number of recommended daily servings shall be one (1).

**2.3 Clear and Reasonable Warning.** Commencing within 90 days after the Effective 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 Peak Refuel manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Peak Refuel to provide an exposure warning for Products that entered the stream of commerce within 60 days after the Effective 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 is 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:** Peak Refuel 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/food](http://www.P65Warnings.ca.gov/food).

**2.4** A **Warning** or **Alternative Warning** provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The **Warning** or **Alternative Warning** shall be affixed to or printed on the Products’ packaging or labeling, or on a

placard, shelf tag, sign or electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is 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. The **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings. Where the **Warning** or **Alternative Warning** is provided on the food product label, it must be set off from other surrounding information, and Peak Refuel shall enclose the **Warning** or **Alternative Warning** in a black box and comply with the content requirements specified in Section 25607.2. If “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Peak Refuel shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites owned, operated, or maintained by Peak Refuel where Peak Refuel offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word “**WARNING**,” appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, Peak Refuel shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section

25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

**2.5 Compliance with Warning Regulations.** The Parties agree that Peak Refuel shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning regulations adopted by the State of California's OEHHA applicable to the Product and the exposure at issue.

### **3. MONETARY SETTLEMENT TERMS**

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

In settlement of all the claims referred to in this Settlement Agreement, Peak Refuel 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. Espinoza's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Agreement to OEHHA and Espinoza.

#### **3.2. 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, Peak Refuel shall reimburse Espinoza's counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Peak Refuel, and negotiating a settlement in the public interest, in the total amount of \$25,000.00.

#### **3.3 Payment Procedures.**

Within fifteen (15) business days of the Effective Date, Peak Refule shall make a total payment of \$27,000.00 for the civil penalties and attorneys' fees and costs set forth in Section 3.1 and 3.2 above

by wire transfer to Espinoza's counsel, Brodsky & Smith, LLC, in accordance with wire instructions to be provided by Brodsky & Smith, LLP on or before the Effective Date.

#### **3.4. Tax Documentation.**

Peak Refuel 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. RELEASE OF ALL CLAIMS**

**4.1 Release of Peak Refuel and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and Peak Refuel, 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 ("Releasers") for failure to provide warnings for alleged exposures to lead from use of the Products, and Releasers hereby release any such claims against Peak Refuel and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Peak Refuel directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to BPS, its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees, and their respective, directors, officers, agents, employees, and attorney (collectively, the "Releasees"), from all claims for violations of Proposition 65 through 60 days after the Effective 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 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.

**4.2 Peak Refuel's Release of Espinoza.** Peak Refuel, 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.

**4.3 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 Peak Refuel, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through 60 days after 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 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 Peak Refuel each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**4.4 Deemed Compliance with Proposition 65.** The Parties agree that compliance by Peak Refuel with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Products.

**5. 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.

**6. 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.

**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) 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 Peak Refuel:

Aaron Belzer  
Seyfarth Shaw LLP  
2029 Century Park E., Ste. 3500  
Los Angeles, CA 90067

With a copy to:

Travis Christofferson  
Pure Freeze Dry, LLC dba Peak Refuel  
691 S Automall Drive  
American Fork, UT 84003

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.

8. **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.

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

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

10. **MODIFICATION**

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

11. **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.

12. **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: 12 | 26 | 24

Date: 12/18/2024

By:   
Gabriel Espinoza

By:   
Pure Freeze Dry, LLC dba Peak Refuel