

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe and Beautiful (“**KASB**”) and Paris Gourmet of New York, Inc. (“**Paris Gourmet**”), with KASB and Paris Gourmet each individually referred to as a “**Party**” and, collectively, the “**Parties.**” KASB is a California-based non-profit organization proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. Paris Gourmet is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 Consumer Product Description

KASB alleges that Paris Gourmet manufactures, imports, sells, and distributes for sale in California dried mushrooms containing the heavy metals, Lead (**Pb**) and Mercury (**Hg**), including, but not limited to, *Gourmand Dried Porcini Mushrooms, Grade A, 1LB, SKU: GO1602, UPC: 8 37775 00682 7, Best By: 11/03/2024*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Dried mushrooms are referred to hereinafter as the “**Products.**” Lead (**Pb**) and Mercury (**Hg**) are listed pursuant to Proposition 65 as chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Notice of Violation

On November 4, 2022, KASB served Paris Gourmet, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Paris Gourmet violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to Lead and Mercury. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Paris Gourmet denies the factual and legal allegations contained in the Notice and maintains that all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Paris Gourmet of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Paris Gourmet's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean December 11, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION, LABELING, OR REMOVAL

Paris Gourmet Shall be deemed compliant with both the terms of this Agreement and with Proposition 65 by electing any one or more of the options specified in Sections 2.1 (Reformulation), 2.2 (Labeling Option), or 2.3 (Removal Option).

2.1 Reformulation Option

Commencing on the Effective Date and continuing thereafter, all Products Paris Gourmet sells, ships, or distributes for sale in or into California, directly or through third party retailers, e-commerce platforms or customers with nationwide distribution, shall be Reformulated Products as defined in Section 2.1.1.

2.1.1 Reformulation Products. For purposes of this Agreement, "Reformulated Products" are Products in compliance with the standards set forth in Sections 2.1.1.1 and 2.1.1.2.

2.1.1.1 Mercury Standard

Products which contain no detectable amount of Mercury. For purposes of this Agreement "**no detectable amount**" shall mean not detected when analyzed Pressure Digestion and Inductively Coupled Plasma/Mass Spectrometry by a laboratory accredited by the State of California, a federal agency, or the International Laboratory Accreditation Cooperation

(“ILAC”), and the European Accreditation Laboratory Committee in accordance with International Organization for Standards/International Electrotechnical Commission (“ISO/IEC”) 17043 and ISO Guide 34 (“Accredited Laboratory”). All Mercury concentration levels pursuant to this Section 2.2 shall be determined pursuant to a Pressure Digestion and Inductively Coupled Plasma/Mass Spectrometry with sample preparation and analysis in conformity with AOAC 2013.6 U.S. Environmental Protection Agency method (“**EPA Method**”) 6020 or 6020A, or its equivalent, with inductively coupled plasma mass spectrometry (“**ICP-MS**”) equipment with a level of detection of at least ten parts per billion (“**10 ppb**”) that meets standard laboratory QA/QC requirements.

2.1.1.2 Lead Standard

Products which contain a maximum concentration of seventeen parts per billion (“**17 ppb**”) of the heavy metal lead (“**Pb**”) by weight when analyzed by an Accredited Laboratory, using inductively coupled plasma mass spectrometry (“**ICP-MS**”) equipment with a level of detection (“**LOD/LOQ**”) of 10 ppb or less utilizing scientifically appropriate adherence to the protocols set forth in AOAC Method 2013.06 (21st Ed., 2019).

