

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 Otis McAllister, Inc., ("Otis" or "Defendant") on the other hand, with CRC and Otis each individually referred to as a "Party" and collectively as the "Parties."

1.2 Allegations and Notice of Violation

CRC alleges in a 60-Day Notice of Violation dated February 3, 2023, that Otis sells and/or distributes Canned Sardines for sale 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 all La Sirena, Sardine products, regardless of the addition of water, oil, or flavoring of any kind, that may contain lead and that are manufactured, sold or distributed for sale in California by Otis including, but not limited to (hereinafter collectively the "Products"):

Sardines La Sirena Tomato Sauce 25/5.5oz, 000-28571-00068-7, 25/5.5oz

Sardines La Sirena Spicy Tomato Sauce (Pica Pica) 25/5.5oz, 000-28571-00069-4, 25/5.5oz

1.4 Notice of Violation

On February 3, 2023, CRC served the Notice on Otis, the California Attorney General and the other requisite public enforcers with 60-Day Notices of Violation ("Notices"), alleging that Otis and another violated Proposition 65 when they failed to warn consumers in California of the alleged exposure 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

Otis 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 applicable laws. Nothing in this Settlement Agreement shall be construed as an admission by Otis or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, brands (including La Sirena), 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 Otis or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, brands (including La Sirena), affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any

22

fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Otis. This Section shall not, however, diminish or otherwise affect Otis' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean ninety (90) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

Otis agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California (in person or online – if and when there are online sales into California, however as of the Effective Date Otis does not sell any products online) the Products that contains a warning as provided for in paragraph 2.2.

2.2 General Warning Requirements

Otis 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 Product sold or distributed in California by Otis that contains one of the following statements:

1) \triangle WARNING: Consuming this product can expose you to 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;

2) \triangle WARNING: Cancer and Reproductive Harm-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 Products are sold in California.

(i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Otis 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.

R.N.

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 Effective Date, which Products are expressly subject to the releases provided in Section 4.1. To avoid confusion, Products in the stream of commerce shall include all Products that have been canned and/or packaged prior to the Effective Date, regardless of their stated shelf life. Such existing inventory may be sold and distributed under this grace period.

3. MONETARY SETTLEMENT TERMS

3.1 Total Settlement Amount

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, or expenses incurred or to be incurred whatsoever in connection with the allegation pursuant to the Notice, Otis shall make a total settlement payment of Twenty-eight thousand, Two hundred and fifty dollars (**\$28,250.00**) ("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 Notices or referred to in this Settlement Agreement, Otis agrees to pay Two thousand Eight hundred and Twenty-five dollars (**\$2,825.00**) 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 thirty (30) days of the date this Settlement Agreement is executed by the Parties, Otis shall issue two separate checks for the initial civil penalty payment to "OEHHA" in the amount of Two thousand, One Hundred eighteen dollars and seventy-five cents (**\$2,118.75**) and shall, pursuant to the instructions below, wire to CRC the amount of Seven hundred six dollars and twenty-five cents (**\$706.25**).

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

RW

All penalty payments owed to CRC shall be sent via wire to:

Wire & ACH Instructions:

Account Name: The Law Offices of Joseph R. Manning
Bank Name: J.P. Morgan Chase Bank, N.A.
Bank Address: 270 Park Ave. New York, NY. 10017
ACH Routing / ABA Number: 322271627
Wire Routing / ABA Number: 021000021
Account Number: 802922919

For further benefit of: Civil Penalty Payment – **2023-00322**

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 thirty (30) days of the date this Settlement Agreement is executed by the Parties, Otis agrees to wire Twenty-Five Thousand Four Hundred and Twenty-Five Dollars (**\$25,425.00**) to Manning Law, APC for all fees and costs incurred in investigating, bringing this matter to the attention of Otis, and negotiating a settlement.

Wire & ACH Instructions:

Wire & ACH Instructions:
Account Name: The Law Offices of Joseph R. Manning
Bank Name: J.P. Morgan Chase Bank, N.A.
Bank Address: 270 Park Ave. New York, NY. 10017
ACH Routing / ABA Number: 322271627
Wire Routing / ABA Number: 021000021
Account Number: 802922919

For Further Benefit of: Attorney's Fees and Costs - 2023-00322

3.5 Tax Documentation

Otis agrees to provide a completed IRS 1099 form for its payments to CRC and Manning Law, and CRC and Manning Law agree to provide IRS W-9 forms to Otis. The Parties acknowledge that Otis cannot issue any settlement payments pursuant to Section 3 above until after Otis receives the requisite W-9 forms from CRC's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 CRC's Release of Otis

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges Otis and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, brands (including La Sirena), affiliates, franchisees,

12/21

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 (including, but not limited to R-Ranch Markets, Incorporated), 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 based 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 Otis's Release of CRC

Otis 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 Products.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties, arising out of the Notices or relating to the Products, will develop or be discovered. CRC on behalf of itself only, and Otis 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 Otis 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.

R.N.

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 Center Drive
Foothill Ranch, CA 92610

For Otis:

Royce Nicolaisen, CEO
Otis McAllister, Inc.
25 Orinda Way, Ste. 101
Orinda, CA 94563

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.

R.N.

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

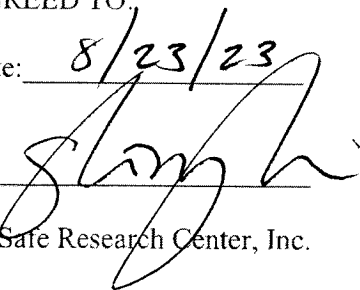
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date:

8/23/23

By:



CalSafe Research Center, Inc.

AGREED TO:

Date:

8/14/2023

By:

 C.E.O.

Otis McAllister, Inc.