

## SETTLEMENT AGREEMENT

### 1. RECITALS

#### 1.1 The Parties

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

Ms. McCartney is a citizen of the State of California. Ultimate Superfoods 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 Ultimate Superfoods manufactured, distributed, supplied, and/or sold certain products, specifically, “Ojio Arriba Raw Organic Cacao Powder” and “Ojio Dominican Organic Cacao Powder” for use by consumers, causing users in California to be exposed to cadmium (the “Listed Substance”) in amounts exceeding the maximum allowable dosage level 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 April 9, 2015, a sixty-day notice of violation, along with a Certificate of Merit, was provided by Ms. McCartney to Ultimate Superfoods and various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to Ultimate Superfood’s “Ojio Dominican Organic Cacao Powder” On November 11, 2015, a second sixty-day notice with accompanying Certificate of Merit was provided by Ms. McCartney to Ultimate Superfoods and

various public enforcement agencies regarding alleged violation of Proposition 65 with respect to Ultimate Superfood's "Ojio Arriba Raw Organic Cacao Powder" ("60-Day Notices.") The products referenced in both notices are hereinafter referred to collectively as "Covered Products."

### **1.3 No Admissions**

Ultimate Superfoods 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 Ultimate Superfoods has not violated Proposition 65. This Settlement shall not be construed as an admission of liability by Ultimate Superfoods 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, Ultimate Superfoods shall not sell or distribute or offer for use or sale in California any Covered Product for the reasonably foreseeable use of which would cause the purchaser to exceed the maximum allowable dosage level (MADL) for cadmium established by OEHHA 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, Ultimate Superfoods shall provide the following warning (“Warning”) as specified below:

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

The Warning shall be permanently affixed to or printed on the outside packaging or container of each unit of the Covered Products prior to distribution or sale within California. 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. Notwithstanding Section 2.1, Ultimate Superfoods may exhaust its current inventory of any units of the Covered Product bearing any warning language differing from the foregoing. Ultimate Superfoods agrees to implement the Warning at its earliest opportunity following the Effective Date.

## **3. PAYMENTS**

### **3.1 Civil Penalty Pursuant To Proposition 65**

Ultimate Superfoods shall pay a civil penalty of \$10,000, 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 civil penalty in the amount of \$10,000 shall be due and payable five (5) days

after the Effective Date herein. Ultimate Superfoods 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. Ultimate Superfoods shall remit the checks to:

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

Pacific Justice Center shall remit the check payable to the Office of Environmental Health Hazard Assessment and shall contemporaneously send a copy of the transmittal Ultimate Superfoods.

### **3.2 Payment of Attorneys' Fees And Expenses**

Ultimate Superfoods shall pay Ms. McCartney's attorney's fees and expenses incurred in pursuing the instant action, in the amount of \$40,000, by check made out to "Robert B. Hancock." Ultimate Superfoods 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 Ultimate Superfoods**

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 Ultimate Superfoods, its parents, subsidiaries, shareholders, directors, members, officers, employees, agents, attorneys, and manufacturers, distributors and retailers of the Covered Products from the claims asserted in Ms.

McCartney's 60-Day Notices regarding violation of Proposition 65 with respect to the Covered Products.

#### **4.2 Ultimate Superfoods's Release Of Ms. McCartney**

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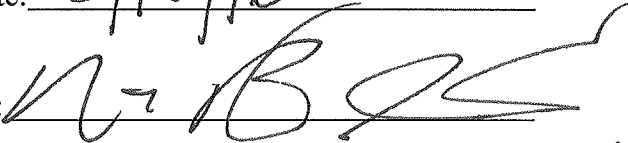
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subject to any conflicting obligation which will or might prevent or interfere with the execution or performance of this Settlement by said Party.

**AGREED:** Ultimate Superfoods, Inc.


Date: 3/10/16

By: 

Its: General Counsel / Ultimate Superfoods

**AGREED:**

Date: 3/11/16

  
Erika McCartney