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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  
Filed:

**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 to the provisions of California Health and Safety Code section 25249.6 *et seq.*, against Mexicorp,

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

6 **1.2** Defendant generally denies all material allegations of the Complaint, and has  
7 asserted numerous affirmative defenses. Defendant specifically denies that any of its products  
8 requires a Proposition 65 warning or otherwise causes harm to any person.

9 **1.3** CRC and Mexicorp shall be referred to as a “Party” to this Consent Judgment, and  
10 collectively they shall be referred to herein as the “Parties” to this Consent Judgment.

11 **1.4** Mexicorp is a Texas limited liability corporation that employs more than ten  
12 employees and has employed more than ten employees at times relevant to the allegations of the  
13 Complaint, and that manufactures, distributes and/or sells products in the State of California and  
14 has done so in the past.

15 **1.5** The products covered by this Consent Judgment (hereinafter, “Covered Products”)  
16 are corn tortilla products, including corn tostadas, corn snack products and taco shells  
17 manufactured by Mexicorp that are sold, distributed or offered for sale to consumers in the State  
18 of California by Mexicorp and its downstream distributors, private label resellers, and retailers.

19 **1.6** The Parties have entered into this Consent Judgment in order to settle,  
20 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
21 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or  
22 be construed as an admission by any of the Parties or by any of their respective officers,  
23 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,  
24 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or  
25 violation of law. However, this paragraph shall not diminish or otherwise affect the obligations,  
26 responsibilities, and duties of the Parties under this Consent Judgment.

27 **1.7** By stipulating to the entry of this Consent Judgment and agreeing to provide the  
28 relief and remedies specified herein, Defendant does not admit that it has violated, or threatened

1 to violate, Proposition 65 or any other law or legal duty; or that the chemical acrylamide in food  
2 poses any risk to human health. The Parties recognize that acrylamide is ordinarily formed when  
3 certain foods, such as the corn food products at issue in this case, are heated, and that levels of  
4 acrylamide formation are due to a variety of factors, including (among others) heating time and  
5 temperature.

6 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall  
7 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
8 current or future legal proceeding unrelated to these proceedings.

9 **1.9** The Effective Date of this Consent Judgment shall be the date on which the  
10 Consent Judgment is entered as a judgment by this Court.

## 11 **2. JURISDICTION AND VENUE**

12 **2.1** For purposes of this Consent Judgment only, CRC and Defendant stipulate that  
13 this Court has jurisdiction over the allegations of violations contained in the Complaint and  
14 personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper  
15 in the County of Orange, and that this Court has jurisdiction to enter this Consent Judgment as a  
16 full and final resolution of all claims which were or could have been raised in the Complaint  
17 based on the facts alleged therein.

## 18 **3. INJUNCTIVE RELIEF: ACRYLAMIDE REDUCTION**

19 **3.1 Target Level and Compliance Date.** Beginning on the Effective Date,  
20 Defendant shall reduce the level of acrylamide in its Covered Products shipped for sale in  
21 California to 281 parts per billion, calculated pursuant to the protocol described in Paragraph 3.3  
22 (the “Target Level”), or be subject to the provisions of Paragraph 4.

23 **3.2** “Shipped for sale in California” means covered Products that Defendant either  
24 directly ships into California for sale in California or that it sells to a distributor or retailer who  
25 Defendant knows will sell the Covered Products to consumers in California. Where a retailer or  
26 distributor sells products both in California and other states, Defendant shall take commercially  
27 reasonable steps to ensure that, after the Target Level has been reached, the only Covered  
28 Products that are sold in California are either (i) Covered Products for which Defendant has

1 complied with Paragraph 3; or (ii) Covered Products for which Defendant has complied with  
2 Paragraph 4.

3 **3.3 Standard and Verification.**

4 **3.3.1** Testing for acrylamide shall be performed using either GC/MS (Gas  
5 Chromatography/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass  
6 Spectrometry/Mass Spectrometry), or any other testing method agreed upon by the Parties to this  
7 Consent Judgment.

8 **3.3.2** Defendant shall collect, over no less than a ten-day period, a random sample of  
9 each type of Covered Product from each of at least five (5) production lots of such type of  
10 Covered Product from each location that supplies such type of Covered Product to California.

11 **3.3.3** To comply with the Target Level, testing conducted in accordance with the  
12 protocol set forth herein must establish that the arithmetic average of all test results is below the  
13 Target Level.

14 **3.3.4** If Defendant's test results demonstrate that the Target Level has been achieved on  
15 or before the Effective Date for the Covered Products shipped for sale in California, then, on or  
16 before the Effective Date, it shall provide CRC with written notice of compliance, including the  
17 calculation required to demonstrate achievement of the Target Level, and test results. Thereafter,  
18 Defendant shall be required to test the Covered Products according to the protocol described in  
19 this section on two additional occasions. The first occasion shall be approximately six (6)  
20 months following receipt of the results from the initial testing. The second occasion shall be  
21 approximately six (6) months thereafter. If those additional tests confirm that the Target Level  
22 has been achieved for all of the Covered Products shipped for sale in California, Defendant shall  
23 have no further duty to test the Covered Products.

