

## 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 PYM Health, Inc., (“PYM”) on the other hand, with CRC and PYM 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 March 8, 2024 (AG No. 2024-00943), that PYM sells and/or distributes “PYM, Mood Chews Berry (UPC# 860004555322)” and “PYM, Attention Chews Mixed Berry (UPC# 850044895229)” 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.

#### **1.3 Product Descriptions**

The products covered by this Settlement Agreement are defined as, and expressly limited to “PYM, Mood Chews Berry (UPC# 860004555322)” and “PYM, Attention Chews Mixed Berry (UPC# 850044895229)” (collectively, the "Products") that are manufactured, sold or distributed for sale in California by PYM.

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

On March 8, 2024, CRC served the Notice on PYM, the California Attorney General and the other requisite public enforcers, alleging that PYM and others violated Proposition 65 when they failed to warn consumers in California of the alleged exposures to lead from the Products.

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**

PYM 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 Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by PYM 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 PYM 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 PYM. This Section shall not, however, diminish or otherwise affect PYM’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. The

term "Compliance Date" shall mean ninety (90) days after the Effective Date.

## 2. INJUNCTIVE RELIEF

### 2.1 Clear and Reasonable Warnings

Beginning on the Compliance Date, PYM 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, Product that exposes a person to an exposure level of more than 0.5 micrograms of lead per serving, with serving size measured by the serving size specified on the label of the Product and the number of servings listed on the labeling, 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 the Product into California for sale in California or to sell the Product to a distributor that PYM knows or has reason to know will sell the Product in California.

### 2.2 General Warning Requirements

If PYM is required to provide a warning pursuant to Section 2.1, PYM 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 shall be provided to California consumers in manner that complies with 27 C.C.R. §25602(a) and which contains one of the following statements:

- 1) **WARNING:** Consuming this product can expose you to lead which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food);
- 2) **WARNING:** Reproductive Harm-[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

The warning shall be offset in a box with black outline.

In addition, for the Covered Product sold over the Internet by PYM, PYM shall comply with 27 C.C.R. §25602(b).

For Product that PYM provides for a downstream entity to sell on the internet, PYM shall include an instruction that the entity comply with the warning requirements of this section.

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.

If CRC alleges that any Product fails to adhere to this Settlement Agreement, then CRC shall inform PYM of its test results, including information sufficient to permit PYM to identify the Product at issue and investigate. PYM shall, within thirty (30) days following such notice, provide CRC with testing information demonstrating PYM's compliance with the Settlement Agreement, or proof that omission of

the Warning was due to the Product being packaged, distributed, shipped or sold prior to the Compliance Date. The Parties shall first attempt to resolve the matter prior to CRC taking any further legal action.

(i) Changes in Warning Regulations or Statutes

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

**2.3 Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2 shall not apply to Product that is already manufactured, packaged, distributed, shipped or sold as of the Compliance Date, which Product is expressly subject to the releases provided in Section 4.1.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Total Settlement Payment**

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, PYM shall make a total settlement payment of Twenty-Eight Thousand Dollars (**\$28,000.00**) ("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, PYM agrees to pay Two Thousand Eight Hundred Dollars (**\$2,800.00**) 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 ten (10) days of the Effective Date, PYM shall issue a check to "OEHHA" in the amount of Two Thousand One Hundred Dollars (**\$2,100.00**) and shall, pursuant to the instructions below, wire to CRC the amount of Seven Hundred Dollars (**\$700.00**).

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. P65-0752

**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, PYM agrees to pay Twenty-Five Thousand Two Hundred Dollars (**\$25,200.00**) to CRC and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of PYM, and negotiating a settlement.

The payment shall be made in seven (7) equal installment payments of Three Thousand Six Hundred Dollars (\$3,600.00).

The payments shall be due as follows:

- The first installment shall be due within 10 days of the Effective Date.
- The second installment shall be due within 60 days of the Effective Date.
- The third installment shall be due within ninety 90 days the Effective Date.
- The fourth installment shall be due within 120 days of the Effective Date.
- The fifth installment shall be due within 150 days of the Effective Date.
- The sixth installment shall be due within 180 days of the Effective Date.
- The seventh installment shall be due within 210 days of the Effective Date.

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. P65-0752

### **3.4 Tax Documentation**

PYM 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 PYM cannot issue any settlement payments pursuant to Section 3 above until after PYM receives the requisite W-9 forms from CRC's counsel.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 CRC's Release of PYM**

CRC, acting on its own behalf and not on behalf of the public, fully releases and discharges PYM and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors (the "Defendant Releasees") and all entities to which Defendant Releasees directly or indirectly distribute or sell the Product, and any other distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees, including Sprouts Farmers Market, LLC, (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 lead.

### **4.2 PYM's Release of CRC**

PYM 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 PYM 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 Compliance Date, including all rights of action therefore. CRC and PYM 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. PUBLIC BENEFIT**

It is PYM's understanding that the commitments it has agreed to herein, and actions to be taken by PYM 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 PYM 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 PYM's alleged failure to provide a warning concerning actual or alleged exposure to lead prior to use of the Product 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 Product addressed in this Settlement Agreement, provided that PYM is in material compliance with this Settlement Agreement.

**6. 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.

**7. 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.

**8. NOTICE**

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class mail or 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 PYM

Abhishek Gurnani  
Amin Wasserman Gurnani LLP  
549 W Randolph St, Ste 400  
Chicago, IL 60661  
Tel: Office (312) 327-3325  
[agurnani@awglaw.com](mailto:agurnani@awglaw.com)

**9. 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.*

**10. 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).

**11. MODIFICATION**

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

**12. 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.

**13. 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.

**14. 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.

AGREED TO:

Date: 7/3/2024

By:  4D7E7F1FE86247B...

CalSafe Research Center, Inc.

AGREED TO:

Date: 7/5/2024

By: 

PYM Health, Inc.