

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is entered as of the date of the last signature below (the “Effective Date”) into by and between Clean Product Advocates, LLC (“CPA”), on the one hand, and Kellanova, formerly known as Kellogg Company (“Kellanova”), on the other hand, with CPA and Kellanova collectively referred to as the “Parties.”

RECITALS

1.1. Allegations

CPA alleges that Kellanova manufactured, imported, sold, offered for sale, or distributed in the State of California plant-based chorizo products CPA refers to as “Veggie Chorizo Crumbles,” which Kellanova understands to mean “MorningStar Farms® Chorizo Crumbles” (referred to herein as the “Covered Products”). CPA further alleges that the Covered Products contain Lead, which is listed under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”), as potentially causing cancer and birth defects or other reproductive harm at certain levels. CPA further alleges that the Covered Products expose consumers to levels of Lead that require a pre-exposure warning under Proposition 65, but that Kellanova failed to provide the requisite warning.

1.2. Product Description

The products covered by this Settlement Agreement are the Covered Products that Kellanova manufactured, imported, sold, offered for sale, or distributed in California.

1.3. Notice of Violation

CPA alleges that on or around February 16, 2023, it issued and served a document entitled “60-Day Notice of Violation” (“Notice”) to Kellogg Sales Company, Kellogg Company (now Kellanova), Kellogg Company DBA Kellogg’s, and The Kroger Company d/b/a Ralph’s, and that it served the same on the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California. The Notice alleged, among other things, that the entities named in the Notice, including Kellanova, violated Proposition 65 by failing to provide a requisite Lead warning as to the Covered Products. To the best of the Parties’ knowledge, no public enforcement entity has commenced or is diligently prosecuting the allegations as set forth in the Notice.

1.4. No Admission

Kellanova enters into this Settlement Agreement merely to avoid the costs and uncertainty of litigation. Kellanova expressly denies the material factual and legal allegations contained in the Notice and maintains that all products that it has manufactured, imported, sold, offered for sale, or distributed in the State of California, including, but not limited to, the

Covered Products, have been and are in compliance with all applicable laws, regulations, standards, regulations, guidance, and requirements, including, but not limited to, Proposition 65. The existence of this Settlement Agreement, its contents, and Kellanova's compliance with it shall not be construed as an admission by Kellanova of any fact, finding, issue of law, or violation of law, nor shall this Settlement Agreement be admissible in any proceeding for any purpose other than a proceeding between the Parties and solely for the purpose of enforcing the terms of this Settlement Agreement.

NOW, THEREFORE, in consideration of the terms, covenants, representations, and warranties in this Settlement Agreement, the adequacy of which is acknowledged, the Parties agree as follows:

AGREEMENT

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

In consideration for this Settlement Agreement, as of the Effective Date, Kellanova agrees to distribute, sell, and offer for sale into California only Covered Products that are Reformulated Products, as defined pursuant to Section 2.1 below, or that have a clear and reasonable Proposition 65 warning, pursuant to Section 2.2 below. Notwithstanding the preceding, in full compliance with this Settlement Agreement, Kellanova shall be permitted to distribute, sell, and offer for sale into California all Covered Products contracted for manufacture, manufactured, or purchased up to six (6) months after the Effective Date, even if such Covered Products do not constitute Reformulated Products and do not have a clear and reasonable Proposition 65 warning.

2.1. Reformulation Standards

The Covered Products shall be deemed to comply with Proposition 65 with regard to Lead and be exempt from any Proposition 65 warning requirements for Lead in the Covered Products that do not exceed 0.5 micrograms of Lead per day ("Reformulated Products") when analyzed pursuant to a methodology utilized by federal or state government agencies for purposes of determining Lead in a solid substance.

For the purpose of this Settlement Agreement, the amount of Lead a person is exposed to from the Covered Products shall be calculated using the following formula: micrograms of Lead per gram of product, multiplied by grams of product per serving of the product, multiplied by servings of the product per day, which equals micrograms of Lead exposure per day.

2.2. Warning Standards

(a) A clear and reasonable warning under Proposition 65 for purposes of this Settlement Agreement requires one of the following warning statements with a black box around the warning per safe harbor requirements on the packaging label of the Covered Products that do not

meet the warning exemption standard set forth in Section 2.1 above. The warning shall consist of the following as applicable and based on Kellanova's sole and absolute discretion:

(1) **WARNING:** Consuming this product can expose you to chemicals including Lead, which [is] are 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

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

Kellanova may use "cancer and" in the warning at its option. Kellanova may include the names of additional chemicals in the warning if they are present in the Covered Products at a level that Kellanova reasonably believes would require a Proposition 65 warning.

(b) The requirements for warnings, set forth in subsection (a) above, are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. Kellanova shall be deemed to be in compliance with the warning requirements of this Settlement Agreement either by adhering to this Section 2.2 or by complying with the Proposition 65 warning requirements adopted by the State of California Office of Environmental Health Hazard Assessment ("OEHHA") that are adopted at the time it places the Covered Products in the stream of commerce.

(c) INTERNET – Covered Products that are sold by Kellanova on the Internet to persons located in California shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Covered Products.

