

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (this "Agreement") is made effective on the date last executed herein ("Effective Date") by and between Environmental Research Center ("ERC") and Source of Health Inc. (operating under the names Dr. Clark Store and Self Health Resource Center) ("SOH"). ERC and SOH are hereinafter referred to collectively as the "Parties". The Parties agree as follows:

1. This Agreement is limited to this Matter, which is defined as all claims and allegations related to the Notice of Violations of California Health & Safety Code §25249.5, *et seq.* (also known as "Proposition 65") that ERC served on SOH on April 15, 2011 (the "Notice"), and the following products identified in the Notice, namely (the "Covered Products").

**Self Health Resource Center Dr. Clark Store Uva Ursi  
Self Health Resource Center Dr. Clark Store Super W Blend  
Self Health Resource Center Dr. Clark Store Valerian Root  
Self Health Resource Center Dr. Clark Store Watercress  
Self Health Resource Center Dr. Clark Store Fenu-Thyme  
Self Health Resource Center Dr. Clark Store Burdock Root  
Self Health Resource Center Dr. Clark Store Super W Blend  
Self Health Resource Center Dr. Clark Store Pau d' Arco**

2. Nothing in this Agreement shall be construed as an admission of SOH of any fact, issue of law, or violation of law. The Parties agree that this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. In consideration of the following covenants of SOH, and the other conditions contained in this Agreement, ERC releases SOH as set forth in Paragraph 7 below:

a. SOH agrees that all Covered Products produced and offered for sale in California (and for sale to a third party for retail sale in California) after May 1, 2012, shall comply with Proposition 65.

b. SOH shall conduct Lead testing of at least one (1) randomly selected sample of each lot of the Covered Products (in the form intended for sale to the end-user) to ensure that the Products comply with Proposition 65, which at the time this Agreement is written means the daily exposure of Lead is no more than 0.5 micrograms when the maximum number of servings is taken as directed on the Covered Products' label. The first test shall commence no later than May 1, 2012. All testing done pursuant to paragraph 3.b. is to be performed by a trained laboratory technician at the SOH facility using the PerkinElmer Optima 2000 ICP-OES spectrometer upgraded with Optima 8000 software, or comparable equipment.

c. SOH shall conduct additional Lead testing of at least one (1) randomly selected sample of each lot of each of the Covered Products (in the form intended for sale to the end-user) to ensure reliability of the results obtained using the Optima 2000 ICP-OES spectrometer upgraded with Optima 8000 software, or comparable equipment. The first test shall commence

no later than May 1, 2012. All testing done pursuant to 3.c. is to be performed by a laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or a laboratory that is approved by, accredited by, or registered with the United States Food & Drug Administration for the analysis of heavy metals. Testing under this section shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) and closed-vessel, microwave-assisted digestion employing high-purity reagents, or other testing methods recommended at the time of the testing by the California Attorney General's Office, or any other testing method agreed upon in writing by the Parties. Testing pursuant to paragraph 3.c. shall continue until at least one (1) lot of each of the Covered Products has been tested and compared to test results from testing conducted pursuant to paragraph 3.b.

d. The parties acknowledge receipt of information from PerkinElmer that SOH is the first company in the United States to purchase and use the Optima 2000 upgraded with Optima 8000 software, or comparable equipment, for the purpose of Lead testing and that it is in the public's interest to conduct testing of, and verify the accuracy of the Optima 2000 upgraded with Optima 8000 software, or comparable equipment, for potential use by other companies whose objective is compliance with Proposition 65.

e. The method of selecting samples for testing under paragraphs 3.b. and 3.c. shall comply with the regulations of the Food and Drug Administration as set forth in Title 21, Part 111, Subpart E of the Code of Federal Regulations, including section 111.80(c).

f. SOH shall retain copies of its test data from the date testing commenced and shall provide all test data to ERC upon fifteen (15) days of receipt of said data after conducting the required testing as set forth above. The requirement to provide all test data to ERC shall cease after one year from the Effective Date.

4. In full and final satisfaction of civil penalties, payment in lieu of further civil penalties, ERC's expenses and costs of investigation, and ERC's attorney fees, SOH shall make a total payment of \$50,000 ("Total Settlement Amount"). Sections 4.a-4.e below describe the agreed partition and timing of payments of the Total Settlement Amount.

a. As a portion of the Total Settlement Amount, \$4,000 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$3,000) of the civil penalties to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c). ERC will retain the remaining 25% (\$1,000) of the civil penalty.

b. As a portion of the Total Settlement Amount, \$16,000 shall be considered a payment to ERC in lieu of further civil penalties for activities such as (1) funding the investigating, researching and testing of consumer products that may contain Proposition 65 listed chemicals; (2) funding grants to California non-profit foundations/entities dedicated to public health; (3) funding the ERC Eco Scholarship Fund for high school students in California interested in pursuing an education in the field of environmental sciences; (4) funding ERC's Operation Education Program designed to provide funding to educators in the State of California

public school system for creative and effective environment and environmental sciences teaching projects; (5) funding ERC's Voluntary Compliance Program to work with companies not subject to Proposition 65 to reformulate their products to reduce potential consumer exposures to Proposition 65 listed chemicals; (6) funding ERC's RxY Program to assist various medical personnel to provide testing assistance to independent distributors of various products; (7) funding ERC's Got Lead? Program to assist consumers in testing products for lead content; (8) funding post-settlement monitoring of past consent judgments; (9) funding to maintain ERC's database of lead-free products, Proposition 65-compliant products and contaminated products; (10) funding to track and catalog Proposition 65-compliant, contamination-free sources of ingredients used in the products ERC tests; (11) funding ERC's Cancer Scholarship Fund; and (12) funding the continued enforcement of Proposition 65 matters which address contaminated ingestible products, similar to the subject matter of this Action.

