

## SETTLEMENT AGREEMENT AND RELEASE

The Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc. (“HLF”) and Prina Enterprises dba XPRS Nutra (“Company”) enter into this Settlement Agreement (“Agreement”). HLF and Company are referred to individually as a “Party” or collectively as “Parties.” The Parties agree as follows.

### Introduction.

The “Matter” arises out of the Notice(s) of Violations of California Health & Safety Code §25249.5, et seq. (“Proposition 65”) that HLF served to Prina Enterprises dba XPRS Nutra (collectively, the “Noticed Companies,” “Company”) on January 19, 2023, California Attorney General’s number 2023-00190 (referred to as “Notice” or “NOV”). In the Notice(s), HLF alleges that the following product requires Warning for lead and cadmium under Proposition 65: XPRS Nutra, Organic Spinach Powder, SKU: X002XM7FCF (“Covered Product”).

The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Notice(s) and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission 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 by the Parties of any fact, issue of law, or violation of law including but not limited to Proposition 65. 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.

### 1. Definitions

1.3. “Effective Date” is the date on which this Agreement is fully executed by the Parties.

1.4. “Compliance Date” is the date that is 30 days after the Effective Date.

1.5. “Expose, ” “Exposure” are used in this Agreement as defined in Cal. Code Regs., tit. 27, § 25102(i) and means to cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a chemical listed in Proposition 65. An individual may come into contact with a listed chemical through water, air, food, consumer products.

1.6. “Daily Exposure Level” means micrograms of lead or cadmium per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day, using the largest number of recommended daily servings appearing on the label or in marketing materials of the Company. If the label or marketing materials contain no recommended daily servings, then the number of recommended daily servings shall be one.

1.7. “Violative Daily Exposure Levels” is an exposure to more than 0.5 micrograms of lead per day and/or more than 4.1 micrograms of cadmium per day.

1.8. “Consumer Information” is used in this Agreement as defined in Cal. Code Regs., tit. 27, § 25600.1(c) and 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.

1.9. “Warning” is a warning compliant with Section 2.3 of the Agreement.

1.10. "Warning Symbol" is a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white.

1.11. "Reformulated Product" is an identical Product in substance and labeling to Covered Product(s), but with a product's component(s) harvested in different location(s) or grown/manufactured with different (from Covered Product(s)) methods that have resulted in reduced or eliminated presence of the violative chemicals- lead and lead compounds and cadmium, below the Violative Daily Exposure Levels specified in Section 1.7 of this Agreement.

1.12. "Distributor" is any entity or individual that sells Covered Products.

1.13. "Distribute into the State of California" means to directly or indirectly sell Covered Product in California.

## **2. Company's Duties**

2.1. Beginning as of the Compliance Date, the Company shall not Distribute into the State of California Covered Product(s) that expose(s) a person to the Violative Daily Exposure Levels, unless Covered Products(s) meet(s) the Warning requirements of this Agreement. Covered Product(s) that Company Distributes into the State of California after the Compliance Date, shall either (1) qualify as a Reformulated Product or (2) comply with the Warning requirements of this Agreement.

### **2.2. Testing.**

2.2.1. The testing requirements of Section 2.2 do not apply to Covered Products for which the Company has provided the Warning.

2.2.2. Testing shall be performed prior to Company's first distribution into California or sale in California of Reformulated Product;

2.2.3. Testing shall continue at least once per year for as long as the Company sells Covered Product(s).

2.2.4. For purposes of determining if the Warning is required, the Company shall randomly select and test three (3) samples of the Covered Products from different lot numbers by Company (or, if fewer than 3 lots are available for testing, from as many lots as are available). HLF reserves the right to test Covered Products and, if the results are violative of Section 2.2., assert any new claims that may arise. Testing shall continue at least once per year thereafter for as long as the Company sells Covered Product(s).

2.2.5. 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, limit of quantification, accuracy, and precision and meets the following criteria: Gas Chromatography Mass Spectroscopy, achieving a limit of detection of less than or equal to 0.010 milligrams per kilogram (.010 mg/kg), or any other testing method subsequently agreed upon in writing by the Parties.

2.2.6. Testing pursuant to this Agreement shall be performed by an independent third party laboratory accredited to perform testing for lead and cadmium using the methodology in Section 2.2.5.

