

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Mountain High Organics, Inc. (“**Mountain High**”), and Keep America Safe and Beautiful (“**KASB**”), with Mountain High and KASB 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. Mountain High 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 Mountain High manufactures, imports, sells, and distributes for sale in California flax seeds containing the heavy metal, cadmium (Cd), including, but not limited to, *Beveri Nutrition, Organic Golden Milled Flax Seed, Net Wt. 16 oz., 24AUG2023Y01, UPC: 8 53746 00018 2, ASIN: B00HWS2KTC*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Flax seeds are referred to hereinafter as the “**Products.**” Cadmium (Cd) is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, developmental toxicity, and male reproductive toxicity.

1.3 Notice of Violation

On December 12, 2022, KASB served Mountain High, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Mountain High violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to cadmium (Cd). No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Mountain High 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 Mountain High of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Mountain High's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean the date this Agreement is signed by both parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products Mountain High manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one or more third party retailers, distributors, or e-commerce marketplaces, shall meet one of the Reformulation Standards for Reformulated Products, as defined by Section 2.2.

2.2 Reformulation Standard

For purposes of this Agreement, "Reformulated Products" are defined as Products which contain no detectable amount of Cadmium. For purposes of this Agreement "**no detectable amount**" shall mean not detected when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization, that employs inductively coupled plasma mass spectrometry ("ICP-MS") utilizing scientifically appropriate adherence to the protocols set forth in AOAC Method 2015.01 or 2013.06 (21st Ed., 2019) with a LOD/LOQ of 0.10 ppm or less ("**Accredited Laboratory**").

2.3 Certification to Compliance with Reformulation Standard

On or before the Effective Date, an officer of Mountain High shall provide Seven Hills LLP with a written attested declaration stating, as of the Effective Date, and continuing thereafter, any and all Products manufactured or imported by Mountain High 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 websites, are Reformulated Products as defined by Section 2.2. Along with its attested declaration, Mountain High 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.

2.4 Customer Notification

No later than the Effective Date, Mountain High shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each customer in California to which it supplied Products between December 12, 2021, and December 12, 2022; and (2) any other customer that is a retailer or distributor that has any inventory of Products, which Mountain High supplied between December 12, 2019, and December 12, 2022, for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain cadmium (Cd), a chemical 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 Mountain High 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 following warning statement:

⚠WARNING: Consuming this product can expose you to chemicals, including cadmium, 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.

The foregoing 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 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 Mountain High. 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 forgoing warning statements.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Mountain High agrees to pay a civil penalty of \$2,500 within five (5) business days of the Effective Date. Mountain High'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. Mountain High shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "Seven Hills LLP in Trust for KASB" in the amount of \$625. 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. Mountain High agrees to issue four (4) installment checks for a total amount of \$18,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Mountain High'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. Payments

Mountain High shall transmit to Seven Hills LLP the total sum of \$20,500 representing the civil penalty and attorney's fees in Sections 3.1 and 3.2 within five (5) days of the Effective

Date, which should include six (6) separate checks in the following amounts and dated for deposit on the following dates:

- \$625 dated for deposit on or after the Effective Date, made payable to “Seven Hills LLP in trust for Keep America Safe and Beautiful” pursuant to Section 3.1;
- \$1,875 dated for deposit on or after the Effective Date, made payable to OEHHA pursuant to Section 3.1;
- \$4,500 dated for deposit on or after the Effective Date, made payable to Seven Hills LLP pursuant to Section 3.2;
- \$4,500 dated for deposit within thirty (30) days of the Effective Date, made payable to Seven Hills LLP pursuant to Section 3.2;
- \$4,500 dated for deposit within sixty (60) days of the Effective Date, made payable to Seven Hills LLP pursuant to Section 3.2;
- \$4,500 dated for deposit within ninety (90) days of the Effective Date, made payable to Seven Hills LLP pursuant to Section 3.2;

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 Mountain High

KASB, as an individual and *not* on behalf of the public, releases Mountain High, its past and present directors, officers, employees, attorneys, and each entity to whom Mountain High 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 Agreement constitutes compliance with Proposition 65 with respect to exposures to Cadmium 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 Mountain High 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 Cadmium in Products imported, shipped, sold or distributed for sale by Mountain High 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 Mountain High or (2) to Releasees who have been instructed by Mountain High, pursuant to Section 2.4, to provide a warning on Products that are not Reformulated Products and have failed to do so.

4.2 Mountain High's Release of KASB

Mountain High, 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.

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 Mountain High

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 Mountain High 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 Mountain High:

Joanne Fellin, CEO
Mountain High Organics, Inc.
9 S. Main St.
New Milford, CT 06776

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, FACSIMILE 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 herein.

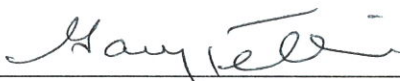
AGREED TO:

AGREED TO:

Date: 12/19/2023

Date: 12-18-23

By: 

By: 

My Nguyen, CFO
Keep America Safe and Beautiful

Gary Fellin
Mountain High Organics, Inc.