

# SETTLEMENT AND RELEASE AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This settlement and release agreement (“Settlement Agreement”) is entered into by and between Consumer Rights Advocates, LLC (“CRA”) on the one hand, and ZENB US, Inc. (“ZENB”) on the other hand, with CRA and ZENB, each individually referred to herein as a “Party” and collectively as the “Parties.”

### 1.2 General Allegations

CRA alleges that ZENB manufactures, imports, distributes, offers for sale, and/or sells certain products in California containing lead or cadmium without warning under California Health and Safety Code sections 25249.5 *et seq.* (“Proposition 65”). Lead and cadmium are listed pursuant to Proposition 65 as chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm.

### 1.3 Covered Products

The products covered by this Settlement Agreement are Agile Bowl pasta bowls, including the flavors identified below. Such items shall be referred to herein as the “Covered Products.”

- Red Pepper Harissa; UPC No.: 850037028399
- Mexican Street Corn; UPC No.: 850037028191
- Cauliflower Tikka Masala; UPC No.: 8500370281841
- Zesty Garlic Spinach; UPC No.: 850037028177

### 1.4 Notice of Violation

CRA served ZENB and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the State of California four (4) 60-day Notices of Violation pursuant to Cal. Health & Safety Code § 25249.5, *et seq.*, Notices of Violation Nos. 2024-01500; 2024-01501; 2024-01502; 2024-01503, each dated April 19, 2024 (the “Notices”), alleging that ZENB was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to unlawful amounts of lead or cadmium. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting an action to enforce the violations alleged in the Notice.

### 1.5 No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them on the terms set forth herein and as alleged in the Notices concerning ZENB’s compliance with Proposition 65. ZENB denies the material factual and legal allegations in the Notices and maintains that all the products it has manufactured, offered for sale and/or distributed for sale in California, including the Covered Products, have been and are in compliance with Proposition 65 and all other applicable statutory, regulatory, common law, or equitable doctrines. Nothing in this Settlement Agreement shall be construed as an admission by ZENB or any of its officers, directors,

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Settlement Agreement Between Consumer Rights Advocates, LLC and ZENB US, Inc.

shareholders, employees, agents, parent or sister companies, subsidiaries, divisions, affiliates, franchisees, licensees, licensors, joint venture partners, customers, suppliers, distributors, wholesalers, or retailers, of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by ZENB or any of its officers, directors, shareholders, employees, agents, parent or sister companies, subsidiaries, divisions, affiliates, franchisees, licensees, licensors, joint venture partners, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, all of such being specifically denied by ZENB. Neither the existence nor terms of this Settlement Agreement shall be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. This Section shall not, however, diminish or otherwise affect ZENB's 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 on which a complete and fully executed copy of this Settlement Agreement is exchanged by the Parties' counsel.

## **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

As of the Effective Date, ZENB shall not "distribute into the State of California" or directly sell in the State of California any Covered Products that expose a person to more than 0.5 micrograms of lead per day based on the recommended serving size on the Covered Product's label, unless the Covered Product bears a warning meeting the warning requirements under Section 2.1 & 2.2. Additionally, ZENB shall not "distribute into the State of California" or directly sell in the State of California any Covered Products that expose a person to more than 4.1 micrograms of cadmium per day based on the recommended serving size on the Covered Product's label, unless the Covered Product bears a warning meeting the warning requirements under Section 2.1 & 2.2.

For the purpose of this Settlement Agreement, exposure level shall be measured in micrograms and shall be calculated using the following formula: micrograms of lead/cadmium per gram of product, multiplied by grams of product per serving of the product as stated on the label, multiplied by servings of the product per day stated on the label, which equals micrograms of lead/cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one. Any testing of the Covered Products' exposure level shall be undertaken by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization.