2.1.2 Certification to Compliance with Reformulation Standard


If Paris Gourmet elects to comply with Section 2.1 instead of Sections 2.2 or 2.3 of this Agreement, on or before the sixtieth (60th) day after the Effective Date, an officer of Paris Gourmet shall provide Seven Hills LLP with a written attested declaration stating, as of the Effective Date, and continuing thereafter, any and all Products Paris Gourmet grows, sources, produces, processes, packages, assembles, manufactures, imports, sells, ships, or distributes for sale to (a) consumers in California directly including through its own website, affiliated websites or a third party website, to consumers located in California, and (b) customers with nationwide distribution and e-commerce platforms, are Reformulated Products as defined by Section 2.2. Along with its attested declaration, Paris Gourmet shall provide a recent test result performed after the date of the Notice, showing the Products were tested and analyzed according to the parameters set forth in the preceding Section 2.2 and are Reformulated

Products. Failure to comply with this section shall render this agreement null and void, unless Paris Gourmet has complied with either or both of Sections 2.2 or 2.3, *infra*.

2.2 Product Warnings

Commencing on or before 30 days after the Effective Date, for all Products that are not Reformulated Products, Paris Gourmet shall provide clear and reasonable warnings to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

(a) **Warning.** The Warning shall consist of the following statement, with Paris Gourmet to elect which of the chemicals listed in brackets to include in the warning:

 **WARNING:** Consuming this product can expose you to chemicals including [Mercury or Lead], which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

A warning provided pursuant to section 2.3(a) must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except if the labeling does not use the color yellow, the symbol may be in black and white. The entire warning shall be set off from other surrounding information, enclosed in a box and appear in at least 6-point type but no smaller than the largest type size used for other consumer information on the Products.

(b) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

(c) **On-Product Warnings.** Paris Gourmet shall affix a warning to the Product label or otherwise directly on Products provided for sale to consumers located in California and to customers with retail outlets in California, nationwide distribution or e-commerce platforms. For the purpose of this agreement, “Product label” means a display of written, printed or graphic material printed on or affixed to each of the Products or its immediate container or wrapper.

(d) **Internet Warnings.** Paris Gourmet shall provide warnings for each Product both on the Product label in accordance with Section 2.4(c), and by prominently displaying, or requiring the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, to consumers in California during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear adjacent to or immediately following the display, description, or price of the Products for which it is given in the same type size or larger than other consumer information provided for the Products. For customers with e-commerce platforms over which Paris Gourmet has no ability to control the application of warnings, Paris Gourmet shall instruct the customer to provide the warning statement required by section 2.3(a), as a condition of sale of the product.

2.3 Removal Option

As an alternative to either Section 2.1 or 2.2, *supra*, Paris Gourmet may elect to refrain from selling the Product to any purchasers, wholesalers, or distributors, Paris Gourmet knows or should know provides products for sale to customers in the State of California. For purposes of this Section, Paris Gourmet shall be deemed to know a purchaser, wholesaler, or distributor provides products for sale to customers in the State of California if the purchaser, wholesaler, or

distributor has retail outlets in California, e-commerce platforms or nationwide distribution. Paris Gourmet shall mandate as a condition of sale that no Product may be sold to consumers within the State of California, commencing on the Effective Date.

2.4 Customer Notification

No later than the Effective Date, Paris Gourmet shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each customer in California to which it supplied Products between November 4, 2021 and November 4, 2022; and (2) any other customer that is a retailer or distributor that has any inventory of Products, which Paris Gourmet supplied between November 4, 2019, and November 4, 2022, for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain Mercury and Lead, chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. The Notification letter shall inform the recipient that all Products must either (1) be returned to Paris Gourmet for a full refund or (2) have a label, attached to the packaging of each Product before it is sold in the California market or to a customer in California, expressly referring to the Product with the warning statement specified in Section 2.2.(a), *supra*. The warning must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline. The entire warning shall be set off from other surrounding information, enclosed in a box and appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products. The Notification Letter shall enclose a shipping label with the return address and postage paid by Paris Gourmet. If the customer is a retailer or distributor of the Products, the Notification Letter shall include a sheet of white background, adhesive stickers with the foregoing warning statement.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Paris Gourmet agrees to pay a civil penalty of \$1,000 within fifteen (15) business days of the Effective Date. Paris Gourmet’s civil

penalty payment will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“**OEHHA**”), and the remaining twenty-five percent (25%) retained by KASB. Paris Gourmet shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$750; and (b) “**Seven Hill LLP in trust for Keep America Safe and Beautiful**” in the amount of \$250. KASB’s counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

