

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 OMG! Food Company, LLC, ("OMG!") on the other hand, with CRC and OMG! each individually referred to as a "Party" and collectively as the "Parties."

1.2 General Allegations

CRC alleges in a 60-Day Notice of Violation dated September 9, 2022 (2022-01510), that OMG! sells and/or distributes Ancestral Roots, Organic Ashwagandha Powder, UPC #85228008224 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, Ancestral Roots, Organic Ashwagandha Powder, UPC #85228008224, ("Product") that contains lead and that is manufactured, sold or distributed for sale in California by OMG!.

1.4 Notice of Violation

On September 9, 2022, CRC served the Notice on OMG!, the California Attorney General and the other requisite public enforcers, alleging that OMG! 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 or is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

OMG! 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 OMG! or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, assigns, 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 OMG! 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 OMG!. This Section shall not, however, diminish or otherwise affect OMG!'s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the "Effective Date" shall be May 1, 2023.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

Beginning on the Effective Date, unless it meets the warning requirements under Sections 2.2, OMG! shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California" (in person or online), purchasing for sale or directly selling in the State of California, any Product that exposes a person to an exposure level of more than 0.5 micrograms of lead per serving, with serving size measured by the serving size specified on the label of the Product.

As used in this Settlement Agreement, the term "Distributing into the State of California" shall mean to directly ship Product into California for sale in California or to sell Product to a distributor that OMG! knows or has reason to know will sell the Product in California. The injunctive relief in Section 2 does not apply to Product that has left the possession and is no longer under the control of OMG! prior to the Effective Date and all claims as to such Product is released in this Settlement Agreement.

2.2 General Warning Requirements

OMG! 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 OMG! 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;

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

The warning shall be offset in a box with black outline. 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, OMG! 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, OMG! shall make a total settlement payment of Eighteen Thousand Dollars and 00/100 **(\$18,000.00)** ("Total Settlement Amount") as follows: an initial payment of Five Thousand Dollars and 00/100 (\$5,000.00) and the remaining amount of Thirteen Thousand Dollars and 00/100 **(\$13,000.00)** to be paid over 6 months in monthly installment amounts of Two Thousand One Hundred and Sixty-Seven Dollars and 00/100 **(\$2,167.00)** for 5 months and a final payment of Two Thousand One Hundred and Sixty Dollars and 00/100 **(\$2,165.00)** in the final month. The Total Settlement Amount shall be apportioned into a Civil Penalty, Attorney's Fees and Costs, 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, OMG! agrees to pay One Thousand Eight Hundred Dollars and 00/100 **(\$1,800.00)** 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 thirty (30) days of the Effective Date, OMG! shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of One Thousand Three Hundred Fifty Dollars and 00/100 **(\$1,350.00)** and (b) CRC in the amount of Four Hundred Fifty Dollars and 00/100 **(\$450.00)**.

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)
26100 Towne Centre Drive
Foothill Ranch, CA. 92610

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, OMG! agrees to pay Sixteen Thousand Two Hundred Dollars and 00/100 (**\$16,200.00**) to CRC and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of OMG!, and negotiating a settlement. This amount shall be paid as follows: an initial payment of Three Thousand and Two Hundred Dollars and 00/100 (**\$3,200.00**) within thirty (30) days of the Effective Date, and subsequent installment payments in the amount of Two Thousand One Hundred and Sixty-Seven Dollars and 00/100 (**\$2,167.00**) which shall be due on: June 1, 2023; July 1, 2023; August 1, 2023; September 1, 2023; and October 1, 2023. A final payment of Two Thousand One Hundred and Sixty-Five Dollars and 00/100 (**\$2,165.00**) shall be due on November 1, 2023. These payments for Attorney's Fees and Costs shall be paid via a check made payable to "Manning Law, APC".

Should OMG! fail to make any payment set forth in Section 3.1, 3.2, or 3.3 within the time allotted under this Agreement, OMG shall have seven (7) business days to cure by making such payment. The seven day cure period shall commence the day after a payment deadline as set forth herein and does not require written notice from CRC or Manning Law. Notwithstanding that notice is not required to trigger the cure period, CRC and Manning Law agree to provide written notice to OMG! of any intent to sue or otherwise initiate civil proceedings against OMG! to collect on an outstanding payment or otherwise enforce this Agreement. Neither CRC nor Manning Law may initiate any civil action against OMG! to enforce payment under this Agreement unless and until three (3) business days have passed since issuance of written notice to OMG! of CRC or Manning Law's intent to sue.

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)
26100 Towne Centre Drive
Foothill Ranch, CA. 92610

3.5 Tax Documentation

OMG! 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 OMG!. The Parties acknowledge that OMG! cannot issue any settlement payments pursuant to Section 3 above until after OMG! receives the requisite W-9 forms from CRC's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 CRC's Release of OMG!

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges OMG! and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, assigns, distributors (the "Defendant Releasees") and all entities to which Defendant Releasees directly or indirectly distribute or

sell the Product, 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 Products with respect to exposures to lead.

4.2 OMG!'s Release of CRC

OMG! 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 OMG! 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 OMG! acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, 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
26100 Towne Center Drive
Foothill Ranch, CA. 92610
P65@manninglawoffice.com

For OMG!:

Roni Gloger
Founder, OMG! Food Company
25100 Normandie Avenue, Unit A
Harbor City, CA 90710
roni@omgfoodcompany.com
cc: damon.pitt@klgates.com

8. COUNTERPARTS: FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) 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

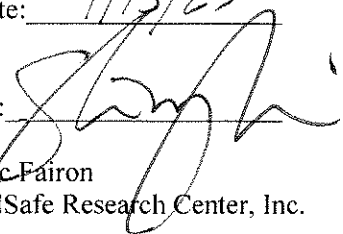
No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of Civil Code § 1654. It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

14. ENFORCEMENT

Any legal action to enforce this Settlement Agreement shall be brought in the county of Los Angeles of the State of California. The prevailing party shall be entitled to recover its reasonable attorney's fees and costs arising from a successful enforcement or defense of such enforcement action concerning the Settlement Agreement.

AGREED TO:

Date: 4/13/23

By: 

Eric Fairon
CalSafe Research Center, Inc.

AGREED TO:

Date: _____

By: _____

Roni Gloger
OMG! Food Company, LLC

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.

14. ENFORCEMENT

Any legal action to enforce this Settlement Agreement shall be brought in the county of Los Angeles of the State of California. The prevailing party shall be entitled to recover its reasonable attorney's fees and costs arising from a successful enforcement or defense of such enforcement action concerning the Settlement Agreement.

AGREED TO:

AGREED TO:

Date: _____

Date: 04/17/2023

By: _____

By: Roni Gloger

Eric Fairon
CalSafe Research Center, Inc.

Roni Gloger
OMG! Food Company, LLC