

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information Original Filing Supplemental Filing Corrected Filing

| | | | | |
|--|--|---|--------------------------------------|-----------------------|
| PARTIES TO THE ACTION | PLAINTIFF(S) | | | |
| | DEFENDANT(S) INVOLVED IN SETTLEMENT | | | |
| CASE INFO | COURT DOCKET NUMBER | | COURT NAME | |
| | SHORT CASE NAME | | | |
| REPORT INFO | INJUNCTIVE RELIEF | | | |
| | PAYMENT: CIVIL PENALTY | PAYMENT: ATTORNEYS FEES | PAYMENT: OTHER | For Internal Use Only |
| | | \$14,000 | | |
| | WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input type="checkbox"/> No | IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL | DATE SETTLEMENT SIGNED / / | |
| COPY OF SETTLEMENT MUST BE ATTACHED | | | | |
| FILER INFO | NAME OF CONTACT | | | |
| | ORGANIZATION | | TELEPHONE NUMBER (707) 829-0215 | |
| | ADDRESS | | FAX NUMBER (707) 827-8538 | |
| | CITY | STATE | ZIP | E-MAIL ADDRESS |
| | | 95472 | omar@omarfigueroa.com | |

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“Settlement Agreement” or “Agreement”) is entered into by and between Biosphere Watch Group SPC (referred to herein as “BWG”) represented by its attorneys, Omar Figueroa, Esq. and Lauren Mendelsohn, Esq., of the Law Offices of Omar Figueroa, Inc.; and Koi CBD, LLC (referred to herein as “Noticed Party”) represented by its attorney, Clifford White of The Myers Law Group.

BWG is a social purpose corporation domiciled in California that seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. BWG alleges that Noticed Party employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

BWG alleges that the Noticed Party manufactures and sells, in the State of California, products containing Delta-9-THC without first providing the clear and reasonable exposure warning required by Proposition 65. Delta-9-THC is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause birth defects or other reproductive harm (hereinafter the “Listed Chemical”).

1.3 Product Description

The products covered by this Settlement Agreement are all of Noticed Party’s products containing the Listed Chemical that are manufactured and sold to consumers in the State of California by the Noticed Party, including, but not limited to: KOI Delta 9 THC Gummies, KOI Complete Full Spectrum CBD + THC Gummies, and KOI Complete Nighttime Rest Gummies (the “Products”).

1.4 Notice of Violation

On or about August 28, 2024, BWG served Noticed Party and certain requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), a document that informed the recipients of BWG’s allegation that Noticed Party violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical. To the best of BWG’s knowledge, no public enforcer has commenced or is otherwise prosecuting an action to enforce the alleged violations set forth in the Notice.

1.5 No Admission

Noticed Party denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products manufactured and sold 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 the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by the Noticed Party. This section shall not, however, diminish or otherwise affect the Noticed Party’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 day the final requisite signature is applied to the Settlement Agreement.

2. INJUNCTIVE RELIEF: PRODUCT WARNINGS

2.1 Product Warnings. Commencing within thirty (30) days of the Effective Date, for any of the Noticed Party’s Products that contain the Listed Chemical and are shipped to any California resident consumer, or any agent, distributor, or affiliated company working on behalf of Noticed Party, for potential sale to California consumers, Noticed Party shall provide a clear and reasonable warning on the label of each Product as set forth in Section 2.3.

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.

2.2 Internet Warnings. In addition to the warning specified in Section 2.1 above, for all Products that Noticed Parties offer for sale directly to consumers in California via the internet, Noticed Parties shall provide a warning for such Products by including the warning set forth below in Section 2.3 on one or more of the following: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same web page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The internet warning described above can also be delivered through a hyperlink using the word “[California Prop 65] WARNING” (language in brackets optional), which then takes the user to a display of the warning set out in Paragraph 2.3.

