

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND FORCE  
FACTOR, LLC**

**1. RECITALS**

**1.1 The Parties**

**1.1.1** This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and Force Factor, LLC (“Force Factor”).

APS&EE and Force Factor shall hereinafter collectively be referred to as the “Parties”.

**1.1.2** APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

**1.1.3** APS&EE alleges that Force Factor is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

**1.2 Allegations**

**1.2.1** APS&EE alleges that Force Factor distributed, sold or made available for sale in the State of California Force Factor Modern Mushrooms Superfood Powder, 8-10126-66152-4 (hereinafter, the “Product(s)”) causing users in California to be exposed to hazardous levels of lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is listed by the State of California as known to cause cancer and birth defects or other reproductive harm.

**1.2.2** On July 18, 2024, APS&EE served a Sixty-Day Notice of Violation (“60-Day Notice”), along with a Certificate of Merit, to Force Factor, Walmart, Inc., and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products

### **1.3 No Admissions**

Force Factor denies all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that Force Factor has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Force Factor but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Agreement.

### **1.4 Compromise**

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered on behalf of the public interest and to avoid prolonged and costly litigation between them.

### **1.5 Effective Date**

The "Effective Date" shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party or its counsel.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard**

As of the Effective Date, Force Factor shall not sell, distribute, or cause the Products to be offered for sale in California unless: (a) the Products expose a person to less than 0.5 micrograms of lead per day based on the recommended Daily Serving as calculated below in Section 2.2, or (b) the Products are distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.3.

### **2.2 Exposure Calculation**

**2.2.1** A "Daily Serving" (for purposes of determining Proposition 65 compliance for chemicals present in the Products) shall be defined by the serving size set forth on the label of the Products under "Nutrition Facts", "Supplement Facts", or equivalent. If the label, package, or advertising material specific for the Product (e.g., Product display page on the internet) do not recommend a number of daily servings, then

the number of daily servings shall be one.

**2.2.2** For determining exposure, Force Factor shall use a certified laboratory to test at least six (6) samples of Products randomly drawn from each lot. The total lead content (micrograms of lead per gram) shall be determined by calculating the arithmetic mean of those results. The daily exposure shall then be calculated by using the following formula: micrograms of lead per gram, multiplied by grams of Product per serving, multiplied by servings of the Product per day.

### **2.3 Proposition 65 Warnings**

Whenever a clear and reasonable warning is required under Section 2.1, Force Factor shall use a warning with the capitalized and emboldened wording, as follows:

**WARNING:** Consuming this product can expose you to 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).

If Force Factor has reason to believe the Products may expose consumers to additional chemicals listed under Proposition 65, then it may replace “Lead which is” with “chemicals, including Lead, which are” in the warning statement. Where the warning is provided on the food product label, it must be set off from other surrounding information, enclosed in a box. The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”. Additionally, if the Product contains consumer information in a foreign language, the warning must be provided in the foreign language.

The Products shall carry said warning directly on each unit, label, or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. A

Product that is sold by Force Factor on the internet to persons located in California shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. For Products that Force Factor provides for a downstream entity to sell on the internet, Force Factor shall comply with 27 CCR section 25600.2(b) and include an instruction that the entity comply with the warning requirements of this section.

### **3. PAYMENTS**

#### **3.1 Civil Penalty Pursuant To Proposition 65**

In settlement of all claims referred to in this Agreement, Force Factor shall pay a total civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$500.00) for APS&EE.

Force Factor shall issue these payments as part of the total payment described below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective payments to OEHHA and APS&EE.

#### **3.2 Reimbursement Of APS&EE’s Fees And Costs**

Force Factor shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement, in the amount of fourteen thousand dollars (\$14,000.00). Accordingly, Force Factor shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of sixteen thousand dollars (\$16,000.00) which includes the civil penalty described in Section 3.1, within five (5) business days of the Effective Date. Wire instructions have been exchanged between the Parties.

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#### **4. RELEASES**

##### **4.1 APS&EE's Release Of Force Factor**

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases Force Factor, its parents, subsidiaries, affiliated companies, shareholders, directors, members, managers, officers, partners, agents, employees, representatives, attorneys, successors and assignees, as well as its downstream distributors, wholesalers, retailers, and franchisees, including Walmart, Inc. (collectively, "Released Parties"), from any alleged Proposition 65 violation claims asserted in the Notice regarding failure to warn about lead exposure from the Products sold or distributed by Force Factor for sale or potential sale in California before the Effective Date.

##### **4.2 Force Factor's Release Of APS&EE**

Force Factor, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Force Factor in this matter. If any Released Parties should institute any such action, then APS&EE's release of said Released Party in this Agreement shall be rendered void and unenforceable.

##### **4.3 Waiver Of Unknown Claims**

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides 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.

Each of the Parties waives and relinquishes any right or benefit it has or may have

under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

**5. SEVERABILITY**

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

**6. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California. This Agreement is entered into in the State of California and may only be enforced in the State of California.

**7. NOTICES**

All correspondence and notices required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

<p>TO FORCE FACTOR: Todd A. Harrison, Esq. Venable LLP 600 Massachusetts Av, NW Washington, DC 20001</p>	<p>TO APS&amp;EE: Lucas Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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**8. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed

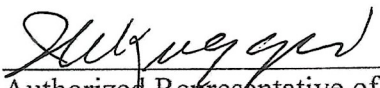
Agreement shall have the same force and effect as the originals.

**9. AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

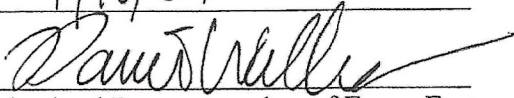
**AGREED TO:**

Date: 9.16.24

By:   
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date: 9/16/24

By:   
Authorized Representative of Force Factor, LLC  
Danel Wallace