

## SETTLEMENT AGREEMENT

*The Last Beach Cleanup v. Gelson's Markets, et al.*

This Settlement Agreement, dated as of October 18, 2023 (the "Effective Date"), is entered into by and between The Last Beach Cleanup ("Plaintiff") and Gelson's Markets ("Gelson's") (collectively, the "Parties").

### RECITALS

A. On or about April 13, 2022, Plaintiff sent a pre-suit demand letter to Gelson's, notifying Gelson's of its alleged violations of California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq.*, in connection with its sales and/or distribution of reusable grocery bags made from plastic film ("Plastic Bags"), and requesting that Gelson's substantiate its recycling claims on its Plastic Bags, pursuant to California's Environmental Marketing Claims Act ("the EMCA"), Cal. Bus. & Prof. Code §§ 17580(a), (b). Plaintiff notified Gelson's of its intent to file suit to correct and rectify Gelson's' alleged violations of California law if the violations did not cease, and if Gelson's did not provide the requested substantiation.

B. On June 3, 2022, Plaintiff filed a lawsuit in Los Angeles County Superior Court, entitled *The Last Beach Cleanup v. Gelson's Markets*, Case No. 22STCV18216 (the "Action"), for injunctive relief pursuant to UCL. On February 23, 2023, Plaintiff filed the First Amended Complaint in the Action as of right, in response to Gelson's' demurrer to the original Complaint. On June 28, 2023, Plaintiff filed the operative Second Amended Complaint in the Action after the Court granted Plaintiff's Motion for Leave to File its Second Amended Complaint.

C. Plaintiff's Second Amended Complaint alleges that Gelson's has violated the UCL's prohibition on unlawful and unfair business practices, predicated on Gelson's': (1) alleged violations of California's Single-Use Carryout Bag Ban, Pub. Res. Code § 42280, *et seq.*,

for its sale and distribution of Plastic Bags in California that are allegedly not recyclable and that include recyclability labeling that allegedly does not comply with the Federal Trade Commission's Guides for Use of Environmental Marketing Claims; and (2) alleged violations of the EMCA based on Gelson's' alleged refusal to provide Plaintiff with sufficient substantiation of the recycling claims on its Plastic Bags upon request.

D. The Parties have conducted an investigation of the facts and have analyzed the relevant legal issues in regard to the claims and defenses asserted in the Action. Plaintiff believes that the claims asserted in the Second Amended Complaint have merit. Gelson's believes that the causes of action asserted in the Second Amended Complaint are without merit and that Gelson's has complete defenses thereto.

E. The Parties enter into this Settlement Agreement for the purpose of avoiding prolonged litigation and as a full settlement of all claims that were or could have been raised against Gelson's in the Second Amended Complaint based upon the facts alleged therein. Nothing in this Settlement Agreement shall be construed by either Party as an admission of any fact or conclusion of law.

## **AGREEMENT**

### **1. INJUNCTIVE RELIEF**

**A. Interim Deadline: Cessation of Purchasing Plastic Bags for Resale.** By November 1, 2023, Gelson's shall cease and refrain from purchasing Plastic Bags for sale or distribution in California.

**B. Cessation of Sale/Distribution of Plastic Bags.** By January 31, 2024, Gelson's shall cease and refrain from selling or distributing Plastic Bags in California.

**C. Removal of Store Drop-Off Bins for Plastic Recycling.** By December 31, 2023, Gelson's shall remove any and all store drop-off bins for the recycling of plastic ("drop-off bins") from its stores in California, and shall not introduce or reintroduce any drop-off bins into its California stores thereafter. This Section 1.C. does not apply to any drop-off bins Gelson's may be required to provide and/or maintain in the future pursuant to any newly passed federal, state, or local law.

## **2. ENFORCEMENT.**

**A. Notice.** In the event a Party, acting in good faith, believes another Party has violated the terms of this Settlement Agreement, the aggrieved Party shall give written notice detailing the alleged or anticipated breach. Within thirty (30) days after the notice is given, the Parties shall meet and confer and negotiate in good faith to resolve the dispute. If there is no resolution within forty-five (45) days after the notice is given, then neither Party is obligated to continue negotiations and either Party may seek relief by other means.

