

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 La Frontera, ("LAF" or "Defendant") on the other hand, with CRC and LAF each individually referred to as a "Party" and collectively as the "Parties."

1.2 General Allegations

CRC alleges in a 60-Day Notice of Violation originally dated March 31, 2023, and later amended on June 1, 2023, that LAF sells and/or distributes the "La Frontera, Mango Super Snack (UPC# 734829020078)" in California that contains lead without a warning required by Health and Safety Code §§ 25249.5 *et seq.* ("Proposition 65") (collectively 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 product covered by this Settlement Agreement is defined as, and expressly limited to "La Frontera, Mango Super Snack (UPC# 734829020078)", (hereinafter the "Product") that contains lead and that is manufactured, sold or distributed for sale in California by LAF.

1.4 Notice of Violation

On June 1, 2023, CRC served the Notice on LAF, the California Attorney General and the other requisite public enforcers, alleging that LAF and others violated Proposition 65 when they failed to warn consumers in California of the alleged exposures to lead from the Product.

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 Notice.

1.5 No Admission

LAF denies the material, factual and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by LAF or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, 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 LAF or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by LAF. This Section shall not, however, diminish or otherwise affect LAF'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

2.1 Clear and Reasonable Warnings

Beginning on the Effective Date, LAF shall include a warning on each Product that LAF ships into or otherwise distributes in California for sale in California in accordance with the warning requirements under Section 2.2 below. Nothing in this Agreement shall prohibit LAF from removing such warning or being relieved of its obligation under this Section upon the express written agreement of all Parties hereto.

2.2 General Warning Requirements

LAF agrees that each warning, as provided under Section 2.1, above, 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. The warning shall also comply with 27 C.C.R. § 25607.1(c). Specifically, where the product sign, label, or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

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

- 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;
- 2) **WARNING:** Cancer and Reproductive Harm-www.P65Warnings.ca.gov/food.

The warning shall be offset in a box with black outline.

In addition to complying with the warning requirements of this section, LAF shall comply with the warning requirements for the Product prescribed under Proposition 65 and its regulations, including the warning requirements governing internet purchases.

(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, LAF 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 or legislation 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.

2.3 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to Product that is already in the stream of commerce as of the Effective Date, which Product is expressly subject to the releases provided in Section 4.1.

3. MONETARY SETTLEMENT TERMS

3.1 Total Settlement Payment

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, LAF shall make a total settlement payment of Twenty-Nine Thousand Five Hundred Dollars **(\$29,500.00)** ("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 Notice or referred to in this Settlement Agreement, LAF agrees to pay Two Thousand Nine Hundred and Fifty Dollars **(\$2,950.00)** 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 ten (10) days of the Effective Date, LAF shall issue two checks: (1) one payable to "OEHHA" in the amount of Two Thousand Two Hundred and Twelve Dollars and Fifty Cents **(\$2,212.50)** and shall include "Prop 65 Penalties" in the Memo Line, and (2) one payable to CRC in the amount of Seven Hundred and Thirty-Seven Dollars and Fifty Cents **(\$737.50)**.

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, LAF agrees to pay Twenty-Six Thousand Five Hundred and Fifty Dollars **(\$26,550.00)** to CRC and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of LAF, and negotiating a settlement. The payment shall be made in eight (8) equal installment payments of Three Thousand Three Hundred and Eighteen Dollars and Seventy-Five Cents (\$3,318.75).

LAF will issue a check for each installment payable to The Law Offices of Joseph R. Manning. The payments shall be due as follows:

- The first installments shall be due within ten (10) days of the Effective Date.
- The second installment shall be due within sixty (60) days of the Effective Date.
- The third installment shall be due within ninety (90) days the Effective Date.
- The fourth installment shall be due within one hundred twenty (120) days of the Effective Date.
- The fifth installment shall be due within one hundred fifty (150) days of the Effective Date.
- The sixth installment shall be due within one hundred eighty (180) days of the Effective Date.
- The seventh installment shall be due within two hundred ten (210) days of the Effective Date.
- The eighth installment shall be due within two hundred forty (240) days of the Effective Date.

Nothing in this Agreement shall prohibit LAF from paying the entire \$26,550.00 in fewer than eight installments or prior to two hundred forty (240) days of the Effective Date.

The payments required under Section 3.2 and 3.3 shall be delivered to The Law Offices of Joseph R. Manning for distribution to the appropriate entities.

3.4 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 CRC's Release of LAF

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges LAF and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors (the "Defendant Releasees") and all entities to which Defendant Releasees directly or indirectly distribute or sell the Product, and any other distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees, including but not limited to Chedraui USA, Inc. (formerly Bodega Latina Corporation dba El Super) ("Downstream Releasee") (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 Product 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 Product with respect to exposures to lead.

4.2 LAF's Release of CRC

LAF 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 Product.

4.3 California Civil Code Section 1542

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

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.
26100 Towne Center Drive
Foothill Ranch, CA 92610
Tel: Office (949) 200-8757 Fax: (866) 843-8309
p65@manninglawoffice.com

For LAF

Ronald A. Valenzuela
Lathrop GPM, LLP
2049 Century Park East, Suite 3500
Los Angeles, CA 90067
Tel.: Office (310) 789-4600 Fax (310) 789-4601
ronald.valenzuela@lathropgpm.com

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.

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:

AGREED TO:

Date: 11/2/2023

Date: _____

By:  4D7E7F1FE86247B...

By: _____

CalSafe Research Center, Inc.

La Frontera

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.

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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: 11/2/2023

By:  4D7E7F1FE86247B...

CalSafe Research Center, Inc.

AGREED TO:

Date: 11/03/2023

By: 

La Frontera