



Union of Orthodox Jewish Congregations of America • איחוד קהילות האורתודוקסים באמריקה
11 Broadway New York, NY 10004 * Tel: (212) 563-4000 * Fax: (212) 564-9058 * www.ou.org

April 19, 2017

Mrs. Celeste Corina Santos Salazar
Casa Ausencio Leon Ruiz Y Sucesores
Zaragoza # 5, Centro
Tlacolula de Matamoros, Oaxaca, 70400
MEXICO

Dear Mrs. Santos Salazar:

Enclosed please find a Private Label Agreement (PLA) for kosher certification of the following products that you wish to produce for Casa Perro Santo S.A. de C.V.

Please review, sign and forward copies to the respective private label company for signature and return together with payment of the enclosed invoice. Upon receipt of such, copies will be countersigned and forwarded to your attention along with authorization for use of the OU symbol on the above mentioned Private Label Company.

PLEASE BE ADVISED THAT THE OU EMBLEM IS A REGISTERED TRADEMARK AND AS SUCH, MAY NOT BE USED UNTIL:

You will receive a countersigned PLA from our office together with a Private Label Letter of Certification granting official authorization of the product(s) in question. Usage prior to written approval is a violation of the contractual agreement between the Orthodox Union and your Company.

If a signed PLA is not submitted to the Orthodox Union within four months of the date of this letter, the application for authorization will be withdrawn.

We wish you much success in this project.

Sincerely yours,

Rabbi Cohen
Rabbinic Coordinator
UNION OF ORTHODOX JEWISH
CONGREGATIONS OF AMERICA

Encl.



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PRIVATE LABEL AGREEMENT

THIS PRIVATE LABEL AGREEMENT (this "**Agreement**") is entered into as of March 28, 2017 ("**Effective Date**"), by and between the Union of Orthodox Jewish Congregations of America, a State of New York nonprofit corporation (the "**OU**"), and Casa Ausencio Leon Ruiz Y Sucesores, located at Zaragoza # 5, Centro Tlacolula de Matamoros, Oaxaca, 70400 MEXICO (the "**Company**"), and Casa Perro Santo S.A. de C.V., located at Plaza de la Magdalena 8 Atizapan de Zaragoza, CP 52957 MEXICO (the "**Distributor**"). OU, the Company and the Distributor shall each also hereinafter be referred to, individually, as a "**Party**" and, collectively, as the "**Parties**."

RECITALS:

WHEREAS, among other things, the OU performs Kosher certification services throughout the world, and is the exclusive owner of the OU certification mark, (the "**OU Symbol**"), a registered trademark with the U.S. Patent and Trademark Office; and

WHEREAS, the OU and the Company are parties to a separate Certification Agreement ("**Certification Agreement**") enabling Company to produce certain products with an OU Symbol, according to the terms and conditions of such Certification Agreement; and

WHEREAS, the Company and Distributor would like the Company to produce Distributor's products, (such products, "Private Label Products"); and

WHEREAS, Company and Distributor would like to place an OU Symbol on certain Private Label Products;

NOW, THEREFORE, in consideration of the premises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

SECTION 1. Certification of Private Label Products.

(A) The certification of Private Label Products shall be contingent upon the Company and the OU having entered into, and being subject to, the Certification Agreement, and shall be contingent upon Company's compliance with the terms and conditions of such Certification Agreement.

(B) Company agrees that Private Label Products produced and/or processed by the Company shall be subject to all the terms and conditions of the Certification Agreement, and for purposes of the Certification Agreement, any Private Label Product shall be considered a Company product under the Certification Agreement.

(C) The Distributor shall not cause or permit any product that is identical or similar to an OU certified Private Label Product (each, a "**Similar Product**") to be produced, manufactured, processed, packaged, or labeled at any other company, whether or not such product bears the OU Symbol, without first obtaining the prior written consent of the OU. For the avoidance of doubt, Distributor wishing to produce Similar Products at several companies may do so if Distributor obtains prior written authorization from the OU, and such authorization may be granted in the form of a Private Label Agreement with another company.

(D) OU certified Private Label Products shall be manufactured only at the plant listed on Schedule A attached hereto and incorporated herein by reference (such plant(s) the "Plant(s)"), and shall only be authorized to place the specific OU Symbol as listed in Schedule A. Company and/or Distributor shall notify the OU if any Private Label Product ceases to be produced at a Plant.

(E) The OU Symbol shall be the only kosher certification symbol that appears on the label of a Private Label Product, unless the Company and the Distributor obtain the prior written consent of the OU.

(F) Company and/or Distributor may only place an OU Symbol on a Private Label Product(s) listed in Schedule A attached hereto and incorporated herein by reference. Company and Distributor must obtain prior written permission from the OU before adding to, or modifying the Schedule A.

