

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) between Environmental Research Center, Inc. (“ERC”) and NativePath, LLC and Lexicon Digital Media Group, LLC, individually and dba NativePath (collectively “NativePath”) is effective on April 18, 2022 (“Effective Date”). ERC and NativePath are referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1. This matter arises out of the Notice of Violation of California Health & Safety Code §25249.5, *et seq.* (also known as “Proposition 65”) that ERC served on NativePath on October 14, 2021 (the “Notice”) with regard to the following product identified below (referred to as the “Covered Product”):

- **NativePath All-In-One Plant Based Native Nutrients Delicious Sweet Greens (UPC 027191).**

2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Notice and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission against interest of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission against interest by the Parties of any fact, issue of law or violation of law. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability. This Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

**3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

In consideration of the following covenants and conditions contained in this Agreement, the Parties have provided the releases as set forth in Section 6 below:

3.1 Beginning on the Effective Date, NativePath shall be permanently enjoined from manufacturing for sale in the State of California, “Distributing into the State of California,” or directly selling in the State of California, any Covered Product which exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it meets the warning requirements under Section 3.2. Covered Products manufactured and placed into the Stream of Commerce prior to the Effective Date may be sold by any person at any time without violation of this Agreement. The term Stream of Commerce means that manufactured Covered Products are put into final packaging for consumer sales and (1) have been Distributed into the State of California or sold in the State of California by NativePath or (2) are no longer in the possession of or under the control of NativePath.

3.1.1 As used in this Agreement, the term “Distributing into the State of California” and “Distributed into the State of California” shall mean to directly ship a Covered

Initials JO  4/18/22

Product into California for sale in California or to sell a Covered Product to a distributor that NativePath knows or has reason to know will sell the Covered Product in California.

**3.1.2** For purposes of this Agreement, the “Daily Lead Exposure Level, ” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size recommended on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section 3.1.3., amounts of allowances of lead in the ingredients listed in **Table 1** below. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one and the serving size shall be the largest serving size depicted on the nutrition facts panel or the supplement facts panel.

**3.1.3** In calculating the Daily Lead Exposure Level for the Covered Product, NativePath shall be allowed to deduct the amount of lead which is deemed “naturally occurring” in any ingredient listed in **Table 1** that is contained in the Covered Product under the following conditions: For each year that NativePath claims entitlement to a “naturally occurring” allowance, NativePath shall provide ERC with the following information: (a) NativePath must produce to ERC a list of each ingredient in the Covered Product, and the amount, measured in grams, of each such ingredient contained therein, for which a “naturally occurring” allowance is claimed; (b) NativePath must provide ERC with documentation of laboratory testing that complies with Sections 3.4.3 and 3.4.4 and that shows the level of lead detected in any ingredient listed in **Table 1** that is contained in the Covered Product and for which NativePath intends to deduct “naturally occurring” lead; (c) If the laboratory testing reveals the detection of lead in any ingredient listed in **Table 1** that is contained in the Covered Product, NativePath shall be entitled to deduct up to the full proportional amount of the allowance for that ingredient, as listed in **Table 1**, but not to exceed the total amount of lead actually detected in that ingredient in the Covered Product; and (d) If the Covered Product does not contain an ingredient listed in **Table 1**, NativePath shall not be entitled to a deduction for “naturally occurring” lead in the Covered Product for that ingredient.

The information required by Sections 3.1.3 (a) and (b) shall be provided to ERC within sixty (60) days of the Effective Date, and anniversary thereof, for any year that NativePath claims entitlement to the “naturally occurring” allowance. Only one test result for each relevant ingredient for which an allowance is claimed shall be required for the first submittal within sixty (60) days of the Effective Date, and only one test result shall be required for each relevant ingredient for which an allowance is claimed for each subsequent annual reporting period. No information is due to ERC under this Section for the Covered Product if a Warning is provided.

