

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Ruby Gustafson (“GUSTAFSON”) and Terrasoul Superfoods, LLC (“TERRASOUL”), with and TERRASOUL each individually referred to as a “Party” and collectively as the “Parties.” GUSTAFSON is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. GUSTAFSON alleges that TERRASOUL is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations and Contentions

GUSTAFSON alleges that TERRASOUL manufactures, sells, and/or distributes for sale in California, Terrasoul Superfoods Cassava Flour, UPC#X001H9ZPEP (“Product”) with lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. GUSTAFSON alleges that TERRASOUL failed to provide the health hazard warning required by Proposition 65 for exposures to lead.

TERRASOUL contends that the Product does not violate Proposition 65 because any lead content that may be present is “naturally occurring” and thus exempt from Proposition 65 exposure calculation pursuant to California Code of Regulations title 27 section 25501; and/or 2) the level of lead in the Product does not expose the consumer to lead in an amount exceeding the safe harbor values set forth in Health and Safety Code section 25249.10(c). Thus, Proposition 65 warnings are not required and TERRASOUL did not violate Proposition 65. TERRASOUL further contends that it is no longer distributing or selling the Product.

### **1.3 Product Description**

The product covered by this Settlement Agreement is specifically defined as, and limited to, Terrasoul Superfoods Cassava Flour, UPC#X001H9ZPEP, that are manufactured, sold, or distributed for sale in California by TERRASOUL.

### **1.4 Notice of Violation**

On November 11, 2024, GUSTAFSON served TERRASOUL, Amazon.com Sales, Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that the notice recipients violated Proposition 65 by failing to warn customers and consumers in California of the health hazards associated with exposures to lead from the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

TERRASOUL denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has 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 TERRASOUL 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 TERRASOUL of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by TERRASOUL. This Section shall not, however, diminish or otherwise affect TERRASOUL'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 April 15, 2025.

## **2. INJUNCTIVE RELIEF**

As of the Effective Date, TERRASOUL will no longer manufacture or sell the

Product in California.

If TERRASOUL resumes distribution or sale of the Product in California, it will provide Proposition 65 warnings as set forth in sections 2.1 and 2.2 if the exposure to lead exceeds 0.5 mg/day, as determined by California Code of Regulations title 27 section 25821, et seq.

## **2.1 Warning Text**

TERRASOUL will provide a clear and reasonable warning commencing on the Effective Date, consisting of either of the following statements:

**CALIFORNIA WARNING:** Can expose you to lead, a carcinogen and reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

OR

**CALIFORNIA WARNING:** 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).

The above warning statements must print the words “**CALIFORNIA WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the words “**CALIFORNIA WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the words “**CALIFORNIA WARNING:**”. The entire warning statement must be enclosed in a rectangular black box.

TERRASOUL Product packaging does not contain any descriptions in any other language besides English, therefore the warning statement shall be written only in English.

## **2.2 Method of Transmission**

**Product Labeling.** TERRASOUL shall affix one of the foregoing warning statements to the packaging of the Product. The warning statement shall be affixed to

the Product packaging or labeling, and placed 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. Where the short-form warning statement is provided on the label, the entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product label. In no case shall the short-form warning statement appear in a type size smaller than six-point type.

**Internet.** In addition to the product labeling, where TERRASOUL offers Products to California customers via its own proprietary internet website, TERRASOUL shall provide a clear and reasonable internet web page warning to customers located in California. The warning statement shall appear either: (i) on the same web page on which a Product is displayed and/or described; (ii) on the same page as the price for the Product; or (iii) on one or more web pages displayed to a California purchaser prior to completion of the checkout process. Alternatively, the warning statement shall be provided using a clearly marked hyperlink using the word “WARNING” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. If the product label warning is provided using the short-form warning statement, the warning provided on the website may use the same content. A warning is not prominently displayed if the purchaser must search for it in the general content of the website.

TERRASOUL shall, if it has the ability to do so, post the warning or alternative statement on the websites of its third-party internet sellers and if it does not have the ability to post the warning or alternative warning statement on the websites of third-party internet sellers, provide such sellers with written notice as laid out in California Health and Safety Code § 25600.2(b).