2.3 Text of the Warning. The Noticed Parties shall use the warnings set forth below, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline, and the specific language as shown below (the triangular symbol may be black and white if the color yellow is otherwise not used on the Product’s packaging):

For Products which contain Delta-9-THC but no listed carcinogens:



WARNING: Consuming this product during pregnancy exposes your child to delta-9-THC, which can affect your child’s behavior and learning ability. For more information go to www.P65Warnings.ca.gov/cannabis

For Products which contain Delta-9-THC and one or more listed carcinogens:



WARNING: Consuming this product during pregnancy exposes your child to delta-9-THC, which can affect your child’s behavior and learning ability, and exposes you to carcinogens including [name one or more listed carcinogens]. For more information go to www.P65Warnings.ca.gov/cannabis

Foreign Language Requirement: Where a product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the Warning must also be provided in that language in addition to English.

2.4 Exemption for Products Manufactured before October 1, 2023

The warning requirements of Section 2 shall not apply to Products that were manufactured or packaged before October 1, 2023, which Products are expressly subject to the releases provided in Section 6.

3. PENALTIES & PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).

The Noticed Party shall make a civil penalty payment of One Thousand United States Dollars (\$1,000.00 USD) as a component of this settlement. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to BWG.

4. REIMBURSEMENT OF LEGAL FEES AND COSTS

The Noticed Party shall pay a total of Fourteen Thousand United States Dollars (\$14,000.00 USD) for legal fees and costs incurred as a result of the time and resources BWG and its enforcement team have spent on this matter, including but not limited to: research and investigation, bringing this matter to the Noticed Party’s attention, document preparation,

negotiating a settlement in the public interest, and post-settlement compliance.

5. PAYMENT AND FORM 1099

5.1 Payment. All payments shall be delivered within ten (10) calendar days of the Effective Date and receipt of W-9 forms for BWG and the Law Offices of Omar Figueroa to the Law Offices of Omar Figueroa, Inc., 7770 Healdsburg Ave., Sebastopol, CA 95472, and shall be in the form of three checks for the following amounts made payable to:

(a) “Office of Environmental Health Hazard Assessment” in the amount of \$750.00 (seven hundred and fifty dollars) for payment of 75% of the civil penalty to OEHHA. Counsel for BIOSPHERE WATCH GROUP, SPC agrees to forward such funds to OEHHA.

(b) “Biosphere Watch Group, SPC” in the amount of \$250.00 (two hundred and fifty dollars), as payment of the remaining 25% of the civil penalty to BIOSPHERE WATCH GROUP, SPC.

(c) “The Law Offices of Omar Figueroa, Inc.” in the amount of \$14,000.00 (fourteen thousand dollars) as payment for attorneys’ fees and costs pursuant to Section 4 above.

5.2 Issuance of Tax Forms. Noticed Party shall provide BIOSPHERE WATCH GROUP, SPC’s counsel with a separate 1099 form for each of its payments under this Settlement Agreement to:

(a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;

(b) “BIOSPHERE WATCH GROUP, SPC”, 7770 Healdsburg Ave., Suite B, Sebastopol, CA 95472 (EIN: [to be provided upon signing]), for its portion of the civil penalties paid; and

(c) “The Law Offices of Omar Figueroa, Inc.”, 7770 Healdsburg Ave., Suite A,

Sebastopol, CA 95472 (EIN: [to be provided upon signing]), for fees and costs reimbursed pursuant to Section 4.

IRS W-9 forms shall be provided for BWG and the Law Offices of Omar Figueroa. The Parties acknowledge that Noticed Party cannot issue any settlement payments until Noticed Party receives the requisite W-9 forms.

6. CLAIMS COVERED AND RELEASED

6.1 BWG's Release of Noticed and Related Parties

This Settlement Agreement is a full, final, and binding resolution between BWG and the Noticed Party of all claims including, but not limited to, any violations of Proposition 65 that were or could have been asserted by BWG, on behalf of itself, or on behalf of its past and current agents, representatives, attorneys, successors and assignees, against any and all of the Noticed Party, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and each entity to whom Noticed Party directly or indirectly distributes or sells the Products, including its downstream distributors and retailers, and its upstream suppliers and manufacturers ("Releasees"), for unwarned exposures to the Listed Chemical from the Products manufactured, distributed, sold or distributed for sale in California by the Noticed Party prior to the Effective Date.