///  
///  
///  
///

Initials JP CB 4/8/02

TABLE 1

INGREDIENT	ALLOWANCES OF AMOUNT OF LEAD
Calcium (Elemental)	Up to 0.8 micrograms/gram (up to a maximum amount of 1.2 micrograms of lead if there are 1.5 grams or more of elemental calcium in the Covered Product)

**3.2 Clear and Reasonable Warnings**

If NativePath is required to provide a warning pursuant to Section 3.1, the following warning must be utilized (“Warning”):

**WARNING:** Consuming this product can expose you to chemicals including [lead] which is [are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

NativePath shall use the phrase “cancer and” in the Warning if NativePath determines that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if NativePath determines that exposure to another Proposition 65 chemical may require a cancer warning, in which case NativePath may modify the above Warning to reference one or more such carcinogen(s) without modification of this Agreement.

The Warning shall be securely affixed to or printed upon the label of any Covered Product and it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over NativePath’s proprietary internet website, the Warning shall appear and be prominently displayed prior to completion of checkout when a California delivery address is indicated for any purchase of any Covered Product. The Warning is not prominently displayed if the purchaser must search for it in the general content of the website. An asterisk or other identifying method must be utilized to identify which product being purchased is subject to the Warning. In no event shall any NativePath internet or website Warning be contained in or made through exclusively through a link. In the event the Warning is provided through a link, this warning method shall be made through a clearly marked hyperlink using the word “WARNING” in all capital and bold letters either on the Covered Product’s primary display page or on the checkout page so long as the hyperlink goes directly to a page prominently displaying the Warning without content that detracts from the Warning.

The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label and the word “WARNING” shall be in all capital letters and in bold print. No statements shall accompany the Warning in the box. The Warning may be accompanied by supplemental information only to the extent that the

Initials 

supplemental information identifies the source of the exposure or provides information on how to avoid or reduce exposure to the identified chemical or chemicals.

NativePath must display the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, or on its proprietary website, if applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

For purposes of this Agreement, the term "label" means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container, packaging, or wrapper.

### **3.3 Conforming Covered Products**

A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the exposure methodology set forth in Section 3.1.2 and the quality control methodology described in Section 3.4. No Warning is required for a Conforming Covered Product.

### **3.4 Testing and Quality Control Methodology**

**3.4.1** Beginning within one year of the Effective Date, NativePath shall arrange for lead testing of the Covered Product manufactured on or after the Effective Date at least once a year for a minimum of three (3) consecutive years by arranging for testing of three (3) randomly selected samples of the Covered Product, in the form intended for sale to the end-user, which NativePath intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into the State of California." If tests conducted pursuant to this Section demonstrate that no Warning is required for the Covered Product during each of the three (3) consecutive years, then the testing requirements of this Section will no longer be required as to the Covered Product. However, if during or after the three-year testing period, NativePath changes ingredient suppliers for the Covered Product and/or materially reformulates the Covered Product, NativePath shall test the Covered Product for at least one (1) year after such change is made. Each year during which testing is required by this Section 3.4.1 may be referred to as the Annual Compliance Cycle.

**3.4.2** For purposes of measuring the "Daily Lead Exposure Level," the highest lead detection result of the three (3) randomly selected samples of the Covered Product tested during an Annual Compliance Cycle will be controlling. If, for whatever reason, during a required Annual Compliance Cycle as described in Section 3.4.1, the highest result reflects an exposure to lead in excess of the Daily Lead Exposure Level for the Covered Product, NativePath has the right to test three alternate randomly selected samples of the Covered Product, in the form intended for sale to the end-user, which NativePath intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into the State of California" ("Retest"), and the highest lead detection result from the three alternate randomly selected samples tested during the Retest shall be used as

Initials JO 

controlling for calculating the Daily Lead Exposure Level for the Covered Product for purposes of the Agreement. NativePath shall only be permitted one Retest of the Covered Product, as outlined in this Section, during each Annual Compliance Cycle. The first Annual Compliance Cycle shall be completed within one (1) year of the Effective Date and each subsequent Annual Compliance Cycle shall be completed by the subsequent annual anniversaries of the Effective Date.

**3.4.3** All testing pursuant to this Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection and limit of quantification, sensitivity, accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005 mg/kg.

