

## SETTLEMENT AND RELEASE AGREEMENT

### 1. **INTRODUCTION**

#### 1.1. **Berj Parseghian and Malibu Country Market, LLC:**

This Settlement Agreement is entered into by and between Berj Parseghian ("Parseghian"), represented by his attorneys KJT Law Group, LLP on the one hand, and Malibu Country Market, LLC, d.b.a. Vintage Grocers ("MCM"), on the other hand, with Parseghian and MCM collectively referred to as the "Parties."

#### 1.2. **General Allegations**

In *Berj Parseghian v. Atha, Inc. et al.*, No. 21STCV43281 (Los Angeles Sup. Ct.) (the "Lawsuit"), Parseghian alleges that MCM offered for sale in the State of California products, containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm. MCM denies the allegations in the Lawsuit.

#### 1.3. **Product Description**

The product covered by this Settlement Agreement is defined to include Atha – Cassava Tortilla Chips – BBQ Blast Off; UPC #: 8 50989 00802 9, which MCM has sold in California and they contain lead. All such items shall be referred to herein as the "Covered Product."

#### 1.4. **Notice of Violation**

On May 11, 2021, Parseghian served MCM, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled "60-Day Notice of Violation" ("Notice") that provided MCM

and such public enforcers with notice that MCM was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Covered Product exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

**1.5. No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning MCM's compliance with Proposition 65. Specifically, MCM denies the allegations contained in Parseghian's Notice and the Lawsuit and maintains that all products that it has placed for sale in California, including the Covered Product, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by MCM of any fact, finding, issue of law, or violation of law. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of MCM under this Settlement Agreement.

**1.6. Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

**2. INJUNCTIVE RELIEF:**

Beginning on the Effective Date, MCM agrees to discontinue purchasing or selling the Covered Product in the State of California.

The injunctive relief in Section 2 does not apply to any Covered Product that has left the possession, and is no longer under the control of MCM prior to the Effective Date and all claims as to such Covered Product is released in this Settlement Agreement.

**3. CONSIDERATION**

In settlement of the claims referred to in this Settlement Agreement, the Parties reached an accord on the compensation due, under the private attorney general doctrine and principles of contract law. Under these legal principles, MCM shall pay \$22,500.00 ("Payment") as settlement and for fees and costs, incurred as a result of the claims referred to in this Settlement Agreement.

**4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, \$2,000.00 of the Payment shall be considered a "civil penalty." The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% (i.e. \$1,500.00) of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% (i.e. \$500.00) of the penalty remitted to Parseghian.

**5. REIMBURSEMENT OF FEES AND COSTS**

In settlement of the claims referred to in this Settlement Agreement, \$20,500.00 of the Payment shall be considered reimbursement of Parseghian's attorneys' fees, expert and investigation fees, and related costs associated with the claims referred to in this Settlement Agreement.

**6. PAYMENT INFORMATION**

MCM shall mail these portions of the Payment within ten (10) business days following the Effective Date, at which time such portions shall be mailed to the following addresses respectively:

The portion owed to Plaintiff and for attorneys' fees, shall be delivered to the following payment address:

**KJT LAW GROUP LLP**

**230 N. Maryland Avenue, Suite 306**

**Glendale, CA 91206**

The portion owed to OEHHA shall be delivered directly to OEHHA at the following addresses:

For United States Postal Delivery:

Mike Gyurics  
Senior Accounting Officer -- MS 19-B  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA. 95812-0410

For Non-United States Postal Service Delivery:

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

**7. COVERED CLAIMS & RELEASE**

This Settlement Agreement is a full, final and binding resolution between Parseghian on behalf of himself and the public interest and MCM and MCM's subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys ("Releasees"), all entities to which MCM directly or indirectly sells the Covered Product, including but not limited to customers, franchisees, licensors and licensees ("Affiliated Releasees"), of any violation of Proposition 65 based on MCM's failure to warn about alleged exposure to lead contained in the Covered Product any time up until the Effective Date.

Parseghian, in his capacity, releases, waives, and forever discharges any and all claims against MCM, the Releasees, and the Affiliated Releasees, arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted pertaining to the Covered Product.

**8. 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then MCM shall have no further obligations pursuant to this Settlement Agreement.

**9. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For MCM: Sean A. McCormick, Esq.  
Elkins Kalt Weintraub Reuben Gartside LLP  
10345 W. Olympic Boulevard  
Los Angeles, CA 90064

For Parseghian: Tro Krikorian, Esq.  
KJT Law Group, LLP  
230 N. Maryland Ave., Suite 306  
Glendale, CA 91206

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**10. COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This Agreement may be executed in counterparts, and if so executed and delivered, all of the counterparts together shall constitute one and the same Agreement. A facsimile or image

scan of a signature shall be binding against the Party whose signature appears on the facsimile or image scan, provided such facsimile or image scan is delivered by the Party whose signature appears on the facsimile or image scan. The Parties expressly agree that this Agreement may be executed via electronic signatures, including but not limited to electronic signatures effectuated via DocuSign or PDF, and such electronic signatures are binding and have the same force and effect as wet signatures.

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**12. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

**13. DRAFTING**

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.

**14. 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.


**IN WITNESS WHEREOF, the Parties have agreed, accepted, and executed this Agreement on the date written.**

Executed on 9/20/2022, at Pasadena, California.

DocuSigned by:  
  
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Berj Parseghian

Executed on 9/21/2022, at Los Angeles, California.


Malibu Country Market, LLC

DocuSigned by:  
  
B5F8223F031D46A...  
By: Brent Karasiuk


Its: President/Manager

**APPROVED AS TO FORM BY:**

Executed on 9/20/2022, at Glendale, California.

DocuSigned by:  
  
D011CF9328F0472...  
Tro Krikorian, Esq., Attorney for Berj Parseghian  
KJT Law Group, LLP

Executed on 9/21/22, at Los Angeles, California.

  
Sean A. McCormick, Esq., Attorney for Malibu Country Market, LLC  
Elkins Kalt Weintraub Reuben Gartside LLP