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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CALSAFE RESEARCH CENTER, INC., a
California non-profit corporation

Plaintiff,

v.

MEXICORP LLC

Defendants.

Case No. **30-2021-01179086-CU-TT-CXC**

STIPULATED CONSENT JUDGMENT

Assigned for all purposes to: Hon. Glenda
Sanders, Dept. CX101

Action Filed: January 15, 2021

1. INTRODUCTION

1.1 On January 15, 2021, CalSafe Research Center, Inc. ("CRC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint") pursuant

1 to the provisions of California Health and Safety Code section 25249.6 *et seq.*, against Mexicorp,
2 LLC. ("Mexicorp" or "Defendant"). The Complaint alleges that the Defendant failed to provide
3 clear and reasonable warnings that ingestion of the products identified in the Complaint would
4 result in exposure to acrylamide, a chemical known to the State of California to cause cancer, in
5 violation of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
6 Code section 25249.6 *et seq.*, also known as "Proposition 65."

7 **1.2** Defendant generally denies all material allegations of the Complaint, and has
8 asserted numerous affirmative defenses. Defendant specifically denies that any of its products
9 requires a Proposition 65 warning or otherwise causes harm to any person.

10 **1.3** CRC and Mexicorp shall be referred to as a "Party" to this Consent Judgment, and
11 collectively they shall be referred to herein as the "Parties" to this Consent Judgment.

12 **1.4** Mexicorp is a Texas limited liability corporation that employs more than ten
13 employees and has employed more than ten employees at times relevant to the allegations of the
14 Complaint, and that manufactures, distributes and/or sells products in the State of California and
15 has done so in the past.

16 **1.5** CRC is a 501(c)(3) non-profit corporation organized under the state of California,
17 acting in the interest of the general public. It seeks to promote awareness of exposures to toxic
18 chemicals and to improve human health by reducing or eliminating hazardous substances
19 contained in consumer products and encouraging corporate responsibility.

20 **1.6** The products covered by this Consent Judgment (hereinafter, "Covered Products")
21 are corn tortilla products, including corn tostadas, corn snack products and taco shells
22 manufactured by Mexicorp that are sold, distributed or offered for sale to consumers in the State
23 of California by Mexicorp and its downstream distributors, private label resellers, and retailers.

24 **1.7** The Parties have entered into this Consent Judgment in order to settle,
25 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
26 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
27 be construed as an admission by any of the Parties or by any of their respective officers,
28 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,

licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Consent Judgment.

1.8 By stipulating to the entry of this Consent Judgment and agreeing to provide the relief and remedies specified herein, Defendant does not admit that it has violated, or threatened to violate, Proposition 65 or any other law or legal duty; or that the chemical acrylamide in food poses any risk to human health. The Parties recognize that acrylamide is ordinarily formed when certain foods, such as the corn food products at issue in this case, are heated, and that levels of acrylamide formation are due to a variety of factors, including (among others) heating time and temperature.

1.9 Except as expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any current or future legal proceeding unrelated to these proceedings.

1.10 The Effective Date of this Consent Judgment shall be the date on which the Consent Judgment is entered as a judgment by this Court.

2. JURISDICTION AND VENUE

2.1 For purposes of this Consent Judgment only, CRC and Defendant stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Orange, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein.

3. INJUNCTIVE RELIEF: ACRYLAMIDE REDUCTION

3.1 Target Level and Compliance Date. Beginning on the Effective Date, Defendant shall reduce the level of acrylamide in its Covered Products shipped for sale in California to 281 parts per billion, calculated pursuant to the protocol described in Paragraph 3.3 (the "Target Level"), or be subject to the provisions of Paragraph 4.

3.2 "Shipped for sale in California" means covered Products that Defendant either

1 directly ships into California for sale in California or that it sells to a distributor or retailer who
2 Defendant knows will sell the Covered Products to consumers in California. Where a retailer or
3 distributor sells products both in California and other states, Defendant shall take commercially
4 reasonable steps to ensure that, after the Target Level has been reached, the only Covered
5 Products that are sold in California are either (i) Covered Products for which Defendant has
6 complied with Paragraph 3; or (ii) Covered Products for which Defendant has complied with
7 Paragraph 4.

8 **3.3 Standard and Verification.**

9 **3.3.1** Testing for acrylamide shall be performed using either GC/MS (Gas
10 Chromatography/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass
11 Spectrometry/Mass Spectrometry), or any other testing method agreed upon by the Parties to this
12 Consent Judgment.

13 **3.3.2** Defendant shall collect, over no less than a ten-day period, a random sample of
14 each type of Covered Product from each of at least five (5) production lots of such type of
15 Covered Product from each location that supplies such type of Covered Product to California.

16 **3.3.3** To comply with the Target Level, testing conducted in accordance with the
17 protocol set forth herein must establish that the arithmetic average of all test results is below the
18 Target Level.

