

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Gabriel Espinoza (“Espinoza”) and Capital Foods International, Inc. (“Capital Foods”). Together, Espinoza and Capital Foods are collectively referred to as the “Parties.” Espinoza is an individual who resides in the State of California, and allegedly 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 Capital 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 Capital Foods has exposed individuals to lead from its sales of products including, but not limited to, *Pamana*® Black Fungus Spice, UPC # 795981950290 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 *Pamana*® Black Fungus Spice, UPC # 795981950290 (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Capital Foods.

**1.4 Notices of Violation.** On June 7, 2023, Espinoza alleges he served Fortune Commercial Corporation (“Fortune”) and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “June Notice”). The June Notice provided Fortune and such others, including public enforcers, with notice that alleged that Fortune 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. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the June Notice.

On November 27, 2024, Espinoza alleges he served Fortune, Capital Foods, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “November Notice”). The November Notice provided Capital Foods and such others, including public enforcers, with notice that alleged that Capital Foods was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products may expose them to lead. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the November Notice.

The June Notice and November Notice are collectively referred to herein as, the “Notices.”

**1.5 No Admission.** Capital Foods 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 Capital 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 Capital Foods of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Capital 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 Notices, Capital Foods 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 Capital 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 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: 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 ninety (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 Capital Foods knowingly manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Capital Foods to provide an exposure warning for Products that are in inventory or entered the stream of commerce within ninety (90) 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:” [or] “CALIFORNIA WARNING:” [or] “CA 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:** Capital 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:

**“WARNING:” [or] “CALIFORNIA WARNING:” [or] “CA WARNING:”** Risk of cancer and reproductive harm from exposure to lead. See [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:”, “CALIFORNIA WARNING:”, or “CA 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 only if such electronic device or automatic process provides the **Warning** or **Alternative Warning** without the purchaser having to seek it out, 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 Capital Foods 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, Capital Foods 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 where Capital Foods knowingly 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**," "**CALIFORNIA WARNING:**" , or "**CA 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, Capital Foods 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 known 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 Capital 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 warning 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, Capital Foods shall pay \$500.00 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 sent to the addresses identified in § 3.2, below

**3.1 Civil Penalty.** Within fifteen (15) business days of the Effective Date, Capital Foods shall issue two (2) separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$375.00; and to (b) "Gabriel Espinoza" in the amount of \$125.00. The Civil Penalty payment(s) shall be sent to the addresses identified in § 3.2, below.

**3.2 Payment Procedures.**

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

(i) All payments owed to Espinoza, pursuant to § 3.1 shall be sent 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 sent 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.** Capital 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 sent to the address provided in § 3.2(a)(i), as proof of payment to OEHHHA.

**(c) Tax Documentation.** Capital 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, Capital Foods shall reimburse Espinoza's counsel for a portion of fees and costs incurred as a result of investigating and bringing this matter to the attention of Capital Foods, and negotiating a settlement allegedly in the public interest. Within fifteen (15) business days of the Effective Date, Capital Foods shall issue a check payable to "Brodsky Smith" in the amount of \$14,000.00 to be sent to the address identified in § 3.2(a)(i), above.

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

**5.1 Release of Capital Foods and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Espinoza, acting on his own behalf, and Capital 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 Capital Foods and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Capital Foods directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, online marketplaces, customers, retailers, including but not limited to Fortune, its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for violations of Proposition 65 before the Effective Date or within ninety (90) days after the Effective Date based on exposure to lead from use of the Products. This

release shall also cover any Products that were in inventory or in the stream of commerce prior to the Effective date through (90) days after the Effective Date.

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 Capital Foods' Release of Espinoza.** Capital 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 Notices and relating to the Products will develop or be discovered. Espinoza on behalf of himself only, on one hand, and Capital Foods, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through ninety (90) 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 Capital 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 Capital Foods with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Products.

**6. 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.

**7. 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.

**8. 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 Capital Foods:

Sedina L. Banks  
Sherry E. Jackman  
Greenberg Glusker LLP  
2049 Century Park E., Ste. 2600  
Los Angeles, CA 90067

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.

**9. 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.

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

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

**11. MODIFICATION**

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

**12. ENFORCEMENT OF SETTLEMENT AGREEMENT**

**12.1** A Party may enforce any of the terms and conditions of this Settlement Agreement only after that Party first provides sixty (60) days written notice to the Party allegedly failing to comply with the terms and conditions of this Settlement Agreement and attempts to resolve such Party's failure to comply in an open and good faith manner without the alleged non-complying Party having to pay any settlement amount.

**12.2 Notice of Violation.** Prior to bringing any proceeding to enforce the terms of this Settlement Agreement, Espinoza shall provide a written notice of violation ("NOV") to Capital Foods that includes information sufficient for them to be able to understand and correct the violation without payment of any settlement amount or monetary payment, including but not limited to: (a) the name of the product, (b) specific dates when the product was sold in California, (c) the store, website, or other place at which the product was available for sale to California consumers, and (d) any other evidence or other support for the allegations in the NOV, including all test data obtained by Espinoza regarding the Product.

**12.3 Notice of Election Response.** Within thirty (30) days of receiving an NOV, Capital Foods shall serve a Notice of Election (“NOE”) either contesting or not contesting the NOV.

**12.3.1 Non-Contested NOV.** Espinoza shall take no further action regarding the alleged violation against Capital Foods including, without limitation, requiring a monetary payment, if Capital Foods serves a NOE then elects not to contest the NOV and meets one of the following conditions: (a) the Product was shipped by Capital Foods for sale in California before the Effective Date, or (b) since receiving the NOV, Capital Foods has taken corrective action by either taking all steps necessary to bring the sale of the Product into compliance under the terms of this Settlement Agreement, or requesting that its customers in California remove the Products identified in the NOV from sale in California and destroy or return the Products to Capital Foods.

**12.3.2 Contested NOV.** If Capital Foods serves a NOE electing to contest the NOV, the provisions of this Section 12.3.2 shall apply.

(a) Capital Foods may request that the sample(s) of the Product tested by Espinoza be subject to confirmatory testing at an EPA or California accredited laboratory of Capital Foods’s choosing.

(b) If the confirmatory testing establishes that the Product does not contain lead in excess of the levels allowed by this Settlement Agreement, Espinoza shall take no further action regarding the alleged violation. If the testing does not establish compliance as Reformulated Products, Capital Foods may withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section 12.3.1.

(c) If Capital Foods does not withdraw an NOE to contest the NOV to take action under 12.3.1 above, the Parties shall meet and confer for a period of no less than thirty (30) days before Espinoza may take action seeking to enforce the terms of this Settlement Agreement.

**12.4** In any proceeding brought by either Party to enforce this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorney’s fees and costs.

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:**

Date:

6 | 3 | 25

By:

Gabriel Espinoza

**AGREED TO:**

Date:

5/22/2025 | 10:16 AM PDT

By:

Signed by:

Sean Han

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Capital Foods International, Inc.