(G) The Company or Distributor shall not remove unused labels and/or packaging materials bearing the OU



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Symbol from a Plant without first obtaining the prior written consent of the OU; upon termination of this Agreement all unused labels and packaging materials bearing the OU Symbol shall be, at the OU's option, immediately (a) transferred to a new plant which has been certified by the OU, (b) destroyed, or the OU Symbol immediately excised therefrom, in each instance, in the presence of OU representatives, or (c) remitted to the OU.

(H) Upon the Company's or Distributor's material breach or violation of any of the terms or conditions of this Agreement, or the Company's breach or violation of the Certification Agreement, as determined by the OU in its sole discretion, the OU shall notify the Company or the Distributor of such breach or violation, and the OU shall have the right to demand, and the Company and/or the Distributor agree to implement, without limitation, one or more of the following remedies and/or actions:

- (1) Immediate recall of a product bearing an OU symbol from the market;
- (2) Publication of advertisements, to be drafted by the OU, at the Company's or Distributor's expense, in newspapers, magazines and other media, notifying the public of the non-approved status of a Private Label Product, with a maximum aggregate cost to the Company and/or Distributor of \$5,000.00; and/or
- (3) Termination of this Agreement, and destruction of all packaging material in accordance with Section 1(G) herein.

(I) Unauthorized Use of the OU Symbol; Liquidated Damages. If, at any time, the Company or the Distributor (A) uses or displays the OU Symbol in a manner not authorized by the OU, the Company and Distributor, jointly and severally, hereby agree to pay to the OU, as liquidated damages, \$750.00 in the aggregate, for each day that the Distributor's product displays the OU Symbol in such unauthorized manner. The Company and Distributor hereby agree that the \$750.00 per day payment amount is (1) a reasonable estimate of the damages that the OU will likely sustain as a result of the Company's or Distributor's unauthorized use or failure of compliance, and (2) not intended to constitute a penalty for any purpose. The OU's enforcement of any of its rights set forth in this Section 1(I) shall not preclude and/or prejudice any other rights and/or remedies (in law and/or in equity) that the OU may have in the event that any provision of this Agreement was not performed in accordance with its specific terms or was otherwise breached by the Company or the Distributors.

(J) Term. The term (the "**Term**") of this Agreement shall commence on the Effective Date and shall terminate on **January 31, 2018** (the "**Initial Termination Date**"). This Agreement shall be renewed and extended automatically for periods of twelve (12) additional months thereafter, unless a Party terminates this Agreement upon at least thirty (30) calendar days written notice to the other Party prior to an anniversary of the Initial Termination Date.

(K) Annual Private Label Certification Fee. The Company shall pay to the OU an initial registration fee of \$250.00 for the registration of a certified Private Label Product, and an annual amount of \$250.00 annual certification fee for each subsequent Term or part thereof, such amount subject to change upon written notification to the Company.

(L) The Company and/or Distributor may not (a) use the names, logos, emblems, symbols, trademarks, service marks and copyright rights of the OU, and/or (b) engage in any advertising; press release or other public communications; web site or internet marketing; electronic mail solicitation or marketing; or direct mail or facsimile transmission or telemarketing campaigns (collectively, "**Advertisement**"), which refer to or mention the OU, the OU Certification, or the OU Symbol. Notwithstanding the previous sentence, so long as the Company and the Distributor are in compliance with the terms and conditions of this Agreement, (a) the OU Symbol may appear in the Distributor's Advertisement of a Private Label Product if the Advertisement includes a picture, photo, drawing or other likeness of the packaging of such Product and the OU Symbol is displayed, as it typically and normally appears, on such packaging, and (b) the Distributor may make reference in its Advertisements of a Private Label Product that such product has OU Certification so long as the Distributor only states that such product is "certified as kosher by the OU."

(M) A certified Private Label Product bearing the OU Symbol shall not contain any food in addition to such product, such as a promotional insert, even if such food is separately wrapped, unless the Company and Distributor obtain the prior written consent of the OU.

SECTION 2. Indemnification and Limitation of Liability.

(A) The Distributor and Company hereby agree to indemnify and hold the OU (and the OU's directors, officers, employees, stockholders, principals, managers, members, partners, agents and representatives) (each, an



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"Indemnified Party") harmless from and against any demands, claims, losses, costs, damages, liabilities, penalties, fines and expenses (including court costs and reasonable fees of attorneys and other professionals) arising out of, relating to, or resulting from (1) the OU's Certification of any Private Label Product manufactured by the Company, (2) the Distributor's private label product having an OU symbol on such product, (3) the safety of any Private Label Product or any Distributor's product that has an OU Symbol, including, without limitation, any effect that such product may have or may have had on the physical and/or mental health of any person, whether related to or resulting from the certification of such product by the OU or otherwise. For purposes of clarification, and with respect to the OU and the Company, this Section 2 shall not preclude the OU from any indemnification provided for in the Certification Agreement.

