

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Berj Parseghian and Birch Benders, 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 Birch Benders, LLC ("Birch Benders"), on the other hand, with Parseghian and Birch Benders collectively referred to as the "Parties."

1.2. **General Allegations**

Parseghian alleges that Birch Benders manufactured and distributed and 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.

1.3. **Product Description**

The products covered by this Settlement Agreement are defined to include:

- Birch Benders – Pancake & Waffle Mix – Keto; UPC #: 8 10001 56006 5.
- Birch Benders – Pancake & Waffle Mix – Paleo; UPC #: 8 56017 00344 8.

Birch Benders has sold, offered for sale, manufactured, or distributed the above products in California. All such items shall be referred to herein as the "Covered Product."

1.4. **Notice of Violation**

On December 20, 2021, Parseghian served Birch Benders, 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 Birch Benders and such public enforcers with notice that Birch Benders 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 Birch Benders' compliance with Proposition 65. Specifically, Birch Benders 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 Birch Benders 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 Birch Benders of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Birch Benders. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Birch Benders under this Settlement Agreement.

1.6. **Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which a complete and fully executed copy of this Settlement Agreement is exchanged by the Parties' counsel.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Beginning on the Effective Date, Birch Benders 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 an 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 Birch Benders 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 Birch Benders **prior to** the Effective Date and all claims as to such Covered Product is released in this Settlement Agreement.

2.2 Clear and Reasonable Warnings

If Birch Benders 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

Option 2:

WARNING: [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov/food

Birch Benders shall use the phrase "cancer and" in the Warning if Birch Benders has reason to believe that the exposure level is greater than 15 micrograms of lead per day or if Birch Benders has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. The Warning shall comply with the safe harbor provisions of 27 C.C.R. § 25607.1-.2, as those regulations may be amended from time to time, or any subsequent regulatory section setting forth safe harbor warnings for food products.

3. CONSIDERATION

In settlement of all the claims referred to in this Settlement Agreement, the Parties reached an accord on the total compensation due, under Proposition 65, the private attorney general doctrine and principles of contract law. Under these legal principles, Birch Benders shall pay a total of (\$45,000.00) as settlement and for fees, costs, and penalties in fully resolving this matter.

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

In settlement of all the claims referred to in this Settlement Agreement, (\$7,000.00) 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. \$5,250.00) of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% (i.e. \$1,750.00) of the penalty remitted to Parseghian.

5. REIMBURSEMENT OF FEES AND COSTS

In settlement of all the claims referred to in this Settlement Agreement, (\$38,000.00) 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

Birch Benders shall mail these payments within ten (10) business days following the Effective Date, at which time such payments shall be mailed to the following addresses respectively:

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

All payments 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 Birch Benders, 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), whether known or unknown, fixed or contingent, against (a) Birch Benders, and its respective equity owners, parents, subsidiaries, affiliates, sister and related companies, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, (b) each of Birch Benders distributors, wholesalers, manufacturers, vendors, licensors, licensees, auctioneers, retailers (including but not limited to Whole Foods Market California, Inc. and its respective subsidiaries, affiliates, parents, franchisees, cooperative members, and licensees), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users (collectively, the "Releasees"), for any alleged violations of Proposition 65, or any other alleged violation of statutory or common law, arising from alleged exposures to lead in relation to the Covered Product.

Parseghian and his past and current agents, representatives, attorneys, successors, and/or assignees, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, fees, attorneys' fees, damages, losses, claims, liabilities, and demands of any nature, character, or kind, known or unknown, suspected or unsuspected, relating to the Covered Product, against Birch Benders and

the Releasees. Parseghian acknowledges that he is familiar with California Civil Code section 1542, which provides 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.

Parseghian, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him 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 he may lawfully waive such rights or benefits pertaining to the released matters.

The Parties understand and agree that the commitments Birch Benders has agreed to herein, and actions to be taken by Birch Benders under this Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Administrative Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Birch Benders failure to provide a Proposition 65 warning concerning the Covered Product, such private party action would not confer a significant benefit on the general public, provided that Birch Benders is in material compliance with this Agreement.

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 Birch Benders 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 Birch Benders: Will Wagner, Esq.
Arnold & Porter Kaye Scholer LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111

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

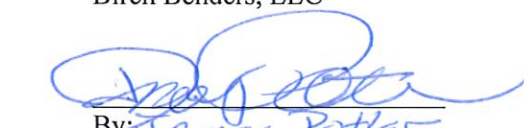
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

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

Executed this 6/28/2022 day of Pasadena, 2022, at Pasadena, California.


DocuSigned by:
BERJ PARSEGHIAN
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Berj Parseghian

Executed this 13th day of July, 2022, at Berkeley, California.

Birch Benders, LLC

By: JAMES POTTER
Its: Executive General Counsel

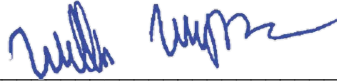
APPROVED AS TO FORM BY:

6/28/2022
Executed this ___ day of _____, 2022, at Glendale, California.

DocuSigned by:

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Tro Krikorian, Esq. Attorney for Betj Parseghian
KJT Law Group, LLP

Executed this 14th day of July, 2022, at San Francisco, California.



Will Wagner, Esq. Attorney for Birch Benders, LLC
Arnold & Porter Kaye Scholer LLP