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

25 **4.1** If Defendant does not achieve the Target Level by the Effective Date, the  
26 following warning must be utilized ("Warning") until such time as it achieves the Target Level:

27 **WARNING:** Consuming this product can expose you to acrylamide which is known  
28 to the State of California to cause cancer. For more information go to  
[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

1           **4.2**     The Warning shall be securely affixed to or printed upon the package or label of  
2 each Covered Product. Defendant must display the above Warning with such  
3 conspicuousness, as compared with other words, statements or designs on the label or  
4 package, to render the Warning likely to be read and understood by an ordinary individual  
5 under customary conditions of purchase or use of the product.

6           **4.3     Extra-Territorial Effect.** Nothing in this Consent Judgment requires that  
7 warnings be given for any Products that are not shipped for sale in California.

8           **5.     SETTLEMENT PAYMENT**

9           **5.1.**     In full satisfaction of all potential civil penalties, additional settlement payments,  
10 attorney's fees, and costs, Mexicorp shall make a totally payment of \$48,500 ("Total Settlement  
11 Amount") to CRC in two payments (the "Periodic Payments") according to the following  
12 payment schedule ("Due Dates"):

- 13                     •   Payment 1 - \$35,000.00 within 10 days of the Effective Date
- 14                     •   Payment 2 - \$13,500.00 within 60 days of the Effective Date

15           **5.2     Delivery.** Mexicorp shall make these payments as set forth in section 5.3 below,  
16 for which CRC's counsel will give Mexicorp the necessary account information.

17           **5.3**     The Total Settlement Amount shall be apportioned as follows:

18           **5.3.1   Allocation of Payments.**

19           **\$7,275** as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

20 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
21 25249.12 (25% to CRC and 75% to the State of California's Office of Environmental Health  
22 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
23 payment for \$5,456.25 shall be made payable to OEHHA and associated with taxpayer  
24 identification number 68-0284486. This payment shall be delivered as follows:

25 For United States Postal Service Delivery:

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

1 For Non-United States Postal Service Delivery:

2 Attn: Mike Gyurics  
3 Fiscal Operations Branch Chief  
4 Office of Environmental Health Hazard Assessment  
5 1001 I Street, MS #19B  
6 Sacramento, CA 95814

7 The CRC portion of the civil penalty payment for \$1,818.75 shall be made payable  
8 to the Manning Law APC, Client Trust and CalSafe Research Center, Inc and associated with  
9 taxpayer identification number 84-4419173. This payment shall be delivered to Manning Law,  
10 APC, 20062 SW Birch St. Suite 200, Newport Beach, CA 92660.

11 **5.3.2 \$4,850** as an Additional Settlement Payment (“ASP”) to CRC pursuant to  
12 Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CRC  
13 intends to restrict use of the ASPs received from this Consent Judgment to the following  
14 purposes: the funds will be placed in CRC’s Toxics in Food Fund and used to support CRC  
15 programs and activities that seek to educate the public about acrylamide and other toxic  
16 chemicals in food, to work with the food industry and agriculture interests to reduce exposure to  
17 acrylamide and other toxic chemicals in food, and to thereby reduce the public health impacts  
18 and risks of exposure to acrylamide and other toxic chemicals in food sold in California. The  
19 payment pursuant to this Section shall be made payable to Manning Law APC, Client Trust and  
20 CalSafe Research Center and associated with taxpayer identification number 84-4419173. This  
21 payment shall be delivered to Manning Law, APC, 20062 SW Birch St. Suite 200, Newport  
22 Beach, CA 92660.

23 **5.3.3 \$2,425** shall be distributed to CRC as reimbursement to CRC for reasonable costs  
24 for testing and bringing this action. This payment shall be made payable to Manning Law APC,  
25 Client Trust and delivered to Manning Law, APC, 20062 SW Birch St. Suite 200, Newport  
26 Beach, CA 92660.

27 **5.3.4 \$33,950** as a reimbursement of a portion of CRC’s reasonable attorneys’  
28 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks  
as follows: (a) \$20,450 payable to Manning Law, APC and associated with taxpayer

identification number 83-0502205; and (b) \$13,500 payable to the Manning Law, APC and associated with taxpayer identification number 83-0502205 in accordance with section 5.1. These payments shall be delivered to Manning Law, APC, 20062 SW Birch St. Suite 200, Newport Beach, CA 92660.

## **6. MODIFICATION OF CONSENT JUDGMENT**

**6.1 Procedure for Modification.** This Consent Judgment may be modified by written agreement of CRC and Defendant, after noticed motion, and upon entry of a modified consent judgment by the Court thereon, or upon motion of CRC or Defendant as provided herein or as otherwise provided by Law, and upon entry of a modified consent judgment by the Court. Before filing an application with the Court for a modification to this Consent Judgment, Defendant shall meet and confer with the CRC to determine whether the CRC will consent to the proposed modification. If a proposed modification is agreed upon, then Defendant and CRC will present the modification to the Court by means of a stipulated modification to the Consent Judgment. Otherwise, Defendant shall bear the burden of establishing that the modification is appropriate based on the occurrence of a condition set forth in this Consent Judgment or as otherwise provided by law.

