

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe and Beautiful (“**KASB**”) and Cordialsa USA, Inc. (“**Cordialsa**”), each individually referred to as a “**Party**” and, collectively, the “**Parties.**” KASB is a California-based non-profit organization and asserts it is proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. KASB alleges Cordialsa is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 Consumer Product Description

KASB alleges that Cordialsa manufactures, imports, sells, and distributes for sale in California cacao powder products containing the heavy metal, cadmium (Cd), including, but not limited to, *Cordillera, Natural Cacao Powder 100% Cacao, 10-12% Cocoa Butter, 1 lb/453.6 g Lot 012021 20:19, Best before 01292023, UPC 0 51817 50671 1*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”).

Cacao powder products are referred to hereinafter as the “**Products.**” Cadmium (Cd) is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, developmental toxicity, and male reproductive toxicity.

1.3 Notice of Violation

On December 3, 2021, KASB asserts it served Cordialsa, Amazon.com, Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Cordialsa violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to cadmium (Cd). Cordialsa received the Notice. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Cordialsa denies the factual and legal allegations contained in the Notice and maintains that all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Cordialsa, of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Cordialsa's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean the date this Agreement is fully executed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products Cordialsa manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one or more third party retailers, distributors, or e-commerce marketplaces, shall meet one of the Reformulation Standards for Reformulated Products, as defined by Section 2.2, or be accompanied by a clear and reasonable warning pursuant to Section 2.3.

2.2 Reformulation Standards

For purposes of this Agreement, "**Reformulated Products**" are defined as follows:

2.2.1 Products with up to 65% cacao content which, if they contain cadmium, contain cadmium in a maximum concentration of 0.320 parts per million ("**ppm**") or less.

2.2.2 For Products with between 65% and 95% cacao content which, if they contain cadmium, contain cadmium in a maximum concentration of 0.400 ppm or less.

2.2.3 For Products with more than 95% cacao content which, if they contain cadmium, contain cadmium in a maximum concentration of 0.800 ppm or less.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, Cordialsa shall provide clear and reasonable warnings for all Products that are not Reformulated Products provided for sale to customers in California in accordance with this Section pursuant to title 27, California Code of Regulations, section 25600, et seq. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner clearly associated with the specific Product to which the warning applies.

2.3.1 Warning. The Warning shall consist of the following statement:

⚠WARNING: Consuming this product can expose you to cadmium. Cadmium is a chemical which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

2.3.2 Foreign Language Requirement. Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

2.3.3 Warnings on Products

Cordialsa shall affix a warning to the Product label or otherwise directly on Products it provides for sale to consumers located in California and to customers with retail outlets in California or on e-commerce platforms for sales to California consumers. For the purpose of this agreement, “**Product label**” means a display of written, printed or graphic material printed on or affixed to each of the Products or its immediate container or wrapper. A warning provided pursuant to section 2.3.1 must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline except, if the labeling does not use the color yellow, the symbol may be in black and white. The entire warning shall appear in at least

6-point type and no smaller than the largest type size used for other consumer information on the Products.

2.3.4 Internet Warnings

If, after the Effective Date, Cordialsa sells Products via the internet, through its own website, affiliated websites or a third party website, to consumers located in California, Cordialsa shall provide warnings for each Product both on the Product label in accordance with Section 2.3.2, and by prominently displaying, or requiring the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, to any consumer located in California during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the checkout process.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Cordialsa agrees to pay a civil penalty of \$2,500 within five (5) business days of the latter of (1) the Effective Date or (2) KASB’s compliance with Section 3.3. At Cordialsa’s sole discretion, payment may be made from the Ben-Zvi & Associates Client Trust Account. Payment is timely under this provision if the initiation of an electronic or wire transfer, or deposit of a physical check in a correctly-addressed envelope in a mailbox or appropriate receptacle for a private delivery service is effected within the afore-mentioned five (5) business days. Cordialsa’s civil penalty payment will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“**OEHHA**”), and the remaining twenty-five percent (25%) retained by KASB. Cordialsa shall cause to be made payment to (a) “**OEHHA**” in the form of a physical check or

wire transfer in the amount of \$1,875; and (b) “Seven Hills LLP in Trust for KASB” in the amount of \$625 either in the form of a physical check or wire transfer. KASB’s counsel shall deliver to OEHHA and KASB their respective portions of the penalty payment if in the form of a physical check.

