

# SETTLEMENT AGREEMENT

## **1. INTRODUCTION**

### **1.1 Parties**

This settlement agreement ("Settlement Agreement") is entered into by and between CalSafe Research Center, Inc., ("CRC"), on the one hand, and La Carreta Supermarkets, Inc. ("Defendant") on the other hand, with CRC and Defendant each individually referred to as a "Party" and collectively as the "Parties." CRC is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Defendant employs ten or more individuals and is a person in the course of doing business for purposes of The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* ("Proposition 65").

### **1.2 General Allegations**

CRC alleges that Defendant distributes tortillas for sale in California that contain acrylamide and that it does so without first providing the health hazard warnings required by Proposition 65. CRC further alleges that Defendant offered the following products, manufactured by others, for sale without first providing the health warnings required by Proposition 65: Paseo Pinter Rosales Digestive Cookies Galletas Digestive; Los Pericos Food Products, LLC, Tostada Casera Sodium Free Tostada; Los Pericos Food Products, LLC, Tostada Casera Sea Salt; Ofrenda Inc., Casa Maya Premium Quality Corn Tostada Sesame; and Dulces Regionales La Molienda Mixnut Bar. Acrylamide is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

### **1.3 Product Description**

The products covered by this Settlement Agreement is defined as, and expressly limited to: La Carreta Supermarkets, Tostada Botanera; La Carreta Supermarkets, Tortilla Chips Salt/Limon; Paseo Pinter Rosales Digestive Cookies Galletas Digestive; Los Pericos Food Products, LLC, Tostada Casera Sodium Free Tostada; Los Pericos Food Products, LLC, Tostada Casera Sea Salt; Ofrenda Inc., Casa Maya Premium Quality Corn Tostada Sesame, and Dulces Regionales La Molienda Mixnut Bar (hereinafter collectively the "Products") that are alleged to contain acrylamide and that were manufactured, manufactured by others, sold or distributed for sale in California by Defendant.

### **1.4 Notice of Violation**

On January 27, 2021, February 9, 2021, March 25, 2021, July 19, 2021, September 16, 2021 and January 5, 2022, CRC served Defendant, the California Attorney General and the other requisite public enforcers with a 60-Day Notice of Violation ("Notice"), alleging that Defendant violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to acrylamide from the Products.

To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

Defendant denies the material, factual and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Defendant or any of its officers, directors, shareholders, employees, agents, parent companies,

subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Defendant or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Defendant. This Section shall not, however, diminish or otherwise affect Defendant's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean ninety (90) days following the execution of this Settlement Agreement by the Parties.

## **2. INJUNCTIVE RELIEF**

### **2.1 Acrylamide Reduction**

**Target Level and Compliance Date.** Beginning on the Effective Date, Defendant shall reduce the level of acrylamide in the Products shipped for sale in California to 350 parts per billion, (the "Target Level"), or be subject to the provisions of Paragraphs 2.3 and 2.4.

**2.2** "Shipped for sale in California" means the Product that Defendant either directly ships into California for sale in California or that it sells to a distributor or retailer who Defendant knows will sell the Product to consumers in California. Where a retailer or distributor sells products both in California and other states, Defendant shall take commercially reasonable steps to ensure that, after the Target Level has been reached, the only Product that is sold in California is either (i) the Product for which Defendant has complied with Paragraph 2.1, or (ii) the Product for which Defendant has complied with Paragraphs 2.3 and 2.4.

### **2.3 Clear and Reasonable Warnings**

If Defendant does not achieve the Target Level by the Effective Date, Defendant agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California (in person or online) the Product that is sold with a warning as provided for in this paragraph and paragraph 2.4.

### **2.4 General Warning Requirements**

Defendant agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product shall consist of a warning affixed to the packaging, label, tag, or directly to each of the Product sold or distributed in California by Defendant that contains one of the following statements:

1) **WARNING:** Consuming this product can expose you to chemicals including Acrylamide which is known to the State of California to cause cancer, birth defects or other reproductive harm. For

more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

- 2) WARNING: Cancer and Reproductive Harm-[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

The warning shall be offset in a box with black outline. The same warning shall be posted on any websites where the Product is sold in California.

- (i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress or voters with such requirements or permission, Defendant shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations, legislation or judicial rulings are enacted or issued providing that warnings as to acrylamide in this type of food product is no longer required, a lack of warning by Defendant will not thereafter be a breach of this Agreement.

## **2.5 Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2 shall not apply to Product that is already in the stream of commerce as of the Effective Date, which Product is expressly subject to the releases provided in Section 4.1.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Total Settlement Penalty**

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, Defendant shall make a total settlement payment of twenty-eight thousand five hundred dollars (**\$28,500.00**) ("Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty and Attorney's Fees and Costs as set forth in Sections 3.2, and 3.3 below.