### **6.2 Other Settlements.**

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

**6.3. Change in Proposition 65.** If Proposition 65 or its implementing regulations are changed from their terms as they exist on the date of entry of this Consent Judgment, either Party

1 or both Parties may seek modification of the Consent Judgment through stipulated or noticed  
2 motion as follows:

3 **6.3.1** If the change establishes that warnings for acrylamide in Covered Products are not  
4 required, Settling Defendant may seek a modification of this Consent Judgment to eliminate its  
5 duties to warn and/or its duty to reduce acrylamide levels.

6 **6.3.2** If the change establishes that the warnings provided by this Consent Judgment  
7 would not comply with Proposition 65 or its implementing regulations, either Party may seek a  
8 modification of the consent Judgment to conform the judgment to the change in law.

9 **6.3.3** If the change establishes by regulation an acrylamide concentration level for corn  
10 tortilla products, including tostadas, taco shells, or corn chips, that is higher than the Target  
11 Level set in this Consent Judgment, Mexicorp may receive the benefit of that higher  
12 concentration level for its Covered Products. In such instance, Mexicorp shall provide 60 days'  
13 written notice to CRC.

## 14 **7. ENFORCEMENT**

15 **7.1** CRC may, by motion or application for an order to show cause before this Court,  
16 enforce the terms and conditions contained in this Consent Judgment. In any such proceeding,  
17 CRC may seek whatever fines, costs, penalties, or remedies are provided by law for failure to  
18 comply with the Consent Judgment, and where said violations of this Consent Judgment  
19 constitute subsequent violations of Proposition 65 or other laws independent of the Consent  
20 Judgment and/or those alleged in the Complaint, CRC is not limited to enforcement of the  
21 Consent Judgment, but may seek in another action whatever fines, costs, penalties, or remedies  
22 are provided for by law for failure to comply with Proposition 65 or other laws. In any action  
23 brought by CRC alleging subsequent violations of Proposition 65 or other laws, Settling  
24 Defendant may assert any and all defenses that are available.

## 25 **8. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

26 **8.1** Each signatory to the Parties' stipulation for entry of this Consent Judgment has  
27 certified that he or she is fully authorized by the Party he or she represents to stipulate to this  
28



Consent Judgment, to enter into and execute the stipulation on behalf of the Party represented, and legally to bind that Party.

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

**9.1** This Consent Judgment is a full, final, and binding resolution between CRC, on behalf of itself and in the public interest, and Mexicorp and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers, distributors, private label resellers, wholesalers, retailers, including 99 Cents Stores, and all other upstream and downstream entities in the distribution chain of any Covered Product, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties"). CRC, on behalf of itself and in the public interest, hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or consumption of the Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Products.

**9.2** It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be discovered. CRC on behalf of itself only, and Mexicorp on behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. CRC and Mexicorp acknowledge that the claims released in Sections 9.1 above may include unknown claims, and nevertheless waive 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

**9.3** CRC on behalf of itself only, and Mexicorp on behalf of itself only,

acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

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

**10. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

**11. RETENTION OF JURISDICTION**

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

**12. PROVISION OF NOTICE**

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

**12.2** Notices shall be sent to:

For CRC

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

For Mexicorp:

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

1 **13. COURT APPROVAL**

2 **13.1** This Consent Judgment shall be submitted to the Court for entry by noticed  
3 motion If this Consent Judgment is not approved by the Court, it shall be of no force or effect  
4 and may not be used by CRC or Defendant for any purpose.

5 **14. ENTIRE AGREEMENT**

6 **14.1** This Consent Judgment contains the sole and entire agreement and understanding  
7 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
8 negotiations, commitments and understandings related hereto. No representations, oral or  
9 otherwise, express or implied, other than those contained herein have been made by any Party  
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
11 deemed to exist or to bind any of the Parties.

12 **14.2.** The Consent Judgment is the result of mutual drafting and no ambiguity found  
13 herein shall be construed in favor of or against any Party.

14 APPROVED AS TO FORM:

15 Date:

16 By: 

17 Joseph R. Manning Jr.  
18 Counsel for Plaintiff  
19

20 APPROVED AS TO FORM:

21 Date: 2/10/21

22 By: 

23 Caroline L. Plant  
24 Counsel for Defendant

25 AGREED TO:  
26 CALSAFE RESEARCH CENTER, INC

27 Date: 2/13/21

28 By: 

Title: CEO

25 AGREED TO:  
26 MEXICORP LLC

27 Date: 2/10/21

28 By: 

Title: V.P. Of U. S. Operations

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

26 Dated:

27 \_\_\_\_\_  
28 Hon. Glenda Sanders,  
Judge of the Superior Court