

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Berj Parseghian and ALDI Inc.:**

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 ALDI Inc., d.b.a. ALDI Foods Inc. ("ALDI"), on the other hand, with Parseghian and ALDI collectively referred to as the "Parties."

1.2. **General Allegations**

Parseghian alleges that ALDI manufactured and distributed and offered for sale in the State of California products that may contain 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 as Simply Nature – Cauliflower Tortilla Chips, including but not limited to: “Simply Nature – Cauliflower Tortilla Chips – Nacho Flavored”; UPC #: 4 099100 147193, that ALDI has sold, offered for sale, manufactured, or distributed in California. All such items shall be referred to herein as the "Covered Product."

1.4. **Notice of Violation**

On March 17, 2022, Parseghian issued to ALDI, 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 ALDI and such public enforcers with notice that ALDI was allegedly in violation of Proposition 65 for failing to warn consumers 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 ALDI's compliance with Proposition 65. Specifically, ALDI denies the material factual and legal allegations contained in Parseghian's Notice and maintains that, to the best of its knowledge, all labels and signage for 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 ALDI 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 ALDI of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by ALDI. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of ALDI 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 thirty (30) days after the Effective Date (the "Compliance Date"), ALDI 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, Covered Product that exceeds the Proposition 65 "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 Covered Product into California for sale in California or to sell Covered Product to a distributor that ALDI knows or has reason to know will sell the Covered Product in California. The injunctive relief in Section 2 does not apply to Covered Product that is no longer under the control or possession of ALDI prior to the Effective 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 ALDI is required to provide a warning for Covered Product pursuant to Section 2.1, the Warning shall comply with the safe harbor provisions of Proposition 65 for food, including 27 C.C.R. § 25607.1-.2. The content and method of transmission shall be provided in any form as

authorized by Proposition 65 law or regulation effective on or after the Effective Date. Based on current Proposition 65 requirements 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

Aldi shall use the phrase "cancer and" in the Warning if the exposure level is greater than 15 micrograms of lead per day.

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, ALDI shall pay at 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, \$9,000.00 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. \$6,750.00) of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% (i.e. \$2,250.00) of the penalty remitted to Parseghian.

5. REIMBURSEMENT OF FEES AND COSTS

In settlement of all the claims referred to in this Settlement Agreement, \$36,000.00 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 his counsel under the private attorney general doctrine and principles of contract law.

6. PAYMENT INFORMATION

ALDI shall mail these payments within twenty (20) business days after 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 paid to KJT Law Group LLP via wire transfer or 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 ALDI, 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) ALDI, 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 ALDI distributors, wholesalers, manufacturers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, suppliers, 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 manufactured through the Compliance Date.

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 ALDI 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 ALDI has agreed to herein, and actions to be taken by ALDI 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 ALDI's 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 ALDI is in material compliance with this Agreement.

7.2. **ALDI's Release of Parseghian:**

ALDI waives any and all claims against Parseghian, his attorneys, and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Parseghian and his attorneys and other representatives, whether in the course

of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered Product.

7.3. **Deemed in Compliance with Proposition 65.**

The Parties agree that material compliance by ALDI with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead in the Covered Product.

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 ALDI shall have no further obligations pursuant to this Settlement Agreement.

9. **NOTICES AND ENFORCEMENT**

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 ALDI: 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.

Should either Party wish to enforce future alleged violations of this Agreement, it must first provide written notice to the other Party and allow thirty (30) days to expire, during which the other Party is entitled to cure the alleged breach.

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 on 4/7/2023, at Pasadena, California.

DocuSigned by:
BERJ PARSEGHIAN
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Berj Parseghian

Executed on April 6, 2023,

Tom Waito

ALDI Inc.

By: **Group Director**
Its: **Aldi Inc**

APPROVED AS TO FORM BY:

Executed on 4/8/2023, 2023, at Glendale, California.

DocuSigned by:
Tro Krikorian
D911CF9328F0472...

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

Executed on April 7, 2023

Will Wagner

Will Wagner, Esq. Attorney for ALDI Inc.
Arnold & Porter Kaye Scholer LLP