

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 MycoLogical Natural Products Ltd., ("MNP") on the other hand, with CRC and MNP 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 July 27, 2023 (AG No. 2023-02272), that MNP sells and/or distributes "MycoLogical, Organic Shiitake Mushrooms (UPC# 700360002118)" in California containing lead without a warning as 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. MNP denies all of CRC's allegations and maintains that all products it sells and/or distributes for sale in California are safe and comply with all applicable state and federal laws including but not limited to Proposition 65.

1.3 Product Descriptions

The product covered by this Settlement Agreement is defined as mushrooms distributed by MNP, including but not limited to "MycoLogical, Organic Shiitake Mushrooms (UPC# 700360002118)" (the "Product") that contains lead and that is manufactured, sold or distributed for sale in California by MNP.

1.4 Notice of Violation

On July 27, 2023, CRC served the Notice on MNP, Amazon.com Services, LLC, the California Attorney General and the other requisite public enforcers, alleging that MNP and Amazon.com Services, LLC and others violated Proposition 65 when they failed to warn consumers in California of the alleged exposures to lead from the Product.

To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

MNP 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 as confirmed by independent laboratory results, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by MNP 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, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by MNP 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 MNP. This Section shall not, however, diminish or otherwise affect MNP's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which

a complete and fully executed copy of this Settlement Agreement is exchanged by the Parties' counsel.

2. INJUNCTIVE RELIEF

2.1 General Requirements

Beginning on the Effective Date, unless it meets the warning requirements under Section 2.2, MNP agrees that any Product sold or distributed for sale in California shall either: (a) meet the reformulation standard set forth in Section 2.2 or (b) comply with the general warning requirements set forth in Section 2.3.

As used in this Settlement Agreement, the term "distribute" for sale in California" shall mean to directly ship the Product into California for sale in California or to sell the Product to a distributor that MNP actually knows will sell the Product in California.

2.2 Reformulation Standard

MNP agrees not to sell or distribute for sale in California any Product that exposes a person to an exposure level of more than 0.5 micrograms of lead per day, with daily exposure measured by the lesser of: (a) the serving size specified on the label of the Product or (b) the average daily consumption of dried mushrooms in the United States by reference to the U.S. Center for Disease Control and Prevention National Center for Health Statistics' National Health and Nutrition Examination Survey (NHANES) ("Reformulation Standard") or similar data.

2.3 General Warning Requirements

MNP 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 the 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 MNP, or on a placard, shelf tag, sign or electronic device or automatic process 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 and] 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 text in brackets shall be optional. The warning shall be offset in a box with black outline.

For sales by MNP on an e-commerce website under the exclusive control of MNP where Products are sold directly to California consumers, the warning must also be provided by including either the warning or a clearly marked hyperlink using the word "**WARNING**" on the Product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase.

For Product that MNP provides to a downstream entity and MNP has actual knowledge that the downstream entity directly sells the Product on the Internet to California consumers, MNP shall include an instruction that the entity comply with the website warning requirements of this section; however, MNP does not assume any duty to monitor any websites for compliance and shall have no liability for any website's non-compliance.

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. "Consumer information" means warnings, directions for use, ingredient lists and nutritional information and excludes the brand name, product name, company name, location of manufacture or product advertising.

2.4 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. For the avoidance of doubt, Products in the stream of commerce as referred to in this Agreement specifically include, but are not limited to, Products in the process of manufacture.

2.5 Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment (OEHHA) promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, MNP 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 or legislation 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.

In the event OEHHA adopts a safe harbor level for lead that is higher than the Reformulation Standard, or a court of competent jurisdiction approves of a reformulation standard for lead that is higher than the Reformulation Standard, MNP is permitted to use such safe harbor level or reformulation standard at any time without being deemed in breach of this Agreement.

3. MONETARY SETTLEMENT TERMS

3.1 Total Settlement Payment

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, MNP shall make a total settlement payment of Thirty Thousand Dollars (**\$30,000.00**) ("Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty and Attorney's Fees and Costs as set forth in Sections 3.2 and 3.3 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, MNP agrees to pay Three Thousand Dollars (**\$3,000.00**) 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, MNP shall issue a check to "OEHHA" in the amount of Two Thousand Two Hundred and Fifty Dollars (**\$2,250.00**) and shall, pursuant to the instructions below, wire to CRC the amount of Seven Hundred and Fifty Dollars (**\$750.00**).

