

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 This Action arises out of the alleged violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq. (also known as and hereinafter referred to as "Proposition 65") regarding the following product (hereinafter collectively the "Covered Product"): Trader Joe's Cocoa Powder Unsweetened -- made from 100% Tainaco Cocoa Beans (SKU No. 93050).

1.2 Plaintiff Erika McCartney ("MCCARTNEY") is a California resident acting as a private enforcer of Proposition 65. MCCARTNEY has threatened to bring an enforcement action in the public interest against Trader Joe's Company ("TRADER JOE'S") and Amazon.com, Inc. ("Defendants") concerning cadmium in the Covered Product pursuant to California Health and Safety Code Section 25249. MCCARTNEY asserts that she is dedicated to, among other causes, helping safeguard the public from health hazards by reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

1.3 Casa Luker, S.A. ("CASA LUKER") is the exclusive supplier of the Covered Product to Defendant TRADER JOE'S and packages the Covered Product for TRADER JOE'S using labeling and artwork authorized by TRADER JOE'S for use with the Covered Product.

1.4 MCCARTNEY, CASA LUKER, and TRADER JOE'S are hereinafter sometimes referred to individually as a "Party" or collectively as the "Parties."

1.5 On or about September 22, 2014, pursuant to California Health and Safety Code Section 25249.7(d)(1), MCCARTNEY served a 60-Day Notice of Violations of Proposition 65 ("Notice of Violations") on the California Attorney General, other public enforcers, and the Defendants.

1.6 More than sixty (60) days passed since service of the Notice of Violations, and no designated governmental agency filed a complaint against Defendants with regard to the Covered Product or the alleged violations.

1.7 Through the Notice of Violation, MCCARTNEY alleged that Defendants manufactured, distributed, and/or sold in California the Covered Product, which contains cadmium, a chemical listed under Proposition 65 as a reproductive toxin, and exposed consumers at a level requiring a Proposition 65 warning. Further, the Notice of Violations alleged that use and consumption of

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the Covered Product exposes persons in California to cadmium without first providing clear and reasonable warnings, in violation of California Health and Safety Code Section 25249.6.

1.8 CASA LUKER and TRADER JOE'S generally deny all material and factual allegations contained in or arising from MCCARTNEY's Notice of Violation, assert that they have various affirmative defenses to such potential claims, and specifically deny that the Plaintiff or California consumers have been harmed or damaged by their conduct or products, including the Covered Product.

1.9 The Parties enter into this Settlement in order to settle, compromise and resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Settlement, nor compliance with its terms, shall constitute or be construed as an admission by any of the Parties (or by any of CASA LUKER's or TRADER JOE'S respective officers, directors, shareholders, employees, agents, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors, wholesalers, or retailers) of any fact, conclusion of law, issue of law, violation of law, fault, wrongdoing, or liability, including without limitation, any admission concerning any alleged violation of Proposition 65.

1.10 Except as expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties or may have in any other or future legal proceeding. Provided, however, nothing in this Section shall affect the enforceability of this Settlement.

1.11 The "Effective Date" of this Settlement shall be the date this Settlement has been fully executed by all of the Parties.

2. LABELING, TESTING, AND WARNINGS

2.1 Beginning on the Effective Date, CASA LUKER shall permanently cease and desist from supplying TRADER JOE'S, or otherwise "Distributing into California" any Covered Product which the amount of consumption by a typical consumer contains more than 4.1 micrograms of cadmium per 2 grams of the Covered Product. Relative to the above, "Distributing into California" means to ship any of the Covered Product to California for sale or to sell any of the Covered Product to a distributor or retailer that CASA LUKER knows or has reason to know will sell or use the Covered Product in California. Excepted from the scope of this injunction are containers of the Covered Product labeled with a Proposition 65-compliant warning as set forth in Section 2.4 below.

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To provide for consistency with the above formula, in the absence of providing a warning pursuant to Section 2.4 below, within one hundred twenty (120) days of the Effective Date, TRADER JOE'S and CASA LUKER shall cease and desist from printing new labels for use on the Covered Product containing any recipe utilizing the Covered Product if the recipe results in greater than 4.1 micrograms of cadmium per specified serving size of the food anticipated to be prepared. Further, within one hundred twenty (120) days of the Effective Date, TRADER JOE'S shall cease and desist from disseminating by means within its corporate office's control (e.g., on the current or future versions of its website or through its Fearless Flyer publication and mailers) any recipe it has developed or may in the future develop which utilizes the Covered Product such as to result in greater than 4.1 micrograms of cadmium per specified serving size of the food anticipated to be prepared. To the extent that MCCARTNEY believes that TRADER JOE'S has overlooked a recipe subject to the obligation set forth above, it shall notify TRADER JOE'S and provide it with a cure opportunity as required by Section 5.3 below.

