

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement") is made effective on the date on which it is executed (the "Effective Date") between Environmental Research Center Inc. ("ERC") and Living Intentions, LLC ("LIVING"). ERC and Living are referred to individually as a "Party" and 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 LIVING on November 30, 2012 (the "Notice"), and the products identified below (the "Covered Products").

- **Living Intentions Salad Booster Vegan Cheesy**
- **Living Intentions Salad Booster The Zesty Original**
- **Living Intentions Superfood Cereal Chia Ginger**

2. The Parties enter into this Agreement in order to achieve a settlement of the claims as stated in Section 1 for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of ERC or LIVING of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by LIVING of any fact, issue of law or violation of law. Nothing in this Agreement or any document referred to herein, shall be construed as giving rise to any presumption or inference of admission or concession by LIVING as to any fault, wrongdoing or liability whatsoever. 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 LIVING, and the other conditions contained in this Agreement, ERC releases LIVING as set forth in Section 6 below:

a. LIVING agrees that all Covered Products produced and offered for sale in California (and offered for sale to a third party for retail sale in California) on and after the Effective Date, shall comply with California law, including Proposition 65.

b. Beginning on the Effective Date, LIVING shall not manufacture for sale in the State of California, distribute into the State of California, or directly sell in the State of California, any Covered Products which expose a person to a daily dose of lead more than 0.5 micrograms per day when the maximum suggested amount is consumed as directed on the Covered Product's label, unless each such unit of the Covered Products bears the following warning statement on its individual unit label packaging or by sticker securely affixed on the product unit package:

**"WARNING: This product contains lead, a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm."**

c. The term "cancer" shall be included in the warning only if the maximum suggested amount causes an exposure to more than 15 micrograms of lead when the maximum suggested amount is taken as directed on the Covered Product's label.

d. The warning statement set forth in Section 3b. shall be prominent and displayed securely on the product unit packaging, or by a sticker securely affixed to the Covered Products with such conspicuousness, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Products. No other statements, such as those regarding Proposition 65 or lead, may accompany the warning statement.

e. LIVING has provided ERC with a Certificate of Analysis from Anresco Laboratories, dated March 25, 2013 ("Certificate"), which Certificate is attached as Exhibit A to this Agreement. That Certificate shows no detectable lead in any of the three Covered Products using testing method AOAC 986.15. It is believed that the current lack of detectable lead may be the result of the relocation of LIVING's manufacturing facility, which relocation occurred after the testing which gave rise to the Notice. Accordingly, the warning statement set forth in Section 3b. shall not be required to be placed on Covered Products, unless and until later testing, pursuant to Section 3f. below, indicates that consumption of a Covered Product will expose a person to a daily dose of lead more than 0.5 micrograms per day when the maximum suggested amount is consumed as directed on the Covered Product's label.

f. LIVING shall test at least four (4) randomly-selected samples of four separate lots each year for each Covered Product for lead content to confirm whether the maximum suggested amount is more or less than 0.5 micrograms of lead when taken pursuant to the directions on the Covered Product label. LIVING shall provide ERC with any related documentation pursuant to Section 3.g.2, and shall include the lot identification numbers of the lots tested. The first test shall commence no later than November 1, 2013. LIVING shall test samples in the form intended for the end-user.

g. In the event that later testing pursuant to Section 3e. indicates that consumption of a Covered Product exposes a person to a daily dose of lead more than 0.5 micrograms per day when the maximum suggested amount is consumed as directed on the Covered Product's label, LIVING may reformulate the Covered Product to reduce the lead content to a level that results in an exposure to 0.5 micrograms or below. If LIVING is successful with reformulation for any of the Covered Products and reduces the lead content to 0.5 micrograms or below when taken pursuant to the maximum suggested amount pursuant to the directions on the label of the Covered Product, both ERC and LIVING agree that the Covered Products may be offered for sale in California without the warning stated in Section 3b. If LIVING is successful with reformulation on any of the Covered Products, LIVING shall notify ERC and provide any test results for the Covered Products that document this change in formulation, no longer than 10 working days after LIVING's receipt of the test results.

(1) Pursuant to Sections 3f. and 3g., any such testing shall be performed by an independent, third-party 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. The method of selecting samples for testing must comply with the regulations of the Food & Drug Administration as set forth in Title 21, Part 111, Subpart E of the Code of Federal Regulations, including section 111.80(c). Testing for lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) or any other testing method agreed upon in writing by the Parties. Nothing in this Agreement shall limit LIVING's ability to conduct or require that others conduct additional testing of the Products, including raw materials used in their manufacture.

(2) Pursuant to Sections 3f. and 3g., LIVING shall retain copies of its test data from the date testing commenced and shall provide all test data to ERC within 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 three (3) years from the Effective Date.

h. The requirements of Sections 1, 2, and 3a.,3b.,3c.,3d., 3e., 3f., 3g. will only apply to any time in which LIVING is a "person in the course of doing business," as that term is defined in Health and Safety Code Section 25249.11(b). LIVING represents that during periods when the Covered Products were placed in the stream of commerce it was a person in the course of doing business because it employed 10 or more employees.