As used in this Settlement Agreement, the term "distribute into the State of California" shall mean to directly ship the Covered Product into California for sale in California or to sell the Covered Products to a distributor that ZENB knows will sell the Covered Products in California. The term "distribute into the State of California" does not encompass unauthorized sales of the Covered Product by third parties.

## **2.1 CLEAR AND REASONABLE WARNINGS**

As of the Effective Date, and to the extent that ZENB is required to provide a warning, ZENB agrees to provide a clear and reasonable warning on the Covered Products in compliance with the requirements of Proposition 65, subject to ZENB's right to use up existing inventory of packaging lacking a warning. This requirement shall only be required for Covered Products that are manufactured, distributed, marketed, imported, sold, shipped for sale, or offered for sale to consumers by ZENB in the State of California.

The injunctive requirements of this Section 2 shall not apply to any Covered Products that are already in the stream of commerce as of the Effective Date, or being produced with packaging that has been ordered by ZENB as of the Effective Date, which Covered Products are expressly subject to the releases provided in Section 4 of this Settlement Agreement and shall be permitted to be sold through as previously manufactured, packaged and/or labeled.

## **2.2 GENERAL WARNING REQUIREMENTS**

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Products shall consist of a warning affixed to the packaging, label, tag, or directly to each of the Covered Products sold or distributed in California by ZENB that contains the following warning statement. No Proposition 65 warning shall be required for any Covered Products already in the stream of commerce as of the Effective Date, and all such Covered Products are hereby deemed to be exempt from Proposition 65 enforcement and are expressly subject to the releases provided in Section 4 of this Settlement Agreement:

**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).

ZENB may include the names of additional chemicals in the warning if they are present in the Covered Products at a level that ZENB reasonably believes would require a Proposition 65 warning.

The warning shall be securely affixed to or printed upon the label of each product, and it must be set off from other surrounding information and enclosed in a box. In addition, the same warning shall be posted on any website under the exclusive control of ZENB, where the Covered Products are sold directly to consumers located in California. The warning requirements of this section shall be satisfied if the forgoing warning appears either (a) on the same web page on which Covered Products are displayed and/or described by providing a clearly marked hyperlink using the word "WARNING"; (b) on the same page as the price for the Covered Product, or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.

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 layperson 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. If there is "consumer

information” (as defined in 27 CCR section 25600.1(c)) on the product packaging that is in a foreign language, the warning must also be in the foreign language.

### **2.3. CHANGES IN WARNING REGULATIONS, STATUTES OR OTHER GOVERNING AUTHORITY**

In the event that (a) the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations, (b) legislation is enacted by the California legislature, United States Congress or the voters, or (c) a published opinion is issued by a court of competent jurisdiction, requiring, permitting or establishing warning text and/or methods of transmission different than those set forth above or an alternative means of calculating exposure for purposes of Proposition 65 other than that set forth herein, ZENB shall be entitled to use, at its discretion, such other warning text, method of transmission, or means of calculating exposure, without being deemed in breach of this Settlement Agreement. If regulations, legislation, or judicial rulings are enacted or issued providing that a Proposition 65 warning for the product is no longer required, a lack of warning will not thereafter be a breach of this Settlement Agreement.

## **3. CONSIDERATION**

### **3.1 Total Settlement Amount**

In full satisfaction of all potential civil penalties, attorneys’ fees, costs, and other expenses incurred by CRA and its counsel in connection with the Notice and Covered Products, and in exchange for CRA’s release of all liability in connection with the Covered Product, ZENB shall pay a total of \$20,000 (Total Settlement Amount) as set forth in this Section. No other payment is required by ZENB under this Settlement Agreement.

