

## SETTLEMENT AND RELEASE AGREEMENT

### 1. **INTRODUCTION**

#### 1.1. **Parseghian and Mutual Trading Co., Inc.:**

This Settlement Agreement is entered into by and between Berj Parseghian ("Parseghian"), represented by his attorneys KJT Law Group, LLP on the one hand, and Mutual Trading Co., Inc. ("MTC"), on the other hand, with Parseghian and MTC collectively referred to as the "Parties."

#### 1.2. **General Allegations**

Parseghian alleges that MTC manufactured and distributed and offered for sale Mushrooms in the State of California, which contain lead and cadmium, and that such sales have not been accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. The State of California has also listed cadmium as a chemical known to cause cancer, developmental toxicity and reproductive harm.

#### 1.3. **Product Description**

The products covered by this Settlement Agreement are Shiitake Mushrooms, which include "Miyako Brand – Shii-Take – Japanese Forest Mushrooms; UPC #: 0 72546 31152 0", that MTC has sold, offered for sale, manufactured, or distributed in California and that contain lead and cadmium. All such items shall be referred to herein as the "Covered Product."

#### 1.4. **Notice of Violation**

On February 24, 2022, Parseghian served MTC and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled "60-Day Notice of Violation" ("Notice") that provided MTC

and such public enforcers with notice that MTC was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Covered Product exposed users in California to lead and cadmium. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. **No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning MTC's compliance with Proposition 65. Specifically, MTC denies the material factual and legal allegations contained in Parseghian's Notice and maintains that all products that it has placed for sale and distribution in California, including the Covered Product, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by MTC of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by MTC of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by MTC. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of MTC under this Settlement Agreement.

1.6. **Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

**2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

2.1 Beginning on the Effective Date, MTC 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 Product that expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day or to a “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day, unless it meets the warning requirements under Section 2.2.

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 that MTC knows or has reason to know will sell the Covered Product in California. The injunctive relief in Section 2 does not apply to any Covered Product that has left the possession, and is no longer under the control of MTC prior to the Effective Date and all claims as to such Covered Product is released in this Settlement Agreement.

For purposes of this Settlement Agreement, "Daily Lead Exposure Level" and the "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead or cadmium per gram of product, multiplied by grams of product per serving of the product as stated on the label, multiplied by servings of the product per day stated on the label, which equals micrograms of lead or cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

## **2.2 Clear and Reasonable Warnings**

If MTC is required to provide a warning pursuant to Section 2.1, one of the following warnings must be utilized ("Warning"):

### **Option 1:**

**WARNING:** Consuming this product can expose you to chemicals including [lead and/or cadmium], which [is or 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](http://www.P65Warnings.ca.gov/food)

**Option 2:**

**WARNING:** Cancer and Reproductive Harm – <http://www.p65warnings.ca.gov/food>

The Warning shall be securely affixed to or printed upon the label of each Covered Product and it must be set off from other surrounding information. In addition, for any Covered Product sold over the internet, the Warning shall appear on the checkout page in full text or through a clearly marked hyperlink using the word "WARNING" in all capital and bold letters when a California delivery address is indicated for any purchase of any Covered Product. If a hyperlink is used, the hyperlink must go directly to a page prominently displaying either the Option 1 Warning or the Option 2 Warning without content that detracts from the Warning. An asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label and the word "WARNING" shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

MTC must display the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, or on its website, if applicable, to render the

Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

For purposes of this Settlement Agreement, the term "label" means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper.

If Proposition 65 warnings for lead and cadmium should no longer be required, MTC shall have no further obligations pursuant to this Settlement Agreement.

**3. CONSIDERATION**

In settlement of all the claims referred to in this Settlement Agreement, the Parties reached an accord on the compensation due, under the private attorney general doctrine and principles of contract law. Under these legal principles, MTC shall pay a total of (\$38,000.00) as settlement and for fees and costs, incurred as a result of investigating and bringing this matter to MTC's attention.

