

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Consumer Rights Advocates, LLC (“CRA”) on the one hand, and 99 Cents Only Stores LLC (“99 CENTS”) and Promate Produce USA (“PROMATE”) on the other hand, with CRA, 99 CENTS, and PROMATE, each individually referred to herein as a “Party” and collectively as the “Parties.”

1.2 General Allegations

CRA alleges that 99 CENTS and PROMATE distribute and/or sell certain Mango Chamoy products in California containing lead without warning under California Health and Safety Code sections 25249.5 *et seq.* (“Proposition 65”). Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects, or other reproductive harm.

1.3 Covered Product

The product covered by this Settlement Agreement is defined below. Such item shall be referred to herein as the “Covered Product”

- Mango Chamoy, UPC No. 2-0200122984-2

1.4 Notice of Violation

On July 24, 2023, CRA served 99 CENTS and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the State of California, one (1) 60-day Notice of Violation pursuant to Cal. Health & Safety Code § 25249.5, *et seq.*, Notice of Violation No. 2023-02226 (the “Notice”) alleging that 99 CENTS were in violation of Proposition 65 for failing to warn consumers and customers that the Covered Product exposed users in California to unlawful amounts of lead. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

The Parties enter into this Settlement Agreement to settle the disputed claim between them as set forth herein and in the Notice. 99 CENTS and PROMATE deny the material factual and legal allegations in the Notice and maintains that all the products they have manufactured and/or distributed for sale in California, including the Covered Product, have been and are in compliance with Proposition 65 and all other applicable statutory, regulatory, common law, or equitable doctrines. Nothing in this Settlement Agreement shall be construed as an admission by 99 CENTS or PROMATE or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, licensors, joint venture partners, 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 99 CENTS or PROMATE or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, licensors, joint venture partners, customers, suppliers, distributors, wholesalers, or

Settlement Agreement Between Consumer Rights Advocates, LLC and 99 Cents Only Stores LLC and Promate Produce USA Inc.

retailers of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by 99 CENTS and PROMATE. Neither the existence nor terms of this Settlement Agreement shall be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. This Section shall not, however, diminish or otherwise affect 99 CENTS and PROMATE'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 Parties' counsel.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

As of the Effective Date, 99 CENTS and PROMATE shall not "distribute into the State of California," or directly sell in the State of California any Covered Product that exposes a person to more than 0.5 micrograms of lead per day based on the recommended serving size on the Covered Product's label, unless the Covered Product bears a warning meeting the warning requirements under Section 2.1 & 2.2.

For the purpose of this Settlement Agreement, 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.

As used in this Settlement Agreement and Release, the term "Distribute into the State of California" shall mean to directly ship the Covered Product into California for sale in California or to sell the Covered Product to a distributor that 99 CENTS and PROMATE knows will sell the Covered Product in California.

2.1 CLEAR AND REASONABLE WARNINGS

As of the Effective Date, 99 CENTS and PROMATE agree to provide a clear and reasonable warning on the Covered Product in compliance with the requirements of Proposition 65. This requirement shall only be required for Covered Product that is manufactured, distributed, marketed, imported, sold, shipped for sale, or offered for sale to consumers by 99 CENTS or PROMATE in the State of California and that does not meet the reformulation standard in paragraph 2.

The injunctive requirements of this Section shall not apply to any Covered Product that is already in the stream of commerce as of the Effective Date, which Covered Product is expressly subject to the releases provided in Section 4 of this Settlement Agreement.

2.2 GENERAL WARNING REQUIREMENTS

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Product shall consist of a warning affixed to the packaging, label, tag, or directly to each of the

Covered Product sold or distributed in California by 99 CENTS or PROMATE that contains one of the following warning statements:

OPTION 1:

WARNING: Consuming this product can expose you to chemicals, including Lead which is known to the State of California to cause birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov/food.

OR

OPTION 2:

WARNING: Reproductive Harm – www.P65Warnings.ca.gov/food

The Warning shall be securely affixed to or printed upon the label of each product, and it must be set off from other surrounding information and enclosed in a box. In addition, the same warning shall be posted on any website under the exclusive control of 99 CENTS and PROMATE, where the Covered Product is sold directly to consumers located in California. The warning requirements of this section shall be satisfied if the forgoing warning appears either (a) on the same web page on which Covered Product is displayed and/or described by providing a clearly marked hyperlink using the word "WARNING"; (b) on the same page as the price for the Covered Product, or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process.

