

SETTLEMENT AGREEMENT AND RELEASE

The Chemical Toxin Working Group, Inc. (“**CTWG**”) and Mercado Latino, Inc. (“**MLI**”) enter into this Settlement Agreement (this “**Agreement**”). This Agreement is effective on the date on which it is fully executed (“**Effective Date**”). CTWG and MLI are referred to individually as a “**Party**” and collectively as the “**Parties**.” The Parties agree as follows:

1. The “**Matter**” arises out of the Notices of Violations of California Health & Safety Code §25249.5, *et seq.* (also known as “**Proposition 65**”) that CTWG served to MLI and Smart & Final Stores, Inc. (“**SFSI**”) (AG No. 2018-01726) (the “**Notices**”). Among other things, CTWG asserts in the Notices that MLI and SFSI knowingly and intentionally exposed individuals in California to lead, without first giving a clear and reasonable warning, in alleged violation of Proposition 65, through MLI’s manufacture, sale, and/or distribution of *Royal Crown Baby Clams* (the “**Covered Product**”).

2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Matter and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law, or violation of law including but not limited to Proposition 65. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability. This Section 2 shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. Lead Standards; Warnings; and Testing.

3.1 On and after the date that is ninety (90) days after the Effective Date, MLI shall not distribute into California or directly sell in the State of California any Covered Product that does not qualify as a Reformulated Covered Product under Section 3.3, unless such Covered Product complies with the warning requirements of Section 3.2. As used in this Agreement, the term “distribute into California” shall mean that MLI directly ships the Covered Product into California for sale in California or sells the Covered Product to a distributor or retailer that MLI knows will sell, or that informs MLI that it intends to sell, the Covered Product in California.

3.2 On and after ninety (90) days after the Effective Date, MLI shall provide on the Covered Product (to the extent it does not constitute a Reformulated Covered Product) distributed into California, sold in California, or for which MLI has been informed will be sold into California, a warning that complies with the requirements of Sections 3.2.1, 3.2.2, 3.2.3, or 3.2.4. The warning shall be displayed (i) on the packaging of such Covered Product with such conspicuousness, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Product; and (ii) with respect to internet sales, the warning shall be governed by the Proposition 65 law and regulations in force on or after August 30, 2018.

Respecting the warnings defined in Sections 3.2.1, 3.2.2, and 3.3.3, the warning must be in a type size no smaller than the largest type size used for other consumer information on the product.

In no case shall the warning appear in a type size smaller than 6-point type.

3.2.1 Option 1

 **WARNING: 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.**

The bracketed term “cancer and” is optional.

3.2.2 Option 2

 **WARNING: Consuming this product can expose you to 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.**

The bracketed term “cancer and” is optional. Alternatively, at MLI’ option, the warning may be modified to include a warning that complies with 27 Cal. Code Regs. § 25607.2. If the warning is printed on the label, the warning shall be set off from other surrounding information in the label and enclosed in a box.

3.2.3 Option 3

For the Covered Product, the warning may state:

 **WARNING: Reproductive Harm – www.P65Warnings.ca.gov.**

At MLI’ option, the warning may alternatively state:

 **WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov.**

The pictogram specified in Section 3.2.3 shall be in yellow with a black exclamation mark; *provided however*, the pictogram may be in white instead of yellow if the Covered Product label does not contain the color yellow.

3.2.4 Option 4

Any warning authorized by any Proposition 65 law or regulation effective on or after the Effective Date.

3.3 Calculation of Levels; Reformulated Covered Product. A Reformulated Covered Product is one for which the average daily exposure level does not exceed 0.5 micrograms of lead per day, as determined by the formula, testing and quality control methodology described in Section 3.4. As used in this Agreement, “no more than 0.5 micrograms of lead per day” means that the samples of the testing under Section 3.4 yield an average daily exposure of no more than 0.5 micrograms of lead per day (with average daily exposure calculated pursuant to Section 3.4 of this Agreement), respectively. For a Covered Product that causes exposures in excess of 0.5 micrograms of lead per day, MLI shall provide the warnings set forth in Section 3.2. For purposes of determining if a warning is required pursuant to Section 3.2, the average concentration utilizing the geometric mean of lead detection results of five (5) samples of the relevant product, randomly selected by MLI, will be controlling.

3.4. Formula, Testing and Quality Control Methodology.

3.4.1 For purposes of this Agreement, average daily exposure levels shall be measured in micrograms per day, and shall be calculated using the following formula: the average concentration of lead in the product in micrograms per gram, multiplied by grams of product per serving of the product (using the serving size appearing on the product label), multiplied by frequency of consumption of once every fourteen (14) days. The testing requirements of this Section 3.4.1 do not apply to any of the Covered Product for which MLI has provided a warning as specified in Section 3.2.

3.4.2 MLI shall not be required to engage in testing pursuant to this Agreement unless MLI distributes into California any Covered Product without a warning. All testing pursuant to this Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, limit of quantification, accuracy, and precision and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method subsequently agreed upon in writing by the Parties.

3.4.3 Unless warnings are affixed consistent with the requirements of Section 3.2, all testing pursuant to this Agreement shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the United States Food & Drug Administration, and pursuant to the requirements of Section 3.4.2. Testing shall be performed prior to MLI's first distribution into California or sale in California of any Covered Product ordered for production by MLI after the Effective Date, and testing shall continue thereafter at least once per year for four (4) consecutive years after the Effective Date (the "**Testing Period**"), after which time, no further testing shall be required unless, after the Testing Period, MLI changes suppliers for the Covered Product, then MLI shall test the Covered Product at least once after such change is made.

3.5 MLI and the Releasees (as defined in Section 5.1 below) shall have no obligation or liability with respect to a Covered Product that is sold and/or distributed in California after the date of the Notices, as applicable, except as otherwise set forth in this Agreement.

4. MLI shall pay the total settlement amount of **\$80,000** (the "**Settlement Amount**") as follows: (i) \$35,000 within ten (10) days of the Effective Date (the "**First Payment**"); (ii) \$15,000 within forty (40) days of the Effective Date; (iii) \$15,000 within seventy (70) days of the Effective Date; and (iv) \$15,000 within one hundred (100) days of the Effective Date. The civil penalty pursuant to Section 4.1 below shall be paid from the First Payment.

MLI shall pay the Settlement Amount payments cited above by wire transfer (instructions to be provided on request to CTWG) or check made payable to "*Khansari Law Corporation – Client Trust Account*" on behalf of CTWG, and sent to:

Khansari Law Corporation
o/b/o The Chemical Toxin Working Group, Inc.
11845 W. Olympic Blvd., Suite 1000

Los Angeles, CA 90064

CTWG shall be solely responsible for allocating the payment pursuant to Sections 4.1 and 4.2 below. Upon request, CTWG or its legal counsel shall supply MLI with a completed W-9 form. The Settlement Amount shall be allocated as follows:

4.1. \$8,000 shall be considered a “civil penalty”, of which CTWG (from the First Payment) shall remit seventy-five percent (75%) to the “Safe Drinking Water and Toxic Enforcement Fund” managed by the State of California’s Office of Environmental Health Hazard Assessment.

4.2 \$72,000 shall be considered reimbursement of CTWG’s attorneys’ fees and costs related to the Matter.

4.3 Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys’ fees related to this Matter.

5. Binding Effect; Claims Covered and Released.

5.1. CTWG, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, parents, subsidiaries, successors, assigns, and legal representatives (collectively referred to as “**CTWG Releasors**”) fully releases and waives any right to participate (directly or indirectly) in any litigation against (a) MLI, and its respective equity owners, parents, subsidiaries, affiliates, sister and related companies, (b) its upstream suppliers and all downstream entities in the stream of commerce including but not limited to distributors, suppliers, wholesalers, customers, retailers (including but not limited to SFSI), franchisees, cooperative members, and licensees (the entities identified in this subsection (b) are collectively referred to as “**Downstream Releasees**”), and (c) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors, and assigns of any of the entities identified in subsections (a) and (b), above (the entities identified in subsections (a), (b) and (c), above, are collectively referred to as “**Releasees**”), and the CTWG Releasors release, waive and forever discharge Releasees from any and all claims, actions, suits, demands, liabilities, damages, penalties, fees (including but not limited to attorneys’ fees, investigator fees, and expert fees), costs and expenses (collectively referred to as “**Claims**”) that were asserted, or that could have been asserted, for any alleged violations of Proposition 65, or any other alleged violations statutory or common law, arising from alleged exposures to lead and lead compounds in the Covered Product.

