

SETTLEMENT AGREEMENT

1. RECITALS

1.1 The Parties

This settlement agreement (“Settlement Agreement”) is entered into by and between Erika McCartney (“Ms. McCartney”) on the one hand, and Luchi, LLC (“LUCHI”) on the other. Ms. McCartney and LUCHI shall hereinafter collectively be referred to as the “Parties.”

1.2 Allegations

Ms. McCartney alleges LUCHI manufactured, distributed, supplied, and/or sold “Sprout Living Epic Protein Powder, Chocolate Maca” (hereinafter the “Covered Product,” as it may be rebranded from time to time) for use by consumers, causing users in California to be exposed to cadmium and lead (the “Listed Substances”) without providing “clear and reasonable warnings,” in violation of Proposition 65.

On December 13, 2016, a 60-Day Notice of Violation, with a Certificate of Merit, was provided by Ms. McCartney to LUCHI and various public enforcement agencies regarding the alleged violation of Proposition 65 (“Notice”). No public prosecutor commenced any action in the 60-day period following issuance of the Notice.

1.3 No Admissions

LUCHI denies all allegations in Ms. McCartney’s 60-Day Notice and maintains that the Covered Product is and has been in compliance with all laws, that no exposures to lead and/or cadmium from the Covered Product occurred at levels requiring Proposition 65 warnings, that any level of lead and/or cadmium in the Covered Product is naturally occurring, that LUCHI is not a “person in the course of doing business,” and that LUCHI has not violated Proposition 65.

This Settlement Agreement shall not be construed as an admission of liability, or of any fact or issue of law, by LUCHI, 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 Agreement.

1.4 Compromise

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

1.5 Effective Date

The "Effective Date" shall be the date upon which the Settlement Agreement is signed by both Parties and delivered to the opposing party.

2. INJUNCTIVE RELIEF

2.1 Warning Obligations for Covered Product

Beginning on the Effective Date, LUCHI shall not Distribute into California any Covered Product without a warning as set forth in Paragraph 2.2 below. "Distributing into California" or "Distribute into California" means to ship any of the Covered Product to California for sale by, or to sell any of the Covered Product to, a distributor that LUCHI knows or has reason to know will redistribute or sell the Covered Product in or into California.

2.2 Warning

Prior to Distributing into California, the following warning ("Warning") shall be provided on the packaging of the Covered Product:

WARNING: [This product, and] Consuming this product, can expose you to chemicals including [lead and] cadmium, which are known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65warnings.ca.gov/food.

At its sole option, LUCHI may include the bracketed text in the Warning and/or set off the Warning from other text on the packaging by enclosing it in a box. The Warning shall be displayed on the packaging of the Covered Product with such conspicuousness, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Product.

3. PAYMENTS

3.1 Civil Penalty Pursuant to Proposition 65

LUCHI shall pay a civil penalty of \$11,500, 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. As set forth below, Ms. McCartney agrees to donate a portion of the penalty payable to her to *CancerCare*, a charitable organization providing financial assistance to individuals receiving cancer treatment. Ms. McCartney hereby waives her statutory rights to share in the subject civil penalty to any greater extent than set forth below.

The civil penalty shall be made by (1) a check or money order made payable to “Office of Environmental Health Hazard Assessment” in the amount of \$8,625; (2) a check or money order made payable to “Erika McCartney” in the amount of \$1,610; and (3) a check or money order made payable to “CancerCare” in the amount of \$1,265. Provided that LUCHI receives appropriate and necessary information from each of the recipients to allow for proper documentation relating to tax reporting, LUCHI shall remit the payments within ten (10) days of the Effective Date.

3.2 Payment of Attorneys' Fees and Expenses

In full satisfaction of all claims for attorneys' fees, costs, and expenses incurred, LUCHI shall pay the amount of \$28,500. This amount shall be made by check or money order made payable to "Robert B. Hancock." LUCHI shall remit the payments within ten (10) days of the Effective Date.

All payments under this Agreement shall be mailed or transmitted via overnight delivery to the following address:

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 Agreement, and the Parties agree that in that event, the Settlement Agreement shall be rescinded in full, and the Parties restored to their respective positions as though the Settlement Agreement had never existed.

4. RELEASES

4.1 Ms. McCartney's Release of LUCHI

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 and waives all rights to institute or participate in (directly or indirectly) any form of legal action and releases and discharges: (a) LUCHI and each entity to which LUCHI has directly or indirectly distributed or sold the Covered Product, including but not limited to all retailers, distributors, wholesalers, and customers; and (b) all past and current parents, subsidiaries, affiliates, directors, officers, employees, shareholders, agents, attorneys, successors, and assignees, of the entities identified in

(a) above (the released entities and individuals identified in (a) and (b) above are collectively referred to as “Releasees”), with respect to any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees (including but not limited to investigation fees, attorneys’ fees, and expert fees), costs, and expenses arising under Proposition 65 or any other statutory or common law based on any exposures to, or failure to warn about any exposures to, lead and cadmium in the Covered Product.

The Parties agree that compliance with the requirements of this Settlement Agreement by LUCHI shall constitute compliance with Proposition 65 by any Releasee with respect to any exposure to lead or cadmium in the Covered Product manufactured or purchased by LUCHI after the Effective Date.

4.2 LUCHI’s Release of Ms. McCartney

LUCHI, by this Settlement Agreement, 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 in this matter or seeking enforcement of Proposition 65 against LUCHI 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 or she 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 or she may lawfully waive all such rights and benefits pertaining to the claims in this Settlement Agreement. 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 in Sections 4.1 and 4.2 and that such releases are intended to cover known and unknown claims. The Parties agree that this Settlement Agreement and the releases contained herein shall be and remain effective in all respects, notwithstanding the discovery of such additional or different facts.

Nothing in Section 4 prevents or limits a Party's right to enforce the terms of this Settlement Agreement.

5. DISMISSAL OF CLAIMS AGAINST RELEASEES

Within five (5) days of receiving the payments required under Section 3, Ms. McCartney shall take all steps necessary to secure a dismissal with prejudice as to every Releasee in any pending lawsuit in which she alleges that such Releasee has violated Proposition 65 by exposing individuals to lead and/or cadmium in the Covered Product without a clear and reasonable warning.

6. SEVERABILITY

Should any non-material part or provision of this Settlement Agreement 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.

7. GOVERNING LAW

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

8. INTEGRATION

This Settlement Agreement 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.

9. COUNTERPARTS

This Settlement Agreement 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 Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Settlement Agreement shall have the same force and effect as the originals.

10. MODIFICATION

This Settlement Agreement may be modified by written stipulation of the Parties.

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Party. Each Party has read, understands, and agrees to all of the terms and conditions of this Settlement agreement. Each Party warrants to the other that it is free to enter into this

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Settlement Agreement and is not subject to any conflicting obligation which will or might prevent or interfere with the execution or performance of this Settlement Agreement by said Party.

AGREED: Luchi, LLC

AGREED:

Date: 6/21/2018

Date: 5/15/18

By: *Mark Malinsky*
Mark Malinsky

Erika McCartney
Erika McCartney

Its: President