

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 DVC Industries, Inc. (d/b/a The Spice Lab) (“DVC”) on the other hand, with CRC and DVC 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 January 12, 2022 (No. 2022-00070), that the product “Trader Joe’s, Herbes de Provence, UPC#00579278)” sold and/or distributed in California contains lead without a warning required by Health and Safety Code §§ 25249.5 *et seq.* (“Proposition 65”) (the “Notice”). Lead is listed pursuant to California’s 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, Herbes de Provence, that contains lead and that is manufactured, sold or distributed for sale in California by DVC under any name, including without limitation Trader Joe’s Herbes de Provence (hereinafter collectively the “Product”).

1.4 Notice of Violation

On January 12, 2022, CRC served the Notice on Trader Joe’s Company (“Trader Joe’s”), the California Attorney General, and the other requisite public enforcers, alleging that Trader Joe’s and others violated Proposition 65 when they failed to inform consumers in California of the alleged exposures to lead from 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

DVC denies the material, factual and legal allegations in the Notice and maintains that all of the Product it sold and/or distributed for sale in California, including without limitation the Product described in the Notice, has been, and is, in compliance with all California laws. Nothing in this Settlement Agreement shall be construed as an admission by DVC 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 DVC 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 DVC. This Section shall not, however, diminish or otherwise affect DVC’s obligations 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, if any Product exposes a person to a daily lead exposure level of more than 0.5 micrograms of lead per day (or higher No Significant Risk Level as may be established under applicable law), DVC shall either (1) not "Distribute into the State of California," or directly sell in the State of California, any Product or (2) only "Distribute into the State of California," or directly sell in the State of California any Product that meets the warning requirements under Section 2.2. This provision is intended to match Proposition 65 requirements and does not expand DVC's obligations under Proposition 65 in any way.

As used in this Settlement Agreement, the term "Distribute into the State of California" shall mean to directly ship Product into California for sale in California or to sell Product to an authorized distributor that DVC knows or has reason to know will sell the Product in California and excludes any unauthorized sales or resales of the Product by individuals or entities other than DVC or Trader Joe's who are not supplied with the Product by DVC or a distributor to which it sells the Product. For avoidance of doubt, resales of the Product on Amazon.com or other online marketplaces by individuals or entities who purchased the Product at retail from Trader Joe's shall not be within the definition of "Distribute into the State of California" and shall not subject DVC or Trader Joe's to liability or otherwise constitute a breach of this agreement. The injunctive relief in Section 2 does not apply to Product that has left the possession and is no longer under the control of DVC prior to the Effective Date and all claims as to such Product are released in this Settlement Agreement.

2.2 Where an authorized retailer or distributor sells products both in California and other states, DVC shall take commercially reasonable steps to ensure that the only Product that is sold in California is either (i) the Product for which DVC has complied with Paragraph 2.1, or (ii) the Product for which DVC has complied with Paragraphs 2.3 and 2.4.

2.3 Clear and Reasonable Warnings

For Product that exposes a consumer to more than 0.5 micrograms of lead per day (or higher NSRL), DVC agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California (in person or online) Product for which a warning is provided under the terms of paragraph 2.4.

2.4 General Warning Requirements

Any warning compliant with Proposition 65 will be deemed to satisfy the warning requirement. By way of illustration, and without narrowing permitted Proposition 65 warnings in any way, DVC 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* Product the warning applies, so as to minimize the risk of consumer confusion. If DVC is required to provide a warning pursuant to Section 2.1, the warning method of transmission shall be provided in any form as authorized by any Proposition 65 law or regulation effective on or after the Effective Date, including without limitation shelf tags at the retail level.

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 of the Product sold or distributed in California by DVC 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, 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.
- 3) Any warning authorized by any Proposition 65 law or regulation effective on or after the Effective Date.

The warning shall be offset in a box with black outline.

(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 California voters with such requirements or permission, DVC 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 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.

2.6 If CRC contends that any Product distributed and sold after the Effective Date (i.e., Product that is not subject to the Settlement Agreement releases) violates Proposition 65, it must provide written notice to DVC by mail and e-mail in accordance with Paragraph 7 below. The notice shall include the purchase receipt (showing the date, time and location where the Product was purchased), photographs of the Product purchased, lead test result(s) for the Product, and all Product identifying information from the Product receptacle (including any and all codes printed on the Product receptacle). CRC shall make any such Product available to DVC for independent testing. At its election, DVC may either decline further action on the basis that no Proposition 65 violation has occurred, or may take corrective action by either: (a) removing the lot or lots tested from sale in California; or (b) providing a clear and reasonable warning for the Products from the lot or lots tested as described in this Settlement Agreement. If DVC chooses to take corrective action, the Product will be deemed compliant with this Agreement and no enforcement action may be taken with respect to it.

2.7 Nothing contained in this Agreement, including this Section 2 and its subparts, shall be deemed a waiver of any defenses that DVC and the Releasees have to a claim that the Product violates Proposition 65, including without limitation the right to argue for a higher NSRL than 0.5 micrograms/day for the Product and to argue that some or all of the lead found in the Product is naturally occurring, and any such defense to a claim of violation of Proposition 65 shall have equal effect as a defense to a claim of breach of this Agreement relating to noncompliance with Section 2.

3. **MONETARY SETTLEMENT TERMS**

3.1 **Total Settlement Penalty**

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, DVC shall make a total settlement payment of \$20,000.00 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 Notice or referred to in this Settlement Agreement, DVC agrees to pay one 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, DVC 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. Under these legal principles, within ten (10) days of the date this Settlement Agreement is executed by the Parties, DVC agrees to pay eighteen thousand dollars (**\$18,000.00**) to CRC and its counsel for all fees and costs incurred in investigating this matter 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

DVC 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 DVC. The Parties acknowledge that DVC cannot issue any settlement payments pursuant to Section 3 above until after receives the requisite W-9 forms from CRC's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 Binding Effect

This Agreement is a full, final, and binding resolution between CRC, on behalf of itself and in the public interest, and its respective parent companies, affiliates, officers, executors, administrators, successors, and assigns, on the one hand, and DVC, on behalf of itself, and Released Parties (defined below), on the other, of any alleged violation of Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings for exposure to lead from the import, manufacturing, marketing, distribution, sale or offering for sale, handling, use or consumption of the Products, and fully resolves all claims that have been asserted or could have been asserted for failure to provide Proposition 65 warnings.

4.2 CRC's Release

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges DVC, Trader Joe's and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors (the "Releasees") and all entities to which Releasees directly or indirectly distribute or sell the Product, including but not limited to any other distributors, wholesalers, customers, retailers, resellers (whether authorized or unauthorized), 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, consumption, or exposure to 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 Product with respect to exposures to lead.

4.3 DVC’s Release of CRC

DVC, 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 Product.

4.4 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 DVC 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 DVC 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 other than its releases 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 DVC:

John Walker
Sacro & Walker LLP
700 N. Brand Blvd., Suite 610
Glendale, CA 91203
Email: jwalker@sacrowalker.com

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 an 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 signed by all 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.

AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____

By: _____

CalSafe Research Center, Inc.

DVC Industries, Inc.

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.

AGREED TO:

Date: _____

By: _____

CalSafe Research Center, Inc.

AGREED TO: *A. Brett Cameron*

Date: *Dec 13 2022*

By: 

DVC Industries, Inc.