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 layperson 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. If the consumer information in the product is in a foreign language, the warning must also be in the foreign language.

2.3. **CHANGES IN WARNING REGULATIONS, STATUTES OR OTHER GOVERNING AUTHORITY**

In the event that (a) the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations, (b) legislation is enacted by the California legislature, United States Congress or the voters, or (c) a published opinion is issued by a court of competent jurisdiction in the State of California, requiring, permitting or establishing warning text and/or methods of transmission different than those set forth above or an alternative means of calculating exposure for purposes of Proposition 65 other than that set forth herein, 99 CENTS and PROMATE shall be entitled to use, at their discretion, such other warning text, method of transmission, or means of calculating exposure, 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.

3. **CONSIDERATION**

3.1 Total Settlement Amount

In full satisfaction of all potential civil penalties, attorneys' fees, costs, and other expenses incurred by CRA and its counsel in connection with the Notice and Covered Product, and in exchange for CRA's release of all liability in connection with the Covered Product, PROMATE shall pay a total of \$15,000 (Total Settlement Amount) as set forth in this Section in consideration of the releases of 99 CENTS and PROMATE and other terms of this agreement. No other payment is required by 99 CENTS or PROMATE under this Settlement Agreement.

3.2 Civil Penalties Pursuant to Health & Safety Code Section 25249.7(b)

One thousand dollars (\$1,000) of the Total Settlement Amount shall be considered a "civil penalty" under section 25249.7(b) of the California Health and Safety Code. This civil penalty payment will be allocated in accordance with sections 25249.12(c)(1) & (d) of the California Health and Safety Code. PROMATE shall have two separate checks issued within ten (10) days of the Effective Date, and all payments shall be made as follows:

(a) One check made payable to California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of seven hundred fifty dollars (\$750), which represents seventy-five percent (75%) of the civil penalties; and

(b) One check made payable to Consumer Rights Advocates, LLC in the amount of two hundred fifty dollars (\$250), which represents the remaining twenty-five percent (25%) of the civil penalties.

(c) All civil penalty payments to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered to OEHHA (memo line to read: "Proposition 65 Penalties) at the following address(es):

For the United States Postal Delivery Service:

Attn: 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:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street MS #19B
Sacramento, CA 95814

(d) All payments to Consumer Rights Advocates, LLC shall be sent to:

Cornerstone Law Firm, PC
357 S. Robertson Blvd, Second Floor
Beverly Hills, CA 90211

3.3 Reimbursement of Fees and Costs

Fourteen thousand dollars (\$14,000) of the Total Settlement Amount shall be paid to CRA's counsel, Cornerstone Law Firm, PC, in consideration of the releases provided by Section 4, and as part of the release to 99 CENTS and PROMATE of any Proposition 65 liability (including all costs, and fees) in relation to the Notice and the Covered Product. The Parties reached an accord on the compensation owed to CRA and its counsel under the private attorney general doctrine and principles of contract law. PROMATE shall make this payment within ten (10) days of the Effective Date and mail the check to the following address:

Cornerstone Law Firm, PC
357 S. Robertson Blvd, Second Floor
Beverly Hills, CA 90211

3.4. Tax Documentation

CRA agrees to provide an IRS W-9 form under this Settlement Agreement. The Parties acknowledge that PROMATE cannot issue any settlement payments pursuant to this Section 3 until PROMATE receives the requisite W-9 forms from CRA.

4. CLAIMS COVERED AND RELEASED

4.1 CRA Release of 99 CENTS, PROMATE, Downstream Customers, and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 herein, CRA, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, parents, subsidiaries, its past and current agents, representatives, attorneys, successors and/or assignees (collectively, the "Releasers"), 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 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively, the "Claims"), against all of the following: (i) 99 CENTS and PROMATE, including, without limitation, their owners, subsidiaries, affiliates, doing-business-as entities (i.e., "DBAs"), sister and related companies, (ii) each of 99 CENTS and PROMATE's downstream distributors, including, and any other upstream or downstream entities in the distribution chain for the Covered Products, including, but not limited to, manufacturers, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, third-party re-sellers, and users, and (iii) all employees, agents, indemnitees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors and assigns of the entities identified in subsections (i) and (ii) of this section 4.1. The persons and entities described in subsections (i), (ii), and (iii) of this section 4.1 are collectively referred to herein as the "Releasers."

