

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 MegaMex Foods, LLC ("MegaMex" or "Defendant"), on the other hand, with CRC and MegaMex each individually referred to as a "Party" and collectively as the "Parties."

1.2 Allegations and Notices of Violation

CRC alleges in two separate 60-Day Notices of Violation dated June 3, 2022 (Attorney General Notice # 2022-01144) and July 1, 2022 (Attorney General Notice # 2022-01424), that MegaMex sells and/or distributes in California DOÑA MARÍA[®] branded sauces: Pipian (Notice # 2022-01144) and Mole (Notice # 2022-01424) that contain lead without a warning required by Health and Safety Code §§ 25249.5 *et seq.* ("Proposition 65") (together, the "Notices"). 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 products covered by this Settlement Agreement are DOÑA MARÍA[®] branded sauces, including but not limited to: Mole (UPC# 072878505239); and Pipian (UPC# 072878495233) (hereinafter, Mole and Pipian sauces are referred to collectively as the "Products") that contain lead and that are manufactured, sold and/or distributed for sale in California by MegaMex.

1.4 Notice of Violation

On June 3, 2022, and July 1, 2022, CRC served the Notices on MegaMex, the California Attorney General and the other requisite public enforcers, alleging that MegaMex and others violated Proposition 65 when they failed to warn consumers in California of the alleged exposure 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

MegaMex denies the material, factual and legal allegations in the Notices and maintains that all products it sold and/or distributed for sale in California, including the Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by MegaMex or any of its officers, directors, shareholders, members, employees, agents, parent companies, subsidiaries, divisions, affiliates, joint ventures, 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 MegaMex or any of its officers, directors, shareholders, members, employees, agents, parent companies, subsidiaries, divisions, affiliates, joint ventures, 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 MegaMex. This Section shall not, however, diminish or otherwise affect MegaMex'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 ninety (90) days

following the full execution of this Settlement Agreement by all Parties.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

If MegaMex does not achieve a lead level of <0.35 ppm in the Products (the “Target Level”) by the Effective Date, MegaMex agrees that it shall only sell in, or into, California, Products that contain a warning as provided for in paragraph 2.2.

2.2 General Warning Requirements

MegaMex 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.

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 product sold or distributed in California that contains one of the following statements:

1) **WARNING:** Consuming this product can expose you to 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 a 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, MegaMex 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 warnings for the Products is no longer required, a lack of warning will not thereafter be a breach of this Agreement.

2.3 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to products that are already in the stream of commerce as of the Effective Date, which Product is expressly subject to the releases provided in Section 4.

3. MONETARY SETTLEMENT TERMS

3.1 Total Settlement

In full satisfaction of all potential claims, including civil penalties, attorneys’ fees, and costs, MegaMex shall make a total settlement payment of Forty-Nine Thousand Dollars (**\$49,000.00**) (“Total

Settlement Amount”). The Total Settlement Amount shall be apportioned into a Civil Penalty and 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, MegaMex agrees to pay Four Thousand and Nine Hundred Dollars (**\$4,900.00**) 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 twenty (20) days of the date this Settlement Agreement is executed by the Parties, MegaMex shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of Three Thousand Six Hundred and Seventy Five Dollars (**\$3,675.00**) and (b) CRC in the amount of One Thousand Two Hundred and Twenty-Five Dollars (**\$1,225.00**).

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

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 twenty (20) days of the date this Settlement Agreement is executed by the Parties, MegaMex agrees to issue a check in the amount of Forty Four Thousand and One Hundred Dollars (**\$44,100.00**) payable to Manning Law Office, APC for all fees and costs incurred in investigating, bringing this matter to the attention of MegaMex, and negotiating a settlement.

3.4 Payment Address

At MegaMex’s option, the Total Settlement Payment of \$49,000 may be sent via wire or ACH to:

Account Name:	The Law Offices of Joseph R. Manning
Bank Name:	J.P. Morgan Chase Bank, N.A.
Bank Address:	270 Park Ave. New York, NY. 10017
ACH Routing / ABA Number:	322271627
Wire Routing / ABA Number:	021000021

Swift Code: CHASUS33
Account Number: 802922919
For Further Benefit of: MegaMex

In the event MegaMex sends the Total Settlement Payment to CRC's Counsel in accordance with this Section 3.4, receipt of the Total Settlement Payment in the account referenced above shall fully satisfy and discharge all of MegaMex's payment obligation under this Agreement. CRC and its counsel shall insure that the Total Settlement Payment is further divided into civil penalties and attorneys fees and costs as set forth in Sections 3.2 and 3.3 and delivered to the payees identified in Sections 3.2 and 3.3.

3.5 Tax Documentation

CRC and Manning Law agree to provide IRS W-9 forms to MegaMex. The Parties acknowledge that MegaMex cannot issue any settlement payments pursuant to Section 3 above until after MegaMex receives the requisite W-9 forms from CRC's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 CRC's Release of MegaMex

CRC, on behalf of itself and its officers, directors, shareholders, members, employees, agents, parent companies, subsidiaries affiliates, and divisions, and not on behalf of the public ("CRC Releasors"), hereby fully releases and forever discharges MegaMex and its officers, directors, shareholders, members, employees, agents, parent companies, subsidiaries, divisions, affiliates, partners, joint venturers, franchisees, licensees, customers, suppliers, distributors (the "Defendant Releasees") and all entities to which Defendant Releasees directly or indirectly distribute or sell the Products and any other distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees (collectively, the "Released Parties" and individually, a "Released Party") from, and hereby waives, any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses incurred or asserted, or that could have been incurred or asserted, whether in law or equity, based on or related to the handling, use, sale, distribution or consumption in California of the products, and 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 MegaMex's Release of CRC

MegaMex 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 or damages not known to the Parties, arising out of the Notice or relating to the Products will develop or may be discovered. CRC on behalf of itself and CRC Releasors, and MegaMex 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 MegaMex 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 or any other state or federal law or common law principal of similar effect 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
26100 Towne Center Drive
Foothill Ranch, CA 92610

For MegaMex:

Matthew Kaplan
Tucker Ellis LLP
515 South Flower St., 42nd Floor
Los Angeles, CA 90071

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.

AGREED TO:

Dated: 7/25/23
By: [Signature]
CalSafe Research Center, Inc.

AGREED TO:

Dated: 07/21/2023
By: [Signature]
DocuSigned by:
Ryan Michaelis
D056E1C6480A428...
MegaMex Foods, LLC.

