

SETTLEMENT AGREEMENT

BETWEEN ERIKA MCCARTNEY AND CO.EXIST NUTRITION CORP.

1. RECITALS

1.1 The Parties

This Settlement Agreement ("Settlement") is entered into by and between Erika McCartney ("Ms. McCartney") and Co.Exist Nutrition Corp. ("Co.Exist"). Ms. McCartney and Co.Exist shall hereinafter collectively be referred to as the "Parties."

Ms. McCartney is a citizen of the State of California. Co.Exist 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 Co.Exist manufactured, distributed, supplied, and/or sold certain products, specifically, "22 Days Plant Protein Power – Vanilla" and "22 Days Plant Protein Power – Chocolate" 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, a sixty-day notice of violation, along with a Certificate of Merit, was provided by Ms. McCartney to Co.Exist and various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to Co.Exist's "22 Days Protein Plant Power - Vanilla." On January 8, 2015, a second sixty-day notice with accompanying Certificate of

Merit was provided by Ms. McCartney to Co.Exist and various public enforcement agencies regarding alleged violation of Proposition 65 with respect to Co.Exist's "22 Days Protein Plant Power -- Chocolate." ("60-Day Notices.") The products referenced in both notices are hereinafter referred to collectively as "Covered Products."

1.3 No Admissions

Co.Exist 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 Co.Exist has not violated Proposition 65. This Settlement shall not be construed as an admission of liability by Co.Exist 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, Co.Exist shall not manufacture, decorate, import, distribute or offer for use or sale any Covered Product containing the Listed Substance in excess of the MADL for distribution, sale or use in California, unless clear and reasonable warnings are given in a manner consistent with the method and language set forth in Section 2.2.

2.2 Manner of Providing Warning

For the Covered Products containing the Listed Substance in excess of the MADL, Co.Exist shall provide the following warning ("Warning") as specified below:

"[California Proposition 65] **WARNING:** This product contains [cadmium,] a substance known to the State of California to cause birth defects or other reproductive harm.

The text above appearing in brackets shall be optional. The Warning shall be permanently affixed to or printed on (at the point of manufacture, prior to shipment to California, or prior to distribution within 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.

2.3 Reformulation of Covered Products

In the event Co.Exist sells or distributes either or both of the Covered Products without the Warning required by Paragraph 3.2, Co.Exist shall retain documentary proof that the latest batches of the Covered Product(s) do(es) not contain the Listed Substance, per label serving, in excess of the MADL. Any documentary proof shall be based upon certified independent laboratory testing using inductively-coupled plasma-mass spectrometry, and shall be based on the first "run" of the Covered Product(s) in any calendar year. Co.Exist shall provide its documentary proof to Plaintiff within two weeks of receiving a written request for such. This provision shall remain in effect for two (2) years beginning on the effective date of this **SETTLEMENT AGREEMENT – Page 3**

agreement.

2.4 Offer for Refund

Co.Exist shall accept refund requests for the full purchase price of the Covered Products by any person in California that directly purchased any Covered Product from Co.Exist during the period January 8, 2014 through January 8, 2016 and that presents evidence of such purchase. Said refunds shall be provided via check, using regular United States Mail.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

Except as further provided herein, Co.Exist shall pay a civil penalty of \$22,500, in two installments, to be apportioned in accordance with Health and Safety Code section 25249.12(c)(l) and (d), with 75% paid to State of California Office of Environmental Health Hazard Assessment, and the remaining 25% paid to Ms. McCartney.

The first installment of the civil penalty in the amount of \$10,000 shall be due and payable five (5) days after the Effective Date herein. Co.Exist 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 \$7,500; and (2) a check or money order made payable to "Erika McCartney" in the amount of \$2,500. Co.Exist shall remit the checks to:

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

The second installment of the civil penalty in amount of \$12,500 shall be due and payable sixty (60) days after the Effective Date herein. Co.Exist 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 \$7,500; and (2) a check or money order made payable to "Erika McCartney" in the amount of \$2,500. Co.Exist shall remit the checks to:

Assessment" in the amount of \$9,375; and (2) a check or money order made payable to "Erika McCartney" in the amount of \$3,125. Co.Exist shall remit the checks to:

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

However, the second installment of the civil penalty shall be waived by Ms. McCartney in the event that, prior to the due date for remittance of the second installment, Co.Exist provides to counsel for Ms. McCartney documentary proof that the latest batches of both the Covered Products do not contain the Listed Substance, per label serving, in excess of the MADL. Any documentary proof provided shall be based upon certified independent laboratory testing using inductively-coupled plasma-mass spectrometry.

3.2 Payment of Attorneys' Fees And Expenses

Co.Exist shall pay Ms. McCartney's attorney's fees and expenses incurred in pursuing the instant action, in the amount of \$50,000. Co.Exist shall remit the payment within five (5) business days 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 Co.Exist

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 Co.Exist, its parents, subsidiaries, shareholders, directors, members, officers, employees, agents, attorneys, and manufacturers,

SETTLEMENT AGREEMENT – Page 5

distributors and retailers of the Covered Products from the claims asserted in Ms. McCartney's 60-Day Notices¹ regarding violation of Proposition 65 with respect to the Covered Products.

4.2 Defendant's Compliance with this Agreement

The Parties agree that Defendant's compliance with this Agreement shall constitute compliance with Proposition 65 with respect to cadmium in the Covered Products distributed and/or sold after the Effective Date.

4.3 Co.Exist's Release Of Ms. McCartney

Co.Exist, 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 Co.Exist in this matter.

4.4 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

¹ Such claims include any sales, distribution, or other alleged violations stemming from sales of any Covered Product by any downstream distributor or retailer after the effective date of this agreement.

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

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

AGREED: Co.Exist Nutrition Corp.

Date: 3/27/2015

By: 
Marco Borges

Its: Chief Executive Officer

AGREED:

Date: _____

Erika McCartney

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

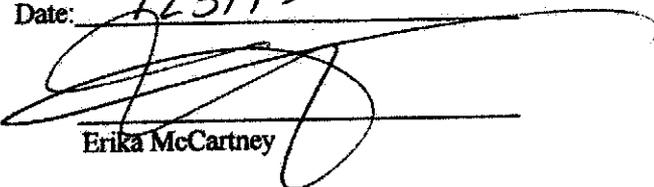
AGREED: Co.Exist Nutrition Corp.

Date: _____

By: _____

Its: _____

AGREED:

Date: 3/23/15


Erika McCartney