**3.4.4** All testing pursuant to this Agreement shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program or an independent third-party laboratory that is registered with the United States Food & Drug Administration. Alternatively, NativePath may rely on compliance certificates delivered by a manufacturer of the Covered Product documenting the lead levels in the delivered finished goods so long as such compliance certificates comply with Section 3.4.3. NativePath further may rely on testing of any calcium ingredient by its manufacturer for which a “naturally occurring” allowance is claimed under this Agreement.

**3.4.5** Nothing in this Agreement shall limit NativePath’s ability to conduct, or require that others conduct, additional testing of the Covered Product, including the raw materials used in their manufacture.

**3.4.6** Within thirty (30) days of ERC’s written request, NativePath shall deliver the reports or certificates obtained pursuant to Section 3.4 to ERC. ERC may not request reports or certificates prior to the first anniversary of the Effective Date, and any request pursuant to this Section 3.4.6 may only relate to the previously completed Annual Compliance Cycle in order to ensure that NativePath has a full twelve (12) months to conduct an annual cycle of testing prior to ERC’s request. NativePath shall retain all such reports or certificates and documentation for a period of three years from the date of each document.

**3.4.7.** The testing requirements of this Section 3.4 do not apply to any Covered Product for which NativePath has provided a Warning in compliance with Section 3.2 continuously and uninterrupted after the Effective Date; however, in the event NativePath ceases to provide the Warning in compliance with Section 3.2, NativePath shall be required to comply with the testing requirements of this Section beginning immediately after the date the Warning ceases to be provided or one year after the Effective Date, whichever date is later, unless NativePath can show to the satisfaction of ERC that the cessation in providing the Warning was a temporary error that was resolved when discovered.

4. NativePath shall make a total payment of \$20,000.00 (“Total Settlement Amount”) by

Initials JP 

wire transfer to ERC's account on or before April 22, 2022 ("Due Date"), for which ERC will give NativePath the necessary account information on or before the Effective Date. The Total Settlement Amount shall be allocated as follows:

a. \$1,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$750.00) of the civil penalty 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% (\$250.00) of the civil penalty.

b. \$3,685.83 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to NativePath's attention and negotiating a settlement.

c. \$15,314.17 shall be distributed to ERC for its in-house legal fees.

d. In the event that NativePath fails to remit the Total Settlement Amount owed under Section 4 of this Agreement on or before the Due Date, NativePath shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to NativePath via electronic mail. If NativePath fails to deliver the Total Settlement Amount within five business days from the written notice, the Total Settlement Amount shall become immediately due and payable and shall accrue interest at the statutory judgment interest rate provided in the Code of Civil Procedure section 685.010. Additionally, NativePath agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to collect the payment due under this Agreement.

5. Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys' fees related to the Notice.

## 6. Binding Effect; Claims Covered and Released

6.1. This Agreement is a full, final, and binding resolution between ERC, on behalf of itself, and NativePath and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, manufacturers, importers, licensees, customers (including Amazon and its affiliates but not including private label customers of NativePath), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of the Covered Product, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties").

6.2 ERC, acting in the public interest, releases the Released Parties from any and all claims for violations of Proposition 65 up through the Effective Date based on exposure to lead from the Covered Product as alleged in the Notice of Violation. ERC, on behalf of itself only, hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or consumption of the Covered Product, as to any alleged violation of Proposition 65 or its implementing regulations

Initials  

arising from the failure to provide Proposition 65 warnings on the Covered Product regarding lead up to and including the Effective Date.

**6.3** ERC, on its own behalf only, and NativePath on its own behalf only, further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice up through and including the Effective Date, provided, however, that nothing in Section 6 shall affect or limit any Party's right to seek to enforce the terms of this Agreement.

**6.4** It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notice, and relating to the Covered Product, will develop or be discovered. ERC, on behalf of itself only, and NativePath, on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. ERC and NativePath acknowledge that the claims released in Sections 6.2 and 6.3 above may include unknown claims, and the Parties nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

(i) 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.

ERC, on behalf of itself only, and NativePath, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

**6.5** Compliance by NativePath after the Effective Date with the terms of this Agreement shall be deemed to constitute compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to lead in the Covered Product as set forth in the Notice, regardless of the date the Covered Product is sold. The Parties intend and agree that this Agreement and compliance therewith confers a material benefit upon the People of the State of California such that any subsequent attempted prosecution by a citizen enforcer under Proposition 65 respecting alleged lead in the Covered Product would be duplicative and not yield any additional benefit to, or advancement of, the public interest.