CRA and its attorneys represent and warrant that they have not filed and are not contemplating filing, that they are not aware of any other person who has filed or is contemplating filing, and that they have not engaged and do not intend to engage in any advertising or solicitation to locate additional persons to file, any form of complaint against the Releasers.

Settlement Agreement Between Consumer Rights Advocates, LLC and 99 Cents Only Stores LLC and Promate Produce USA Inc.

4.2 CRA's California Civil Code Section 1542 Waiver

CRA, on behalf of itself and all other Releasors, acknowledges that it is familiar with California Civil Code section 1542, which provides 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.

CRA, on behalf of itself and all other Releasors, expressly waives and relinquishes any and all rights and benefits that they may have under, or which may be conferred on them, 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 Releasors may lawfully waive such rights or benefits pertaining to the released matters. The Parties agree that compliance with the terms of this Settlement Agreement shall constitute compliance by any Releasee with Proposition 65.

4.3 99 CENTS and PROMATE's Release of CRA

99 CENTS and PROMATE waive any and all claims against CRA, its attorneys, and other representatives for any and all actions taken or statements made (or those that could have been taken or made) by CRA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered Product.

4.4 Binding Settlement Agreement

This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of CRA and the Releasees.

4.5 Public Benefit

It is the Parties' belief that the terms of this Settlement Agreement confer a significant benefit to the general public as set forth in California Code of Civil Procedure section 1021.5 and California Administrative Code title 11, section 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging that the Covered Products are somehow in violation of Proposition 65, such private party action would not confer a significant benefit on the general public, so long as PROMATE and 99 CENTS are in material compliance with the terms of this Settlement Agreement.

5. 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 99 CENTS and PROMATE shall have no further obligations pursuant to this Settlement Agreement.

6. NOTICE

Unless otherwise specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by electronic mail or overnight courier as follows:

To CRA: Davar Danialpour, Esq. CORNERSTONE LAW FIRM, P.C. 357 S. Robertson Blvd., Second Floor Beverly Hills, California 90211 david@davarlaw.com	To 99 CENTS: Joseph D. Lee, Esq. Munger, Tolles & Olson LLP 350 South Grand Ave. 50 th FL Los Angeles, CA 90071 joseph.lee@mto.com
To PROMATE Rodolfo Garcia Promate Produce USA 5688 S Boyle Ave Vernon, CA 90058 rodolfopromateproduce@gmail.com	

Any Party, from time to time, may specify in writing to the other Party a change of address or electronic mail to which all notice and other communications shall be sent.

7. COUNTERPARTS: FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature or electronically, 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, electronic, 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 California Civil Code sections 1633.1 *et seq.*

8. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7(f)

CRA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

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, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind any of the Parties.

10. SEVERABILITY & MODIFICATION

If after execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected. This Settlement Agreement may be modified only by a written agreement signed by the Parties.

11. 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 or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of California Civil Code section 1654. It is conclusively presumed that the Parties participated equally in drafting this Agreement.

12. AUTHORIZATION

Each Party represents that its signatory to this Settlement Agreement has the full legal authority to enter into and legally bind it to the terms herein. Each Party further represents that it has read, understood, and agreed to all the terms and conditions of this Settlement Agreement.

AGREED TO:

**CONSUMER RIGHTS ADVOCATES,
LLC**

January 4, 2024
Date: ~~December 2, 2023~~

By: Faraz Adjansian

Signature:


Consumer Rights Advocates, LLC

AGREED TO:

99 CENTS ONLY STORES LLC

Date: 12/5/23

By: Mary M. Kasper

Signature:


99 Cents Only Stores LLC

AGREED TO:

PROMATE PRODUCE USA INC.

Date: 12-21-23
By: SEBASTIAN GAMA

Signature:


Promate Produce USA Inc.