19 **3.3.4** If Defendant's test results demonstrate that the Target Level has been achieved on
20 or before the Effective Date for the Covered Products shipped for sale in California, then, on or
21 before the Effective Date, it shall provide CRC with written notice of compliance, including the
22 calculation required to demonstrate achievement of the Target Level, and test results. Thereafter,
23 Defendant shall be required to test the Covered Products according to the protocol described in
24 this section on two additional occasions. The first occasion shall be approximately six (6)
25 months following receipt of the results from the initial testing. The second occasion shall be
26 approximately six (6) months thereafter. If those additional tests confirm that the Target Level
27 has been achieved for all of the Covered Products shipped for sale in California, Defendant shall
28 have no further duty to test the Covered Products.

1 **4. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS**

2 **4.1** If Defendant does not achieve the Target Level by the Effective Date, the
3 following warning must be utilized (“Warning”) until such time as it achieves the Target Level:

4 **WARNING:** Consuming this product can expose you to acrylamide which is known
5 to the State of California to cause cancer and birth defects or other reproductive
6 harm. For more information go to www.P65Warnings.ca.gov/food.

7 **4.2** The Warning shall be securely affixed to or printed upon the package or label of
8 each Covered Product. Defendant must display the above Warning with such
9 conspicuousness, as compared with other words, statements or designs on the label or
10 package, to render the Warning likely to be read and understood by an ordinary individual
11 under customary conditions of purchase or use of the product.

12 **4.3 Extra-Territorial Effect.** Nothing in this Consent Judgment requires that
13 warnings be given for any Products that are not shipped for sale in California.

14 **5. SETTLEMENT PAYMENT**

15 **5.1.** Mexicorp shall pay Forty-Eight Thousand Five-Hundred Dollars (\$48,500.00)
16 (“Total Settlement Amount”) in settlement and total satisfaction of all the claims referred to in
17 the Notice, the Complaint, and this Consent Judgment. This includes civil penalties in the amount
18 of Seven-Thousand Eight Hundred Dollars (\$7,800.00) pursuant to Health and Safety Code
19 section 25249.7(b) and attorney's fees and costs in the amount of thirty-seven thousand dollars
20 (\$37,000.00) pursuant to Code of Civil Procedure section 1021.5. This also includes and
21 Additional Settlement Payment (“ASP”) in the amount of Three Thousand Seven Hundred
22 Dollars (\$3,700.00) to CRC pursuant to Health & Safety Code § 25249.7(b), and California Code
23 of Regulations, Title 11, § 3204.

24 **5.2 Delivery.** Mexicorp shall make these payments as set forth in section 5.3 below,
25 for which CRC’s counsel will give Mexicorp the necessary account information.

26 **5.3** The Total Settlement Amount shall be apportioned as follows:

27 **5.3.1 Allocation of Payments.**

28 \$7,800.00 as a civil penalty pursuant to Health & Safety Code § 25249.7(b). The civil
penalty payment shall be apportioned in accordance with Health & Safety Code §

25249.12 (25% to CRC and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for 5,850.00 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The CRC portion of the civil penalty payment for \$1,950.00 shall be made payable to the Manning Law APC, Client Trust and CalSafe Research Center, Inc and associated with taxpayer identification number 84-4419173. This payment shall be delivered to Manning Law, APC, 20062 SW Birch St. Suite 200, Newport Beach, CA 92660.

5.3.2 \$3,700.00 as an Additional Settlement Payment ("ASP") to CRC pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CRC intends to restrict use of the ASPs received from this Consent Judgment to the following purposes: the funds will be placed in CRC's Toxics in Food Fund and used to support CRC programs and activities that seek to educate the public about acrylamide and other toxic chemicals in food, to work with the food industry and agriculture interests to reduce exposure to acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts and risks of exposure to acrylamide and other toxic chemicals in food sold in California. The payment pursuant to this Section shall be made payable to Manning Law APC, Client Trust and CalSafe Research Center and associated with taxpayer identification number 84-4419173. This

1 payment shall be delivered to Manning Law, APC, 20062 SW Birch St. Suite 200, Newport
2 Beach, CA 92660 within **fourteen (14) days** of the Effective Date.

3 Based on the review of CRC's previous years' budget, one-hundred-percent (100%) of
4 the ASP funds will be utilized for CRC's enforcement program. This work includes obtaining,
5 shipping, analyzing and testing products that may contain acrylamide and are sold to California
6 consumers. This work also includes monitoring and enforcement of past consent judgments and
7 settlements to ensure companies are in compliance with their obligations thereunder, with a
8 specific focus on those judgments and settlements concerning acrylamide. Finally, this work
9 includes investigation of new companies and testing of products that CRC does not obtain any
10 recovery through settlement or judgment. CRC will use ASP funds to reimburse itself for other
11 Proposition 65 investigations where CRC incurs testing costs but does not make a recovery and
12 for which no recovery is anticipated. This reimbursement will allow CRC to continue to benefit
13 the public with its' enforcement activities.