2.2 All Covered Product that has been or will have been distributed, shipped, or sold, or otherwise placed in the stream of commerce by CASA LUKER through and including the Effective Date of this Settlement are exempt from the provisions of Sections 2.1, 2.3, and 2.4 and are included within the release in Sections 7.1 through 7.4. To be in compliance with the terms of this Settlement, neither CASA LUKER nor TRADER JOE'S is required to undertake any efforts or conduct to remove Covered Products from the stream of commerce. Within ten (10) days following the Effective Date, CASA LUKER shall provide Plaintiff with the last lot number and date code or best by date for the Covered Product it put into the stream of commerce prior to the Effective Date.

2.3 For a period of three (3) years from the Effective Date, except as provided by Section 2.2 above, any batch or lot number of the Covered Product CASA LUKER plans to be Distributing into California without a Proposition 65-compliant warning shall be tested for cadmium concentration utilizing ICP- or graphite furnace-mass spectrometry capable of detecting cadmium at a level of 25 parts per billion or less, provided, however, that CASA LUKER shall not be required to test in excess of four batches or lots of the Covered Product in any given year. For purposes of this Section and Section 2.1 above, CASA LUKER may utilize a compositing procedure to combine multiple samples drawn from any batch or lot of Covered Product prior to testing or it may calculate an average of test results from all samples drawn from such batch or

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lot. All tests shall be conducted at the expense of CASA LUKER. CASA LUKER shall provide the verified results of all tests to counsel for MCCARTNEY, via mail, within fourteen (14) business days of receipt of such results by CASA LUKER. All test results shall be provided to counsel for MCCARTNEY prior to the Covered Product being offered for sale to any consumer in California and shall be kept confidential, except that MCCARTNEY may (1) with notification provided to CASA LUKER at least fourteen (14) business days in advance, disclose such results to the California Attorney General's office pursuant to Evidence Code Section 1040 et seq. or Health and Safety Code Section 25249.7(d), or (2) submit such results to a court under seal for *in camera* review in conjunction with an action undertaken to enforce the terms of this agreement.

2.4 Clear and Reasonable Proposition 65 Warnings

For a Covered Product that is subject to the Proposition 65 warning requirement based on Sections 2.1 and 2.2 above, prior to Distributing into California such Covered Product, CASA LUKER shall obtain TRADER JOE's authorization to provide, and provide, the following warning ("Warning") as specified below:

[California Proposition 65] WARNING: This product contains [cadmium,] a chemical known to the State of California to cause birth defects or other reproductive harm.

The text in brackets in the warnings above is optional.

The Warning shall either be affixed to or printed on (at the point of manufacture, prior to shipment to California, or prior to distribution within California) the outside packaging or container of each unit of the Covered Product or provided at the point of display of the Covered Product wherever it is offered for sale in California. The Warning shall be displayed with such conspicuousness, as compared with other words, statements designs or devices on the outside packaging or at the point of display in California, as to render it likely to be read and understood by an ordinary individual prior to purchase or use. If the Warning is displayed on the product container or labeling, the Warning shall be at least the same size as the largest of any other health or safety warnings on the product container or labeling, and the word "WARNING" shall be in all capital letters and in bold print. If presented at the point of display, the Warning shall be presented on a sign or shelf label in a font no smaller than the largest type size used for other information on the sign or on a shelf label for similar products.

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3. SETTLEMENT PAYMENTS

3.1 On behalf of TRADER JOE'S, CASA LUKER shall make a total settlement payment of \$85,000, which shall be in full and final satisfaction of any and all civil penalties, payment in lieu of civil penalties, and attorneys' fees and costs associated with this matter.

3.2 Within seven (7) days of the Effective Date, CASA LUKER shall electronically transfer the full settlement payment amount of \$85,000 to its counsel's client trust account, which shall be held in such trust account pending the Court's approval of the Consent Judgment described in Section 10 below. CASA LUKER's counsel shall provide MCCARTNEY with written confirmation within five days of the funds being deposited in its client trust account as specified above. Within five (5) business days of the date that the Consent Judgment described in Section 10 below is approved by the Court, counsel for CASA LUKER shall direct its client trust account administrator to issue three separate checks sent to counsel for MCCARTNEY, Robert B. Hancock, Pacific Justice Center, 50 California Street, San Francisco, California 94111. The checks shall be payable to the following parties and the payment shall be apportioned as follows:

3.2.1 \$30,000 (thirty thousand dollars) as civil penalties pursuant to California Health and Safety Code Section 25249.7(b)(1). Of this amount, \$22,500 (twenty-two thousand five hundred dollars) shall be payable to the Office of Environmental Health Hazard Assessment ("OEHHA"), and \$7,500 (seven thousand five hundred dollars) shall be payable to MCCARTNEY. (Cal. Health & Safety Code § 25249.12(c)(1) & (d)). MCCARTNEY's counsel will forward the civil penalty to OEHHA.

3.2.2 \$55,000 (Fifty-five thousand dollars) payable to Pacific Justice Center as reimbursement of MCCARTNEY's attorneys' fees, costs, investigation and litigation expenses ("Attorney's Fees and Costs").

3.3 Any failure to remit payment on or before its due date or any failure of said checks to clear shall be deemed a material breach of this Agreement by Defendants. In that event, the Parties agree that, unless they then all stipulate otherwise: (1) this agreement shall be deemed mutually rescinded, and all Parties shall be restored to their positions prior to its execution; and (2) Plaintiff and Trader Joe's shall jointly take all steps necessary to set aside any judgment entered in connection with the Action, including, without limitation, by way of ex parte relief, stipulation or noticed motion.

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4. MODIFICATION

This Settlement may be modified only by written agreement and stipulation of the Parties and upon having such stipulation reported to the Office of the California Attorney General. MCCARTNEY shall not unreasonably withhold agreement to any modification requested by CASA LUKER and/or TRADER JOE'S based on a change or clarification in law, but shall be entitled to reimbursement of all reasonable attorneys' fees and costs associated with any such modification requested by CASA LUKER and/or TRADER JOE'S. If, despite their meet and confer efforts, the Parties are unable to reach agreement on such a modification, the matter shall be decided by an arbitrator, the selection of which shall be based on the agreement of all Parties and the expense of which shall be paid by the prevailing party.

5. ENFORCEMENT OF SETTLEMENT TERMS

5.1 To the extent it enters this Settlement as a judgment, a court shall retain jurisdiction to enforce, modify or terminate such judgment.

5.2 Subject to Section 5.3, any Party may, by means of filing a breach of contract action or, if this Settlement is entered as a judgment, via application for an order to show cause, enforce the terms and conditions contained in this Settlement. The prevailing party in any such action or application may request that the court award its reasonable attorneys' fees and costs associated with such action or application.

5.3 Before filing an action for breach or application for an order to show cause, MCCARTNEY shall provide CASA LUKER and TRADER JOE'S with 30 (thirty) days written notice of any alleged violations of the terms and conditions contained in this Settlement. As long as CASA LUKER or TRADER JOE'S cure any such alleged violations within the 30 (thirty) day period (or if any such violation cannot practicably be cured within 30 days, one or both expeditiously initiates a cure within 30 days and completes it as soon as practicable), then there shall be deemed no material violation of the Settlement. A cure to an alleged violation of this Settlement shall be deemed to have been made to the extent CASA LUKER or TRADER JOE'S present MCCARTNEY with test results on the batch or lot of Covered Product at issue that demonstrate that no Warning is required under Section 2.1 based on the testing methodologies authorized under Section 2.3.

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6. APPLICATION OF SETTLEMENT

This Settlement and any resulting judgment shall apply to and be binding upon the Parties and their respective officers, directors, successors and assigns, and it shall benefit the Parties and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors, successors, and assigns. Except as to TRADER JOE'S, excluded from the benefits of this Settlement are companies who rebrand and offer CASA LUKER manufactured or distributed Covered Product under their own brand, with no attribution to CASA LUKER or TRADER JOE'S.

7. BINDING EFFECT, CLAIMS COVERED AND RELEASED

7.1 This Settlement is a full, final, and binding resolution between MCCARTNEY, on behalf of herself on the one hand, and both CASA LUKER and TRADER JOE'S on the other hand, of any and all direct or derivative violations (or claimed violations) of Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to cadmium from the handling, use, or consumption of the Covered Product and fully resolves all claims that have been or could have been asserted up to and including the Effective Date for failure to provide Proposition 65 warnings for the Covered Product regarding cadmium.

