

**SETTLEMENT AND RELEASE AGREEMENT BETWEEN CLAIMANT TAMAR
KALOUSTIAN AND NEW ENGLAND GREENS, LLC**

1. INTRODUCTION

1.1. The Parties

This Settlement and Release Agreement (“Agreement”) is entered into by and between Tamar Kaloustian (“Claimant”), on the one hand, and New England Greens, LLC d/b/a Vibrant Health (“New England Greens”), on the other hand, with Claimant and New England Greens collectively referred to as the “Parties” and individually as “Party.”

1.2. General Allegations and Product Description

Claimant alleges that New England Greens manufactured, distributed and offered for sale in the State of California Plant-Based Superfood – Green Vibrance, including but not limited to UPC #0 74306 80002 2 and substantially similar products (the “Product”) sold by retailers including but not limited to, Nowhere Partners, Corporation d/b/a Erewhon Markets that cause exposures to lead and lead compounds (“Lead”) without first providing clear and reasonable warning under the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code section 25249.6 *et seq.* (“Proposition 65”). California has listed Lead under Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3. Notice of Violation

On April 20, 2020, Claimant issued to New England Greens, Nowhere, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California a document entitled “60-Day Notice of Violation” (“Notice”) that provided New England Greens and certain public enforcers with notice that New England Greens was allegedly in violation of California Health & Safety Code section 25249.6. To the

best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.4. No Admission

The parties enter into this Agreement to settle disputed claims between them as set forth herein and in the Notice concerning New England Greens' compliance with Proposition 65. Specifically, New England Greens denies the material factual and legal allegations contained in Claimant's Notice. The Product is a covered product subject to a Consent Judgment entered into in 2013 ("2013 Consent Judgment"), and maintains that, all products that it has manufactured for sale and distributed in California, including the Product, have been at all relevant times in compliance with terms of the 2013 Consent Judgment, Proposition 65 and any other statutory, regulatory, common law, or equitable doctrine. Particularly, New England Greens asserts that the label of the Product contained a clear and reasonable warning for all relevant California sales. Nothing in this Agreement shall be construed as an admission by New England Greens of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by New England Greens of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by New England Greens. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of New England Greens under this Agreement.

1.5. 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 in the public interest and to avoid prolonged and costly litigation between them.

1.6. Effective Date

For purposes of this Agreement, the term “Effective Date” shall mean the date on which a complete copy of the Agreement is delivered to each Parties’ counsel.

2. INJUNCTIVE RELIEF

New England Greens maintains that under the 2013 Consent Judgement that it has already agreed, and currently provides, on the exterior cardboard label of the Product a clear and reasonable warnings as set forth herein or as defined by the California Code of Regulations, tit. 27, div. 4, chap. 1, art. 6 (commencing at § 25600). The individual Product packets inside the cardboard label are not intended for and should not have been offered for individual sale in California. As of the Effective Date, New England Greens agrees to add on the Product’s label a statement saying that the individual Product packets are not for individual sale in California and/or remove the bar code from the individual Product packets. This requirement shall not apply to Products that are manufactured prior to the Effective Date. New England Greens intends to continue to comply with the injunctive terms of the 2013 Consent Judgment.

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

In settlement of all the claims referred to in this Agreement, New England Greens shall pay a total of \$1,500 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the OEHHA and the remaining 25% of the penalty remitted to Claimant. Claimant’s counsel shall be responsible for delivering OEHHA’s and Claimant’s portions of any penalty payment made under this Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Claimant and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, New England Greens shall reimburse Claimant's counsel for fees and costs incurred as a result of investigating and bringing this matter to New England Greens' attention. New England Greens shall pay Claimant's counsel \$13,500 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

Within fifteen (15) days following the Effective Date, New England Greens shall make a total payment of Fifteen Thousand Dollars (\$15,000) for civil penalties, fees, and costs to the following addresses respectively:

All payments owed to Plaintiff and for attorneys' fees, shall be delivered to the following payment address:

**KJT LAW GROUP LLP
230 N. Maryland Avenue, Suite 306
Glendale, CA 91206**

All payments owed to OEHHA shall be delivered directly to OEHHA at the following addresses:

For United States Postal Delivery:

Senior Accounting Officer -- MS 19-B
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-0410

For Non-United States Postal Service Delivery:

Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1001 I Street
Sacramento, CA 95814

Other than this payment, the Parties agree to bear their own fees and costs.

6. CLAIMS COVERED AND RELEASED

**6.1. Release of New England Greens, Downstream Customers and
Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Claimant, in her representative capacity, and on behalf of herself, her 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 relating to the Product, and releases all claims including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) New England Greens, (b) each of New England Greens' distributors, wholesalers, manufacturers, vendors, licensors, licensees, auctioneers, retailers (including but not limited to Nowhere Partners, Corporation d/b/a Erewhon Markets and its respective subsidiaries, affiliates, parents, franchisees, cooperative members, and licensees), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) New England Greens' parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

Claimant also, in her capacity, on behalf of herself, his past and current agents, representatives, attorneys, successors, and/or assignees, and *not* in her representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, fees (including but not limited to attorneys' fees), damages, losses, claims, liabilities, and demands of any nature, character, or kind, known or unknown, suspected or unsuspected, relating to the Product, against New England Greens and the Releasees . Claimant acknowledges that she is familiar with California Civil Code section 1542, 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.

Claimant, in her capacity only, and on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her by the provisions of, California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

6.2. New England Greens' Release of Claimant

New England Greens waives any and all claims against Claimant, her attorneys, and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Claimant and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Product.

6.3. Public Benefit

The Parties understand and agree that the commitments New England Greens has agreed to herein, and actions to be taken by New England Greens under this Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Administrative Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to New England Greens' failure to provide a Proposition 65 warning concerning 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 those Products addressed in this Agreement, provided that New England Greens is in material compliance with this Agreement.

7. SEVERABILITY

If, subsequent to the execution of this Agreement, any of the provisions of this Agreement are deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected, but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Agreement being contrary to, the intent of the Parties in entering into this Agreement.

8. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California and apply within the State of California. Actions to enforce any provision of this Agreement shall be venued in the Superior Court of California, County of Sacramento. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then New England Greens shall have no further obligations pursuant to this Agreement.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: (i) first-class mail (registered or certified), return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

For New England Greens: Will Wagner, Esq.
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

For Claimant: Tro Krikorian, Esq.
KJT Law Group, LLP
230 N. Maryland Ave., Suite 306
Glendale, CA 91206

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

10. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

Claimant agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations,

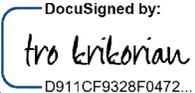
commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties as to the subject matter of this Agreement.

13. MODIFICATION

This Agreement may be modified only by a subsequent written agreement signed by the Parties.

14. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agreed 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 obligations that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

<p>4/9/2021 AGREED TO: Date: April __, 2021</p> <p>By:  <small>D911CF9328F0472...</small> On Behalf of Claimant Tamar Kaloustian</p>	<p>AGREED TO: Date: April __, 2021</p> <p>By: _____ On Behalf of New England Greens, LLC d/b/a Vibrant Health</p>
--	--

commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties as to the subject matter of this Agreement.

13. MODIFICATION

This Agreement may be modified only by a subsequent written agreement signed by the Parties.

14. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agreed 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 obligations that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

AGREED TO:	AGREED TO:
Date: March __, 2021	Date: April 14, 2021
By: _____ On Behalf of Claimant Tamar Kaloustian	By:  On Behalf of New England Greens, LLC d/b/a Vibrant Health