

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 CostadelSol Enterprises, LLC ("CSE") on the other hand with CalSafe and CSE 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. CSE 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 CSE distributes corn chips for sale in California that contain acrylamide and that it does so without first providing the health hazard warnings required by Proposition 65. 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 product covered by this Settlement Agreement are defined as, and expressly limited to, Diana Crunchy Cornbits Lime Flavored Fried Corn Kernels (hereinafter collectively "the Product") that allegedly contain acrylamide and that are manufactured, sold or distributed for sale in California by CSE.

1.4 Notice of Violation

On July 14, 2021, CalSafe served CSE, the California Attorney General and the other requisite public enforcers with a 60-Day Notice of Violation ("Notice"), alleging that CSE violated Proposition 65 by failing to warn distributors, retailers, customers and consumers in California of health risks associated with exposures to acrylamide from the Product.

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

1.5 No Admission

CSE 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 CSE 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 CSE of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by CSE. This Section shall not, however diminish or otherwise affect CSE'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, CSE shall either (a) reformulate the Product to achieve a “Daily Acrylamide Exposure Level” no greater than 0.2 micrograms per day (for purposes of this Settlement Agreement, “Daily Acrylamide Exposure Level” shall be measured in micrograms and shall be calculated using the following formula: micrograms of acrylamide per gram of Product, multiplied by grams of product per serving of the Product with an assumed consumption rate of 5.3 grams of product per day; a Daily Acrylamide Exposure Level no greater than 0.2 micrograms is hereinafter referred to as the “Target Level”), or (b) comply with the provisions of Paragraphs 2.2 and 2.3 below.

2.2 Clear and Reasonable Warnings

If CSE does not achieve the Target Level for Acrylamide by the Effective Date, CSE agrees to only manufacture, sell, import or distribute for sale in California (in person or online) the Product that is sold with a warning as provided for in this Paragraph and Paragraph 2.3.

2.3 General Warning Requirements

For Product that does not achieve the Target Level for Acrylamide, as set out in paragraph 2.1 above, and which is manufactured and packaged for distribution for authorized sale or use in California, CSE shall provide clear and reasonable warnings as set forth in Proposition 65 and related Regulations. CSE 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, to minimize the risk of consumer confusion.

(i) Changes in Warning Regulations or Statutes

In the event that a court order or ruling by a California federal or state court, or the Office of Environmental Health Hazard Assessment (or another authorized agency) provides or promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than as provided under Proposition 65 or its Regulations, or legislation is enacted in or for California, CSE shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being in breach of this Agreement. If a court or regulations or legislation are enacted which provide that warnings as to Acrylamide in the Product are no longer required, a lack of warning by CSE shall not thereafter be a breach of this Agreement.

If a California court approves a Proposition 65 settlement or consent judgment concerning Acrylamide for one or more of CSE competitors or ant release that provides for materially less onerous compliance measures, then CSE shall be entitled to forthwith replace the more onerous compliance measures set out herein with those less onerous measures.

2.4 Grace Period for Existing Inventory of Products

The requirements of this Section 2 shall not apply to Product that are manufactured on or prior to, or is already in the stream of commerce as of the Effective Date, shall be subject to full release of liability, as expressly provided in Paragraph 4.1.

3. MONETARY SETTLEMENT TERMS

3.1 Total Settlement Penalty

In full satisfaction of all potential civil penalties, additional settlement payments, attorneys' fees, and costs, CSE shall pay forty-eight thousand dollars **(\$48,000.00)** ("Total Settlement Amount"), which comprises \$7,200 in civil penalties and \$40,800 in attorney's fees and costs, including testing costs, pursuant to CCP Section 1021.5, as set out in Paragraphs 3.2, 3.3 and 3.4 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, CSE agrees to pay seven thousand two hundred **(\$7,200.00)** 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, CSE shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of five thousand four hundred dollars and fifty cents **(\$5,400.00)** and (b) CalSafe in the amount of one thousand eight hundred dollars **(\$1,800.00)**.

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

Within fourteen (14) days of the date of execution of this Settlement Agreement by the Parties, CSE shall pay thirty-eight thousand four hundred dollars **(\$38,400.00)** to CalSafe and its counsel for all

fees and costs incurred in investigating, bringing this matter to the attention of CSE, and negotiating a settlement. The \$38,400.00 in Attorney's Fees and Costs shall be paid as follows: one check for \$38,400.00 payable to "Manning Law APC."

3.4 Cost Reimbursement

Within fourteen (14) days of execution of this Settlement Agreement by the Parties, CSE shall pay two thousand four hundred dollars (**\$2,400.00**) to CalSafe as reimbursement to CalSafe for reasonable costs for testing and bringing this action. This payment shall be made payable to Manning Law APC, Client Trust and delivered to Manning Law APC.

3.5. 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

3.6 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 CalSafe's Release of CSE

CalSafe, acting on its own behalf and *not* on behalf of the public, fully releases and discharges CSE, its owners, parents, subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees, attorneys, and each entity from whom and to whom CSE directly or indirectly buys, distributes or sells the Product (as defined herein), including but not limited to the manufacturer of such Product (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 from the Product manufactured, imported, sold or distributed by the Released Parties in California by CSE before the Effective Date, as alleged in the Notice.

CalSafe's Individual Release of Claims

CalSafe in its individual capacity also provides a release to the Released Parties which shall be a full and final accord and satisfaction, as well as a bar to all actions, causes of action, obligations, costs, expenses, attorneys fees, damages, losses, claims liabilities and demands of every nature, known or unknown, arising out of actual or suspected exposure to Acrylamide in the Product manufactured, imported, sold or distributed by CSE and/or the Released Parties before the Effective Date.

4.2 CSE's Release of CalSafe

CSE on its own behalf, and on behalf of all Released Parties, 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 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 Notice and relating to the Product, will develop or be discovered. The Parties 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. The Parties acknowledge that the claims released in Paragraphs 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. If Proposition 65 is repealed, or otherwise rendered inapplicable, including due to change in the law, then CSE may provide written notice to CalSafe or such asserted changes, and shall have no further obligations under this Settlement Agreement to the extent Product is so affected.

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 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.

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 CSE:

Neil Klein
McKasson & Klein LLP
18401 Von Kaman Ave., Suite 330
Irvine, CA 92612

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); further, pursuant to such Section 25249.7(f), CalSafe acknowledges that to the extent required, it shall prepare and file a noticed motion to obtain judicial or court approval of this settlement herein (and CSE shall use best efforts to support such motion for approval).

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.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the entire agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior discussions, negotiations, commitments and understandings. No oral or written agreements, except as specified herein, shall be binding on the Parties.

13. SUPERSEDES PRIOR AGREEMENT

This Settlement Agreement shall supersede and replace the agreement which was previously entered into by the Parties and fully executed on December 14, 2021 (the "Prior Agreement").

AGREED TO:

Date:

1/6/22

By:

CalSafe Research Center, Inc.

AGREED TO:

Date:

By:

AGREED TO:

Date: 12/29/2021

By:

COSTA DEL SOL ENTERPRISES LLC

AGREED TO:

Date:

By: