

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 NBF USA, Inc. ("NBF") and Lotus Bakeries North America Inc. ("Lotus") (collectively, "Defendants") on the other hand, with CRC and Defendants each individually referred to as a "Party" and collectively as the "Parties."

1.2 General Allegations

CRC alleges in a 60-Day Notice of Violation dated February 11, 2022 that NBF sells and/or distributes Naked Cocoa Delight Bars, UPC#813115020678 (the "Product") in California that contain lead without a warning required by Health and Safety Code §§ 25249.5 *et seq.* ("Proposition 65") (the "Notice"). Lead 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 is defined as, and expressly limited to, the Product, that contains lead and that is manufactured, sold, or distributed for sale in California by Lotus.

1.4 Notice of Violation

On February 11, 2022, CRC served the Notice on NBF, the California Attorney General, and the other requisite public enforcers, alleging that NBF and others violated Proposition 65 when they failed to warn consumers in California of the alleged exposures to lead from the Product. Lotus is an affiliate of NBF USA, Inc. and is the seller of the Product.

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 Notice.

1.5 No Admission

Defendants deny 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 Defendants or any of their 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 Defendants or any of their 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 Defendants. This Section shall not, however, diminish or otherwise affect Defendants' 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 full execution of this Settlement Agreement by all Parties.

2. INJUNCTIVE RELIEF

2.1 Lead Reduction

Target Level and Compliance Date. Beginning on the Effective Date, Defendant shall reduce the level of lead in the Products shipped for sale in California to .015 parts per million, (the “Target Level”), or be subject to the provisions of Paragraphs 2.3 and 2.4.

2.2 “Shipped for sale in California” means the Product 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 Product 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 Product that is sold in California is either (i) the Product for which Defendant has complied with Paragraph 2.1, or (ii) the Product for which Defendant has complied with Paragraphs 2.3 and 2.4.


2.3 Clear and Reasonable Warnings

If Defendants do not achieve the Target Level by the Effective Date, Defendants agree to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California (in person or online) the Product that contains a warning as provided for in paragraph 2.4.

2.4 Warning Requirements

Defendants agree 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, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold or distributed in California by Defendants that contains one of the following statements:

1)  WARNING: Consuming this product can expose you to chemicals including Lead which are 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 Product is 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, Defendants shall be entitled to use, at their 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 Product that is already in the stream of commerce as of the Effective Date, which Product is 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, Lotus shall make a total settlement payment of thirty-five thousand dollars (**\$35,000.00**) ("Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty, Attorney's Fees and Costs 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 Notice or referred to in this Settlement Agreement, Lotus agrees to pay three thousand five hundred (**\$3,500.00**) 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, Lotus shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of two thousand six hundred twenty-five dollars (**\$2,625.00**) and (b) CRC in the amount of eight hundred seventy-five dollars (**\$875.00**).

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, Lotus agrees to pay thirty-one thousand five hundred dollars (**\$31,500.00**) to CRC and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Lotus, and negotiating a settlement. The \$31,500.00 in Attorney's Fees and Costs shall be paid via one check for \$31,500.00 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

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

4. CLAIMS COVERED AND RELEASED

4.1 CRC's Release of Defendants

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges Defendants and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, including but not limited to NBF USA, Inc. (the "Defendant Releasees") and all entities to which Defendant Releasees directly or indirectly distribute or sell the Product, including but not limited to Sprouts Farmers Market 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 Product 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.

4.2 Defendants' Release of CRC

Defendants on behalf of their past and current agents, representatives, attorneys, successors and assignees hereby waive 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 Product.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties, arising out of the Notice or relating to the Products, will develop or be discovered. CRC on behalf of itself only, and Defendants on behalf of themselves 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 Defendants 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. 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.

6. 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.

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 to the 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 CRC

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

For Defendants:

Vanessa Charlotte Adriance
DLA Piper LLP (US)
550 South Hope Street, Suite 2400
Los Angeles, CA 900172678

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. 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.*

9. 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).

10. MODIFICATION

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

11. 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.

12. 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.

13. 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.

By: 

By: Isabelle Maes in her capacity of director.

For and on behalf of NBF USA, Inc. and Lotus Bakeries North America Inc.

Dated

19 August 2022

By: _____

CalSafe Research Center

_____ Dated