4. LIVING shall make a total payment of Nineteen Thousand Five Hundred Dollars and No Cents (\$19,500.00) ("Total Settlement Amount") to ERC. Sections 4.a-4.d below describe the agreed upon partition and payment of the Total Settlement Amount.

a. As a portion of the Total Settlement Amount, \$14,973.00 shall be considered a reimbursement to ERC for its reasonable investigation and consulting costs associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of bringing this matter to LIVING's attention and negotiating a settlement in the public interest.

b. As a portion of the Total Settlement Amount, \$3,447.00 shall be considered reimbursement of attorney fees for Ryan Hoffman, and \$1,080.00 shall be considered reimbursement of attorney fees for Michael Freund.

c. Pursuant to Section 4, LIVING agrees to remit the Total Settlement Amount of \$19,500.00 to ERC within 5 days of the Effective Date. LIVING shall make this payment by check made payable to "Environmental Research Center" and sent by first-class registered or certified mail, or overnight delivery, to ERC at: Environmental Research Center, 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108.

d. In the event that LIVING fails to remit the payment owed under Section 4 of this Settlement Agreement on or before the due date, LIVING shall be deemed to be in material breach of its obligations under this Settlement Agreement.

5. Except as set forth in Section 4, LIVING and ERC shall bear any and all of their own costs, expenses, and attorneys' fees related to this matter.

6. ERC, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives, releases LIVING 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 served on LIVING on November 30, 2012.

7. The Parties hereby agree that this Settlement Agreement & Release applies to LIVING, and fully releases LIVING, its parents, subsidiaries, affiliates (including those companies that are under common ownership and/or common control), shareholders, directors, members, managers, officers, employees, and attorneys from all claims asserted in the Notice.

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

9. 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 LIVING's products other than the Covered Products.

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

11. After execution of this Agreement, ERC will submit to the California Attorney General a Report of Settlement. In addition, ERC will provide to the California Attorney General a 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.

12. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes 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 both Parties.

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

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

15. If any provision, term, or section of this Agreement is found to be invalid, illegal, or unenforceable, then 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, then such provision, term, or section may be modified so that the unenforceable provision, term, or section is enforceable to the greatest extent possible.

16. 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.

17. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

18. The Parties are aware and acknowledge that this Agreement is an out-of-court settlement and that they will not receive the protections afforded by a court-approved consent judgment. The Parties are entering into this Agreement in good faith and in an effort to settle all claims and allegations related to the Notice of Violations of California Health & Safety Code §25249.5, *et seq.*, that ERC served on LIVING on November 30, 2012, which applies only to the claims made by ERC and to the products identified in the Notice.

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 its attorneys' fees in addition to any other legally recoverable costs.

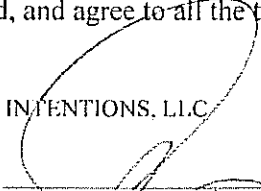
20. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail, copy of this Agreement, or any other counterpart, shall be deemed to be an original.

21. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

DATED: 8/5/13

LIVING INTENTIONS, LLC

By: \_\_\_\_\_

  
Title: [ Owner / CEO ]

DATED: 8/6/13

ENVIRONMENTAL RESEARCH CENTER, INC.

By: \_\_\_\_\_

  
Chris Hensinstall, Executive Director



# Certificate of Analysis

March 25, 2013

LIVING INTENTIONS LLC  
250 S. Garrard Blvd., #250  
Richmond, CA 94801

Anresco No. 320130371

Attn: Joshva McHugh  
FAX: 415-824-4333

### Sample information

Product Three Samples As Follows:  
1.Vegan Cheesy Salad Booster 3OZ Lot #LI-VC-011614  
2.Zesty Original Salad Booster 3OZ Lot #LI-ZO-022514  
3.Chia Ginger Superfood Cereal 9OZ Lot #LI-CG-020714

Received Date March 18, 2013.


### Analytical Results

Analysis Date March 18, 2013 to March 25, 2013  
Method AOAC 986.15  
Analyst Yelena Bindman

### Findings

| Sample ID  | Lead, mg/kg   | Detection Limit, mg/kg |
|--|---------------|------------------------|
| 1.Vegan Cheesy Salad Booster Lot #LT-VC-011614   | None Detected | 0.02                   |
| 2.Zesty Original Salad Booster Lot #LI-ZO-022514 | None Detected | 0.02                   |
| 3.Chia Ginger Superfood Cereal Lot #LI-CG-020714 | None Detected | 0.02                   |

Reported by  
Anresco, Inc.

  
Cynthia Kushi  
Senior Chemist

  
Yelena Bindman  
Senior Chemist