

SETTLEMENT AGREEMENT

BETWEEN ERIKA MCCARTNEY AND SUNFOOD CORPORATION

1. RECITALS

1.1 The Parties

This Settlement Agreement (“Settlement”) is entered into by and between Erika McCartney (“Ms. McCartney”) and Sunfood Corporation (“Sunfood”). Ms. McCartney and Sunfood shall hereinafter collectively be referred to as the “Parties.”

Ms. McCartney is a citizen of the State of California. Sunfood is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

1.2 Allegations

Ms. McCartney alleges Sunfood manufactured, distributed, supplied, and/or sold certain consumer products, specifically, “Sunfood Superfoods Cacao Powder” and “Sunfood Superfoods Cacao Nibs” (the “Subject Products”) for use by consumers, causing users in California to be exposed to cadmium (the “Listed Substance”) in amounts exceeding the maximum allowable dosage level (“MADL”) established by the California Office of Environmental Health Hazard Assessment (“OEHHA”) without providing “clear and reasonable warnings,” in violation of Proposition 65. Cadmium is subject to Proposition 65 warning requirements because it is listed as known to the State of California to cause reproductive harm.

On September 5, 2014 and November 11, 2015, sixty-day notices of violation, along with Certificates of Merit, were provided by Ms. McCartney to Sunfood and various public enforcement agencies regarding the alleged violations of Proposition 65 with respect to the Subject Products.

1.3 No Admissions

Sunfood denies all allegations in Ms. McCartney's 60-Day Notices and maintains that the Covered Products have been, and are, in compliance with all laws, and that Sunfood has not violated Proposition 65. This Settlement shall not be construed as an admission of liability by Sunfood but as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Settlement.

1.4 Compromise

The Parties enter into this Settlement in order to resolve the controversy described above and avoid prolonged and costly litigation between them.

1.5 Effective Date

The "Effective Date" shall be the date upon which this Settlement is signed by both Parties and delivered to each Party.

2. INJUNCTIVE RELIEF

2.1 Warning Obligations for Covered Products

After the Effective Date, Sunfood shall not distribute into California either Subject Product containing the Listed Substance in excess of the MADL, unless a clear and reasonable warning is given in a manner consistent with the method and language set forth in Section 2.2. For purposes of this section, the Subject Products shall be deemed to contain the Listed Substance in excess of the MADL if either: (a) it exceeds 4.1 micrograms per serving size appearing on the label of the Subject Product; or (b) any use or recipe disseminated by Sunfood for the Subject Product would result in exposure to the Listed Substance in excess of 4.1

micrograms per serving. As used herein, the term “distribute into California” shall mean to directly ship either Subject Product into California, or to sell either Subject Product to a distributor that Sunfood knows or has reason to know will sell the Covered Product in California.

2.2 Manner of Providing Warning

For the Subject Products containing the Listed Substance in excess of the MADL, Sunfood shall provide the following warning (“Warning”) as specified below:

WARNING: This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

The Warning shall be permanently affixed to or printed on (at the point of manufacture, prior to shipment to California, or prior to distribution into California) the outside packaging or container of each unit of the Covered Products. The Warning shall be displayed with such conspicuousness, as compared with other words, statements designs or devices on the outside packaging or labeling, as to render it likely to be read and understood by an ordinary individual prior to use. If the Warning is displayed on the product container or labeling, the Warning shall be at least the same size as the largest of any other health or safety warnings on the product container or labeling, and the word “**WARNING**” shall be in all capital letters and in bold print.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

Sunfood shall pay a civil penalty of \$17,500, to be apportioned in accordance with Health and Safety Code section 25249.12(c)(1) and (d), with 75% paid to State of California Office of Environmental Health Hazard Assessment, and the remaining 25% paid to Ms. McCartney.

The civil penalty shall be due and payable five (5) days after the Effective Date herein. Sunfood shall issue two (2) checks for the civil penalty: (1) a check or money order made

payable to “Office of Environmental Health Hazard Assessment” in the amount of \$13,125; and
(2) a check or money order made payable to “Erika McCartney” in the amount of \$4,375.

Sunfood shall remit the checks to:

Pacific Justice Center
ATTN: Robert B. Hancock, Esq.
50 California Street, Suite 1500
San Francisco, CA 94111

3.2 Payment of Attorneys’ Fees And Expenses

Sunfood shall pay Ms. McCartney’s attorneys’ fees and expenses incurred in pursuing the instant action, in the amount of \$45,000, with two checks or money order made payable to “Robert B. Hancock.” Sunfood shall remit the payments, in equal installments of \$22,500 within thirty and sixty days, respectively, of the Effective Date to:

Pacific Justice Center
ATTN: Robert B. Hancock, Esq.
50 California Street, Suite 1500
San Francisco, CA 94111

4. RELEASES

4.1 Ms. McCartney’s Release Of Sunfood

Ms. McCartney, acting in her individual capacity, her past and current agents, representatives, attorneys, successors, and/or assignees, in consideration of the promises and monetary payments contained herein, hereby releases Sunfood, its parents, subsidiaries, shareholders, directors, members, officers, employees, agents, attorneys, and manufacturers, distributors and retailers of the Covered Product from the claims asserted in Ms. McCartney’s 60-Day Notices regarding violation of Proposition 65 with respect to the Covered Products.

4.2 Sunfood’s Release Of Ms. McCartney

Sunfood, by this Settlement, waives all rights to institute any form of legal action against

Ms. McCartney, her past and current agents, representatives, attorneys, experts, successors, and/or assignees, for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Sunfood in this matter.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that they are familiar with Section 1542 of California Civil Code which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Each of the parties waives and relinquishes any right or benefit it has or may have under Section 1542 of *California Civil Code* or any similar provision under the statutory or non statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the claims in this Settlement. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Settlement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any non-material part or provision of this Settlement for any reason be declared by a Court to be invalid, void, unenforceable, or against law or public policy, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

The terms of this Settlement shall be governed by the laws of the State of California.

7. INTEGRATION

This Settlement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be amended or modified except in writing executed by both Parties.

8. COUNTERPARTS

This Settlement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Settlement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Settlement shall have the same force and effect as the originals.

9. AUTHORIZATION

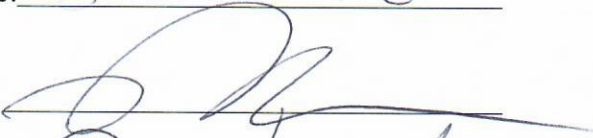
The undersigned are authorized to execute this Settlement on behalf of their respective Party. Each Party has read, understood, and agrees to all of the terms and conditions of this Settlement. Each Party warrants to the other that it is free to enter into this Settlement and not

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subject to any conflicting obligation which will or might prevent or interfere with the execution or performance of this Settlement by said Party.

AGREED: Sunfood Corporation


Date: 5-4-16

By: 

Its: President

AGREED:

Date: 6/6/16



Erika McCartney