### **3.2 Civil Penalties Pursuant to Health & Safety Code Section 25249.7(b)**

Two thousand dollars (\$2,000) of the Total Settlement Amount shall be a “civil penalty” under section 25249.7(b) of the California Health and Safety Code. This civil penalty payment will be allocated in accordance with sections 25249.12(c)(1)&(d) of the California Health and Safety Code. ZENB shall have two separate checks issued within ten (10) business days of the Effective Date, and all payments shall be made as follows:

(a) One check made payable to California’s Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of one thousand five hundred dollars (\$1,500), which represents seventy-five percent (75%) of the civil penalties; and

(b) One check made payable to Consumer Rights Advocates, LLC in the amount of five hundred dollars (\$500), which represents the remaining twenty-five percent (25%) of the civil penalties.

(c) All civil penalty payments to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered to OEHHA (memo line to read: “Proposition 65 Penalties”) at the following address(es):

For the United States Postal Delivery Service:

Attn: 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:

Attn: Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street MS #19B  
Sacramento, CA 95814

(d) All payments to Consumer Rights Advocates, LLC shall be sent to:

Cornerstone Law Firm, PC  
357 S. Robertson Blvd, Second Floor  
Beverly Hills, CA 90211

### **3.3 Reimbursement of Fees and Costs**

Eighteen thousand dollars (\$18,000) of the Total Settlement Amount shall be paid to CRA's counsel, Cornerstone Law Firm, PC, in consideration of the releases provided by Section 4, and as part of the release to ZENB of any Proposition 65 liability (including all costs, and fees) in relation to the Notices and the Covered Products. The Parties reached an accord on the compensation owed to CRA and its counsel under the private attorney general doctrine and principles of contract law. ZENB shall make this payment within ten (10) business days of the Effective Date, and mail the check to the following address:

Cornerstone Law Firm, PC  
357 S. Robertson Blvd, Second Floor  
Beverly Hills, CA 90211

### **3.4 Tax Documentation**

CRA and Cornerstone Law Firm, PC, agree to provide IRS W-9 forms under this Settlement Agreement. The Parties acknowledge that ZENB cannot issue any settlement payments pursuant to this Section 3 until after ZENB receives the requisite W-9 forms for CRA and Cornerstone Law Firm from CRA's counsel.

Nothing in this Settlement Agreement shall alter the Parties' obligations to be liable for their own taxes or impose any obligations relating to taxes due on the payments made under this Settlement Agreement. CRA and its attorneys shall remain responsible for any taxes due or owing by them on any payments received under this Settlement Agreement.

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

##### **4.1 CRA Release of ZENB and Others**

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between CRA and ZENB for any alleged violation of Proposition 65 that was or could have been asserted by CRA, on its own behalf, on behalf of its past and current agents, employees, representatives, attorneys, predecessors, successors and assignees (collectively, “Releasors”), against ZENB and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and each entity to whom ZENB directly or indirectly distributes, offers for sale or sells the Covered Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, including, but not limited to, Amazon, Amazon.com Services, LLC and the other entities named in the Notices<sup>1</sup> (collectively, “Releasees”) based on the failure or alleged failure to warn about exposures under Proposition 65 in the Covered Product manufactured, imported, distributed, sold or offered for sale in California by ZENB before the Effective Date, as alleged in the Notices.

CRA and its attorneys represent and warrant that they have not filed and are not contemplating filing, that they are not aware of any other person who has filed or is contemplating filing, and that they have not engaged and do not intend to engage in any advertising or solicitation to locate additional persons to file, any form of complaint against the Releasees.

##### **4.2 CRA’s California Civil Code Section 1542 Waiver**

CRA, on behalf of itself and all other Releasors, acknowledges that it is familiar with California Civil Code section 1542, 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.**

CRA, on behalf of itself and all other Releasors, expressly waives and relinquishes any and all rights and benefits that they may have under, or which may be conferred on them, by the provisions of California 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 that Releasors may lawfully waive such rights or benefits pertaining to the released matters. The Parties agree that compliance with the terms of this Settlement Agreement shall constitute compliance by any Releasee with Proposition 65.

