

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Keep America Safe and Beautiful and OM Mushroom Superfood:**

This Settlement Agreement is entered into by and between Keep America Safe and Beautiful (“KASB”), represented by its attorneys KJT Law Group, LLP on the one hand, and OM Mushroom Superfood (“OM”), on the other hand, with KASB and OM collectively referred to as the “Parties.”

1.2. **General Allegations**

KASB alleges that OM distributed and offered for sale in the State of California Morning Energy Blend, containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* (“Proposition 65”). California has identified and listed lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. **Product Description**

The products covered by this Settlement Agreement is defined as “OM Mushroom Superfood – Mushroom Morning Energy Blend; UPC #: 8 50011 99609 6” that OM has sold, offered for sale, manufactured, or distributed in California and that contain lead. All such items shall be referred to herein as the “Covered Product.”

1.4. **Notice of Violation**

On February 7, 2023, Keep America Safe and Beautiful served OM 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 OM and such public enforcers with notice that OM 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. 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 OM's compliance with Proposition 65. Specifically, OM denies the allegations contained in KASB'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 OM 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 OM of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by OM. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of OM 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:**

2.1 Beginning on the Effective Date, OM 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, 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 OM 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 OM prior to the Effective Date and all claims as to such Covered Products are released in this Settlement Agreement.

For purposes of this Settlement Agreement, "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead 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 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 OM 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, which is 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

Option 2:

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

OM shall use the phrase "cancer and" in the Warning if OM has reason to believe that the Daily Lead Exposure Level is greater than 15 micrograms of lead.

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. 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. The Warning shall comply with the Safe Harbor Provisions, as those regulations may be amended from time to time. The Warning shall comply with the Proposition 65 Safe Harbor Provisions, as those regulations may be amended from time to time.

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, OM shall pay (\$25,000.00) as settlement and for fees and costs, incurred as a result of investigating and bringing this matter to OM' attention.

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

In settlement of all the claims referred to in this Settlement Agreement, (\$2,000.00) 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% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty shall be mailed to; payable to; "KJT Law Group, LLP", to be forwarded to KASB.

5. REIMBURSEMENT OF FEES AND COSTS

In settlement of all the claims referred to in this Settlement Agreement, (\$23,000.00) shall be considered reimbursement of KASB'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 KASB and its counsel under the private attorney general doctrine and principles of contract law.

6. PAYMENT INFORMATION

OM shall mail these payments within ten (10) business days following the Effective Date, at which time such payments shall be mailed to the following addresses respectively:

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

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

All payments owed to OEHHA (EIN: 68-0284486) 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 OM, 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, KASB, on behalf of itself, 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) against OM, and its respective equity owners, parents, subsidiaries, affiliates, sister and related companies, directors, officer, members, employees, attorneys, each upstream entity from whom the Covered Products were purchased by OM, and each entity to whom OM directly or indirectly distributes or sells the Covered Products – including, but not limited to , its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Amazon.com Services, LLC – for any alleged violations of Proposition 65, or any other alleged violations of statutory or common law, arising from alleged exposure to lead in relation to the Covered Products, up through the Effective Date.

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Products will develop or be discovered. This Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. KASB, in its capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it 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 it 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 OM 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 OM: Todd A. Harrison, Esq.
Venable LLP
600 Massachusetts Avenue, NW,
Washington, DC 20001

For KASB: 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. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION

25249.7(F)

KASB and its attorneys agree to comply with the reporting requirements referenced in Health and Safety Code section 25249.7(f).

15. SEVERABILITY

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

16. 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.

17. ENFORCEMENT OF SETTLEMENT AGREEMENT

Either Party may bring an action to enforce the terms of this Settlement Agreement. A Party who unsuccessfully brings or contests an action arising out of this Settlement Agreement may be ordered by the court to pay the prevailing Party's reasonable attorney's fees and costs

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

Executed on 06/13/2023, at Glendale, California.

Keep America Safe and Beautiful



By: My Chi Nguyen - COO

Executed on 6/11/2023, at Carlsbad, California.

OM Mushroom Superfood



By: Julie Daoust

Its: CSO