

# SETTLEMENT AGREEMENT

## **1. INTRODUCTION**

### **1.1 Parties**

This settlement agreement ("Settlement Agreement") is entered into by and between CalSafe Research Center, Inc., ("CRC"), on the one hand, and Cherie Sweet Heart, ("CSH" or "Defendant") on the other hand, with CRC and CSH each individually referred to as a "Party" and collectively as the "Parties."

### **1.2 General Allegations**

CRC alleges in two separate 60-Day Notices of Violations dated April 29, 2022, that CSH sells and/or distributes nutritional powder mixes in California that contain lead without a warning required by Health and Safety Code §§ 25249.5 *et seq.* ("Proposition 65") (the "Notice"). Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

### **1.3 Product Description**

The product covered by this Settlement Agreement is defined as, and expressly limited to Sweet Heart Group Brand Moringa Spirulina Blend, Sweet Heart Group Brand Turmeric Matcha and Sweet Heart Group Brand Organic Matcha Green Tea Powder, (hereinafter collectively the "Product") that allegedly contains lead and that is manufactured, sold or distributed for sale in California by CSH as stated in the Notice.

### **1.4 Notice of Violation**

On April 29, 2022, CRC served the Notice on CSH, the California Attorney General and the other requisite public enforcers, alleging that CSH and others violated Proposition 65 when they failed to consumers in California of the alleged exposures to lead from the Product.

To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

CSH denies the material, factual and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by CSH or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by CSH or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by CSH. This Section shall not, however, diminish or otherwise affect CSH's obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, CSH maintains that it has not knowingly sold and/or distributed the Product for sale in California in violation of Proposition 65.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean ninety (90) days following the full execution of this Settlement Agreement by all Parties.

## **2. INJUNCTIVE RELIEF**

### **2.1 Clear and Reasonable Warnings**

If CSH does not achieve the Target Level by the Effective Date, CSH agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California (in person or online) the Product that contains a warning as provided for in paragraph 2.4.

### **2.2 General Warning Requirements**

CSH agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product shall consist of a warning affixed to the packaging, label, tag, or directly to each of the Product sold or distributed in California by CSH that contains one of the following statements:

1) WARNING: Consuming this product can expose you to chemicals including Lead which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food);

2) WARNING: Cancer and Reproductive Harm-[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

The same warning shall be posted on any websites where the Product is sold in California.

#### **(i) Changes in Warning Regulations or Statutes**

In the event that the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress or voters with such requirements or permission, CSH shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations, legislation or judicial rulings are enacted or issued providing that a Proposition 65 warning for the product is no longer required, a lack of warning will not thereafter be a breach of this Agreement.

### **2.3 Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2 shall not apply to Product that is already in the stream of commerce as of the Effective Date, which Product is expressly subject to the releases provided in Section 4.1.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Total Settlement Penalty**

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, CSH shall make a total settlement payment of forty thousand dollars **(\$40,000.00)** ("Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty, Attorney's Fees and Costs, an Additional Settlement Payment and a Cost Reimbursement as set forth in Sections 3.2, 3.3, 3.4 and 3.5 below.

#### **3.2 Civil Penalty Payment**

Pursuant to Health and Safety Code§ 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, CSH agrees to pay four thousand dollars **(\$4,000.00)** in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code§§ 25249.12(c)(1) & (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 amount retained by CRC. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, CSH shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of three thousand dollars **(\$3000.00)** and (b) CRC in the amount of one thousand dollars **(\$1,000.00)**.

All payments owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Delivery Service:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS 19B  
Sacramento, CA 95812-4010

For Non-United States Postal Delivery Service:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street MS #19B  
Sacramento, CA 95814

All penalty payments owed to CRC shall be sent to:

Manning Law APC  
Client Trust and CalSafe Research Center (taxpayer identification number 84-4419173)  
20062 SW Birch Street, Suite 200  
Newport Beach, CA 92660

#### **3.3 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to CRC and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within ten (10) days of the date this Settlement Agreement is executed by the Parties, CSH agrees to pay thirty-six thousand

dollars (**\$36,000.00**) to CRC and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of CSH, and negotiating a settlement. The \$36,000.00 in Attorney's Fees and Costs shall be paid via four checks, each of which will be for \$9,000, each payable on the first of each month beginning on September 1, 2022. The total amount of these four checks is \$36,000.00. Each check will be payable to "Manning Law APC".

### **3.4 Payment Address**

All payments required under this section to Manning Law APC shall be delivered to:

Manning Law APC (taxpayer identification number 83-0502205)  
20062 SW Birch Street, Suite 200  
Newport Beach, CA 92660

### **3.5 Tax Documentation**

CSH agrees to provide a completed IRS 1099 form for its payments to, and CRC and Manning Law agree to provide IRS W-9 forms to CSH. The Parties acknowledge that CSH cannot issue any settlement payments pursuant to Section 3 above until after CSH receives the requisite W-9 forms from CRC's counsel.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 CRC's Release of CSH**

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges CSH and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors (the "Defendant Releasees") and all entities to which Defendant Releasees directly or indirectly distribute or sell the Product, including but not limited to Grocery Outlet, Inc. and any other distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees, (collectively, the "Released Parties" and individually, a "Released Party"). CRC, on behalf of itself and its officers, directors, shareholders, employees, agents, parent companies, subsidiaries and divisions hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted base on or related to the handling, use, sale, distribution or consumption of the Product in California, as to any alleged violation of Proposition 65 or its implementing regulations, including without limitation any failure to provide Proposition 65 warnings on the Product with respect to alleged exposures to lead.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 above, CRC, 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 Defendant Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to lead in the Product.

#### **4.2 CSH's Release of CRC**

CSH on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all claims against CRC and its attorneys and other representatives, for any and all actions taken, or statements made by CRC and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

#### **4.3 California Civil Code Section 1542**

It is possible that other claims not known to the Parties, arising out of the Notice or relating to the Products, will develop or be discovered. CRC on behalf of itself only, and CSH on behalf of itself only, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. CRC and CSH acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims involving the products or the Notices, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads 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**

In the event that any of the provisions of this Settlement Agreement are held by a court of competent jurisdiction to be unenforceable, the validity of the remaining enforceable provisions 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, without regard to its conflicts of law principals.

#### **7. NOTICE**

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class mail or electronic mail to the address set forth in this Paragraph. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by certified mail, return receipt requested. Said change shall take effect on the date the return receipt is signed by the Party receiving the change.

Notices shall be sent to:

For CRC

Joseph R. Manning, Jr.  
Manning Law, APC  
20062 SW Birch St. Suite 200  
Newport Beach, CA 92660

For CSH:

Youjun Liu, Esq.

Liu & Wakabayashi LLP  
2831 Camino Del Rio South Ste216  
San Diego, CA 92108

**8. COUNTERPARTS: FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF), or electronic signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

**9. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7(f)**

CRC and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code §25249.7(f).

**10. MODIFICATION**

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

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party.

**12. INTERPRETATION**

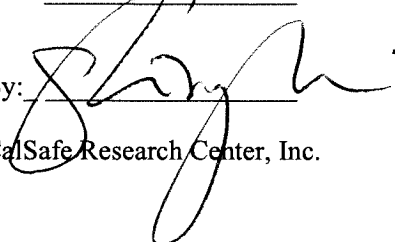
No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of Civil Code § 1654. It is conclusively presumed that the Parties participated equally in the drafting of this Agreement.

**13. 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.


AGREED TO:

Date: 8/23/22

By:   
CalSafe Research Center, Inc.

AGREED TO:

Date: 8/24/22

By:   
Cherie Sweet Heart