

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Safe Products for Californians LLC (“SPFC”) and Lost Empire Herbs (“Lost Empire”) with SPFC and Lost Empire collectively referred to as the “Parties.” SPFC is a limited liability California company with its principal place of business within the State of California, County of Santa Clara, who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. SPFC alleges, and, for purposes of this settlement only, Lost Empire does not dispute, that Lost Empire employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

SPFC alleges that Lost Empire manufactures, imports, sells and/or distributes for sale in California products containing lead and lead compounds, and that it does so without providing an adequate health hazard warning that SPFC alleges is required by Proposition 65. Lead and lead compounds are listed pursuant to Proposition 65 as chemicals known to the state of California to cause reproductive toxicity at the levels alleged by SPFC to be present in the products.

1.3 Product Description

The products that are covered by this Settlement Agreement are identified in SPFC’s Notice of Violation as Lost Empire Powdered Dietary Supplements, consisting of: “Lost Empire Phoenix Formula,” “Lost Empire Athena,”; and “Lost Empire He Shou Wu,” that are manufactured, imported, distributed, sold and/or offered for sale by Lost Empire and/or its customers in the state of California, hereinafter the “Covered Products.”

1.4 Notice of Violation

On or about August 24, 2021, SPFC served Lost Empire, and certain requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Lost Empire violated Proposition 65 when it failed to warn its customers and consumers in California that the Covered Products expose users to lead and lead compounds. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Lost Empire denies the material, factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that it has manufactured, imported, sold and/or distributed for sale in California, including the Covered Products, have been and are in compliance with all laws including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Lost Empire of any fact, finding, and issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Lost Empire of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Lost Empire. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean one year from the date on which this document has been signed by all Parties.

2. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

2.1 Product Removal

As of the Effective Date, Lost Empire shall be permanently enjoined from manufacturing for sale in the State of California, “Distributing into the State of California,” or directly selling in the State of California, any Covered Products manufactured after the Effective Date which expose

a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day, unless it meets the warning requirements under section 2.3.

2.1.1 As used in this Settlement Agreement, the term “Distributing into the State of California” shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor Lost Empire knows or has reason to know will sell the Covered Products in California.

2.1.2 For purposes of this Settlement Agreement, the “Daily Lead Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily shall be one.

2.2 Reformulated Covered Products

Reformulated Covered Products are Covered Products manufactured after the Effective date for which the “Daily Lead Exposure Level” is no greater than 0.5 micrograms of lead per day.

2.3 Clear and Reasonable Warnings

For any Covered Products manufactured after the Effective Date that do not qualify as Reformulated Covered Products and are directly sold or offered for sale in California by Lost Empire after the Effective Date, Lost Empire shall only sell or offer said non-reformulated Covered Products for sale in California when accompanied with one of the following warnings:

OPTION 1:

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

OR:

OPTION 2:

WARNING: [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov/food”

Lost Empire shall use the phrase “cancer and” in the warning if Lost Empire has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead or if Lost Empire has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. The words “chemicals including” may be omitted from the warning content if the warning is being provided for an exposure to lead only.

The Warning shall be provided through one of the following methods: (1) a product-specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point of display of the product; or (2) a product-specific warning provided via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the consumer product, without requiring the purchaser to seek out the warning; or (3) a warning on the label that is securely affixed to or printed upon the label and complies with this Section 2.3. If the warning is provided on the label, it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet where a California delivery address is indicated, the warning shall be provided either by including the warning on the product display page, by otherwise prominently displaying the warning to the purchaser during the checkout process prior to completing the purchase, or by any other means authorized under Section 25607.1 of Title 27 of the California Code of Regulations. An asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the warning. Given Lost Empire’s lack of control over third-party websites, the online warning requirements expressed in this Section apply only to Covered Products sold through Lost Empire’s website. With respect to any downstream reseller customers of Lost Empire who are subject to Proposition 65, Lost Empire may give written notice, including labels, labeling, shelf signs, or tags bearing the warning, and all other necessary warning materials, to the authorized agent of such downstream reseller customers. Such written notice shall instruct the downstream

reseller customers that the labels, labeling, shelf signs, or tags bearing the warning must be displayed on or in proximity to the Covered Products with such conspicuousness, as compared with other words, statements or designs as to render the warning likely to be seen, read, and understood by an ordinary individual prior to sale.

