

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This settlement agreement ("Settlement Agreement") is entered into by and between CalSafe Research Center, Inc., ("CalSafe"), on the one hand, and Nairn's Oatcakes Limited, ("NOL" or "Defendant") on the other hand, with CalSafe and NOL each individually referred to as a "Party" and collectively as the "Parties." CalSafe 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. NOL 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

CalSafe alleges that NOL distributes oat graham's for sale in California that contain lead and acrylamide and that it does so without first providing the health hazard warnings required by Proposition 65. Lead and acrylamide are listed pursuant to Proposition 65 as chemicals known to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to, Nairn's Stem Ginger Gluten Free Oat Graham's (hereinafter collectively "the Products") that contain lead and acrylamide and that are manufactured, sold or distributed for sale in California by NOL.

1.4 Notice of Violation

On June 16, 2021, CalSafe served NOL, the California Attorney General and the other requisite public enforcers with a 60-Day Notice of Violation ("Notice"), alleging that NOL violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to lead and 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

NOL 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 Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by NOL 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 NOL 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 NOL. This Section shall not, however, diminish or otherwise affect NOL'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 twelve (12) months following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Lead and Acrylamide Reduction

Target Level and Compliance Date. Beginning on the Effective Date, Defendant shall reduce the level of lead in the Products shipped for sale in California to .027 parts per million, and the level of acrylamide in the Products to 350 parts per billion (collectively the "Target Levels"), or be subject to the provisions of Paragraphs 2.3 and 2.4.

2.2 "Shipped for sale in California" means the Products 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 Products to consumers in California.

2.3 Clear and Reasonable Warnings

If NOL does not achieve the Target Levels by the Effective Date, NOL 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 Products that are sold with a warning as provided for in this paragraph and paragraph 2.4.

2.4 General Warning Requirements

NOL 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 Products shall consist of a warning affixed to the packaging, label, tag, or directly to each of the Products sold or distributed in California by NOL that contain one of the following Proposition 65 warnings:

1) **WARNING:** Consuming this product can expose you to chemicals including Lead and Acrylamide which are 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.

2) **WARNING:** Cancer and Reproductive Harm-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, NOL 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 lead or acrylamide in these types of food products are no longer required, a lack of warning by NOL will not thereafter be a breach of this Agreement. Further, to the extent the implementation and/or enforcement of Proposition 65 is altered as a result of the litigation known as *California Chamber of Commerce v. Xavier Becerra*, Case No. 2:19-cv- 02019, currently pending in the U.S. Court of Appeals for the Ninth Circuit, under No. 21-15745 (including companion appeals), NOL's duties and obligations under this Agreement shall be deemed modified to conform with any such ruling.

2.5 Grace Period for Existing Inventory of Products

The Products that are manufactured on or prior to the Compliance Date shall be subject to release of liability pursuant to this Consent Judgment, without regard to when such Products were, or are in the future, distributed or sold to customers. As a result, the obligation of NOL, or any Releasees (if applicable), do not apply to these Products manufactured on or prior to the Compliance Date and the injunctive requirements of Section 2 shall not apply to such Products which Products are expressly subject to the releases provided in Section 4.1.

3. MONETARY SETTLEMENT TERMS

3.1 Total Settlement Payment

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, NOL shall make a total settlement payment of twenty-five thousand dollars (**\$25,000.00**) ("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, NOL agrees to pay Two Thousand Five Hundred Dollars (**\$2,500.00**) 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 CalSafe. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, NOL shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of One Thousand Eight Hundred and Seventy-Five Dollars (**\$1,875.00**) and (b) CalSafe in the amount of Six Hundred and Twenty-Five Dollars (**\$625.00**).

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 CalSafe 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 CalSafe 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, NOL agrees to pay Twenty-Two Thousand and Five Hundred Dollars (**\$22,500.00**) to Manning Law, APC for all fees and costs incurred in investigating, bringing this matter to the attention of NOL, and negotiating a settlement. The \$22,500.00 in Attorney's Fees and Costs shall be paid in the form of a check made 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

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

4. CLAIMS COVERED AND RELEASED

4.1 CalSafe's Release of NOL

CalSafe, acting on its own behalf and *not* on behalf of the public, fully releases and discharges NOL, its owners, parents, subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees, attorneys, and each entity from whom and to whom NOL directly or indirectly buys, distributes or sells the Products (as defined herein), including but not limited to the manufacturer of such Products (collectively, "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 Product, as to any alleged violation of Proposition 65 or its implementing regulations alleging failure to warn based on exposure to Acrylamide

and/or Lead from the Products manufactured, imported, sold or distributed by the Released Parties in California by NOL before the Effective Date, as alleged in the Notice.

4.2 NOL's Release of CalSafe

NOL on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all claims against CalSafe and its attorneys and other representatives, for any and all actions taken, or statements made by CalSafe 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 Products.

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. CalSafe on behalf of itself only, and NOL 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. CalSafe and NOL 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 CalSafe
Joseph R. Manning, Jr.
Manning Law, APC
20062 SW Birch St. Suite 200
Newport Beach, CA 92660

For NOL:
Peter J. Pizzi
Walsh Pizzi O'Reilly Falanga LLP
3 Gateway Center, 15th Floor
Newark, NJ 07102

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)

CalSafe 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.

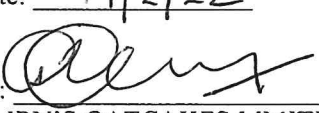
11. AUTHORIZATION

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: 2/15/22
By: 
CALSAFE RESEARCH CENTER, INC.

AGREED TO:

Date: 17/2/22
By: 
NAIRN'S OATCAKES LIMITED