

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 Filippo Berio USA, Ltd. (“Filippo Berio”), on the other hand, with CRC and Filippo Berio 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 30, 2022 (2022-01510), that Filippo Berio sells and/or distributes Sun Dried Tomato Pesto in California that contains 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, Filippo Berio, Sun Dried Tomato Pesto, UPC#041736080027 (hereinafter, the “Product”) that allegedly contains lead and that is sold or distributed for sale in California by Filippo Berio.

1.4 Notice of Violation

On October 5, 2022, CRC served the Notice on Filippo Berio, the California Attorney General and the other requisite public enforcers, alleging that Filippo Berio and others violated Proposition 65 when they failed to warn 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

Filippo Berio denies 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 Filippo Berio 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 Filippo Berio 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 Filippo Berio. This Section shall not, however, diminish or otherwise affect Filippo Berio’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 one hundred and eighty (180) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

2.1.1 Beginning on the Effective Date, Filippo Berio shall not distribute into the State of California, or directly sell in the State of California, the Product if it exposes a person to a Daily Exposure Level of more than 0.5 micrograms of lead per serving, with serving size measured by the serving size specified on the label of the Product, unless it meets the warning requirements under Sections 2.1.4, 2.1.5, and 2.1.6.

2.1.2 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 a distributor that Filippo Berio knows will sell the Product in California. The injunctive relief in Section 2 does not apply to Product that has left the possession and is no longer under the control of Filippo Berio prior to the Effective Date and all claims as to such Product is released in this Settlement Agreement.

2.1.3 For purposes of this Settlement Agreement, the Daily 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), which equals micrograms of lead exposure per day. The Daily Exposure Level shall be determined pursuant to the Testing and Quality Control Methodology set forth in Section 2.2.

2.1.4 If a warning is required pursuant to Section 2.1.1, Filippo Berio shall use one of the following warnings:

WARNING: [Cancer and] Reproductive Harm - www.P65Warnings.ca.gov.

WARNING: 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.

Filippo Berio shall use the phrase “cancer and” in the warning only if the Daily Exposure Level is more than 15 micrograms of lead per serving, with serving size measured by the serving size specified on the label of the Product.

2.1.5 If a warning is required pursuant to Section 2.1.1, Filippo Berio shall provide the warning using one or more of the methods listed under Cal. Code Regs. tit. 27, § 25602(a), selected at Filippo Berio’s discretion. If Filippo Berio elects to provide the warning with a posted sign, shelf tag, or shelf sign pursuant to Cal. Code Regs. tit. 27, § 25602(a)(1), Filippo Berio shall be deemed to have complied with this Section 2.1.5 by providing a Written Notice directly to the authorized agent for the business to which they are selling or transferring the product or to the authorized agent for a retail seller. The Written Notice shall satisfy the requirements of Cal. Code Regs. tit. 27, § 25600.2(b).

2.1.6 If a warning is required pursuant to Section 2.1.1, and the Product is available for sale in California via the Internet, Filippo Berio shall provide a warning pursuant to Cal. Code Regs. Tit. 27, § 25602(b). If Filippo Berio distributes Product into the State of California knowing that the Product will be sold via the Internet (but not on Filippo Berio’s website), Filippo Berio shall be deemed to have complied with this Section 2.1.6 by providing a Written Notice directly to the authorized agent for the business to

which they are selling or transferring the product or to the authorized agent for a retail seller. The Written Notice shall satisfy the requirements of Cal. Code Regs. tit. 27, § 25600.2(b).

2.2 Testing and Quality Control Methodology

2.2.1 Within One Hundred and Eighty (180) days of the Effective Date, Filippo Berio shall arrange for lead testing of five (5) randomly selected samples of the Product, in the form intended for sale to the end-user, which Filippo Berio intends to distribute into or directly sell in California. The testing requirement does not apply to the Product if Filippo Berio has provided a warning as specified in Section 2.1.