14 **5.3.2** \$37,000.00 as a reimbursement of a portion of CRC's reasonable attorneys'
15 fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks
16 as follows: (a) \$23,500.00 payable to Manning Law, APC and associated with taxpayer
17 identification number 83-0502205 \$23,500.00 within 14 days of the Effective Date; and (b)
18 \$13,500.00 payable to the Manning Law, APC and associated with taxpayer identification
19 number 83-0502205 within 60 days of the Effective Date. These payments shall be delivered to
20 Manning Law, APC, 20062 SW Birch St. Suite 200, Newport Beach, CA 92660.

21 **6. MODIFICATION OF CONSENT JUDGMENT**

22 **6.1 Procedure for Modification.** This Consent Judgment may be modified by
23 written agreement of CRC and Defendant, after noticed motion, and upon entry of a modified
24 consent judgment by the Court thereon, or upon motion of CRC or Defendant as provided herein
25 or as otherwise provided by Law, and upon entry of a modified consent judgment by the Court.
26 Before filing an application with the Court for a modification to this Consent Judgment,
27 Defendant shall meet and confer with the CRC to determine whether the CRC will consent to the
28 proposed modification. If a proposed modification is agreed upon, then Defendant and CRC will

1 present the modification to the Court by means of a stipulated modification to the Consent
2 Judgment. Otherwise, Defendant shall bear the burden of establishing that the modification is
3 appropriate based on the occurrence of a condition set forth in this Consent Judgment or as
4 otherwise provided by law.

5 **6.2 Other Settlements.**

6 **6.2.1** If the California Attorney General agrees or has agreed in a settlement or
7 judicially entered consent judgment with another manufacturer of tortilla chips, taco shells, or
8 tostadas on terms, as drafted or as implemented, that (i) are materially more beneficial to the
9 defendant than those set forth in this Consent Judgment as to the Compliance are, or the form,
10 manner or content of warning, or (ii) allow tortilla chip, taco shell, or tostada products with a
11 designated Target Level higher than 281 ppb to be shipped for sale and/or sold in California
12 without a warning, this may provide grounds for Settling Defendant to seek modification
13 pursuant to Paragraph 5.1.

14 **6.3. Change in Proposition 65.** If Proposition 65 or its implementing regulations are
15 changed from their terms as they exist on the date of entry of this Consent Judgment, either Party
16 or both Parties may seek modification of the Consent Judgment through stipulated or noticed
17 motion as follows:

18 **6.3.1** If the change establishes that warnings for acrylamide in Covered Products are not
19 required, Settling Defendant may seek a modification of this Consent Judgment to eliminate its
20 duties to warn and/or its duty to reduce acrylamide levels.

21 **6.3.2** If the change establishes that the warnings provided by this Consent Judgment
22 would not comply with Proposition 65 or its implementing regulations, either Party may seek a
23 modification of the consent Judgment to conform the judgment to the change in law.

24 **6.3.3** If the change establishes by regulation an acrylamide concentration level for corn
25 tortilla products, including tostadas, taco shells, or corn chips, that is higher than the Target
26 Level set in this Consent Judgment, Mexicorp may receive the benefit of that higher
27 concentration level for its Covered Products. In such instance, Mexicorp shall provide 60 days'
28 written notice to CRC.

1 **7. ENFORCEMENT**

2 **7.1** CRC may, by motion or application for an order to show cause before this Court,
3 enforce the terms and conditions contained in this Consent Judgment. In any such proceeding,
4 CRC may seek whatever fines, costs, penalties, or remedies are provided by law for failure to
5 comply with the Consent Judgment, and where said violations of this Consent Judgment
6 constitute subsequent violations of Proposition 65 or other laws independent of the Consent
7 Judgment and/or those alleged in the Complaint, CRC is not limited to enforcement of the
8 Consent Judgment, but may seek in another action whatever fines, costs, penalties, or remedies
9 are provided for by law for failure to comply with Proposition 65 or other laws. In any action
10 brought by CRC alleging subsequent violations of Proposition 65 or other laws, Settling
11 Defendant may assert any and all defenses that are available.

12 **8. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

13 **8.1** Each signatory to the Parties' stipulation for entry of this Consent Judgment has
14 certified that he or she is fully authorized by the Party he or she represents to stipulate to this
15 Consent Judgment, to enter into and execute the stipulation on behalf of the Party represented,
16 and legally to bind that Party.