In the event Lost Empire provides the warning pursuant to OPTION 2, above, the entire warning must be in a type size no smaller than the largest size used for other consumer information on the product, and in no case shall the warning appear in a type size smaller than 6-point type. For all warnings, the word “**WARNING**” shall be in all capital letters in bold print. Any additional statements in the warning shall comply with Title 27, California Code of Regulations, Section 25601(e).

If subsequently enacted changes to Proposition 65 or its implementing regulations require the use of additional or different information on any warning specifically applicable to the Covered Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe Harbor warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this Section.

3. MONETARY PAYMENTS

3.1 Civil Penalty

Pursuant to Health and Safety Code section 25249.7(b), Lost Empire shall pay civil penalties in the amount of \$500. The penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to SPFC. SPFC’s counsel shall be responsible for remitting Lost Empire’s penalty payment under this Settlement Agreement to OEHHA. Within five (5) business days of this Agreement being signed by the Parties, Lost Empire shall issue a check payable to “Safe Products for Californians, LLC” in the amount of \$125, and a check payable to OEHHA in the amount of \$375. These penalty payments shall be delivered to the address listed in Section 3.3 below.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that SPFC and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Lost Empire expressed a desire to resolve SPFC's fees and costs. The Parties then negotiated a resolution of the compensation due to SPFC and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5. For all work performed through the mutual execution of this agreement, Lost Empire shall reimburse SPFC and their counsel \$4,000 within five (5) business days of this Agreement being signed by the Parties. Lost Empire's payment shall be delivered to the address in Section 3.3 in the form of a check payable to "Moore Law Firm, P.C." The reimbursement shall cover all fees and costs incurred by SPFC investigating, bringing this matter to Lost Empire's attention and negotiating a settlement of the matter in the public interest.

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

Safe Products for Californians, LLC
c/o Moore Law Firm, P.C.
300 South First Street, Suite 342
San Jose, CA 95113

4. CLAIMS COVERED AND RELEASED

4.1 SPFC's Release of Proposition 65 Claims

This Settlement Agreement is a full, final and binding resolution between SPFC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, and Lost Empire, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Lost Empire directly or indirectly distributes or sells Covered Products, including downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for

any violation of Proposition 65 through the Effective Date that were or could have been asserted by SPFC relating to the Covered Products. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to lead and lead compounds from the Covered Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Lost Empire.

4.2 SPFC's Individual Releases of Claims

SPFC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of SPFC of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead and lead compounds in the Covered Products manufactured, imported, distributed, or sold by Lost Empire prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Lost Empire. Nothing in this section affects SPFC's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Lost Empire's Covered Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3, SPFC, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that it may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and

investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the allegations made in the Notice.

4.3 Lost Empire's Release of SPFC

Lost Empire, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against SPFC and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by SPFC and their attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

4.4 Waiver of Civil Code Section 1542

With respect to the foregoing waivers and releases in this Settlement Agreement, SPFC hereby specifically waives any and all rights and benefits which it now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this

Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Covered Products, then Lost Empire shall provide written notice to SPFC of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected. If the Office of Environmental Health Hazard Assessment promulgates one or more regulations governing the provision of Proposition 65 warnings for foods, Lost Empire may comply with such regulations as to the Covered Products without being deemed in breach of this Settlement Agreement. Nothing in this Settlement Agreement shall be interpreted to relieve Lost Empire from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Lost Empire:

Zane Christopher
Lost Empire Herbs
8301 NW 101st Ter. Ste #1
Kansas City, MO 64153

For SPFC:

Proposition 65 Coordinator
Moore Law Firm, P.C.
300 South First Street, Suite 342
San Jose, CA 95113

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements addressing compliance with Proposition 65 as to the Covered Products not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

9. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

SPFC agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

11. MODIFICATION


This Settlement Agreement may be modified only by a written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

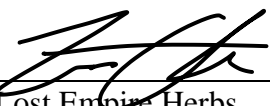
AGREED TO:

Dated: Nov 7, 2021


KR Moore (Nov 7, 2021 17:11 PST)

Safe Products for Californians, LLC
By: Randy Moore, Operating Manager

Dated: 11/9/2021



Lost Empire Herbs
By: Zane Christopher, Director of Quality Assurance