**4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, (\$6,000.00) shall be considered a "civil penalty." The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% (i.e., \$4,500.00) of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% (i.e., \$1,500.00) of the penalty remitted to Parseghian.

**5. REIMBURSEMENT OF FEES AND COSTS**

In settlement of all the claims referred to in this Settlement Agreement, (\$32,000.00) shall be considered reimbursement of Parseghian's attorneys' fees, expert and investigation fees,

and related costs associated with this matter and the Notice. The Parties reached an accord on the compensation due to Parseghian and its counsel under the private attorney general doctrine and principles of contract law.

**6. PAYMENT INFORMATION**

MTC shall send these payments within fifteen (15) business days following the Effective Date. Unless other payment transmittal directions are provided, payment shall be mailed to the following addresses respectively:

All payments owed to Plaintiff and for attorneys' fees, shall be delivered to the following payment address:

**KJT LAW GROUP LLP**  
**230 N. Maryland Avenue, Suite 306**  
**Glendale, CA 91206**

All payments owed to OEHHA shall be delivered directly to OEHHA at the following addresses:

For United States Postal Delivery:

Mike Gyurics  
Senior Accounting Officer -- MS 19-B  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA. 95812-0410

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

**7. RELEASE OF ALL CLAIMS**

**7.1. Release of MTC, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 through 6 above, Parseghian, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Covered Product, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) MTC, (b) its respective equity owners, parents, subsidiaries, affiliates, sister and related companies and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees; and (c) each of MTC's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users (collectively "Releasees"), for any alleged violations of Proposition 65, or any other alleged violation of statutory or common law, arising from alleged exposures to lead and cadmium in relation to the Covered Product.

Parseghian also, in his capacity, and on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, provides a general 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 any nature, character or kind, known or unknown, suspected or unsuspected, against

MTC and the Releasees, for any alleged violations of Proposition 65, or any other alleged violation of statutory or common law, arising from alleged exposures to lead and cadmium in relation to the Covered Product.

Parseghian acknowledges that he is familiar with California Civil Code section 1542, 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.

Parseghian, in his capacity, and on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

**8. 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 as to the Covered Product, then MTC shall have no further obligations pursuant to this Settlement Agreement.

**9. NOTICES**

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



For MTC:                      Letitia D. Moore, Esq.  
  Holland & Knight, LLP  
  50 California Street, Suite 2800  
  San Francisco, CA 94111

For Parseghian:              Tro Krikorian, Esq.  
  KJT Law Group, LLP  
  230 N. Maryland Ave., Suite 306  
  Glendale, CA 91206

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.

**10.     COUNTERPARTS; FACSIMILE/E-SIGNATURES**

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

**11.     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 all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**12.     MODIFICATION**

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

**13.     DRAFTING**

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this

Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

**14. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**IN WITNESS WHEREOF, the Parties have agreed, accepted, and executed this Agreement on the date written.**

Executed this 8/18/2022 day of \_\_\_\_\_, 2022, at Pasadena, California.

DocuSigned by:  
*BERJ PARSEGHIAN*  
17B4A0E5087E404...  
Berj Parseghian

Executed this 18th day of August, 2022, at El Monte, California.

Mutual Trading Co., Inc.

*M. Ohata*  
By: Masatoshi Ohata  
President / CEO

**APPROVED AS TO FORM BY:**

Executed this 8/19/2022 day of \_\_\_\_\_, 2022, at Glendale, California.

DocuSigned by:  
*Tro Krikorian*  
0911CF9328F0472...  
Tro Krikorian, Esq. Attorney for Berj Parseghian  
KJT Law Group, LLP

Executed this 4th day of August, 2022, at San Francisco Area, California.

*Letitia D. Moore*  
Letitia D. Moore, Esq. Attorney for Mutual Trading Co., Inc.  
Holland & Knight, LLP