

# 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 Source Atlantique Incorporated ("Source Atlantique"), on the other hand, with CRC and Source Atlantique 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 September 2, 2022 (2022-02187), that Source Atlantique sells and/or distributes Atlantique Delicias Capers, UPC # 734492464957, 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 products covered by this Settlement Agreement are defined as, and expressly limited to, Delicias Capers in Vinegar (hereinafter collectively the "Products") that contain lead and that are manufactured, sold or distributed for sale in California by Source Atlantique.

### **1.4 Notice of Violation**

On September 2, 2022, CRC served the Notice on Source Atlantique, the California Attorney General and the other requisite public enforcers, alleging that Source Atlantique and others violated Proposition 65 when they failed to 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**

Source Atlantique 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, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Source Atlantique 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 Source Atlantique 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 Source Atlantique. This Section shall not, however, diminish or otherwise affect Source Atlantique'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 Clear and Reasonable Warnings; Compliance Date**

Beginning on a date twelve months from the Effective Date, which date shall be referred to as the "Compliance Date," unless it meets the warning requirements under Sections 2.3, Source Atlantique shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California" (in person or online), purchasing for sale or directly selling in the State of California, Delicias Capers in Vinegar that exceed a lead level of .033 ppm.

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 Source Atlantique 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 is no longer under the control of Source Atlantique prior to the Compliance Date and all claims as to such Products are released in this Settlement Agreement.

### **2.2 General Warning Requirements**

Source Atlantique 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 of the Products sold or distributed in California by Source Atlantique 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](http://www.P65Warnings.ca.gov/food);

2) **WARNING:** Cancer and Reproductive Harm-[www.P65Warnings.ca.gov/food](http://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, Source Atlantique 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.

### **2.3 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 Compliance Date, which Products are expressly subject to the releases provided in Section 4.1. The Products that are manufactured on or prior to the Compliance Date shall be subject to the release of liability pursuant to this Settlement Agreement, without regard to when such Products were, or are in the future, distributed or sold to customers. As a result, the obligation of Source, or any Releasees (if applicable), does not apply to these Products manufactured on or prior to the Compliance Date and the injunctive requirements of Section 2 shall not apply to such Products 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, Source Atlantique shall make a total settlement payment of Nineteen Thousand Dollars and 00/100 (**\$19,000.00**) ("Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty, Attorney's Fees and Costs, 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, Source Atlantique agrees to pay One Thousand Nine Hundred Dollars and 00/100 (**\$1,900.00**) 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 ten (10) days of the date this Settlement Agreement is executed by the Parties, Source Atlantique shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of One Thousand Four Hundred Twenty-Five Dollars and 00/100 (**\$1,425.00**) and (b) CRC in the amount of Four Hundred and Seventy-Five Dollars and 00/100 (**\$475.00**).

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)  
26100 Towne Centre Drive  
Foothill Ranch, CA. 92610

### **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, Source Atlantique agrees to pay Seventeen Thousand One Hundred Dollars and 00/100 (**\$17,100.00**) to CRC and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Source Atlantique, and negotiating a settlement. The \$17,100.00 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)  
26100 Towne Center Drive  
Foothill Ranch, CA. 92610

### **3.5 Tax Documentation**

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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 CRC's Release of Source Atlantique**

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges Source Atlantique 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, 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 base 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.

#### **4.2 Source Atlantique's Release of CRC**

Source Atlantique 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.

#### **4.3 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 Source Atlantique 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 Compliance Date, including all rights of action, therefore. CRC and Source Atlantique 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  
26100 Towne Centre Drive  
Foothill Ranch, CA. 92610

For Source Atlantique:  
Peter J. Pizzi  
Walsh Pizzi O'Reilly Falanga LLP  
3 Gateway Center, 15<sup>th</sup> Floor  
100 Mulberry Street  
Newark, NJ 07102

**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.

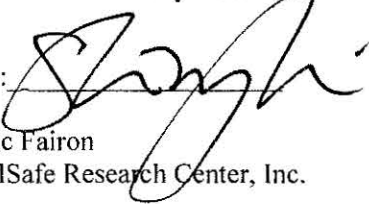
**[Signatures to appear on following page]**

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: 3/17/23

By:   
Eric Fairon  
CalSafe Research Center, Inc.

AGREED TO:

Date: March 21, 2023

By:   
Joe Reich, President  
Source Atlantique Incorporated