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 via wire to:

Wire Instructions:

Account Name: The Law Offices of Joseph R. Manning
Bank Name: J.P. Morgan Chase Bank, N.A.
Bank Address: 2967 Michelson Dr, Ste A, Irvine, CA 92612
Routing Number: 322271627
Wire Routing / ABA Number: 021000021
Swift Code: CHASUS33
Account Number: 579068902

For further benefit of: Civil Penalty Payment File No. P65-0522

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, within thirty (30) days of the date this Settlement Agreement is executed by the Parties, MNP agrees to pay Twenty-Seven Thousand Dollars (\$27,000.00) to CRC and its counsel for all fees and costs incurred in connection with the Notice, including but not limited to investigating, bringing this matter to the attention of MNP, and negotiating a settlement.

The payment shall be sent via wire to:

Wire Instructions:

Account Name: The Law Offices of Joseph R. Manning
Bank Name: J.P. Morgan Chase Bank, N.A.
Bank Address: 2967 Michelson Dr, Ste A, Irvine, CA 92612
Routing Number: 322271627
Wire Routing / ABA Number: 021000021

Swift Code: CHASUS33
Account Number: 579068902
For further benefit of: Attorney's Fees and Costs File No. P65-0522

3.4 Tax Documentation

MNP agrees to provide a completed IRS 1099 form for its payments to, and CRC and Manning Law agree to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that MNP cannot issue any settlement payments pursuant to Section 3 above until after MNP receives the requisite W-9 forms from CRC's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 CRC's Release of MNP

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges MNP and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, including but not limited to Amazon.com Services, LLC, suppliers, distributors (the "MNP Releasees") and all entities to which MNP 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 based 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 Product with respect to exposures to any Proposition 65 chemical.

4.2 MNP's Release of CRC

MNP 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 Product, will develop or be discovered. CRC on behalf of itself only, and MNP 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 MNP 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. DEEMED COMPLIANCE WITH PROPOSITION 65

The Parties agree that compliance by MNP with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to Lead from the Products.

6. PUBLIC BENEFIT

It is MNP's understanding that the commitments it has agreed to herein, and actions to be taken by MNP under this Settlement Agreement 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 MNP that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to MNP's alleged to provide a warning concerning actual or alleged exposure to lead prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, 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 MNP is in material compliance with this Settlement Agreement.

7. ENFORCEMENT

Prior to bringing any motion or other proceeding to enforce Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any Product without a warning and which is alleged to not meet the Reformulation Standard, CRC shall provide a written notice to MNP specifying, for each Product alleged to be violation of this Agreement: the date of alleged violations(s), place of sale and proof of purchase, and test reports obtained by CRC regarding each such Product. CRC shall take no further action regarding any alleged violation if, within sixty (60) days of receiving such notice, MNP affirms in writing (a) that the Product was subject to the grace period of Section 2.4; (b) that MNP provided an appropriate warning in connection with the Product distributed or sold in California in compliance with Section 2.3; or (c) that the Product meets the Reformulation Standard pursuant to Section 2.2 as supported by a test report (or, where exposure is averaged, test reports) from an independent third party laboratory.

8. 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.

9. 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.

10. NOTICE

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class mail with a courtesy copy by 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
Tel: Office (949) 200-8757 Fax: (866) 843-8309
p65@manninglawoffice.com

For MNP
Kim Sandell
Thompson Hine LLP
3130 Wilshire Boulevard Suite 500
Santa Monica, CA 90403
kim.sandell@thompsonhine.com

11. **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.*

12. **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).

13. **MODIFICATION**

The Settlement Agreement may be modified only by written agreement of the Parties.

14. **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.

15. **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.

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.

DocuSign Envelope ID: 7761A471-F6F8-405F-9391-61DC39E75367

AGREED TO:

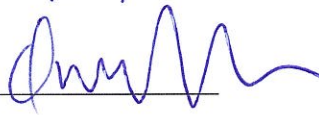
Date: 9/17/2024

By: 
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CalSafe Research Center, Inc.

AGREED TO:

Date: 9/23/2024

By: 

MycoLogical Natural Products Ltd