17 **9. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

18 **9.1** CRC's Release of Proposition 65 Claims. CRC acting on its own behalf and in
19 the public interest releases Mexicorp from all claims for violations of Proposition 65 up
20 through the Effective Date based on exposure to acrylamide from Covered Products as set forth
21 in the Notice of Violation. Compliance with the terms of this Consent Judgment constitutes
22 compliance with Proposition 65 with respect to exposures to acrylamide from Covered
23 Products as set forth in the Notice of Violation. This includes Mexicorp and its respective
24 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
25 suppliers, franchisees, licensees, customers, distributors, private label resellers, wholesalers,
26 retailers, including 99 Cents Stores, and all other upstream and downstream entities in the
27 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
28 of them (collectively, "Released Parties"). This Consent Judgement is a full, final and binding

1 resolution of all claims that were or could have been asserted against Released Parties for
2 violations of Proposition 65 up through the Effective Date based on exposure to acrylamide
3 from Covered Products as set forth in the Notice of Violation.

4 **9.2** It is possible that other claims not known to the Parties, arising out of the facts
5 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
6 discovered. CRC on behalf of itself only, and Mexicorp on behalf of itself only, acknowledge
7 that this Consent Judgment is expressly intended to cover and include all such claims up
8 through and including the Effective Date, including all rights of action therefore. CRC and
9 Mexicorp acknowledge that the claims released in Sections 9.1 above may include unknown
10 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown
11 claims. California Civil Code section 1542 reads as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
13 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
15 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
16 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
17 PARTY.

16 **9.3** CRC on behalf of itself only, and Mexicorp on behalf of itself only,
17 acknowledge and understand the significance and consequences of this specific waiver of
18 California Civil Code section 1542.

19 **9.4.** Compliance with the terms of this Consent Judgment shall be deemed to
20 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to
21 acrylamide in the Covered Products as set forth in the Notice and Complaint.

22 **10. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

23 **10.1** In the event that any of the provisions of this Consent Judgment are held by
24 a court to be unenforceable, the validity of the remaining enforceable provisions shall not
25 be adversely affected.

26 **11. RETENTION OF JURISDICTION**

27 **11.1** The Parties expressly consent to this Court retaining jurisdiction of this
28 matter to implement and enforce this Consent Judgment. The Court shall retain jurisdiction

1 over the parties to enforce the settlement under CCP § 664.6 until performance in full of the
2 terms of the settlement.

3 **12. PROVISION OF NOTICE**

4 **12.1** When any Party is entitled to receive any notice under this consent Judgment, the
5 notice shall be sent by first class mail or electronic mail and address set forth in this Paragraph.
6 Any Party may modify the person and address to whom the notice is to be sent by sending the
7 other Party notice by certified mail, return receipt requested. Said change shall take effect on the
8 date the return receipt is signed by the Party receiving the change.

9 **12.2** Notices shall be sent to:

10 For CRC

11 Joseph R. Manning, Jr.
12 Manning Law, APC
13 20062 SW Birch St. Suite 200
14 Newport Beach, CA 92660

15 For Mexicorp:

16 Corrie L. Plant
17 BICK LAW LLP
18 520 Newport Center Drive Suite 750
19 Newport Beach, CA 92660

20 **13. COURT APPROVAL**



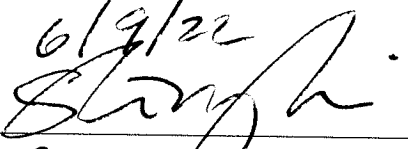

21 **13.1** This Consent Judgment shall be submitted to the Court for entry by noticed
22 motion. If this Consent Judgment is not approved by the Court, it shall be of no force or effect
23 and may not be used by CRC or Defendant for any purpose.

24 **14. ENTIRE AGREEMENT**

25 **14.1** This Consent Judgment contains the sole and entire agreement and understanding
26 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments and understandings related hereto. No representations, oral or
28 otherwise, express or implied, other than those contained herein have been made by any Party
hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be

1 deemed to exist or to bind any of the Parties.

2 **14.2.** The Consent Judgment is the result of mutual drafting and no ambiguity found
3 herein shall be construed in favor of or against any Party.

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| <p>4 APPROVED AS TO FORM:</p> <p>5 Date: 6/9/22</p> <p>6 By:  Joseph R. Manning Jr. 7 Counsel for Plaintiff</p> | <p>APPROVED AS TO FORM:</p> <p>Date: 6/8/2022</p> <p>By:  8 Caroline L. Plant Counsel for Defendant</p> |
| <p>9 AGREED TO: 10 CALSAFE RESEARCH CENTER, INC</p> <p>11 Date: 6/9/22</p> <p>12 By:  13 Title: PRESIDENT</p> | <p>AGREED TO: MEXICORP LLC</p> <p>14 Date: 6/8/22</p> <p>15 By:  16 Francisco Rodriguez 17 Title: V.P. Of U. S. Operations</p> |

18 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

19 Dated:

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21 Hon. Glenda Sanders,
22 Judge of the Superior Court
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