

**CONDITIONAL DISMISSAL AND TOLLING AGREEMENT  
BETWEEN AS YOU SOW AND NESTLE HEALTHCARE NUTRITION, INC.**

This Conditional Dismissal and Tolling Agreement (“**Agreement**”) is entered into between As You Sow, Inc. (“AYS”) and Nestle HealthCare Nutrition, Inc. (“Nestle”), with an **Effective Date** of June 27, 2023. AYS and Nestle shall sometimes be referred to as “**Party**” or collectively referred to as the “**Parties**.”

**FACTUAL RECITALS**

This Agreement is made with reference to the following facts:

- A. **WHEREAS**, on November 1, 2019, AYS served a Notice of Violation, California Attorney General No. 2019-02057 (“**Notice**”), on Nestle alleging that Nestle’s sales of COMPLEAT® ORGANIC BLENDS Pediatric Plant-Based Blend (“**Product**”) violate the warning requirements of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986 (codified at California Health & Safety Code §§ 25249.5, *et seq.*) (“**Prop 65**”);
- B. **WHEREAS**, on June 4, 2020, AYS filed a complaint in the Superior Court of California, County of Santa Clara, captioned as *As You Sow v. Nestle Healthcare Nutrition, Inc., et al.*, No. 20CV367043 (Cal. Super. Ct. 2020) (“**Action**”), alleging that Nestle violated Prop 65 by failing to warn of lead contained in the Product;
- C. **WHEREAS**, since service of the Notice, and during the pendency of the Action, the Parties have been discussing settlement on terms that will require Nestle to make substantial changes to the formulations, ingredients, and sources of ingredients in the Product, reflecting an investment of significant resources and personnel and taking substantial amounts of time;
- D. **WHEREAS**, the Parties are continuing to discuss settlement and resolution of the Prop 65 violations identified in the Notice; and,
- E. **WHEREAS**, the Parties have agreed to enter into this Agreement to provide time to attempt to negotiate a potential resolution without the added expense of the pending litigation and burden on the judicial system.

**AGREEMENT**

**NOW WHEREFORE**, in consideration of the above Recitals, the Parties agree as follows:

- 1. Recitals. The Recitals above are incorporated herein by this reference as though set forth in full, and the Parties agree that the information is true and correct.
- 2. Tolling of All Applicable Statutes of Limitations. As between the Parties, and in relation to any and all claims, causes of action, or controversies arising out of or related to the claims asserted in the Notice, including but not limited to those asserted or which could be asserted in a Court action or proceeding, each and every: (a) time limit, statute of limitation, and/or statute

of repose (of any kind or nature, including all statutes of limitations specified within and related to the Prop 65 statute), (b) deadline and/or defense based in whole or in part upon the passage of time from certain events, and (c) contractual provision or deadline, if any, requiring the Parties to institute or assert any claim, right, objection, action, arbitration, administrative proceeding or legal proceeding, or take any step therein, within a specific period of time, are hereby tolled during the “Tolling Period” (defined below).

3. Term. Any and all claims, causes of action, or controversies arising out of or related to the claims asserted in the Notice shall be tolled indefinitely upon the date of dismissal of the Action (“**Tolling Period**”), and any such claims, causes of action, or controversies shall be deemed to have been tolled during the pendency of the Action. Further, nothing herein shall affect the validity of any previous tolling agreement between the Parties.

4. Preservation of Status Quo. During the Tolling Period, AYS will not file or otherwise initiate a lawsuit against Nestle or any of its subsidiaries, parents, or affiliates based on the Notice, unless any of the Parties terminate the status quo during the Tolling Period. Any Party may terminate the status quo at any time during the Tolling Period by providing written notice to the other Party or their respective legal counsel via overnight mail or e-mail at least thirty (30) days in advance of the proposed date of termination. Nothing in this Agreement shall be deemed to revive or reinstate any claims that were already time-barred prior to the commencement of the Tolling Period, however, pursuant to Paragraph 3, the period of time tolled hereunder shall be expressly “tolled” and not counted towards any limitations period related to the Prop 65 claims identified in the Notice that may be filed by AYS after the termination of the Tolling Period.