**B. Specific Performance.** The Parties expressly recognize that Gelson's obligations under this Agreement are unique. In the event that Gelson's is found to be in breach of this Agreement for failure to comply with the provisions of Section 1 hereto, the Parties agree that it would be impracticable to measure any resulting damages. Accordingly, Plaintiff, in addition to any other available rights or remedies, may sue in equity for specific performance after the notice and meet and confer process described above, and Gelson's expressly waives the defense that a remedy in damages will be adequate.

**C. Fees for Enforcement.** Should Plaintiff prevail in any proceeding to enforce a violation of this Settlement Agreement, Plaintiff shall be entitled to its reasonable attorneys' fees and costs incurred as a result of such proceeding. Should Gelson's prevail in any proceeding,

Gelson's may be awarded its reasonable attorneys' fees and costs as a result of such proceeding. This section is not intended to preclude the ordinary operation of California Civil Code §1717.

**3. PLAINTIFF'S ATTORNEYS' FEES AND COSTS.**

**A. Plaintiff's Entitlement to Attorneys' Fees and Costs.** The Parties disagree as to Plaintiff's entitlement to its reasonable attorneys' fees and costs incurred in the Action. Plaintiff believes that it is entitled to recover its reasonable attorneys' fees and costs from Gelson's pursuant to Code of Civil Procedure Section 1021.5. Gelson's disagrees that Plaintiff is so entitled.

**B. Meet and Confer.** Following execution of this Settlement Agreement, the Parties shall meet and confer and negotiate in good faith in an effort to resolve Plaintiff's claim for its reasonable attorneys' fees and costs.

**C. Motion for Attorneys' Fees.** If the Parties are unable to reach an agreement on Plaintiff's attorneys' fees and costs on or before November 3, 2023, Plaintiff intends to file a motion for attorneys' fees and costs pursuant to California Code of Civil Procedure Section 1021.5. Gelson's reserves all rights to oppose Plaintiff's motion on any and all grounds.

**D. Hearing on Motion for Attorneys' Fees.** Upon the Parties' execution of this Settlement Agreement, Plaintiff shall file a Notice of Settlement with the Court that includes a proposed briefing and hearing schedule on Plaintiff's contemplated motion for attorneys' fees and costs. The Parties agree to the following schedule:

- i. Plaintiff shall file and serve its motion by November 17, 2023.
- ii. Defendant shall file and serve its opposition to Plaintiff's motion by November 30, 2023.
- iii. Plaintiff shall file and serve its reply in support of its motion by December 6, 2023.

- iv. The hearing on Plaintiff's motion shall be held on December 13, 2023, or the soonest date thereafter that the Court is available.

**4. NON-DISPARAGEMENT.**

The parties mutually agree and covenant that neither party will, at any time, make, publish, or communicate to any person or entity in any public forum any defamatory or disparaging remarks, comments, or statements concerning the other party or its business, or any of its employees, officers, and existing and prospective customers, suppliers, investors and other associated third parties. This section does not, in any way, restrict or impede Plaintiff from exercising protected rights to the extent that such rights cannot be waived by agreement or from complying with any applicable law or regulation or a valid order of a court of competent jurisdiction or an authorized government agency.

**5. RELEASE.**

**A. Plaintiff's Release.** Except as set forth in this Settlement Agreement, and subject to the obligations created by this Settlement Agreement, Plaintiff shall release, forever discharge, and covenant not to sue Gelson's and its past or present parents, subsidiaries, divisions, affiliates, officers, directors, employees, agents, attorneys, insurers, and any of its legal representatives (and the predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing) from any and all claims, arising prior to the Effective Date of this Settlement Agreement, arising from or related to the facts, activities or circumstances alleged in the Second Amended Complaint.

