

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 Made in Nature LLC, on the other (“Made in Nature”). Ms. McCartney and Made in Nature shall hereinafter collectively be referred to as the “Parties.”

Ms. McCartney is a citizen of the State of California. Made in Nature is or has been 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 Made in Nature manufactured, distributed, supplied, and/or sold a certain product, specifically, “Made in Nature Organic Goji Berries” (the “Covered Product”) for use by consumers, causing users in California to be exposed to lead (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 a “clear and reasonable warning,” in violation of Proposition 65. Lead is subject to Proposition 65 warning requirements because it is listed as known to the State of California to cause reproductive harm.

On February 17, 2017, a sixty-day notice of violation, along with a Certificate of Merit, was provided by Ms. McCartney to Made in Nature and various public enforcement agencies regarding the alleged violation of Proposition 65. No public prosecutor commenced any action in the intervening 60-day period.

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1.3 No Admissions

Made in Nature 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 Made in Nature has not violated Proposition 65. This Settlement shall not be construed as an admission of liability by Made in Nature 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

After the Effective Date, Made in Nature shall not manufacture, import, distribute or offer for use or sale in California any Covered Product.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

Made in Nature shall pay a civil penalty of \$13,500, 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.

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The civil penalty shall be made by check or money order made payable to "Office of Environmental Health Hazard Assessment" in the amount of \$10,125; and (2) a check or money order made payable to "Erika McCartney" in the amount of \$3,375. Made in Nature shall remit the payments within ten business days of the Effective Date, 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

Made in Nature shall pay Ms. McCartney's attorney's fees and expenses in the amount of \$32,500. The payments shall be made by check or money order made payable to "Robert B. Hancock." Made in Nature shall remit the payments within ten business days of the Effective Date, 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 Made in Nature

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 discharge, waive, and release Made in Nature and

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its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, and agents (collectively, "Releasees"), and all entities to whom they directly or indirectly distribute or sell the Covered Product, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, the "Downstream Releasees") from all claims under Proposition 65 or any other statutory or common law regarding the failure to warn about exposures to lead arising in connection with the Covered Product manufactured, distributed, or sold by Made in Nature on or before the Effective Date. Compliance with the terms of this Settlement by Made in Nature constitutes compliance with Proposition 65 by Made in Nature, Releasees, and Downstream Releasees for purposes of exposures to lead from the Covered Product manufactured, distributed, or sold by Made in Nature after the Effective Date.

4.2 Made in Nature's Release Of Ms. McCartney

Made in Nature, 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 Made in Nature in this matter.

4.3 Waiver Of Unknown Claims

The Parties acknowledge 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. MODIFICATION

This Settlement may be modified only by written agreement of the Parties and with prior notice to the California Attorney General's Office.

6. NOTICE

All notices required pursuant to this Settlement and correspondence shall be sent by first class mail or by overnight delivery service to the following:

For Ms. McCartney:

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

For Made in Nature:

Doug Brent
1708 13th Street
Boulder, CO 80302

AND

Matthew P. Lewis
White & Case LLP
555 S. Flower Street, Suite 2700
Los Angeles, CA 90071

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7. 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.

8. GOVERNING LAW

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

9. 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.

10. 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.

11. 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: Made in Nature LLC.


Date: 9/11/17

By: 

Its: CEO

AGREED:

Date: 9/8/17


Erika McCartney