(d) FOREIGN LANGUAGE – If the Covered Products have consumer information in a foreign language, then the package must also contain the warning message in the foreign language.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In full satisfaction of all potential civil penalties and attorneys' fees, costs, and any other expenses incurred by CPA or its counsel, Kellanova shall pay the total settlement amount of Eight Thousand Five Hundred Dollars (\$8,500) (the "Settlement Amount") as set forth below.

3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b):

Five Hundred Dollars (\$500) of the Settlement Amount shall be considered a "civil penalty" pursuant to California Health & Safety Code § 25249.7(b). Kellanova shall issue two separate wire payments or checks within ten (10) business days of the Effective Date for a total amount of Five Hundred Dollars (\$500) as follows, and all payments shall be delivered to the addresses listed below.

3.1 (a) One check payable or wire transfer to the “State of California’s Office of Environmental Health Hazard Assessment” in the amount of Three Hundred Seventy-Five (\$375), representing 75% of the total civil penalty; and

3.1 (b) One check payable or wire transfer to “Clean Product Advocates, LLC” in the amount of One Hundred Twenty-Five (\$125), representing 25% of the total civil penalty.

3.2 Attorneys’ Fees and Costs:

Eight Thousand Dollars (\$8,000) of the total Settlement Amount shall be paid to Cliffwood Law Firm, PC within ten (10) business days of the Effective Date, as CPA’s attorneys, for reasonable investigation fees, and costs, attorneys’ fees, and any other cost incurred as a result of investigating and bringing this matter to Kellanova’s attention.

4. PAYMENT PROCEDURES

4.1 All payments owed to OEHHHA pursuant to Section 3.1(a) shall be delivered directly to OEHHHA via wire or check (memo line shall include “Prop 65 Penalties NOV #2023-00474”) at the following address:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

4.2 All payments owed to CPA pursuant to Section 3.1(b) shall be made via wire or delivered to:

c/o CPA
Attn: Elham Shabatian
Cliffwood Law Firm, PC
12100 Wilshire Blvd, Suite 800
Los Angeles, CA 90025

4.3 All payments owed to Cliffwood Law Firm, PC pursuant to Section 3.2 shall be made via wire or delivered to:

Cliffwood Law Firm, PC
Attn: Elham Shabatian
12100 Wilshire Blvd, Suite 800
Los Angeles, CA 90025

5. RELEASE OF ALL CLAIMS

5.1. Release of Kellanova, 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 and 4 above, CPA, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, parents, subsidiaries, past and current agents, representatives, attorneys, successors, and/or assignees (collectively, “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 “Claims”), against Kellanova, Kellanova’s parent companies, corporate affiliates, subsidiaries, affiliates, doing-business-as entities, predecessor and successor entities, and each of their respective employees, officers, directors, attorneys, representatives, shareholders, agents, and employees, as well as each upstream and downstream entity in the distribution chain for the Covered Products, including, but not limited to, manufacturers, suppliers, packers, downstream distributors, wholesalers, customers, retailers such as Kellogg Company, Kellogg Sales Company, Kellogg Company DBA Kellogg’s, The Kroger Company dba Ralphs, their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, “Releasees”). CPA also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, Claims, liabilities, and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against the Releasees.

5.2 Kellanova’s Release of CPA

Kellanova, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all Claims against CPA, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CPA and/or its attorneys and other representatives, whether in the course of investigating Claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Covered Products.

5.3 California Civil Code § 1542

It is possible that other Claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Products will develop or be discovered. CPA on behalf of itself only, on the one hand, and Kellanova, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such Claims up through the Effective Date, including all rights of action thereof. The Parties acknowledge that the Claims released in Sections 5.1 and 5.2, above, may include unknown Claims, and nevertheless waive any rights under California Civil Code § 1542 as to any such unknown Claims. California Civil Code § 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.

CPA and Kellanova each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65

The Parties agree that compliance by Kellanova with this Settlement Agreement constitutes compliance by Kellanova and the Releasees with Proposition 65 with respect to exposure to Lead from use of the Covered Products.

5.5. Public Benefit

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

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. 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 Kellanova shall have no further obligations pursuant to this Settlement Agreement.

7. 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 overnight courier on any party by the other party at the following addresses:

For Kellanova:

Emily N. Dillingham, Esq.
Kellanova
412 N. Wells St.
Chicago, IL 60654

With a copy to:

Bao M. Vu, Esq.
Stoel Rives LLP
1 Montgomery Street, Suite 3230
San Francisco, CA 94204

For Clean Product Advocates, LLC:

Elham Shabatian, Esq.
Cliffwood Law Firm, PC
12100 Wilshire Blvd, Suite 800
Los Angeles, CA 90025

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.

8. 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.

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.

10. MODIFICATION

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

11. 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: January 26, 2025

Signature:

Signed by:

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Name:

Emily Newhouse Dillingham

Title:

Corporate Counsel, Litigation & Regulatory

Date: January __, 2025
1/27/2025

Signature:



Name:

DEKI YANGZOM, DIRECTOR

Title: