

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This settlement agreement ("Settlement Agreement") is entered into by and between CalSafe Research Center, Inc., ("CRC"), on the one hand, and Walker Foods, Inc, ("WF" or "Defendant") on the other hand, with CRC and WF each individually referred to as a "Party" and collectively as the "Parties."

1.2 General Allegations

CRC alleged in separate 60-Day Notices of Violation dated January 19, 2022, and May 27, 2022, that WF sells and/or distributes certain tomato products in California that contain lead without a warning required by Health and Safety Code §§ 25249.5 *et seq.* ("Proposition 65") (the "Notices"). Lead is listed pursuant to Proposition 65 as a chemical known to the state of California 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, El Pato, Hot Tomato Sauce, UPC# 00072360002017, UPC# 00072360002024 and Golden State, Hot Chili Peppers, UPC# 00072360001027, UPC# 00072360001041, UPC# 00072360001055, UPC# 00072360341062, El Pato Hot, Chili Peppers, UPC# 00072360000846, UPC# 00072360000945, UPC# 00072360001072 (hereinafter collectively the "Products") that are manufactured, sold or distributed for sale in California by WF.

1.4 Notices of Violation

On January 19, 2022, and May 27, 2022, respectively, CRC served the Notices on WF, the California Attorney General and the other requisite public enforcers, alleging that WF and others violated Proposition 65 when they failed to notify consumers in California of the alleged exposures to lead 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 Notices.

1.5 No Admission

WF denies the material, factual and legal allegations in the Notices and maintains that all of the products it sold and/or distributed for sale in California, including the Products, have been, and are, safe for consumption and in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by WF 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 WF 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 WF. WF contends that it has acted properly at all times, and denies that CRC is entitled to any form of damages or relief based on the conduct alleged in the Notices. In addition, WF continues to maintain that it has meritorious defenses to all concerns raised in the Notices and was and is prepared to vigorously defend the Notices. WF enters into this Settlement Agreement solely to avoid the legal costs and inconvenience that would be incurred with defending actions stemming from the Notices. This Section shall not, however, diminish or

otherwise affect WF'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 the date on which a complete and fully executed copy of this Settlement Agreement is exchanged by the Parties' counsel.

2. INJUNCTIVE RELIEF

2.1 Beginning on the Effective Date, WF 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 Products 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 2.3.

As used in this Settlement Agreement, the term "Distributing into the State of California" shall mean to directly ship Products into California for sale in California or to sell Products to a distributor that PCP knows or has reason to know will sell the Products in California. The injunctive relief in Section 2 does not apply to Products that have left the possession and are no longer under the control of WF prior to the Effective Date and all claims as to such Products are released in this Settlement Agreement.

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. Where a retailer or distributor sells products both in California and other states, Defendant shall take commercially reasonable steps to ensure that, after the Target Level has been reached, the only Products that are sold in California are either (i) the Products for which Defendant has complied with Section 2.1, or (ii) the Products for which Defendant has complied with Sections 2.3 and 2.4.

2.3 Clear and Reasonable Warnings

If WF does not achieve the Target Level by the Effective Date, WF 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 contain a warning as provided for in Section 2.4.

2.4 General Warning Requirements

WF 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* Products 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 WF that contains one of the following statements:

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;

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 Products are 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, WF 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 a Proposition 65 warning for the product is no longer required, a lack of warning will not thereafter be a breach of this Agreement.

2.5 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to Products manufactured, distributed, or sold before the Effective Date, including Products in WF's inventory or in the stream of commerce, which Products are expressly subject to the releases provided in Section 4.1.

3. MONETARY SETTLEMENT TERMS

3.1 Total Settlement Penalty

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, WF shall make a total settlement payment of twenty thousand dollars (**\$20,000.00**) ("Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty, Attorney's Fees and Costs, an Additional Settlement Payment and a Cost Reimbursement as set forth in Sections 3.2, 3.3, 3.4 and 3.5 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 Notices or referred to in this Settlement Agreement, WF agrees to pay two thousand dollars (**\$2,000.00**) 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 CRC. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, WF shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of one thousand five hundred dollars (**\$1,500.00**) and (b) CRC in the amount of five hundred dollars (**\$500.00**).