5. Good-Faith Negotiations. During the Tolling Period, the Parties will continue their good-faith settlement negotiations to resolve any and all claims, causes of action, or controversies arising out of or related to the claims asserted in the Notice.

6. Dismissal of Lawsuit. AYS agrees to dismiss the Action, without prejudice, within ten (10) days following the Effective Date. Nestle will execute any necessary stipulation to such dismissal without prejudice.

7. Payment and Letter. In exchange for AYS’s dismissal of the Action, Nestle agrees that it will:

a. make an interim payment of \$80,000.00 to AYS as reimbursement for AYS’s fees and costs incurred to date in pursuing the claims, causes of action, or controversies arising out of or related to the claims as to Nestle asserted in the Notice. Payment shall be made to “Altshuler Berzon LLP Attorney-Client Trust Account” within fifteen (15) days of the latter of the Effective Date or Nestle’s receipt of a completed W9 form from Altshuler Berzon LLP. This interim payment will be credited against any amounts ultimately requested by AYS in settlement discussions with respect to the Notice and the Action. If during the Tolling Period, Nestle reformulates the Product to fall within safe harbor levels, Nestle shall not challenge the Court’s jurisdiction to award penalties and/or fees and costs, should AYS refile an action related to the claims in the Notice and Action; and

b. send a letter to its mailing list of prescribers of the Product within thirty (30) days of the Effective Date in the form previously provided to AYS and approved by AYS, which shall include a telephone number for prescribers to obtain additional information on estimated lead levels in the Product. A copy of the prescriber letter is attached hereto as "Exhibit A."

8. Amendment. No addition, amendment, or modification of this Agreement shall be effective unless set forth in writing and executed by all Parties hereto or their respective authorized agents.

9. Governing Law. This Agreement shall be deemed to have been executed and delivered within the County of Santa Clara, State of California, and the rights of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

10. Counterparts; Facsimile; PDF. This Agreement may be signed in counterparts, all of which together shall constitute one document. Further facsimile and/or .PDF emailed copies of original signatures shall be construed as original signatures and have the same effect as original signatures.

11. Additional Documents. Each Party shall, on request of the other Party, take such actions and execute such documents as may be reasonably necessary to carry out the purposes of this Agreement.

12. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior agreements and understandings.

13. Representation by Counsel; Authorization. Each of the Parties has been fully advised by their respective counsel with respect to all rights which are affected by this Agreement, or assumed all risk associated with not utilizing advice of legal counsel with respect to resolution of the claims contained in the Notice or affected by this Agreement. Each Party, as applicable, authorizes its respective counsel to execute and deliver such other and further documents as may be necessary to carry out the terms of this Agreement. Each of the individuals whose signatures appear below has the express authority granted by his or her respective principal entity, and Party hereto, to sign on behalf of the entity (including their respective representatives, agents, attorneys, assigns, employees, and consultants) and their signatures have the power to bind the respective entities (including their respective representatives, agents, attorneys, assigns, employees, and consultants). The Parties hereto acknowledge that each was represented by counsel of their choosing or assumed the risk of not seeking counsel with respect to the resolution of the claims in the Notice; and that they have carefully read this Agreement and know the contents thereof, that they agree thereto, and that they have signed the Agreement freely and voluntarily or authorized their counsel to sign on their respective behalf.

14. No Waiver. No breach of *any* provision hereof can be waived unless in writing. Waiver of any provision hereof shall not be deemed to be a waiver of the same or any other provision hereof.


15. Consideration. The Parties hereto acknowledge that this Agreement is supported by adequate consideration and is fully enforceable according to its terms.

16. No Admission. This Agreement does not constitute *any* admission or acknowledgment by the Parties as to any applicable statute of limitations or that any statute of limitations at all applies. The Parties further agree that nothing in this Agreement is, nor will it be construed as, an admission or acknowledgement of any fact, conclusion of law, or liability by any Party to any claim by any person or entity related to or arising from the Notice, including the availability of attorney fees and costs to any Party.

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Agreement as of the date opposite their respective signatures, and each of the signatories below agrees to be bound by the terms and conditions as contained in this Agreement and are bound by the representations and warranties contained herein.

**NESTLE HEALTHCARE NUTRITION, INC.**


Dated: June 27, 2023

By:   
Trenton H. Norris  
Hogan Lovells US LLP

*As counsel and authorized signatory for*  
NESTLE HEALTHCARE NUTRITION,  
INC.

**AS YOU SOW**

Dated: June 27, 2023

By:   
Barbara J. Chisholm  
Altshuler Berzon LLP

*As counsel and authorized signatory for*  
AS YOU SOW

# **EXHIBIT A**

Dear California Tube Feeding Prescriber,

At Nestlé Health Science, we are proud to offer tube feeding formula options that provide fruits and vegetables often missing in the diets of patients with feeding tubes. Compleat Pediatric Organic Blends and Compleat Organic Blends formulas are the first and only certified organic formulas to provide complete nutrition through a combination of fruits and vegetables, chicken, and added vitamins and minerals.

Lately, there has been increased attention to the presence of heavy metals, such as lead, in foods. Heavy metals are naturally found in the environment, including the soil and water in which crops are grown, and make their way into fruits and vegetables. Nestlé Health Science takes numerous steps to test and source organic fruit and vegetable ingredients only from suppliers who meet our strict acceptance criteria, and we continue to seek out ingredients with even lower levels of heavy metals. **Nevertheless, low levels of heavy metals, including lead, are detectable in Compleat Organic Blends.** Note that even if your patients are preparing their own tube feeding formula at home, they may contain higher levels of lead and other heavy metals because the ingredients, whether organic or conventional, will not be subject to the strict safety standards and careful ingredient sourcing that Nestlé Health Science demands. For more information, call 1-800-\_\_\_\_-\_\_\_\_.

Over the last decade, clinical research has consistently demonstrated the benefits of food-based tube feeding formulas for patients who have difficulty tolerating standard tube feeding formulas and/or receiving adequate quantities of standard formulas to meet their unique nutritional requirements. The improved tolerance associated with food-based formulas provides a multitude of benefits to patients and caregivers. For example, a large retrospective study of 469 pediatric patients associates Compleat Pediatric Organic Blends with significant:<sup>1,2</sup>

- Decreases in gastrointestinal intolerance symptoms
- Less inpatient, outpatient, and emergency room visits
- Reductions in healthcare costs

These same clinical and health economic benefits were found in a separate retrospective study of 124 adult patients.<sup>3</sup>

Because food-based formulas may not be appropriate for all patients, best practice is for health care providers to use clinical judgment, based on each patient's specific medical condition, when recommending tube feeding formulas for long- or short-term use.

For more information about Compleat Pediatric Organic Blends and Compleat Organic Blends formulas, or to order samples for your patients, please contact your Nestlé Health Science sales executive, or visit [NestleMedicalHub.com/brands/Compleat](https://NestleMedicalHub.com/brands/Compleat).

Sincerely,  
Barry W. Ritz, PhD.  
Vice President, Regulatory, Scientific & Medical Affairs  
Nestlé Health Science, US

1. Clinical Benefits of Real Food Tube Feeding Formulas Compared to Standard Tube Feeding Formulas in Post-Acute Care PEDIATRIC Patients Desai A, et al. J Pediatr Gastroenterol Nutr. 2022;75(S1):S293.
2. Health Economic Benefits of Real Food Tube Feeding Formulas Compared to Standard Tube Feeding Formulas in Post-Acute PEDIATRIC Patients Desai A, et al. J Pediatr Gastroenterol Nutr. 2022;75(S1):S292.
3. Real-World Evidence on Clinical and Health Economic Outcomes among ADULT Patients in Post-Acute Care Receiving Commercial Blended Tube Feeding Formulas Henrikson A, et al. J Parenter Enteral Nutr. 2022;46(S1):S162.