c. As a portion of the Total Settlement Amount, \$15,000 shall be considered a reimbursement to ERC for its reasonable investigation costs associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of investigating, bringing this matter to SOH's attention, and negotiating a settlement in the public interest.

d. As a portion of the Total Settlement Amount, \$15,000 shall be considered a reimbursement to ERC for its attorney fees.

e. Within 5 days of the Effective Date, SOH shall pay ERC the sum of thirteen thousand dollars, (\$13,000.00); within 35 days of the Effective Date, SOH shall pay ERC the sum of thirteen thousand dollars (\$13,000.00); and for the next 8 months, due on the 1<sup>st</sup> day of each month, SOH shall pay ERC the sum of three thousand dollars (\$3,000) by checks made payable to "Environmental Research Center" and sent by first-class registered or certified mail, or overnight delivery, to ERC's counsel Karen A. Evans at the Law Office of Karen A. Evans. A 5% annual interest rate shall apply to payments received between 7 and 30 calendar days past due. In the event that any payment owed under this Agreement is not remitted on or before the 30<sup>th</sup> calendar date past its due date, SOH shall be deemed to be in default of its obligations under this Agreement and all future payments shall become immediately due and payable. In the event that the ownership of SOH changes hands, all future payments become immediately due and payable.

f. Oskar Thorvaldsson shall execute a personal guarantee on the payment obligations of SOH under this Agreement.

g. As a further condition to this Agreement, SOH shall provide information and documentation reasonably requested by ERC to assist ERC in its efforts to seek compliance with Proposition 65 by San Francisco Herb & Natural Food Company and Mountain Rose, Inc. Such information and documentation shall include, but not be limited to the specific amount of these Companies' products used in the Covered Products, representations as to Lead content made by these Companies to SOH, Invoices, Packing Slips, Contracts, and Indemnity Agreements.

5. SOH shall bear any and all of its own costs, expenses, and attorney fees related to this matter.

6. In consideration of the following covenant of ERC, and the other conditions contained in this Agreement, SOH releases ERC as set forth in Paragraph 9 below:

7. ERC acting on its own behalf releases SOH from all claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead from the Covered Products as set forth in the Notice.

8. The Parties hereby stipulate that this Settlement Agreement & Release applies only to SOH, and not to any other entity upstream or downstream of the company, including but not limited to San Francisco Herb & Natural Food Company, dba Nature's Herb Company and Mountain Rose, Inc. or any of their parents, subsidiaries, affiliates, divisions, or subdivisions.

9. ERC, on its own behalf, on one hand, and SOH, on the other hand, release and waive any claims they may have against each other, and their officers, directors, employees, agents, representatives, and attorneys (the "Releasees") for all actions or statements made or undertaken by the Releasees in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice.

10. Nothing in this Release is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of SOH's products other than the Covered Products.

11. Nothing herein shall be construed as diminishing SOH's continuing obligations to comply with Proposition 65.

12. No action to enforce this Agreement may be filed by ERC, unless ERC notifies SOH of the specific acts alleged to be in breach of the Agreement at least sixty (60) days before filing and serving any such action. Any notice to SOH must contain (1) the name of the product; (2) the lead content of the product, with a copy of the analytical results and description of the testing methodology; (3) specific dates when the product was sold in California; and (4) the store or other place at which the product was available for sale to California consumers. Within forty-five (45) days of receiving the notice described in this paragraph, SOH shall either (1) withdraw the product from sales in California, (2) provide the appropriate Proposition 65 warning for the product, or (3) refute the information provided under this paragraph. Should the parties be unable to resolve the dispute, ERC may take appropriate action to enforce this Agreement.

13. After execution of the Agreement, ERC will submit to the California Attorney General a Report of Settlement. In addition, ERC will provide to the California Attorney General the fully signed copy of this Agreement. The Parties acknowledge and agree that the Parties shall provide as much information as is requested by the California Attorney General, or any other governmental agency, regarding this Matter, its settlement, and this Agreement.

14. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes and replaces any and all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this

Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by all parties to this Agreement.

15. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, officers, directors, employees, agents, servants, heirs, executors, successors, and assigns.

16. 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 this Agreement. It is conclusively presumed all of the Parties participated equally in the preparation and drafting of this Agreement.

17. If any provision, term or section of this Agreement is found to be invalid, illegal or unenforceable, all remaining provisions, terms or sections shall continue in full force and effect and remain binding on the Parties. If any provision, term or section of this Agreement is determined to be unenforceable, such provision, term or section may be modified so that the unenforceable provision, term or section is enforceable to the greatest extent possible.

18. This Agreement shall be deemed to have been entered into in the State of California, and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

19. Any legal action to enforce this Agreement shall be brought in any county of the State of California, any of which is deemed to be the proper venue for such legal action. The prevailing party in any such legal action shall be entitled to recover for its attorney fees in addition to any other legally recoverable costs.

20. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail or other copies of this Agreement or any counterparts, shall be deemed to be an original.

21. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the party for whom they execute to the terms and conditions of this Agreement.

DATED: \_\_\_\_\_

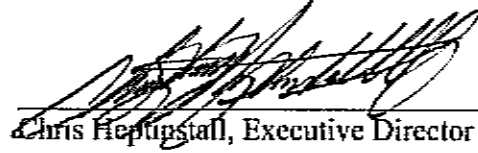
SOURCE OF HEALTH, INC.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATED: 4/19/12

ENVIRONMENTAL RESEARCH CENTER

By:

  
Chris Heptinstall, Executive Director