

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Tamar Kaloustian and Eat Coyotas LLC:**

This Settlement Agreement is entered into by and between Tamar Kaloustian ("Kaloustian"), represented by her attorneys KJT Law Group, LLP, on the one hand, and Eat Coyotas LLC ("Eat Coyotas"), on the other hand, with Kaloustian and Eat Coyotas collectively referred to as the "Parties."

1.2. **General Allegations**

Kaloustian alleges that Eat Coyotas manufactured and distributed and offered for sale in the State of California Cassava Flour Tortillas and Tortillitas, which contain lead, and that such sales have not been accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3. **Product Description**

The products covered by this Settlement Agreement are defined as Coyotas Cassava Tortillas and Coyotas Cassava Tortillitas that Eat Coyotas has sold, offered for sale, manufactured, or distributed in California. All such items shall be referred to herein as the "Covered Product."

1.4. **Notice of Violation**

On November 1, 2022, Kaloustian served Eat Coyotas and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled "60-Day Notice of Violation" ("Notice") that provided Eat Coyotas and such public enforcers with notice that Eat Coyotas was allegedly in

violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Covered Product exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. **No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Eat Coyotas's compliance with Proposition 65. Specifically, Eat Coyotas denies the allegations contained in the Notice and maintains that all products that it has placed for sale and distribution in California, including the Covered Product, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Eat Coyotas under this Settlement Agreement.

1.6. **Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

2. **INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

2.1 Beginning on the Effective Date, Eat Coyotas shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product that exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day, unless it meets the warning requirements under Section 2.2.

As used in this Settlement Agreement, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a

Covered Product to a distributor that Eat Coyotas knows or has reason to know will sell the Covered Product in California. The injunctive relief in Section 2 does not apply to any Covered Product that has left the possession and is no longer under the control of Eat Coyotas prior to the Effective Date and all claims as to such Covered Product are released in this Settlement Agreement.

For purposes of this Settlement Agreement, "Daily Lead 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 as stated on the label, multiplied by servings of the product per day stated on the label, which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

2.2 Clear and Reasonable Warnings

If Eat Coyotas is required to provide a warning pursuant to Section 2.1 and this Section 2.2, one of the following warnings must be utilized ("Warning"):

Option 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

Option 2:

WARNING: [Cancer and] Reproductive Harm – <http://www.P65Warnings.ca.gov/food>

Eat Coyotas shall use the phrase "cancer and" in the Warning if the Daily Lead Exposure Level is greater than 15 micrograms of lead.

The Warning shall be securely affixed to or printed upon the label of each Covered Product and it must be set off from other surrounding information. For purposes of this

Settlement Agreement, the term "label" means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper.

Notwithstanding the above, the content and method of transmission shall be provided in any form as authorized by Proposition 65 law or regulation, applicable to the Covered Product and chemical at issue, effective on or after the Effective Date.

3. CONSIDERATION

In settlement of all the claims referred to in this Settlement Agreement, the Parties reached an accord on the compensation due, under the private attorney general doctrine and principles of contract law. Under these legal principles, Eat Coyotas shall pay a total of \$20,000.00 as settlement and for fees and costs, incurred as a result of investigating and bringing this matter to Eat Coyotas' attention.

4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, (\$3,000.00) shall be considered a "civil penalty." The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with (a) one check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the total penalty (i.e., \$2,250.00) and (b) one check in an amount representing 25% of the total penalty (i.e., \$750.00) made payable directly to Kaloustian. Eat Coyotas shall mail these payments within ten (10) calendar days following the Effective Date, at which time such payments shall be mailed to the following addresses respectively:

The payment owed to Kaloustian shall be delivered to the following payment address:

KJT LAW GROUP LLP

230 N. Maryland Avenue, Suite 306

Glendale, CA 91206

The payment owed to OEHHA shall be delivered directly to OEHHA at the following addresses:

For United States Postal Delivery:

Mike Gyurics
Senior Accounting Officer -- MS 19-B
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA. 95812-0410

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

5. REIMBURSEMENT OF FEES AND COSTS

In settlement of all the claims referred to in this Settlement Agreement, \$17,000.00 shall be considered reimbursement of Kaloustian's attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. The Parties reached an accord on the compensation due to Kaloustian and her counsel under the private attorney general doctrine and principles of contract law. Eat Coyotas shall mail a check payable to "KJT Law Group," via certified mail to the address for Kaloustian's counsel referenced above in three installments as follows:

- \$7,000.00 due ten (10) calendar days following the Effective Date.
- \$10,000.00 due on or before October 30, 2023.

6. RELEASE OF ALL CLAIMS

6.1. Release of Eat Coyotas, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 through 6 above, Kaloustian, on behalf of herself, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Covered Product, 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) against Eat Coyotas, and its respective equity owners, parents, subsidiaries, affiliates, sister and related entities, and any and all manufacturers, vendors, ingredient suppliers, distributors and retailers for any alleged violations of Proposition 65, or any other alleged violation of statutory or common law, arising from alleged exposures to lead in relation to the Covered Product, up through the Effective Date.

Kaloustian, in her capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it 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 it may lawfully waive such rights or benefits pertaining to the released matters. California Civil Code section 1542 provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

7. 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 Product, then Eat Coyotas shall have no further obligations pursuant to this Settlement Agreement.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Eat Coyotas: Brent Johnson
 Holland & Hart LLP
 222 South Main Street, Suite 2200
 Salt Lake City, UT 84101

For Kaloustian: Tro Krikorian, Esq.
 KJT Law Group, LLP
 230 N. Maryland Ave., Suite 306
 Glendale, CA 91206

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. 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 either of the Parties.

11. MODIFICATION

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

12. DRAFTING

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

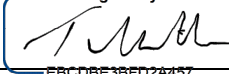
13. AUTHORIZATION

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.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have agreed, accepted, and executed this Agreement on the date written.

Executed on 10/2/2023, at Los Angeles, California.

DocuSigned by:

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Tamar Kaloustian

Executed on 10/02/2023, at San Diego, California.

Eat Coyotas, LLC



By:

Its: **Alfredo Contreras**
CEO