3.2 Reimbursement of Attorneys’ Fees and Costs

KASB and its counsel offered to resolve the allegations in the Notice without reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to KASB’s counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Agreement to the Office of the California Attorney General. Within five (5) days of the Effective Date, Cordialsa agrees to cause to be made payment in the amount of \$28,000 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Cordialsa’s attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9. Payment is timely under this provision if the initiation of an electronic or wire transfer, or deposit of a physical check in a correctly addressed envelope in a mailbox or appropriate receptacle for a private delivery service is effected within the aforementioned five (5) business days.

3.3 Payments and KASB Obligations

All payments payable and due under this Agreement shall be delivered to KASB’s counsel at following address:

Seven Hills LLP
Attn: Laralei Paras
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

Payments to KASB and Seven Hills LLP may be effected by physical check or electronic funds transfer if Cordialsa’s counsel is provided sufficient information by KASB or its counsel to effect such transfers.

Cordialsa shall have no obligation to make any payment under this Settlement Agreement unless and until KASB or its counsel have provided Cordialsa with executed Internal Revenue Service forms W-9 for both KASB and its counsel.

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Cordialsa

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public and Cordialsa of any violation of Proposition 65 that was or could have been asserted by KASB on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against Cordialsa and its parents, subsidiaries, or affiliated entities under common ownership, including: any director, officer, employee, or attorney of Cordialsa and its parents, subsidiaries, or affiliated entities, and against each entity to whom Cordialsa directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "**Releasees**"), based on their failure to warn under Proposition 65 about alleged exposures to cadmium (Cd) contained in the Products manufactured, distributed, sold and/or offered for sale by Cordialsa and sold in or into California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, KASB as an individual and *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of KASB's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that KASB may have, 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 exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to cadmium (Cd) in the Products manufactured, distributed, sold and/or offered for sale by Cordialsa and sold in or into California, before the Effective Date (collectively, "**Claims**"), against Cordialsa and Releasees.

The Parties understand and agree that this Section 4.1 release shall not extend to Releasees who have been instructed by Cordialsa pursuant to Section 2.3.4, to provide an internet Warning for Products that are not Reformulated Products and have failed to do so. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Cordialsa's Products.

4.2 Cordialsa's Release of KASB

Cordialsa, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against KASB and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by KASB and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

4.3 Mutual Waiver of California Civil Code § 1542

KASB, on behalf of itself only and *not* in the public interest, on the one hand, and Cordialsa, on the other hand, each acknowledge that the claims in this Settlement Agreement include all known and unknown claims pertaining to cadmium (Cd) contained in the Products that were sold in California before the Effective Date, except as provided in Section 4.1 hereinabove, and each waive the provisions of California Civil Code § 1542 as to any unknown claims pertaining to cadmium (Cd) contained in the Products that were sold in California that may have existed prior to and including the Effective Date, except as provided in Section 4.1. California Civil Code § 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.

The Parties acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5. SEVERABILITY

If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, including by amendments, modifications, additions, or deletions to the relevant statutes or regulations, then Cordialsa shall have no further injunctive obligations pursuant to this Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve Cordialsa from its obligation to comply with any pertinent state or federal law or regulation.

7. NOTICE

Unless specified herein, all correspondence and notice required by this Agreement shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; (ii) a recognized overnight courier; or (iii) by electronic transmission to any Party by the other at the following addresses:

For Cordialsa:

Henry Ben-Zvi, Esq.
Ben-Zvi & Associates
3231 Ocean Park Boulevard, Suite 212
Santa Monica, CA 90405
henry@ben-zvilaw.com

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
laralei@sevenhillslp.com

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

8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

This Agreement may be executed in counterparts and by 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 REPORTING REQUIREMENTS

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

10. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

11. MODIFICATION


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

12. AUTHORIZATION


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

AGREED TO:

Date: 07/20/2023

By: 
My Nguyen, Chief Operating Officer
Keep America Safe and Beautiful

Date: July 18 / 2023

By: 
Luis A Arango, Managing Director
Cordialsa USA, Inc.