

SETTLEMENT AGREEMENT AND RELEASE

BETWEEN

KEY SCIENCES LLC

AND

NATURE'S PATH FOODS USA INC.

1.0 INTRODUCTION

The Settling Parties:

1.1 Key Sciences LLC (“Key Sciences”) and Nature's Path Foods USA Inc. (herein referred to as “Nature’s Path”), (Key Sciences and Nature’s Path collectively referred to as the “Parties” and each individually as a “Party”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle Key Sciences’ allegations that Nature’s Path violated the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* (“Proposition 65”).

1.2 Key Sciences is a limited liability corporation whose mission is to ensure accuracy of labeling for the benefit and protection of consumers of packaged goods through rigorous scientific testing.

1.3 Nature’s Path is alleged to be a person in the course of doing business in California and subject to the provisions of Proposition 65.

Effective Date:

1.4 The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”).

The Alleged Violations:

1.5 Key Sciences alleges that the Covered Products exposure individuals to Acrylamide and that Nature's Path did not first provide a clear and reasonable warning to those individuals prior to the exposure thus violating Proposition 65.

The Covered Products:

1.6 The products covered by this Settlement Agreement are Nature's Path Organic Waffles (referred to throughout as the "Covered Products"). The Covered Products are limited to those sold or supplied to retailers in California under the Nature's Path brand.

The Chemicals at Issue:

1.7 Acrylamide is referred to hereafter as the "Listed Chemical(s)". On January 1, 1990, the Governor of California added Acrylamide to the list of chemicals known to the State to cause cancer, and on February 25, 2011 the Governor added Acrylamide to the list of chemicals known to the State to cause developmental and reproductive toxicity. These additions took place more than twelve (12) months before Key Sciences served its "Sixty-Day Notice of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986" which is further described below.

Notice of Violations:

1.8 On or about July 1, 2021, Key Sciences served, Nature's Path and certain relevant public enforcement agencies with documents entitled "Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic

Enforcement Act of 1986” designated with Attorney General number 2021-01598 regarding the Covered Products containing the Listed Chemical.

1.9 The Sixty-Day Notice (referred to as “Notice”) alleged that Nature’s Path and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Listed Chemical.

The Dispute and No Admissions by the Parties:

1.10 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties’ and the Covered Products’ compliance with Proposition 65 (the “Dispute”).

1.11 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Nature’s Path, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that Key Sciences or

Nature's Path may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

2.0 RELEASE

2.1 This Settlement Agreement is a full, final, and binding resolution between Key Sciences, acting in its individual capacity, on the one hand, and (a) Nature's Path, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively "Releasees") and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream Releasees"), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising only in connection with the Covered Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered Products are limited to those sold by Nature's Path.

2.2 Key Sciences, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the

Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action, 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) (collectively "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect to any Covered Products sold up to the Effective Date, to the extent that such Claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

2.3 Key Sciences acknowledges that it is familiar with Section 1542 of 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.

Key Sciences, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common

law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. The release in this section shall have no force or effect until the full amount of payments set forth in Section 4.0 below are paid in full.

2.4 Nature's Path its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Products all rights to institute or participate in, directly or indirectly, and fully releases and discharges Key Sciences and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, principals, officers, directors, insurers, attorneys, predecessors, successors, agents, and assigns from any and all Claims including unknown and unsuspected claims as described in paragraph 2.3 above, that arise from the institution, prosecution, assertion, or settlement of the Notice or the claims asserted therein.

3.0 INJUNCTIVE RELIEF

3.1 **Remedial Duties:** Nature's Path agrees that within 120 days of the Effective Date ("Compliance Date"), and continuing thereafter, it will only manufacture or arrange for manufacture for sale in California (a) Covered Products that are Reformulated Products pursuant to Section 3.2, or (b) Covered Products that are labeled with a clear and reasonable warning pursuant to Section

3.2 **Reformulation Standard:** "Reformulated Products" are those Covered Products for which the level of the Listed Chemical does not exceed 280 parts per

billion (“Reformulation Standard”) when tested as packaged in accordance with generally accepted methods for the testing of the presence of acrylamide in foods.

3.3 Clear and Reasonable Warnings: To the extent Nature’s Path is required to provide warnings in accordance with Section 3.1, warnings shall be affixed to the packaging of or directly on the Covered Products, and be 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. Any warning on the packaging or label must set off from other surrounding information and be enclosed in a box. Where a Covered Product’s packaging or label 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. “Consumer Information” includes warnings, directions for use, ingredient lists, and nutritional information. “Consumer Information” does not include the brand name, product name, company name, location of manufacture, or product advertising. The Parties agree that product labeling stating that:

“WARNING: Consuming this product can expose you to chemicals including acrylamide, which is known to the State of California to cause cancer [and birth defects or other reproductive harm.]¹ For more information go to www.P65Warnings.ca.gov/food.”

¹ The language in brackets must be added if the Covered Product contains acrylamide in levels that exceed the Maximum Allowable Does Level.

shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Product. At Defendant's option, it may also use the short form warning, "Cancer [and Reproductive Harm] - www.P65Warnings.ca.gov" if provided in accordance with 27 Cal. Code Regs. § 25603(b) et seq., as amended. Nothing in this section prevents Defendant from providing other factual information regarding the source and presence of acrylamide on Covered Products' labels, website or other media. Covered Products manufactured on or before the Compliance Date are exempt from this requirement.

4.0 PAYMENTS

4.1 Nature's Path agrees, to pay a total of fifty-eight thousand and five hundred dollars (\$58,500) within ten (10) days of the Effective Date by separate checks apportioned as follows:

4.1.1 Civil Penalty: Nature's Path shall pay twenty-eight thousand six hundred and sixty-four dollars (\$28,664.00) as civil penalties pursuant to Health & Safety Code § 25249.12. This payment shall be made via two separate checks:

(a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of twenty-one thousand four hundred and ninety-eight dollars (\$21,498.00), representing 75% of the total penalty; and

(b) one check to Key Sciences LLC in the amount of seven thousand one hundred and sixty-six dollars (\$7,166.00), representing 25% of the total penalty. Additionally, two separate 1099s shall be issued for the above

payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$21,498.00. The second 1099 shall be issued in the amount of \$7,166.00 to Key Sciences and delivered to: Kyle Wallace, Davitt, Lalley, Dey & McHale, P.C., 1971 E Beltline Ave., Suite 106, Grand Rapids, MI 48925. By the Effective Date, Key Sciences shall provide Nature's Path with Key Sciences' Employer Identification Number.

4.1.2 Attorneys' Fees and Costs: Nature's Path shall pay twenty-nine thousand eight hundred and thirty-six dollars (\$29,836.00) to "Davitt, Lalley, Dey & McHale, P.C." (herein "DLDM"), as Key Sciences' attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Nature's Path's attention. By the Effective Date, DLDM shall provide Nature's Path with its Employer Identification Number.

4.1.3 Delivery of Payment:

(a) OEHHA's check shall be delivered to:

Office of Environmental Health Hazard Assessment
Attn: Mike Gyurics
1001 I Street, Mail Stop 12-B
Sacramento, CA 95812-4010

Concurrently with the payment to OEHHA, Nature's Path shall provide Key Sciences with written confirmation that the payment to OEHHA was delivered.

(b) All checks for Key Sciences' and DLDM shall be delivered to:

Kyle Wallace
Davitt, Lalley, Dey & McHale, P.C.
1411 Cortez Street #21948
Denver, CO 80221

5.0 AUTHORITY TO ENTER INTO SETTLEMENT AGREEMENT

5.1 Each of the Parties represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind each Party to this Settlement Agreement.

6.0 REPORT OF THE SETTLEMENT AGREEMENT TO THE OFFICE OF THE ATTORNEY GENERAL OF CALIFORNIA

6.1 Key Sciences shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

7.0 EXECUTION IN COUNTERPARTS AND FACSIMILE

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original.

8.0 ENTIRE AGREEMENT

8.1 This Settlement 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 any of the Parties.

9.0 MODIFICATION OF SETTLEMENT AGREEMENT

9.1 Any modification to this Settlement Agreement shall be in writing and signed by the Parties. Key Sciences shall report any written modification of this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of the written modification.

9.2 If Proposition 65 is repealed, amended, modified, or is otherwise rendered inapplicable for any reason, including but not limited to changes in the law regarding concentration levels for acrylamide or regulatory changes regarding warnings for acrylamide in food products, then Nature's Path may shall provide written notice to Key Sciences of any asserted change, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected. For example, if OEHHA finalizes its proposed regulation regarding the presence of acrylamide in the Covered Products to a level that is higher than 280 parts per billion, this Settlement Agreement shall be deemed modified to align with the value in the final regulation.

9.3 If a court of competent jurisdiction or an agency of the federal government, including, but not limited to the U.S. Food and Drug Administration, states through any communication, regulation, or legally binding act, that federal law has preemptive effect on any of the requirements of this Settlement Agreement, including, but not limited to precluding Defendant from providing any of the warnings set forth in this Settlement Agreement or the manner in which such warnings are given, then Nature's Path shall provide written notice to Key

Sciences of any asserted change and this Settlement Agreement shall be deemed modified to bring it into compliance with or avoid conflict with federal law.

9.4 Upon request by either of the Parties, the Parties shall meet and confer for a period of no less than 30 days to discuss whether to enter a consent judgment as to the claims arising out of the Dispute.

10.0 APPLICATION OF SETTLEMENT AGREEMENT

10.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, Key Sciences and the Releasees and Downstream Releasees identified in Section 2 above.

11.0 ENFORCEMENT OF SETTLEMENT AGREEMENT

11.1 Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 11.2 and 11.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party in any such enforcement action shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

11.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against Nature's Path by Key Sciences, unless the party seeking enforcement or alleging violation notifies the other party of the specific acts alleged to breach this Settlement Agreement at least 30 days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 11.3 below. Any notice to

Nature's Path must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation or warning, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

11.3 Within 30 days of receiving the notice described in Section 11.2, Nature's Path shall either (1) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to Nature's Path for full credit, including shipping costs, or (2) refute the information provided under Section 11.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 11.1.

12.0 NOTIFICATION REQUIREMENTS

12.1 Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For Key Sciences:

Kyle Wallace
Davitt, Lalley, Dey & McHale, P.C.
1411 Cortez Street #21948
Denver, CO 80221

For Nature's Path :

William F. Tarantino, Esq.
Morrison & Foerster LLP
425 Market Street

San Francisco, CA 94105-2482

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

13.0 SEVERABILITY

13.1 If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

14.0 GOVERNING LAW

14.1 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, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Products, then Nature's Path shall provide written notice to Key Sciences of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

AGREED TO:

KEY SCIENCES LLC

Dated: 2/18/22

By:  _____

Printed Name: Lao Tizer

Title: Owner

AGREED TO:

NATURE'S PATH FOODS USA INC.

Dated: _____

By: Neil Mandleman

Printed Name: Neil Mandleman

Title: Chief Financial Officer