(B) Promptly after receipt by an Indemnified Party of notice of the commencement of any action, such Indemnified Party shall, if a claim for indemnification in respect thereof is to be made against the Distributor, deliver to the Distributor written notice of the commencement thereof, and the Distributor shall have the right to assume and manage the defense thereof (with counsel reasonably satisfactory to the OU), including the right to settle, compromise and/or litigate with respect to any such claim (but only after obtaining the OU's and such Indemnified Party's prior written consent with respect to any proposed settlement, compromise or litigation).

(C) In no event and under no circumstances shall the OU be liable to the Distributor and/or the Company for any damages, including, without limitation, direct, special, incidental, indirect, punitive or consequential damages, loss of use of capital, lost profits, lost revenues, commissions, or compensation of any kind, whether or not such damages were foreseeable or in any way arising out of, related to, or resulting from this Agreement (including, without limitation, any claim of activity incident to (1) the OU's provision, non-provision or termination of Kosher Certification for a Private Label Product of the Distributor, (2) the OU's taking of any action under, pursuant to or in connection with this Agreement, (3) any determination or decision made by the OU under, pursuant to or in connection with this Agreement, or (4) the OU's termination of this Agreement (for any reason).

SECTION 3. General Provisions.

(A) **Governing Law.** This Agreement is deemed to be executed and delivered in the State of New York and shall be construed and enforced in accordance with the laws and decisions of the State of New York applicable to contracts made and performed entirely within the State of New York, without regard to the State of New York's conflicts of law provisions.

(B) **Venue.** Each Party unconditionally and irrevocably submits to and accepts the exclusive jurisdiction of any state or federal court of competent jurisdiction located in the County, State of New York or the City of New York for the purposes of any suit, action or other proceeding between the Parties, whether arising out of, related to, or resulting from this Agreement or otherwise. Each Party further unconditionally and irrevocably waives any objections, including improper venue or based on the grounds of forum non conveniens, which it may have to the bringing of any action, suit or proceeding between the Parties, whether arising out of, related to, or resulting from this Agreement or otherwise, in any state or federal courts located in the County, State of New York or the City of New York, and hereby further and unconditionally and irrevocably waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient or inappropriate forum.

(C) **Severability.** If any portion of this Agreement shall be declared invalid by any order, decree or judgment of a court having jurisdiction over the Parties and/or the subject matter of this Agreement, this Agreement shall be construed as if such portion had not been inserted herein except when construction under those circumstances would operate as an undue hardship on any Party or constitute a substantial deviation from the general intent and purpose of the Parties as reflected in this Agreement.

(D) **Attorneys Fees.** Notwithstanding any other provision contained herein or in any other document to the contrary, the Company and the Distributor shall pay all costs, fees and expenses, including attorneys' fees, incurred by the OU (1) in enforcing or implementing its rights and/or remedies under this Agreement, and/or (2) in connection with any litigation or dispute between the Parties arising out of, related to, or resulting from this Agreement.

(E) **Notice.** Any notices required or permitted hereunder shall be given to the appropriate Party at the address specified on the signature page hereto or at such other address as the Party shall specify in writing. Such notice shall be deemed given upon personal delivery to the appropriate address, one (1) business day after dispatch if sent by a nationally recognized courier or overnight delivery service, on the date of dispatch if sent by facsimile for which



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confirmation of transmission is provided, or, if sent by certified or registered mail, three (3) business days after the date of mailing.

(F) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one original Agreement, and in the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature page were an original thereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

"OU" UNION OF ORTHODOX JEWISH
 CONGREGATIONS OF AMERICA,
 KASHRUTH DIVISION

Casa Ausencio Leon Ruiz Y Sucesores

 Rabbi Cohen
 Rabbinic Coordinator

 Celeste Corina Santos Salazar

Casa Perro Santo S.A. de C.V.

 Andrés Vargas Caderón



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SCHEDULE A

PRODUCT NAME (By Company Name)	PRODUCT NAME (By Distributor Name)	GROUP	DISTRIBUTOR BRAND NAME	SYMBOL/ STATUS
Mezcal	Mezcal Artesanal	3	Perro de San Juan	OU

LOCATION(S) OF PLANT OR MANUFACTURING SITE

<u>NAME</u>	<u>ADDRESS</u>	<u>USDA CODE</u>
Casa Ausencio Leon Ruiz Y Sucesores Distillery	SAN DIONISIO OCOTEPEC, OAXACA 70495 MEXICO	