

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Consumer Rights Advocates, LLC (“CRA”) on the one hand, and Goya Foods, Inc.; Goya Foods of California, Inc. (collectively, “GOYA”), on the other hand, with CRA and GOYA, each individually referred to herein as a “Party” and collectively as the “Parties.”

1.2 General Allegations

CRA alleges that GOYA imports, manufactures, distributes, and/or sells certain Spinach Empanadas and Pupusas Cheese & Bean products in California containing lead without warning under California Health and Safety Code sections 25249.5 *et seq.* (“Proposition 65”). Lead is listed pursuant to 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 products covered by this Settlement Agreement are defined below. All such items shall be referred to herein as the “Covered Products.”

- Baked Spinach Empanadas, UPC No. 0-4133109015-5
- Pupusas Cheese & Bean, UPC No. 0-4133109212-8

1.4 Notice of Violation

On October 7, 2022, CRA served GOYA and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the State of California, two (2) “60-Day Notices of Violation” pursuant to Cal. Health & Safety Code § 25249.5, *et seq.* (Notice Numbers 2022-02380 & 2022--2381) (the “Notices”) alleging that GOYA was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to unlawful amounts of lead. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting an action to enforce the violations alleged in the Notices.

1.5 No Admission

The Parties enter into this Settlement Agreement to settle the disputed claim between them as set forth herein and in the Notices. GOYA denies the material factual and legal allegations in the Notices and maintains that all the products they have manufactured for sale in California, including the Covered Products, have been and are in compliance with Proposition 65 and all other applicable statutory, regulatory, common law or equitable doctrines. Nothing in this Settlement Agreement shall be construed as an admission by GOYA or any of their owners, officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, licensors, joint venture partners, 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 GOYA or any of their owners, officers, directors, shareholders, employees, agents, parent companies, subsidiaries,

divisions, affiliates, franchisees, licensees, licensors, joint venture partners, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by GOYA. Neither the existence nor the terms of this Settlement Agreement shall be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. This Section shall not, however, diminish or otherwise affect GOYA'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

As of the Effective Date, GOYA may not offer for sale in the State of California or distribute into the State of California (in person or online) Covered Products unless: (1) they do not expose a person to more than 0.5 micrograms of lead per day or (2) they meet the warning requirements under section 2.2.

2.1 CLEAR AND REASONABLE WARNINGS

If GOYA elects to place a warning on the Covered Products, GOYA agrees to provide a clear and reasonable warning in compliance with the requirements of Proposition 65. This requirement shall only be required for Covered Products manufactured, distributed, marketed, imported, sold, shipped for sale, or offered for sale by GOYA in the State of California.

The injunctive requirements of this Section shall not apply to any Covered Products already in the stream of commerce as of the Effective Date, which are expressly subject to the releases provided in Section 4 of this Settlement Agreement.

2.2 GENERAL WARNING REQUIREMENTS

GOYA 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 confusion to consumers.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Products shall consist of a warning affixed to the packaging, label, tag, or directly to each of the Covered Products sold or distributed in California by GOYA that contains one of the following warning statements:

OPTION 1:

WARNING: Consuming this product can expose you to chemicals, including Lead which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

OR

OPTION 2:

WARNING: Reproductive Harm – www.P65Warnings.ca.gov/food

The Warning shall be securely affixed to or printed upon the label of each product and it must be set off from other surrounding information and enclosed in a box. In addition, the same warning shall be posted on any website under the exclusive control of GOYA, where the Covered Product is sold to consumers located in California. The warning requirements of this section shall be satisfied if the forgoing warning appears either: (a) on the same web page on which a Covered Product is displayed and/or described by providing a clearly marked hyperlink using the word “WARNING”; (b) on the same page as the price for the Covered Product, or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.

3. MONETARY SETTLEMENT TERMS

3.1 Total Settlement Amount

In full satisfaction of all potential civil penalties, attorneys’ fees, costs, and other expenses incurred by CRA and its counsel in connection with the Notices and Covered Products, and in exchange for CRA’s release of all liability in connection with the Covered Products, GOYA shall make a total settlement payment of twenty-three thousand five hundred dollars (\$23,500) (“Total Settlement Amount”) as set forth in this Section 3. No other payment is required by GOYA under this Settlement Agreement.

3.2 Civil Penalty Payment

Two Thousand five hundred dollars (\$2,500) of the Total Settlement Amount shall be considered a “civil penalty” under section 25249.7(b) of the California Health and Safety Code. This civil penalty payment will be allocated in accordance with sections 25249.12(c)(1) & (d) of the California Health and Safety Code. GOYA shall have two separate checks issued within fourteen (14) days of the Effective Date, and all payments shall be made as follows:

(a) One check made payable to California’s Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of one thousand eight hundred seventy-five dollars (\$1,875), which represents seventy-five percent (75%) of the civil penalties; and

(b) One check made payable to CRA in the amount of six hundred twenty-five dollars (\$625), which represents the remaining twenty-five percent (25%) of the civil penalties.