2.2.2 For purposes of measuring the Daily Exposure Level, the average lead detection result of the five (5) randomly selected samples of the Covered Product will be controlling. To the extent that no lead is detected in any sample, the lead level will be deemed zero for that sample for purposes of calculating the average lead detection result of the five samples.

2.2.3 Testing pursuant to this Settlement Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, qualification, accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method subsequently agreed to in writing by the Parties.

2.2.4 Testing pursuant to this Settlement Agreement shall be performed by Eurofins Food Chemistry Testing Madison, Inc. or any other independent third-party laboratory that is chosen by Filippo Berio and that is ISO 17025 accredited.

2.3.5 Nothing in this Settlement Agreement shall limit Filippo Berio’s ability to conduct, or require that others conduct, additional testing of the Product, including the raw materials used in their manufacture.

2.4 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, Filippo Berio 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 (*i.e.*, that is no longer in the possession of Filippo Berio) 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 Payment

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, Filippo Berio shall make a total settlement payment of Twenty-Seven Thousand Dollars and 00/100 (**\$27,000.00**) ("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 and 3.3 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, Filippo Berio agrees to pay Two Thousand Seven Hundred Dollars and 00/100 (**\$2,700.00**) 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) calendar days of the date this Settlement Agreement is executed by the Parties, Filippo Berio shall issue two separate checks for the civil penalty payment to (a) OEHHA in the amount of Two Thousand Seventy-Five Dollars and 00/100 (**\$2,075.00**) and (b) CRC in the amount of Six Hundred Seventy-Five Dollars and 00/100 (**\$675.00**).

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

DK

of the date this Settlement Agreement is executed by the Parties, Filippo Berio agrees to pay Twenty-Four Thousand Three Hundred Dollars and 00/100 (**\$24,300.00**) to CRC and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Filippo Berio, and negotiating a settlement. The \$24,300.00 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 Centre Drive
Foothill Ranch, CA. 92610

3.5 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 CRC's Release of Filippo Berio

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges Filippo Berio and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors (the "Filippo Berio Releasees") and all entities to which Filippo Berio Releasees directly or indirectly distribute or sell the Product, including but not limited to Gourmet Merchants International, Inc. and Bristol Farms, 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 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.

4.2 Filippo Berio's Release of CRC

Filippo Berio 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 Product, will develop or be discovered. CRC on behalf of itself only, and Filippo Berio 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 Filippo Berio 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.

4.4. Deemed Compliance with Proposition 65

The Parties agree that compliance by Filippo Berio with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from the Products.

4.5. Public Benefit

It is Filippo Berio's understanding that the commitments it has agreed to herein, and actions to be taken by Filippo Berio under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Filippo Berio that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Filippo Berio's failure to provide a warning concerning exposure to lead from the Product it has distributed, sold, or offered for sale in California, or will distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to the Product, provided that Filippo Berio is in material compliance with this Settlement Agreement.

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, and apply within the State of California.

7. NOTICES

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 Filippo Berio:

William W. Oxley
Orrick, Herrington & Sutcliffe LLP
355 S. Grand Ave. Ste. 2700
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:

Date: _____

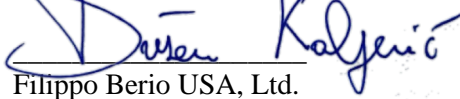
By: _____

Eric Fairon
CalSafe Research Center, Inc.

AGREED TO:

Date: 03/28/2023

By: DUSAN KALJEVIC, CEO&PRESIDENT


Filippo Berio USA, Ltd.

12. INTERPRETATION

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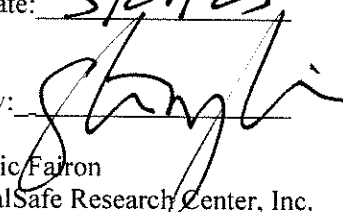
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date:

3/27/23

By:



Eric Fairon
CalSafe Research Center, Inc.

AGREED TO:

Date:

By:

Filippo Berio USA, Ltd.