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 CRC 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 CRC and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within ten (10) days of the date this Settlement Agreement is executed by the Parties, WF agrees to pay eighteen thousand dollars (**\$18,000.00**) to CRC and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of WF, and negotiating a settlement. The \$18,000.00 in Attorney's Fees and Costs shall be paid via a check made payable to "Manning Law, APC".

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

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

4. CLAIMS COVERED AND RELEASED

4.1 CRC's Release of WF

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges WF and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors (the "Defendant Releasees") and all entities to which Defendant Releasees directly or indirectly distribute or sell the Products, including but not limited to Wholesome Choice and any other distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees, (collectively, the "Released Parties" and individually, a "Released Party"). CRC, on behalf of itself and its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, and divisions hereby fully releases and discharges

the 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, based on or related to the handling, use, sale, distribution, or consumption of the Products in California, as to any alleged violation of Proposition 65 or its implementing regulations, including without limitation any failure to provide Proposition 65 warnings on the Products with respect to exposures to lead, regardless of whether the underlying claim exists now or arises in the future.

4.2 WF's Release of CRC

WF on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all claims against CRC and its attorneys and other representatives, for any and all actions taken, or statements made by CRC 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 Notices or relating to the Products, will develop or be discovered. CRC on behalf of itself only, and WF 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. CRC and WF 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. REPRESENTATIONS AND INDEMNITY

CRC represents and warrants to WF that CRC has not assigned or otherwise transferred, or attempted to assign, or transfer, any claim or claims or any portion thereof against WF or the other Released Parties and that there is no other person, firm, or entity that has not executed this Settlement Agreement as a releasing party that has any interest in any such claim against WF. CRC hereby agrees to indemnify and hold WF harmless from any and all liabilities, claims, demands, causes of action, suits, obligations, damages, costs, losses, expenses, compensation, restitution, disgorgement, relief, and attorneys' fees arising from or related to any claim that, if true, would constitute a breach of this representation and warranty including, but not limited to, all claims resulting from anyone asserting such interest, assignment, or transfer.

CRC and its counsel, Manning Law, represent and warrant to WF that CRC and/or its counsel shall not file the suit, nor participate in or assist any other person, firm, or entity, in any manner for any claims pertaining to the Products or any claim being released in this Settlement Agreement that may now exist against WF or any of the Released Parties, known or unknown, discovered or undiscovered, regardless of whether notification of such claims has been given to WF or any of the other Released Parties.

CRC and its counsel, Manning Law, represent and warrant to WF that they are not aware of any

other potential plaintiff, class member, or attorney who is considering or intends to make demands or bring litigation based on alleged exposures to lead in the Products, or otherwise with respect to WF or any of its products, and they have not been notified or otherwise informed of any such intention or consideration thereof.

6. SEVERABILITY

In the event that any of the provisions of this Settlement Agreement are held by a court of competent jurisdiction to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California, without regard to its conflicts of law principals.

8. 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 Section. 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 CRC

Joseph R. Manning, Jr.
Manning Law, APC
20062 SW Birch St. Suite 200
Newport Beach, CA 92660

For WF:

Clement Harvey
Walker Foods, Inc.
237 N. Mission Road
Los Angeles, California 90033
(213) 268-5191
clement@walkerfoods.net

Mr. Robert L. Walker
Walker Foods, Inc.
237 N. Mission Drive
Los Angeles, California 90033
(213) 268-5191

FRPF, LLP
John G. Powers
Seamus O. Hayes
333 South Grand Avenue, Suite 4200
Los Angeles, California 90071
(213) 542-7000
jpowers@frpflaw.com
shayes@frpflaw.com

9. **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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

10. **COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7(f)**

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

11. **MODIFICATION**

The Settlement Agreement may be modified only by written agreement of the Parties.

12. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party.

13. **INTERPRETATION**

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of Civil Code § 1654. It is conclusively presumed that the Parties participated equally in the 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.

AGREED TO:

Date: 11/14/22

By: [Signature]

CalSafe Research Center, Inc.

AGREED TO:

Date: _____

By: _____

Robert L. Walker, President
Walker Foods, Inc.

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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: _____

By: _____

CalSafe Research Center, Inc.

AGREED TO:

Date: 12/2/22

By: Robert L Walker

Robert L. Walker, President
Walker Foods, Inc.