

## SETTLEMENT AND RELEASE AGREEMENT

### 1. **INTRODUCTION**

#### 1.1. **Parseghian and PastryBase LLC:**

This Settlement Agreement is entered into by and between Berj Parseghian ("Parseghian"), represented by his attorneys KJT Law Group, LLP on the one hand, and PastryBase LLC ("PastryBase"), represented by its attorneys Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., on the other hand, with Parseghian and PastryBase collectively referred to as the "Parties."

#### 1.2. **General Allegations**

Parseghian alleges that PastryBase manufactured and distributed and offered for sale in the State of California Keto-Friendly Cupcake Mix containing Cadmium and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed Cadmium under 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 product covered by this Settlement Agreement is defined as "LillyBean by PastryBase – Keto-Friendly – Allergen Free Chocolate Cupcake Mix; UPC #: 6 58580 37763 2" sold, offered for sale, manufactured, or distributed in California and that contain Cadmium. All such items shall be referred to herein as the "Covered Product."

#### 1.4. **Notice of Violation**

On November 22, 2022, Parseghian served PastryBase 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 PastryBase and such public enforcers with notice that PastryBase 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 cadmium. 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 PastryBase's compliance with Proposition 65. Specifically, PastryBase denies the allegations contained in Parseghian's Notice, and maintains that it is exempt from any requirement to comply with Proposition 65 and that it has complied with any statutory, regulatory, common law or equitable requirement or doctrine applicable to it with regard to the manufacture, sale, and distribution of the Covered Product in California. Nothing in this Settlement Agreement shall be construed as an admission by PastryBase 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 PastryBase of any fact, finding, conclusion, issue of law, or violation of law. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of PastryBase 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 five months from the Effective Date (“Compliance Date”), PastryBase shall be prohibited from manufacturing for sale in California, distributing for sale in California, or selling in California, any Covered Product that exposes a person to a “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day (mcg Pb/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 PastryBase 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 PastryBase prior to the Compliance Date, and all claims as to such Covered Product are released in this Settlement Agreement.

For purposes of this Settlement Agreement, "Daily Cadmium Exposure Level" shall be measured in micrograms and shall be calculated using the following formula: micrograms of cadmium 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 Cadmium 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 PastryBase is required to provide a warning pursuant to Section 2.1, one of the following warnings must be utilized ("Warning"):

#### **Option 1:**

**WARNING:** Consuming this product can expose you to chemicals including Cadmium, 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](http://www.P65Warnings.ca.gov/food)

**Option 2:**

**WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

The Warning shall be securely affixed to or printed upon the label of each Covered Product set off from other surrounding information. In addition, for any Covered Product sold over the internet, the Warning shall appear on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase in full text (either the Option 1 Warning or the Option 2 Warning consistent with the option selected for the label warning) or through a clearly marked hyperlink using the word "WARNING" in all capital and bold letters when a California delivery address is indicated for any purchaser of any Covered Product. If a hyperlink is used, the hyperlink must go directly to a page prominently displaying either the Option 1 Warning or the Option 2 Warning without content that detracts from the Warning. An asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label and the word "WARNING" shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

PastryBase must display the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, or on its website, if applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

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.

**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, PastryBase shall pay a total of \$15,000.00 as settlement and for fees and costs, incurred as a result of investigating and bringing this matter to PastryBase's attention.

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

In settlement of all the claims referred to in this Settlement Agreement (\$1,500.00) 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., \$1,125.00) and (b) one check in an amount representing 25% of the total penalty (i.e., \$375.00) made payable directly to Parseghian. PastryBase 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 Plaintiff 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, \$13,500.00 shall be considered reimbursement of Parseghian'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 Parseghian and its counsel under the private attorney general doctrine and principles of contract law. PastryBase shall mail a check payable to "KJT Law Group," via certified mail to the address for Parseghian's counsel referenced above in four installments as follows:

- \$3,500.00 due thirty (30) calendar days following the Effective Date.
- \$3,500.00 due one sixty (60) calendar days following the Effective Date.
- \$3,500.00 due ninety (90) calendar days following the Effective Date.
- \$3,000.00 due one hundred twenty (120) calendar days following the Effective Date.

**6. RELEASE OF ALL CLAIMS**

**6.1. Release of PastryBase, 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, Parseghian, on behalf of himself, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, whether known or unknown, relating to the Covered Product, including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees), against (i) PastryBase and its respective equity owners, parents, subsidiaries, affiliates, successors, assigns, and related companies, (ii) any and all of their upstream vendors and their respective equity owners, parents, subsidiaries, affiliates, successors, assigns, and related companies, and (iii) any and all of their downstream customers, including distributors, retailers, including TJ Maxx of CA LLC, and resellers of the Covered Product, and their respective equity owners, parents, subsidiaries, affiliates, successors, assigns, and related companies, for any alleged violations of Proposition 65, or any other alleged violation of statutory or common law, arising from alleged exposures to cadmium in and/or from Covered Products manufactured prior to the Compliance Date. Parseghian agrees that compliance with this Settlement Agreement shall constitute compliance with Proposition 65, including all related regulations, regarding Cadmium in and/from Covered Product.

Parseghian, in his 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.

**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 PastryBase 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 PastryBase: Collin White  
Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C.  
1615 M Street, N.W.  
Suite 400  
Washington, DC 20036

For Parseghian: 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 5/26/2023

DocuSigned by:  
BERJ PARSEGHIAN  
17B4A0E5087E404...  
Berj Parseghian

Executed on 5/26/2023

PastryBase, LLC

Jillian Donaldson  
By: Jillian Donaldson

Its: Owner