In further consideration of the promises and agreements herein contained, BWG, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that it may have against the Noticed Party and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to alleged or actual exposures or failure to warn about exposures to the Listed Chemical from Products manufactured, distributed, sold, or offered for sale in California by the Noticed Party prior to the Effective Date (noting the Exemption set forth in paragraph 2.4).

6.2 Noticed Party's Release of BWG

Noticed Party, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against BWG and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by BWG and its attorneys and other representatives, whether in the course of investigating Proposition 65 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6.3 Unknown Claims

The release in this Settlement Agreement extends to claims that the Parties do not know or suspect to exist in their favor and which, if known by them, would have materially affected their decisions to enter into this Settlement Agreement. The Parties acknowledge that they are familiar with Section 1542 of the 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.”

The Parties, having been advised by counsel, expressly waive and relinquish any right or benefit that they have or may have under Section 1542 of the California Civil Code and under any other statute, rule or legal principle of similar effect of any jurisdiction, to the full extent that they may waive all such rights and benefits pertaining to the matters released in this Settlement Agreement.

7. REPRESENTATIONS, WARRANTIES, AND COVENANTS

7.1. In General.

BWG represents and warrants to Noticed Party that it has not heretofore assigned or otherwise transferred, or attempted to assign, or transfer, any present or threatened claim or claims against Noticed Party, and that there is no other person or legal entity that has not executed this Settlement Agreement as a releasing party that has any interest in any such claim or claims against Noticed Party.

BWG and the Law Offices of Omar Figueroa further represent and warrant to Noticed Party that neither BWG nor the Law Offices of Omar Figueroa represent or know of any other specific individuals who intend to make demands or bring litigation concerning the Products or against Noticed Party. BWG and the Law Offices of Omar Figueroa represent and warrant that neither BWG nor the Law Offices of Omar Figueroa have been notified or otherwise informed of any such intention or consideration thereof.

Likewise, Noticed Party represents and warrants to BWG and the Law Offices of Omar Figueroa that it has not heretofore assigned or otherwise transferred, or attempted to assign, or transfer, any present or threatened claim or claims against BWG or the Law Offices of Omar Figueroa, and that there is no other person or legal entity that has not executed this Settlement Agreement as a releasing party that has any interest in any such claim or claims against BWG or the Law Offices of Omar Figueroa.

7.2. Compliance with Rule 5.6(a)(2) of the Rules of Professional Conduct.

This section is intended to comply with Rule 5.6(a)(2) of the California Rules of Professional Conduct and is not intended to, nor shall it be construed to, unlawfully or unethically restrict the practice of law.

8. PUBLIC BENEFIT

It is Noticed Party's understanding that the commitments it has agreed to herein, and actions to be taken by it 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 Noticed Party 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 Noticed Party's alleged failure to provide

a warning concerning actual or alleged exposure to Delta-9-THC 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 Noticed Party is in material compliance with this Settlement Agreement.

9. 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.

10. 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 Products, then the Noticed Party may provide written notice to BWG of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Noticed Party from any obligation to comply with any pertinent state or federal toxics control laws.

11. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; (iii) electronic mail with confirmation of delivery by recipient; or (iv) a recognized overnight courier on any party by the other party at the following addresses:

For Koi CBD LLC:

The Myers Law Group
ATTN: Clifford White, Esq.
4695 MacArthur Court, Suite 200
Newport Beach, CA, 92660
litigation@myers.law

For Biosphere Watch Group SPC:

Law Offices of Omar Figueroa
ATTN: Lauren Mendelsohn, Esq.
7770 Healdsburg Avenue, Suite A
Sebastopol, CA, 95472
lauren@omarfigueroa.com

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

12. 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.

13. POST-EXECUTION ACTIVITIES

BWG agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

14. MODIFICATION

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

15. 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.

16. 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.

17. ATTORNEYS' FEES

Except as otherwise provided in this Agreement, the Parties hereby release and discharge each other from all claims for costs and/or attorneys' fees.

18. 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.

[Signatures on Next Page]

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AGREED TO BY:

AGREED TO BY:

Koi CBD LLC

Name: Malinda Ridenour

Title: CFO

Signature: 

Date: 11/20/2024

Biosphere Watch Group, SPC

Name: Barbara Marland

Title: CEO

Signature: 

Date: 11/20/24