

## SETTLEMENT AND RELEASE AGREEMENT

### 1. **INTRODUCTION**

#### 1.1. **Parseghian and Tia Lupita Hot Sauce, 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 Tia Lupita Hot Sauce, LLC ("Tia Lupita"), on the other hand, with Parseghian and Tia Lupita collectively referred to as the "Parties."

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

Parseghian alleges that Tia Lupita manufactured and distributed and offered for sale in the State of California Tortilla Chips, 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.

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

The product covered by this Settlement Agreement is defined to include Tortilla Chips, that Tia Lupita has sold, offered for sale, manufactured, or distributed in California and that contain lead. All such items shall be referred to herein as the "Covered Product."

1.4. **Notice of Violation**

On or about August 18, 2021, Parseghian served Tia Lupita 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 Tia Lupita and such public enforcers with notice that Tia Lupita 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 Tia Lupita's compliance with Proposition 65. Specifically, Tia Lupita denies the allegations contained in Parseghian's Notice and maintains that all products that it has placed for sale and distribution 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 Tia Lupita of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Tia Lupita of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Tia Lupita. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Tia Lupita 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: WARNINGS AND REFORMULATION**

2.1 Beginning one-hundred twenty (120) days from Effective Date ("Compliance Date"), Tia Lupita shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product that expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day, unless it meets the warning requirements under Section 2.2.

As used in this Settlement Agreement, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Tia Lupita knows or has reason to know will sell the Covered Product in 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 Tia Lupita prior to the Compliance Date and all claims as to such Covered Product is released in this Settlement Agreement.

For purposes of this Settlement Agreement, the "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals

micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

## 2.2 Clear and Reasonable Warnings

If Tia Lupita is required to provide a warning pursuant to Section 2.1, one of the following warnings must be utilized ("Warning"):

Option 1:

**WARNING:** Consuming this product can expose you to chemicals including lead, which is known to the State of California to cause [cancer and], birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

Option 2:

**WARNING:** [Cancer and] Reproductive Harm – <http://www.p65warnings.ca.gov/food>.

Tia Lupita shall use the phrase "cancer and" in the Warning if Tia Lupita has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead or if Tia Lupita has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. The Warning shall be provided to California consumers in manner that complies with 27 C.C.R. §25602(a). In addition, for any Covered Product sold over the internet, the Warning shall appear prior to checkout on the primary product page, or as a pop-up when a California zip code is input into the shipping instructions, or on the checkout page in full text or through a clearly marked hyperlink using the word "WARNING" in all capital and bold letters when a California delivery address is indicated for any purchase of any Covered Product. If a hyperlink is used, the hyperlink must go directly to a page prominently displaying either the

Option 1 Warning or the Option 2 Warning without content that detracts from the Warning. An asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning. Given Tia Lupita's lack of control over third-party websites, the online warning requirements expressed in this Section apply only to Covered Products sold through Tia Lupita's website, provided that Tia Lupita complies with the notice requirements set forth in 27 C.C.R.25600.2.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label and the word "WARNING" shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical. For the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the word "WARNING."

Tia Lupita must display or direct consumers to the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, or on its

website, if applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

For purposes of this Settlement Agreement, the term "label" means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper.

For purposes of this Settlement Agreement, when Tia Lupita is required to provide a warning for a Covered Product pursuant to Section 3.1, Tia Lupita may satisfy the warning requirement by providing the required information in compliance with 27 C.C.R. § 25600.2 (2020) to any business that is subject to Proposition 65 to which it is selling or transferring the Covered Product. If subsequently enacted changes to Proposition 65 or its implementing regulations require the use of additional or different information on any warning, the Parties agree that the new safe harbor warning may be utilized in place of the warnings set forth in this Section.

If Parseghian alleges that any Covered Products fail to adhere to this Settlement Agreement, then Parseghian shall inform Tia Lupita in a reasonably prompt manner of its test results, including information sufficient to permit Tia Lupita to identify the Covered Products at issue and investigate. Tia Lupita shall, within thirty (30) days following such notice, provide Parseghian with testing information demonstrating Tia Lupita's compliance with the Settlement Agreement, or proof that omission of the Warning was due to the Covered Products being sold,

manufactured or distributed up to the Compliance Date. The Parties shall first attempt to resolve the matter prior to Parseghian taking any further legal action.

**3. CONSIDERATION**

In settlement of all 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, Tia Lupita shall pay \$15,000 as settlement and for fees and costs, incurred as a result of investigating and bringing this matter to Tia Lupita' attention.

**4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION**

**25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, \$1500 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% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Parseghian.

**5. REIMBURSEMENT OF FEES AND COSTS**

In settlement of all the claims referred to in this Settlement Agreement, \$13,500 shall be considered reimbursement of Parseghian's attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. The Parties reached an accord on the compensation due to Parseghian and its counsel under the private attorney general doctrine and principles of contract law.

**6. PAYMENT INFORMATION**

Tia Lupita shall mail the civil penalty payments within fifteen (15) business days following the Effective Date.

Tia Lupita shall mail reimbursement checks payable to “KJT Law Group,” to Parseghian's counsel in three installments as follows:

- \$5,000.00 paid within thirty (30) days following the Effective Date;
- \$5,000.00 paid within sixty (60) days following the Effective Date;
- \$3,500.00 paid within ninety (90) days following the Effective Date.

All payments 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 \$1,125.00 payment 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. RELEASE OF ALL CLAIMS**

**7.1. Release of Tia Lupita, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 through 6 above, Parseghian, on behalf of himself, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Covered Product, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) against Tia Lupita, its equity owners, parent companies, corporate affiliates, subsidiaries, predecessors, successors and assigns (collectively "Releasees") and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, including but not limited to Whole Foods Market California, Inc, franchisees, dealers, customers, owners, purchasers, users (collectively "Downstream Releasees") and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of Tia Lupita, Releasees or Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65 about exposure to lead arising from the sale, distribution, or use of any Covered Products sold, manufactured or distributed by Tia Lupita, Releasees or Downstream Releasees in California prior to the Compliance Date.

Parseghian, in his capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

**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 Tia Lupita 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 Tia Lupita:           Abhishek K. Gurnani  
                                  Amin Talati Wasserman, LLP  
                                  100 S. Wacker Dr., Suite 2000  
                                  Chicago, IL 60606  
                                  Telephone: 312.327.3325  
                                  Email: abhishek@amintalati.com

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 Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**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 this 11/29/2021 day of Pasadena, 2021, at Pasadena, California.

DocuSigned by:  
BERJ PARSEGHIAN  
17B4A0E5087E404...  
Berj Parseghian

Executed this 29 day of Nov, 2021, at Tiburon, California.

Tia Lupita Hot Sauce, LLC

By: Hector Saldivar  
Its: Founder / owner

**APPROVED AS TO FORM BY:**

Executed this 11/29/2021 day of Glendale, 2021, at Glendale, California.

DocuSigned by:  
[Signature]  
D911GF9328F0472...  
Tro Krikorian, Esq. Attorney for Berj Parseghian

KJT Law Group, LLP

Executed this 29<sup>th</sup> day of November, 2021, at Chicago, Illinois.



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Jennifer Adams, Esq. Attorney for Tia Lupita Hot Sauce, LLC  
Amin Talati Wasserman, LLP