7.2 Except as provided in Section 6, MCCARTNEY hereby forever releases and discharges, both CASA LUKER and TRADER JOE'S and their past and present officers, directors, owners, shareholders, employees, agents, attorneys, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all other upstream and downstream entities and persons in the distribution chain of any Covered Product, and the predecessors, successors and assigns of any of them (collectively, "Released Parties"), from any and all claims and causes of action and obligations to pay damages, restitution, fines, civil penalties, payment in lieu of civil penalties and expenses (including but not limited to expert analysis fees, expert fees, attorney's fees and costs) (collectively, "Claims") based on exposure to cadmium from the Covered Product and/or failure to warn about cadmium in the Covered Product to the extent the Covered Product was sold prior to the Effective Date or is otherwise subject to Section 3.2 above.

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7.3 Compliance with the terms of this Settlement or any modification of it effectuated by Section 4 above by CASA LUKER or TRADER JOE'S shall be deemed by MCCARTNEY to constitute compliance by them with Proposition 65 regarding the Covered Product.

7.4 It is possible that other Claims not known to MCCARTNEY arising out of the facts alleged in the Notice of Violations or the Complaint and relating to Covered Product that was manufactured, sold or Distributed into California by CASA LUKER before the Effective Date will develop or be discovered. MCCARTNEY acknowledges on behalf of herself that the Claims released herein include all known and unknown Claims and waives California Civil Code Section 1542 as to any such unknown Claims. California Civil Code Section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

MCCARTNEY acknowledges and understands the significance and consequences of this specific waiver of California Civil Code section 1542.

7.5 MCCARTNEY, on one hand, and CASA LUKER and TRADER JOE'S, on the other hand, each release and waive all Claims they may have against each other for any statements or actions made or undertaken by them in connection with the Notice of Violation or the allegations contained therein. However, this shall not affect or limit any Party's right to seek to enforce the terms of this Settlement. In addition, going forward, the Parties shall not cause any aspect of the Action, the Notice of Violations, or the terms of this Settlement not otherwise available in the public record to be reported to the public or any media or news reporting outlet. Any statement to the public or any media or news reporting outlet shall be limited to what is available in the public record and documents publicly filed. Regardless of the form or formality of a communication or statement to the media or other person or entity, neither any Party nor their counsel shall disparage the other. Notwithstanding these obligations, the Parties may make such disclosures regarding the Action and terms of this Settlement as necessary to auditors or as otherwise required by state or federal law.

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8. CONSTRUCTION AND SEVERABILITY

8.1 The terms and conditions of this Settlement have been reviewed by the respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with its counsel. In any subsequent interpretation or construction of this Settlement, the terms and conditions shall not be construed against any Party.

8.2 In the event that any of the provisions of this Settlement is held by a court to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

8.3 The terms and conditions of this Settlement shall be governed by and construed in accordance with the laws of the State of California.

9. PROVISION OF NOTICE

All notices required to be given to either Party to this Consent Judgment by the other shall be in writing and sent to the following agents listed below by: (a) first-class, registered, (b) certified mail, (b) overnight courier, or (c) personal delivery to the following:

For Erika McCartney:

Robert B. Hancock
PACIFIC JUSTICE CENTER
50 California Street, Suite 1500
San Francisco, California 94111

For Casa Luker, S.A.:

Robert L. Falk
MORRISON & FOERSTER LLP
425 Market Street, 32nd Floor
San Francisco, California 94105

For Trader Joe's Company:

Daniel J. Faria
O'Melveny & Myers LLP
400 S. Hope Street
Los Angeles, CA 90071

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10. COURT APPROVAL

10.1 Upon execution of this Settlement by the Parties, MCCARTNEY shall comply with the reporting form requirements referenced in California Health & Safety Code section 25249.7(f). Within fourteen (14) business days thereof, MCCARTNEY shall also file and serve the California Attorney General's office with a Motion for Court Approval of a Consent Judgment as to TRADER JOE'S based on and incorporating and attaching as an Exhibit this Settlement. The Motion for Approval shall ask the Court to: (a) find that the terms and provisions of this Settlement represent a good faith settlement of all matters raised by the allegations of the Notice of Violations and complaint, that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and (b) make the findings pursuant to California Health and Safety Code Section 25249.7(f)(4), and approve the Settlement, and enter it as Consent Judgment. MCCARTNEY and her counsel shall be responsible on their own to establish in the Motion for Court Approval that such Attorney's Fees and Costs are appropriate for the work done in this matter. Consistent with Section 3.2.2 above, MCCARTNEY and her counsel agree not to seek more than \$55,000 in fee and cost reimbursement. Neither CASA LUKER nor TRADER JOE'S shall oppose the amount of attorney's fees and costs for which MCCARTNEY seeks court approval as long as the request does not exceed \$55,000. The Parties shall otherwise use their reasonable best efforts to support the Court's approval of the Settlement and entry of the associated Consent Judgment.