### 2.3. Warning.

2.3.1. A clear and reasonable exposure Warning must be provided for Covered Product(s) with Violative Daily Exposure Levels that Company Distributes into the State of California after the Compliance Date. The Warning shall consist of either the Standard Warning (under 2.3.1. (a)) or the Short-Form Warning (under 2.3.1. (b)).

(a) Standard Warning. The Standard Warning shall consist of the statement:

- **WARNING:** Consuming this product can expose you to chemicals including lead, which is 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).

(b) Short-Form Warning. The Short-Form Warning shall consist of the statement:

**WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

The font size of the Short-Form warning must be a minimum of 6 points, and it cannot be smaller than the largest size font used for Consumer Information.

2.3.2. Print Warning. Standard Warning or Short-Form Warning provided pursuant to Section 2.3 in print form must:

- (a) contain the word “WARNING:” in all capital letters, in bold font, followed by a colon;
- (b) be affixed to or printed on the Products’ label, or on a placard, shelf tag, sign or electronic device;
- (c) be displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use;
- (d) be set off from other surrounding information;
- (e) be enclosed in a box with a black, bold border.
- (f) Where a sign or label used to provide a warning includes consumer information about a product in a language other than English, the warning must also be provided in that language in addition to English.

2.3.3. Online/Internet Warning. In addition to the warnings required by Section 2.3.1-2.3.2 above, for internet sales, a warning that complies with this Section 2.3.3 must also be provided by including either the warning or a clearly marked hyperlink using the word “WARNING” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. If the warning is provided using the short-form warning label content pursuant to Section 2.3.1(b) above, the warning provided on the website may use the same content. For purposes of this Section, a warning

is not prominently displayed if the purchaser must search for it in the general content of the website.

2.4. For any Covered Product sold by Company to a Distributor, Company shall provide the written Notice to Distributors attached hereto as Exhibit A with a request of written confirmation from the Distributor.

### **3. Settlement Payments.**

3.1 In satisfaction of all claims for civil penalties and attorneys' fees and costs related to the Notices, Company shall pay a total settlement amount of \$101,500.00 (the "Settlement Amount") within 10 days of the Effective Date by wire transfer to HLF's counsel escrow account, for which HLF's counsel will give Company the necessary account information no later than two days after the Effective Date.

HLF shall be solely responsible for allocating the Settlement Amount pursuant to Section 3. Upon request, HLF or its legal counsel shall supply the Company with a completed W-9 form. The Settlement Amount shall be allocated as follows:

3.2. \$20,300.00 shall be considered a "civil penalty," of which HLF shall remit seventy-five percent (75%) to the "Safe Drinking Water and Toxic Enforcement Fund" managed by the State of California's Office of Environmental Health Hazard Assessment.

3.3. \$81,200.00 shall be considered reimbursement of HLF's attorneys' fees and costs related to the Matter.

3.4. Except as expressly set forth in this Section 3 and 12 below, the Parties shall bear their own costs, expenses, and attorneys' fees related to this Matter.

### **4. Binding Effect; Claims Covered and Released.**

4.1. This Agreement is a full, final, and binding resolution between HLF and the Company of any violation of Proposition 65 related to NOV that were or could have been asserted by HLF. HLF, on behalf of itself, and its respective principals, officers, directors, employees, parents, subsidiaries, executors, administrators, attorneys, successors, and assigns (collectively, the "Releasers"), releases and discharges the Company and its successors in interest, and each of their respective direct and indirect corporate parents, subsidiaries, as well as the past, present and future owners, shareholders, directors, officers, employees, attorneys, insurers, representatives, franchisees, members, licensees, successors and assigns of all such persons or entities, and also each entity who directly or indirectly buys, distributes, markets or sells the Covered Product(s), including but not limited to, downstream distributors, wholesalers, customers, retailers, and marketplaces (including but not limited to Amazon.com, Inc., and Amazon.com Services LLC, and the predecessors, successors and assigns of any of them) (collectively, "Released Parties"), from and against any and all claims, demands, actions, causes of action, suits, liabilities, damages, penalties, fees (including but not limited to attorneys' fees, investigator fees, and expert fees), costs and expenses, related to NOV, that Releasers have, had or may have against the Released Parties from one year prior to NOV to the date of the NOV, whether known or unknown, for failure to provide warnings for alleged exposures to lead and cadmium from use of the Covered Products, all claims for violations of Proposition 65 through the Effective Date based on exposure to lead and cadmium from manufacture, sale, marketing, distribution, use or consumption of the Covered Products, or all claims otherwise arising out of or relating to the Notices including any exposures to lead or cadmium in the Covered Product manufactured, purchased, distributed or sold by Prina, or any of the Released Parties, on or before the Compliance Date.