**2.3 Safe Harbor Warnings.** The parties acknowledge that the warnings required by this section are not the exclusive methods of providing Proposition

65 warnings and agree that TERRASOUL may utilize “safe harbor” warning language and methods, promulgated by the Office of Environmental Health Hazard Assessment and contained in 27 CCR §§ 25602-25603, applicable to lead and the Products, in effect on or after the Effective Date, without being deemed in breach of this Settlement Agreement.

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

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and as consideration for the releases contained in Sections 4.1 and 4.2 below, TERRASOUL agrees to pay \$1,000 in civil penalties no later than the Effective Date. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to GUSTAFSON. TERRASOUL shall make its payment in two checks, delivered to the address in section 3.3, as follows: (1) “OEHHA” in the amount of \$750; and (2) “Ruby GUSTAFSON” in the amount of \$250.

#### **3.2 Attorneys’ Fees and Costs**

The Parties acknowledge that GUSTAFSON and her 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 GUSTAFSON and her 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, TERRASOUL shall reimburse GUSTAFSON’s counsel for fees and costs incurred as a result of investigating and bringing this matter to TERRASOUL’S attention, and negotiating a settlement in the public interest. Within fifteen (15) business days of the Effective Date, TERRASOUL shall issue a check

payable to “Law Office of Shannon C. Wilhite” in the amount of \$13,000 for delivery to the address identified in § 3.3.

### **3.3 Payment Address and Tax Documentation**

All checks under this Settlement Agreement shall be delivered to the following address and shall, thereafter, be delivered by GUSTAFSON to the respective payees:

Law Office of Shannon C. Wilhite  
P.O. Box 82  
Bayside, CA 95524

GUSTAFSON shall provide IRS W-9 forms for: (i) “Office of Environmental Health Hazard Assessment”; (ii) Ruby GUSTAFSON; and (iii) Law Office of Shannon C. Wilhite. TERRASOUL shall issue complete IRS 1099 forms to each payee for their respective payment amount.

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

### **4.1 GUSTAFSON’s Release of Proposition 65 Claims**

GUSTAFSON acting on her own behalf, and not on behalf of the public, releases TERRASOUL its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom TERRASOUL directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers including, but not limited to Amazon.com Sales, Inc., franchisees, cooperative members, importers, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65 through the Effective Date relating to unwarned exposures to lead in the Products. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to TERRASOUL.

#### **4.2 GUSTAFSON's Individual Release of Claims**

GUSTAFSON, in her individual capacity only and not in her representative capacity, provides a release herein that shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of GUSTAFSON of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to lead in the Product manufactured, imported, distributed, or sold by TERRASOUL prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to TERRASOUL.

#### **4.3 TERRASOUL's Release of GUSTAFSON**

TERRASOUL, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against GUSTAFSON and her attorneys and other representatives, for any and all actions taken or statements made by GUSTAFSON and her attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

#### **6. GOVERNING LAW**

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 or is otherwise rendered inapplicable by reason of law generally, or as to the

Products, then TERRASOUL may provide written notice to GUSTAFSON of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

**For TERRASOUL:**

CEO Dennis Botts or Current CEO, President, or  
General Counsel  
Terrasoul Superfoods LLC  
1001 NE Loop 820, Ste 400  
Fort Worth, TX 76131

**For GUSTAFSON:**

Law Office of Shannon C. Wilhite  
Shannon C. Wilhite  
P.O. Box 82  
Bayside CA 95524

**With a copy to:**

Carol R. Brophy, Esq.  
Steptoe LLP  
Steuart Tower, Suite 1070  
San Francisco, California 94105

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (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)**

GUSTAFSON and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).



**10. MODIFICATION**

This Settlement Agreement may be modified only by 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 on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: March 13, 2025

Date: March 13, 2025

By:   
RUBY GUSTAFSON

By:   
TERRASOUL SUPERFOODS, LLC