10.2 If the California Attorney General objects to any term in this Settlement, the Parties shall use their best efforts to resolve the concern in a timely manner, and, if possible, prior to the hearing on the Motion for Court Approval.

10.3 If, despite the Parties' best efforts, the Court does not approve this Settlement and enter a Consent Judgment thereon, CASA LUKER and TRADER JOE'S shall have the option of (a) proceeding with the Settlement solely as a contract, in which case, MCCARTNEY shall promptly dismiss her complaint against TRADER JOE'S and the Settlement contract, including all payment-related obligations set forth in Section 3 above, shall be deemed to have come into full effect, or (b) determining that the Settlement is null and void and of no force or effect, in which event, all payment-related obligations set forth in Section 3 above shall be deemed never to have existed and MCCARTNEY may thereafter proceed of her own accord.

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11. EXECUTION AND COUNTERPARTS

This Settlement may be executed in counterparts, which taken together shall be deemed one document. A facsimile or .pdf signature shall be construed as valid and as the original signature.

12. ENTIRE AGREEMENT, AUTHORIZATION

12.1 This Settlement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any party.

12.2 Each signatory to this Settlement certifies that he or she is fully authorized by the party he or she represents to enter to this Settlement. Except as explicitly provided herein, each party shall bear its own fees and costs.

IT IS SO STIPULATED AND AGREED UPON.

Dated: 11/23/15



ERIKA MCCARTNEY

Dated: _____
Name: _____

CASA LUKER, S.A.

Title: _____

Dated: _____
Name: _____

TRADER JOE'S COMPANY

Title: _____

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IT IS SO STIPULATED AND AGREED UPON.

Dated: _____

ERIKA MCCARTNEY

Dated: 24 NOV 2015
Name: JOSE ADRIANA OCCORIO


CASA-LUKER, S.A.

Title: _____

Dated: _____
Name: _____

TRADER JOE'S COMPANY

Title: _____

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IT IS SO STIPULATED AND AGREED UPON.

Dated: _____

ERIKA MCCARTNEY

Dated: _____

Name: _____

CASA LUKER, S.A.

Title: _____

Dated: 11/27/15

Name: Keathryn Cahoon

Title: SVP, General Counsel



TRADER JOE'S COMPANY

PROPOSITION 65 SETTLEMENT AGREEMENT

APPROVED AS TO FORM:

Dated: 11/23, 2015

By: 
Robert B. Hancock
PACIFIC JUSTICE CENTER
Attorneys for Plaintiff, ERIKA MCCARTNEY

Dated: , 2015

By:
Robert Falk
MORRISON & FOERSTER, LLP
Attorneys for CASA LUKER, S.A.

Dated: , 2015

By:
Daniel J. Faria
O'MELVENY & MYERS LLP
Attorneys for
TRADER JOE'S COMPANY

PROPOSITION 65 SETTLEMENT AGREEMENT

APPROVED AS TO FORM:

Dated: _____, 2015

By:
Robert B. Hancock
PACIFIC JUSTICE CENTER
Attorneys for Plaintiff, ERIKA MCCARTNEY

Dated: *12/3*, 2015

By: *Robert Falk*
Robert Falk
MORRISON & FOERSTER, LLP
Attorneys for CASA LUKER, S.A.

Dated: _____, 2015

By:
Daniel J. Faria
O'MELVENY & MYERS LLP
Attorneys for
TRADER JOE'S COMPANY

PROPOSITION 65 SETTLEMENT AGREEMENT

APPROVED AS TO FORM:

Dated: , 2015

By:
Robert B. Hancock
PACIFIC JUSTICE CENTER
Attorneys for Plaintiff, ERIKA MCCARTNEY

Dated: , 2015

By:
Robert Falk
MORRISON & FOERSTER, LLP
Attorneys for CASA LUKER, S.A.

Dated: *December 1*, 2015

By: *D. Faria*
Daniel J. Faria
O'MELVENY & MYERS LLP
Attorneys for
TRADER JOE'S COMPANY