(c) All civil penalty payments to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered to OEHHA (memo line to read: “Proposition 65 Penalties) at the following address(es):

For United States Postal Delivery Service:

Attn: 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:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street MS #19B
Sacramento, CA 95814

(d) All civil penalty payments to CRA shall be sent to:

Cornerstone Law Firm, PC
357 S. Robertson Blvd, Second Floor
Beverly Hills, CA 90211

3.3 Attorneys' Fees and Costs

Twenty-one thousand dollars (\$21,000) of the Total Settlement Amount shall be paid to CRA's counsel, Cornerstone Law Firm, PC, in consideration of the releases provided by Section 4, and as part of the release to GOYA of any Proposition 65 liability (including penalties, costs, and attorneys' fees) in relation to the Notices, or the Covered Products. The Parties reached an accord on the compensation owed to CRA and its counsel under the private attorney general doctrine and principles of contract law. GOYA shall make this payment of attorneys' fees within fourteen (14) days of the Effective Date to the following address:

Cornerstone Law Firm, PC
357 S. Robertson Blvd, Second Floor
Beverly Hills, CA 90211

3.4. Tax Documentation

CRA agrees to provide an IRS W-9 form for each payee under this Settlement Agreement. The Parties acknowledge that GOYA cannot issue any settlement payments pursuant to this Section 3 until GOYA receives the requisite W-9 forms from CRA. The Parties further acknowledge that they will work together in good faith to extend GOYA's payment deadlines, as set forth herein if CRA fails timely to provide the requisite W-9 tax forms to GOYA.

Nothing in this Settlement Agreement shall alter the Parties' obligations to be liable for their own taxes or impose any obligations relating to taxes due on the payments made under this Settlement Agreement. CRA and its attorneys shall remain responsible for any taxes due or owing by them on any payments received under this Settlement Agreement.

4. CLAIMS COVERED AND RELEASED

4.1 Release of GOYA, Downstream Customers, and Upstream Vendors

Settlement Agreement Between Consumer Rights Advocates, LLC and GOYA

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 herein, CRA, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, parents, subsidiaries, its past and current agents, representatives, attorneys, successors and/or assignees (collectively, the “Releasors”), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and fully releases all claims relating to the Covered Products, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively, the “Claims”), against all of the following: (i) GOYA, including, without limitation, its owners, parent companies, subsidiaries, affiliates, doing-business-as entities (i.e., “DBAs”), sister and related companies, (ii) each of GOYA’s downstream distributors in the stream of commerce (including, but not limited to, Food 4 Less of California, Inc.) and (iii) any other upstream or downstream entities in the distribution chain for the Covered Products, including, but not limited to, manufacturers, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, third-party re-sellers, and users, and (iii) all employees, agents, indemnitees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors and assigns of the entities identified in subsections (i) and (ii) of this section 4.1. The persons and entities described in subsections (i), (ii), and (iii) of this section 4.1 are collectively referred to herein as the “Releasees.”

CRA and its attorneys represent and warrant that they have not filed and are not contemplating filing, that they are not aware of any other person who has filed or is contemplating filing, and that they have not engaged and do not intend to engage in any advertising or solicitation to locate additional persons to file, any form of complaint against the Releasees.

4.2 CRA’s California Civil Code Section 1542 Waiver

CRA, on behalf of itself and all other Releasors, acknowledges that it 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.

CRA, on behalf of itself and all other Releasors, expressly waives and relinquishes any and all rights and benefits that they may have under, or which may be conferred on them, 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 Releasors may lawfully waive such rights or benefits pertaining to the released matters. The Parties agree that compliance with the terms of this Settlement Agreement shall constitute compliance by any Releasee with Proposition 65.

4.3 GOYA’s Release of CRA

GOYA waives any and all claims against CRA, its attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by CRA and its 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 Products.

4.4 Binding Settlement Agreement

This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of CRA and the Releasees.

4.5 Public Benefit

It is the Parties' belief that the terms of this Settlement Agreement confer a significant benefit to the general public as set forth in California Code of Civil Procedure section 1021.5 and California Administrative Code title 11, section 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging that the Covered Products are somehow in violation of Proposition 65, such private party action would not confer a significant benefit on the general public so long as GOYA is in material compliance with the terms of this Settlement Agreement.

5. 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 Products, then GOYA shall have no further obligations pursuant to this Settlement Agreement

6. NOTICE

Unless otherwise specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by electronic mail or overnight courier as follows:

To CRA:

Davar Danialpour, Esq.
CORNERSTONE LAW FIRM, PC
357 S. Robertson Blvd., Second Floor
Beverly Hills, California 90211
david@davarlaw.com

To GOYA:

Naoki Kaneko, Esq.
Thomas V. Wynsma, Esq.
Shook Hardy & Bacon L.L.P.
5 Park Plaza, Suite 1600
Irvine, CA 92614
nkaneko@shb.com
twynsma@shb.com

Any Party, from time to time, may specify in writing to the other Party a change of address or electronic mail to which all notice and other communications shall be sent.

7. COUNTERPARTS: FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature or electronically, 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, electronic, 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 California Civil Code sections 1633.1 *et seq.*

8. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7(f)

CRA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

9. 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 any of the Parties.

10. SEVERABILITY & MODIFICATION

If after execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

11. 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 or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of California Civil Code section 1654. It is conclusively presumed that the Parties participated equally in drafting this Agreement.

12. AUTHORIZATION

Each Party represents that its signatory to this Settlement Agreement has the full legal authority to enter into and legally bind it to the terms herein. Each Party further represents that it has read, understood, and agreed to all the terms and conditions of this Settlement Agreement.

AGREED TO:

Consumer Rights Advocates, LLC

Date: June 28, 2023

By: Davar Danialpour

Title: Attorney

Signature: 

Attorneys for Consumer Rights Advocates,
LLC

AGREED TO:

GOYA

Date: June 26, 2023

By: Joseph Perez

Title: Senior Vice President

Signature: 