

SETTLEMENT AGREEMENT

1. RECITALS

1.1 The Parties

This Settlement Agreement (“Settlement”) is entered into by and between Erika McCartney (“Ms. McCartney”) on the one hand, and River Canyon Retreat, Inc., and its parents, subsidiaries, shareholders, directors, members, officers, employees, agents, attorneys, and manufacturers, distributors and retailers, on the other (“River Canyon.”) Ms. McCartney and River Canyon shall hereinafter collectively be referred to as the “Parties.”

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

1.2 Allegations

Ms. McCartney alleges River Canyon manufactured, distributed, supplied, and/or sold a certain product, specifically, “Bulk Organic Dark Cacao Powder” (the “Covered Product”) 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 May 10, 2016, a sixty-day notice of violation, along with a Certificate of Merit, was provided by Ms. McCartney to River Canyon, certain distributors, and various public enforcement agencies regarding the alleged violation of Proposition 65. No public prosecutor

commenced any action in the intervening 60-day period.

1.3 No Admissions

River Canyon denies all allegations in Ms. McCartney's 60-Day Notice and maintains that the Covered Product has been, and is, in compliance with all laws, and that River Canyon has not violated Proposition 65. This Settlement shall not be construed as an admission of liability by River Canyon 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 to 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 the opposing Party.

2. INJUNCTIVE RELIEF

2.1 Warning Obligations for Covered Product

After the Effective Date, River Canyon shall not manufacture, decorate, import, distribute or offer for use or sale in California any Covered Product with a cadmium content of more than 4.1 micrograms per 18 grams, 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

The parties agree that the placement and appearance of the warning language appearing on the specimen attached hereto as Exhibit A, provided to consumers of the product at the point

of distribution, complies with the requirements of this paragraph. River Canyon agrees to modify the language to conform to the requirements of California Code of Regulations 25607.2 prior to its effective date of August 2018.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

River Canyon shall pay a civil penalty of \$17,500, 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 penalties shall be made in nine equal installments of \$1,944.44, commencing the first day of the calendar month following the Effective Date. All payments shall be made by check or money order. The first six installments shall be payable to "Office of Environmental Health Hazard Assessment." The seventh installment shall be payable to the "Office of Environmental Health Hazard Assessment" and "Erika McCartney" in the amounts of \$1,518.36 and \$426.08, respectfully. The eighth and ninth installments shall be payable to "Erika McCartney" River Canyon shall remit the payments, via regular or certified U.S. Mail 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

River Canyon shall pay Ms. McCartney's attorney's fees and expenses incurred in pursuing the instant action, in the amount of \$38,500. The payments shall be made in fifteen equal installments of \$2,566.66, commencing the first day of the calendar month following the

Effective Date. Each payment shall be made by check or money order made payable to “Robert B. Hancock.” River Canyon shall remit the payments, via regular or certified U.S. Mail to:

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

Any failure to remit any of the foregoing payments shall be deemed to be a material breach of this Settlement, and the parties agree that in that event the Settlement shall be rescinded in full, and the parties restored to their respective positions as though the Settlement had never existed.

4. RELEASES

4.1 Ms. McCartney’s Release Of River Canyon

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 unconditionally releases River Canyon from any and all claims, legal, equitable, statutory, administrative or otherwise, whether known or unknown, including, but not limited to those in Ms. McCartney’s 60-Day Notice, as well as from regarding violation of Proposition 65 with respect to the Covered Product, as well as all unknown claims.

4.2 River Canyon’ Release Of Ms. McCartney

River Canyon, by this Settlement, waives all rights to institute any form of legal action, including unknown claims, 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 River Canyon 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 the 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 subject to any conflicting obligation which will or might prevent or interfere with the execution or performance of this Settlement by said Party.

AGREED: River Canyon Retreat, Inc.

Date: Dec 7, 2017

By: Eric Botwin

Its: [Signature]

AGREED:

Date: _____

Erika McCartney

8. COUNTERPARTS

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AGREED: River Canyon Retreat, Inc.

Date: _____

By: _____


Its: _____

AGREED:

Date: 12/9/17



Erika McCartney

 **WARNING:** Consuming this product can expose you to chemicals including cadmium 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.