##### **4.3 ZENB’s Release of CRA**

ZENB, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or

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<sup>1</sup> These entities are: Mizkan Holdings Co., Ltd.; Mizkan America, Inc.; Mizkan American Holdings Inc.; and Mizkan America Partners, Inc.

assignees, waives any and all claims against CRA, its attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by CRA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered Products.

#### **4.4 Binding Settlement Agreement**

This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of CRA, ZENB, and the other Releasees, including each of their successors and assigns.

#### **4.5 Public Benefit**

It is the Parties' belief that the terms of this Settlement Agreement confer a significant benefit to the general public as set forth in California Code of Civil Procedure section 1021.5 and California Administrative Code title 11, section 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging that the Covered Product is somehow in violation of Proposition 65, such private party action would not confer a significant benefit on the general public, so long as ZENB is in material compliance with the terms of this Settlement Agreement.

### **5. ENFORCEMENT**

If CRA alleges that ZENB has failed to comply with this Settlement Agreement, prior to filing an action or a notice of violation as to any Releasee, CRA shall first provide ZENB sixty (60) days' advance written notice of the alleged violation(s). CRA shall provide testing results, lot numbers, and photographs of the Covered Product packaging for the Covered Products at issue. The Parties shall meet and confer during such sixty (60) day period in an effort to resolve the matter informally without the need for litigation. If the matter is not resolved within sixty (60) days, CRA can file litigation, and the prevailing party can recover applicable costs and attorneys' fees, if any.

### **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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then ZENB shall have no further obligations pursuant to this Settlement Agreement

### **7. NOTICE**

Unless otherwise specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by electronic mail or overnight courier as follows:

<p><b>To CRA:</b>  Davar Danialpour, Esq.  CORNERSTONE LAW FIRM, P.C.  357 S. Robertson Blvd.  Second Floor  Beverly Hills, California 90211  david@davarlaw.com</p>	<p><b>To ZENB:</b>  Matthew Kaplan, Esq.  Tucker Ellis LLP  515 South Flower Street  Forty-Second Floor  Los Angeles, CA 90071  Matthew.kaplan@tuckerellis.com</p>
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Any Party, from time to time, may specify in writing to the other Party a change of address or electronic mail to which all notice and other communications shall be sent.

**8. COUNTERPARTS: FACSIMILE/E-SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature or electronically, 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, electronic, or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to California Civil Code sections 1633.1 *et seq.*

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

CRA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f) and shall report this Settlement Agreement to the California Attorney General’s Office within five (5) days of the Effective Date.

**10. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the 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.

**11. SEVERABILITY & MODIFICATION**

If after execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected. This Settlement Agreement may be modified only by a written agreement signed by the Parties.

**12. INTERPRETATION**

No inference, assumption, or presumption shall be drawn, and no provision of this Settlement Agreement shall be construed against any Party, based upon the fact that one of the Parties or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of California Civil Code section 1654. It is conclusively presumed that the Parties participated equally in drafting this Settlement Agreement. Section headings and subsection headings are solely for convenience of the reader and are not to be given substantive effect or



used as an aid for interpretation of the terms of this Settlement Agreement.

**13. AUTHORIZATION**

Each Party represents that its signatory to this Settlement Agreement has the full legal authority to enter into and legally bind it to the terms herein. Each Party further represents that it has read, understood, and agreed to all the terms and conditions of this Settlement Agreement.

**Signatures on Next Page**

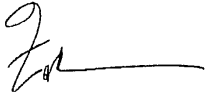
**AGREED TO:**

**CONSUMER RIGHTS ADVOCATES, LLC**

Date: 10/01/24

By: Faraz Adjnasian

Signature:



Consumer Rights Advocates, LLC

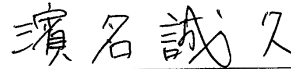
**AGREED TO:**

**ZENB US, INC.**

Date: 09/20/2024

By: Nobuhisa Hamana

Signature:



ZENB US, Inc.

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Settlement Agreement Between Consumer Rights Advocates, LLC and ZENB US, Inc.