5.2. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Product will develop or be discovered. CTWG on behalf of itself and the CTWG Releasors, acknowledges that this Agreement is expressly intended to cover and include all such claims, including all rights of action therefore, and further acknowledges that the Claims released this Section 5 may include unknown claims, and nevertheless 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.

CTWG acknowledges and understands the significance and consequences of this specific waiver of California Civil Code Section 1542.

5.3. The Parties agree that compliance with the terms of this Agreement shall constitute compliance by any Releasee with Proposition 65 regarding alleged exposures to lead and lead compounds in the Covered Product.

6. Resolution of Disputes.

6.1 If CTWG alleges that MLI has failed to comply with this Agreement, prior to filing an action or motion relating to enforcement, CTWG shall first provide MLI thirty (30) days' advance written notice of the alleged violation(s). CTWG shall provide testing results, lot numbers, photographs of the Covered Product packaging, and purchase receipts for the Covered Product at issue in the alleged violation, as applicable. The Parties shall meet and confer during such thirty (30) day period in an effort to reach agreement on an appropriate cure for the alleged violation(s) without the need for litigation.

6.2 Notwithstanding the provisions of Section 3, CTWG may not issue any notice under Section 6.1 if the packaging of the applicable Covered Product is marked or labeled with the statement "Not for Sale in California" or substantially similar language as long as such statement is prominently placed upon such Covered Product's label or other labeling as compared with other words or statements on the label or labeling as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. If MLI marks or labels a Covered Product with such a statement, MLI shall additionally notify its customers/distributors by letter that the Covered Product shall not be sold in California.

7. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by the Parties. Notwithstanding the foregoing, MLI shall be entitled, at its option, to modify any warning that it provides under Section 3.2 to conform with any change in the Proposition 65 warning regulations set forth in Title 27 of the California Code of Regulations that may be adopted after the Effective Date.

8. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, and assigns.

9. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

10. This Agreement shall be deemed to have been entered into in the State of California and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

11. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

12. Any legal action to enforce this Agreement or related to this Matter shall be brought in the County of Alameda of the State of California.

13. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail (.pdf), copy of this Agreement, or any other counterpart, shall be deemed to be an original.

14. All notices required to be given to either Party under this Agreement shall be in writing and sent to the following recipients by (a) first-class mail or (b) overnight delivery.

For CTWG:

Khansari Law Corporation
o/b/o The Chemical Toxin Working Group, Inc.
11845 W. Olympic Blvd., Suite 1000
Los Angeles, California 90064
Tel: (424) 248-6688
Fax: (424) 248-6689
Email: andre@khansarilaw.com

For MLI:

Jorge Rodriguez
Mercado Latino, Inc.
PO Box 6168
El Monte CA 91734

With a copy to:

Maria Rohaidy, Esq.
Taubman, Simpson, Young & Sulentor
One World Trade Center, Suite 400
Long Beach, California 90831
Tel: (562) 436-9201
Email: mmr@tsyslaw.com

15. Each of the individuals who executes this Agreement represents and warrants he/she has the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and has read, understood, and agreed to all the terms and conditions in this Agreement.

DATED: May 6, 2019

THE CHEMICAL TOXIN WORKING GROUP, INC.

By: David Steinman

Name: David Steinman

Title: President

DATED: _____, 2019

MERCADO LATINO, INC.

By: _____

Name: _____

Title: _____

Name: _____

Title: _____

DATED: May 6, 2019

MERCADO LATINO, INC.

By: _____

Name: JORGE RODRIGUEZ

Title: CFO