3.2 Reimbursement of Attorneys’ Fees and Costs

KASB and its counsel offered to resolve the allegations in the Notice without reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to KASB’s counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Agreement to the Office of the California Attorney General. Within fifteen (15) business days of the Effective Date, Paris Gourmet agrees to issue a check in the amount of \$21,500 payable to “**Seven Hills LLP**” for all fees and costs incurred investigating, bringing this matter to Paris Gourmet’s attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

3.3 Payments

All payments payable and due under this Agreement shall be delivered to KASB’s counsel at following address:

Seven Hills LLP
Attn: Laralei Paras
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Paris Gourmet

KASB, as an individual and *not* on behalf of the public, releases Paris Gourmet, its past and present directors, officers, employees, attorneys, and each entity to whom Paris Gourmet directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”) from all claims for violations of Proposition 65 up through the Effective Date based on exposure to Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to Lead from the Products as set forth in the Notice.

KASB, in its individual capacity only and not in its representative capacity, also hereby provides a release to Paris Gourmet and the Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of actions, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of KASB of any nature, character, or kind arising out of alleged or actual exposures to Lead and Mercury in Products imported, shipped, sold or distributed for sale by Paris Gourmet and sold to a consumer in the State of California, prior to the Effective Date, as alleged in the Notice.

The Parties understand and agree this Section 4.1 release below shall not extend either (1) upstream to any entities that sold, supplied, or manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Paris Gourmet or (2) to Releasees who have been instructed, pursuant to Section 2.3, no Product may be sold to consumers within the State of California, or pursuant to Section 2.4, to provide a warning on Products that are not Reformulated Products and have failed to do so.

4.2 Paris Gourmet's Release of KASB

Paris Gourmet, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against KASB 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 KASB and its 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 Products.

4.3 California Civil Code § 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. KASB on behalf of itself only, on one hand, and Paris Gourmet, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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.

KASB and Paris Gourmet each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.4 Deemed Compliance with Proposition 65

The Parties agree that compliance by Paris Gourmet with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to Lead or Mercury from use of the Products.

4.5 Public Benefit

It is Paris Gourmet's understanding that the commitments it has agreed to herein, and actions to be taken by Paris Gourmet under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Paris Gourmet that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Paris

Gourmet's alleged failure to provide a warning concerning exposure to Lead or Mercury relating to use of the Products it has, distributed, sold, or offered for sale in California, or will distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Paris Gourmet is in material compliance with this Settlement Agreement.

5. SEVERABILITY

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

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Paris Gourmet may provide KASB with written notice of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve Paris Gourmet from its obligation to comply with any pertinent state or federal law or regulation.

7. NOTICE

Unless specified herein, all correspondence and notice required by this Agreement shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) a recognized overnight courier to any Party by the other at the following addresses:

For Paris Gourmet:

Daniel Hurwitz Esq.
Wilson Elser Moskowitz Edelman & Dicker LLP
555 S. Flower Street - Suite 2900
Los Angeles, CA 90071-2407

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

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

8. COUNTERPARTS AND PDF SIGNATURES

This Agreement may be executed in counterparts and by 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.

9. COMPLIANCE WITH REPORTING REQUIREMENTS

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

10. ENTIRE AGREEMENT

This 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, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

11. MODIFICATION

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

12. AUTHORIZATION

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

AGREED TO:

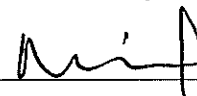
Date: Dec 10, 2023

By: 

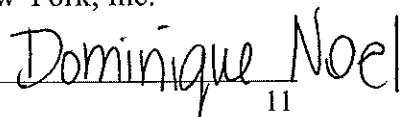
My Nguyen, CFO
Keep America Safe and Beautiful

AGREED TO:

Date: Dec 8, 2023

By: 

Paris Gourmet of New York, Inc.


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