**6.6** Nothing in this Agreement is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of NativePath's products other than the Covered Product.

**7.** Nothing herein shall be construed as diminishing NativePath's continuing obligations to comply with Proposition 65.

Initials





8. All notices required to be given to either Party to this Agreement by the other shall be in writing and sent to the following agents listed below via first-class mail, or via electronic mail where required. Courtesy copies of notices sent via first-class mail may also be sent via email.

**FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

Chris Heptinstall, Executive Director, Environmental Research Center  
3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
Tel: (619) 500-3090  
Email: chris.heptinstall@erc501c3.org

With a copy to:

Charles W. Poss  
Environmental Research Center, Inc.  
3111 Camino Del Rio North, Suite 400  
San Diego, CA 92108  
Ph: (619) 500-3090  
Email: charles.poss@erc501c3.org

**FOR NATIVEPATH, LLC; LEXICON DIGITAL MEDIA GROUP, LLC, individually and dba NATIVEPATH:**

Mr. Jonathon Olla  
Chief Operating Officer  
1200 South Brand Blvd. Suite 184  
Glendale, CA 91204  
Email: Jonathon@nativeproducts.com

With a copy to:

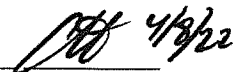
Judith M. Praitis  
Faegre Drinker Biddle and Reath LLP  
1800 Century Park E, Suite 1500  
Los Angeles, CA 90067  
Ph: (310) 203-4000  
Email: judith.praitis@faegredrinker.com

9. After executing 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. Each Party acknowledges and agrees that it shall respond to any inquiry about this Agreement made by the California Attorney General, or any other California governmental agency, regarding the Notice, the settlement, and this Agreement.

10. This Agreement contains the entire agreement between the Parties with regard to settlement of the Notice, and supersedes all prior or contemporaneous agreements or

Initials







understandings, written or oral, with regard to the Notice as set forth in this Agreement. This Agreement may be amended or modified as to injunctive terms only in whole or in part at any time only by an agreement in writing executed by the Parties.

11. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, and assigns. This Agreement is enforceable solely by the Parties hereto.

12. 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.

13. 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.

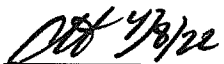
14. This Agreement shall be deemed to have been entered into in the State of California and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

15. The Parties acknowledge by signing this Agreement that they have a right to consult an attorney and that they have either consulted their attorney(s) with respect to the Notice and the terms and conditions of this Agreement or have made the decision not to consult with an attorney regarding the Notice and the terms and conditions of this Agreement. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

16. Any legal action to enforce this Agreement shall be brought in the county of Alameda of the State of California. ERC shall be entitled to recover its reasonable attorneys' fees and costs that are necessary and required to enforce the Agreement to the extent available pursuant to California Code of Civil Procedure section 1021.5.

17. 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.

18. 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.

Initials  

DATED: 4/7/2022

NATIVEPATH, LLC; LEXICON DIGITAL MEDIA GROUP, LLC, individually and dba NATIVEPATH

By: DocuSigned by:  
Jonathon Olla  
Name: Jonathon Olla  
Title: Chief Operating Officer

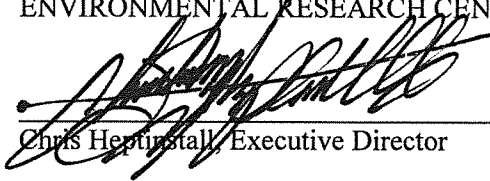
DATED: 4/7/2022

LEXICON DIGITAL MEDIA GROUP, LLC, individually and dba NATIVEPATH

By: DocuSigned by:  
Jonathon Olla  
Name: Jonathon Olla  
Title: Chief Operating Officer

DATED: 4/8/22

ENVIRONMENTAL RESEARCH CENTER, INC.

By:   
Chris Heptinstall, Executive Director

Initials DocuSigned by: JOH 4/8/22