**B. Gelson's' Release.** Except as set forth in this Settlement Agreement, and subject to the obligations created by this Settlement Agreement, Gelson's shall release, forever discharge and covenant not to sue Plaintiff and its past or present parents, subsidiaries, divisions, affiliates, officers, directors, employees, agents, attorneys, and any of their legal representatives (and the

predecessors, heirs, executors, administrators, successors, purchasers, and assigns of each of the foregoing) from any and all claims arising from prosecution of the Action.

**6. BINDING AGREEMENT.**

This Settlement Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto and their respective heirs, successors, representatives and assigns.

**7. INTEGRATION.**

Except as set forth in this Settlement Agreement, and subject to the obligations created by this Settlement Agreement, this Settlement Agreement sets forth the entire agreement between the Parties with respect to the subject matter hereof. All agreements, covenants, representations, or warranties, express or implied, of the Parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations, or warranties, express or implied, oral or written, have been made by any of the Parties to the others, with respect to the subject matter of this Settlement Agreement and all prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter herein are waived, merged in this Settlement Agreement and superseded hereby. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby.

**8. MODIFICATION.**

This Settlement Agreement may be modified from time to time by express written agreement of the Parties. No modification to this Settlement Agreement shall be of binding effect unless set forth in writing and signed by a duly authorized representative of each Party.

**9. AUTHORITY TO EXECUTE AGREEMENT.**

Each of the Parties to this Settlement Agreement warrants, covenants, and agrees that the persons executing this Settlement Agreement are authorized and empowered to enter into and execute this Settlement Agreement for and on behalf of the person(s) and/or entity(ies) they represent, and by their execution hereof, each respective entity or person they represent, and all persons, partnerships, corporations, joint ventures and any person or thing affiliated therewith, shall be bound by the terms hereof.

**10. GOVERNING LAW AND CONSTRUCTION.**

**A. California Law.** This Settlement Agreement is made, executed and entered into and is intended to be performed within the State of California and shall be construed under the laws of the State of California.

**B. Participation by Parties in Drafting.** The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement.

**C. Headings.** The various headings used in this Settlement Agreement are solely for the convenience of the Parties and shall not be used to interpret this Settlement Agreement.

**11. COUNTERPARTS.**

This Settlement Agreement may be executed in multiple counterparts, each of which is hereby declared to be an original; all, however, shall constitute but one and the same Settlement Agreement. Facsimile and pdf signatures shall have the same force and effect as “original” signatures.

**12. NOTICES.**

Any notice or communication required or permitted hereunder shall be given in writing, sent by email and regular mail, addressed as follows:

If to Gelson’s Markets:	Ann M. Grottveit Kahn, Soares & Conway, LLP 1415 L Street, Suite 400 Sacramento, CA 95814 agrottveit@kscsacramento.com
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If to Plaintiff:	Howard Hirsch Lexington Law Group 503 Divisadero Street San Francisco, CA 94117 hhirsch@lexlawgroup.com
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or such other address as shall be designated by notice in writing from the applicable party served as specified above. Such notice or communication shall be deemed to have been given or made, regardless of whether or not actually received, as of the date delivered as provided above.

**13. SEVERABILITY.**

Should a court of competent jurisdiction determine that any part of this Settlement Agreement is void and inoperative by law, the other provisions of this Settlement Agreement shall be deemed severable and shall remain in effect notwithstanding that determination.

**14. NO ASSIGNMENT.**

This Settlement Agreement may not be assigned or transferred by any Party without the prior written consent of each Party (such consent not to be unreasonably withheld), and any such attempted assignment or transfer shall be void and of no effect.

**IN WITNESS WHEREOF**, the Parties hereto through their fully authorized representatives have agreed to this Settlement Agreement:

**ACCEPTED AND AGREED:**

**LAST BEACH CLEANUP**

Jan Dell  
Signature

JAN DELL  
Printed Name

FOUNDER & INDEPENDENT ENGINEER  
Title

**GELSON'S MARKETS**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

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**LAST BEACH CLEANUP**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**GELSON'S MARKETS**



\_\_\_\_\_  
Signature

*MARK MOLTENBOCKER*

\_\_\_\_\_  
Printed Name

*V.P. of Enterprise Risk Management*

\_\_\_\_\_  
Title