

## SETTLEMENT AND RELEASE AGREEMENT

### 1. **INTRODUCTION**

#### 1.1. **Berj Parseghian and Cymbiotika LLC:**

This Settlement Agreement is entered into by and between Berj Parseghian ("Parseghian"), represented by his attorneys KJT Law Group, LLP on the one hand, and Cymbiotika LLC ("Cymbiotika"), on the other hand, with Parseghian and Cymbiotika collectively referred to as the "Parties."

#### 1.2. **General Allegations**

Parseghian alleges that Cymbiotika distributed and offered for sale in the State of California Plant Protein, 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 Plant Protein, including but not limited to, "Cymbiotika – Plant Protein – Alkalizing Greens & Mushrooms – Vanilla; UPC #: 8 50033 14618 9" that Cymbiotika has sold, offered for sale, manufactured, or distributed in California and that allegedly exceed the Maximum Allowable Dose Level (MADL) of lead. All such items shall be referred to herein as the "Covered Product."

#### 1.4. **Notice of Violation**

On April 5, 2023, Parseghian served Cymbiotika 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 Cymbiotika and such public enforcers with notice that Cymbiotika 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 Cymbiotika compliance with Proposition 65. Specifically, Cymbiotika denies the allegations contained in Parseghian'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 Cymbiotika 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 Cymbiotika of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Cymbiotika. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Cymbiotika 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, Cymbiotika 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 Cymbiotika 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 of Cymbiotika 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 Cymbiotika 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](http://www.P65Warnings.ca.gov/food)

**Option 2:**

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

Cymbiotika shall use the phrase "cancer and" in the Warning if the exposure level is greater than 15 micrograms of lead per day.

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. Notwithstanding the above, the content and method of transmission shall be provided in any form as authorized by Proposition 65 law or regulation effective on or after the Effective Date.

**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, Cymbiotika shall pay (\$27,500.00) as settlement and for fees and costs, incurred as a result of investigating and bringing this matter to Cymbiotika 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% (i.e. \$1,500.00) of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% (i.e. \$500.00) of the penalty remitted to Parseghian.

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

The payment owed to Plaintiff shall be delivered to the following payment address:

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

The payment owed to OEHHA 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

**5. REIMBURSEMENT OF FEES AND COSTS**

In settlement of all the claims referred to in this Settlement Agreement, (\$25,500.00) shall be considered reimbursement of Parseghian'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 Parseghian and his counsel under the private attorney general doctrine and principles of contract law. Cymbiotika shall mail a check payable to “KJT Law Group,” via certified mail to the address for Parseghian's counsel referenced above in two installments as follows:

- \$11,750.00 due ten (10) calendar days following the Effective Date.
- \$13,750.00 due on or before September 1, 2023.

All payments owed 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**

**6. RELEASE OF ALL CLAIMS**

**6.1. Release of Cymbiotika, 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, Parseghian, on behalf of himself, and any and all of his successors or assigns, 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 Cymbiotika, 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 Cymbiotika, and each entity to whom Cymbiotika directly or indirectly

distributes or sells the Covered Product – 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. Parseghian, in his 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.

**7. 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 Cymbiotika shall have no further obligations pursuant to this Settlement Agreement.

**8. 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 Cymbiotika: Michael J. Gleason, Esq.  
Hahn Loeser & Parks LLP  
One America Plaza, 600 West Broadway, Suite 1500  
San Diego, CA 92101

For Parseghian: 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.

**9. 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.

**10. 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.

**11. MODIFICATION**

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

**12. 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.

**13. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION**

**25249.7(F)**

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

**14. 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.

**15. 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.

**16. ENFORCEMENT OF SETTLEMENT AGREEMENT**

If either Party believes the terms of this Settlement Agreement have been breached, they shall provide notice to the other Party of the alleged breach and an opportunity to cure the breach within 10 business days. If the alleged breach has not been cured during that 10 business day period, 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.

[SIGNATURE PAGE TO FOLLOW]

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


Executed on 7/19/2023.

Berj Parseghian

DocuSigned by:  
BERJ PARSEGHIAN  
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Executed on \_\_\_\_\_.

Cymbiotika LLC

  
\_\_\_\_\_  
By: 07 / 17 / 2023

Adam Gislason  
Its: Chief Strategy Officer & General Counsel