### **3.2 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Defendant agrees to two thousand eight hundred fifty dollars (**\$2,850.00**) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by CRC. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, Defendant shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of two thousand one hundred thirty-seven dollars and fifty cents (**\$2,137.50**) and (b) CRC in the amount of seven hundred twelve dollars and fifty cents (**\$712.50**).

All payments owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Delivery Service:

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 Delivery Service:

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

All penalty payments owed to CRC shall be sent to:

Manning Law APC  
Client Trust and CalSafe Research Center (taxpayer identification number 84-4419173)  
20062 SW Birch Street, Suite 200  
Newport Beach, CA 92660

### **3.3 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to CRC and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within twenty-one (21) days of the date this Settlement Agreement is executed by the Parties, Defendant agrees to pay twenty-five thousand six hundred fifty dollars (**\$25,650.00**) to Manning Law, AP for all fees and costs incurred in investigating, bringing this matter to the attention of Defendant, and negotiating a settlement. The **\$25,650.00** in Attorney's Fees and Costs shall be paid via one check for **\$25,650.00** payable to "Manning Law APC" within twenty-one (21) days of the date this Settlement Agreement is executed by the Parties.

### **3.4 Payment Address**

All payments required under this section to Manning Law APC shall be delivered to:

Manning Law APC (taxpayer identification number 83-0502205)  
20062 SW Birch Street, Suite 200  
Newport Beach, CA 92660

### **3.5 Tax Documentation**

Defendant agrees to provide a completed IRS 1099 form for its payments to, and CRC and Manning Law agree to provide IRS W-9 forms to Defendant. The Parties acknowledge that Defendant cannot issue any settlement payments pursuant to Section 3 above until after Defendant receives the requisite W-9 forms from CRC's counsel.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 CRC's Release of Defendant**

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges Defendant and its respective officers, directors, shareholders, employees, agents, parent companies,

subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors (the "Defendant Releasees") and all entities to which Defendant Releasees directly or indirectly distribute or sell the Product, including but not limited to La Carreta Supermarkets, Inc. and any other distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees, (collectively, the "Released Parties" and individually, a "Released Party"). CRC, on behalf of itself and its officers, directors, shareholders, employees, agents, parent companies, subsidiaries and divisions 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 base on or related to the handling, use, sale, distribution or consumption of the Products in California, as to any alleged violation of Proposition 65 or its implementing regulations, including without limitation any failure to provide Proposition 65 warnings on the Products with respect to exposures to lead.

Upon Defendant's completion of the conditions herein, CRC's counsel will execute and submit a Request for Dismissal of the entire action, with prejudice, both sides to bear their own costs, for the action currently pending in Orange County Superior Court, entitled *CalSafe Research Center Inc. v. La Carreta Supermarkets, Inc.*, et al., action number 30-2021-01232201-CU-CR-CXC.

#### **4.2 Defendant's Release of CRC**

Defendant on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all claims against CRC and its attorneys and other representatives, for any and all actions taken, or statements made by CRC and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

#### **4.3 California Civil Code Section 1542**

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 Products, will develop or be discovered. CRC on behalf of itself only, and Defendant on behalf of itself only, acknowledge that this Settlement Agreement 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 Defendant acknowledge that the claims released in Sections 4.1 and 4.2 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.

#### **5. SEVERABILITY**

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

#### **6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

#### **7. NOTICE**

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class mail or electronic mail to the 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.

Notices shall be sent to:

For CRC

Joseph R. Manning, Jr.  
Manning Law, APC  
20062 SW Birch St. Suite 200  
Newport Beach, CA 92660  
Courtesy copy to be emailed to: P65Tier1@manninglawoffice.com

For Defendant:

Steven S. Spaulding  
Berkes Crane Santana and Spangler LLP  
515 South Figueroa St., Suite 1500  
Los Angeles, CA 90071  
Courtesy copy to be emailed to: sspaulding@bcsslaw.com

**8. COUNTERPARTS: FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7(f)**

CRC and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code §25249.7(f).

**10. MODIFICATION**

The Settlement Agreement may be modified only by written agreement of the Parties.

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date:

7/26/22

By:

CalSafe Research Center, Inc.

AGREED TO:

Date:

By:

La Carreta Supermarkets, Inc.

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Manning Law, APC  
20062 SW Birch St. Suite 200  
Newport Beach, CA 92660  
Courtesy copy to be emailed to: P65Tier1@manninglawoffice.com

For Defendant:

Steven S. Spaulding  
Berkes Crane Santana and Spangler LLP  
515 South Figueroa St., Suite 1500  
Los Angeles, CA 90071  
Courtesy copy to be emailed to: sspaulding@bcsslaw.com

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Date:

By:

CalSafe Research Center, Inc.

AGREED TO:

Date: 08 - 10 - 2022

By:

La Carreta Supermarkets, Inc.