4.2. HLF, on its own behalf only, and Company, 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(s).

4.3. It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notices, and relating to the Covered Products, will develop or be discovered. HLF on behalf of itself only, and Company 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. HLF and Company acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 and any federal or state law of similar effect as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW 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.

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

4.5. If HLF alleges that Company has failed to comply with this Agreement, prior to filing an action or a notice of violation as to any Released Party, HLF shall first provide Company thirty (30) days' advance written notice of the alleged violation(s). HLF shall provide testing results, lot numbers, photographs of the Covered Product packaging for the Covered Product at issue. Prina shall have thirty (30) days to cure any purported violation by HLF and if cured within thirty (30) days HLF shall not claim or request any additional fees, costs or penalties. The Parties shall meet and confer during such thirty (30) day period in an effort to resolve the matter informally without the need for litigation and HLF may take no further legal action to enforce this Settlement Agreement during that time. If the matter is not resolved within 30 days, HLF can file a litigation and seek recovery of all applicable costs and attorney fees. No action may be taken in the absence of a good faith attempt to resolve any dispute within 30 days period.

4.6. The Parties agree that compliance with the terms of this Agreement shall constitute compliance by any Released Party with Proposition 65 regarding alleged exposures to lead or lead compounds and cadmium in the Covered Products or Reformulated Products manufactured, purchased, distributed, or sold by Company after the Compliance Date.

**4.7 Compliance.** Notwithstanding the foregoing, the Parties agree that Prina shall be deemed to be in compliance with this Settlement Agreement by either providing the warning of § 2.3 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date or otherwise. If Office of Environmental Health Hazard Assessment regulations require or permit specific safe harbor warning text and/or methods of transmission different than those set forth above, Prina shall be entitled to use, at its discretion, such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring, permitting or establishing warning text and/or methods of transmission applicable to the chemical at issue and product type at issue here, different than those set forth above, Prina shall be entitled to use, at its discretion, such other warning text, method of transmission, without being deemed in breach of this Agreement. If regulations, legislation, or controlling judicial rulings are enacted or issued providing that a Proposition 65 warning for the product is no longer required, a lack of warning will not thereafter be a breach of this Agreement.

## 5. Modification

5.1. 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.

5.2. Except as provided in this Section 7, this Agreement may be modified only by a written agreement of the Parties.

5.3. If, in the future, there is a Proposition 65 regulation that specifies a naturally occurring allowance for lead or cadmium in the Covered Products, or there is any other change in the law that Company believes warrants a modification to this Agreement, Company may notify HLF of its intent to modify the Agreement and the Parties shall meet and confer to discuss any appropriate modification.

5.4. If a dispute should arise concerning a modification of this Agreement, then the Parties shall meet and confer in good faith to attempt to resolve the dispute, but if it cannot be resolved in that manner, either Party may present the dispute to the court for resolution.

6. 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, successors, and assigns.

7. 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.

8. 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.

9. 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.

10. Any legal action to enforce this Agreement or related to this Matter may be brought in any California State court. In any legal action brought to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

11. This Agreement may be signed in counterparts, and each counterpart, as well as any e-mail copy or electronically stored on a cloud software copy of this Agreement, or any other counterpart, shall be deemed to be original.

12. All notices required to be given to either Party under this Agreement shall be in writing and sent to the following recipients by (1) (a) first-class mail or (b) overnight delivery, and (2) by email.

For HLF:

Poulsen Law P.C.  
282 11th Avenue, Suite 2612  
New York, New York, 10001

Tel: +1 (646) 776 5999  
Tel: + 1(650) 296 1014 Direct  
contact@poulsenlaw.org

For Company:

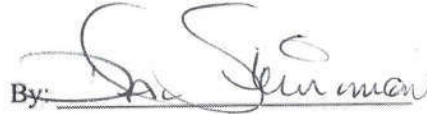
Ryan Landis, Esq.  
Gordon Rees Scully Mansukhani  
5 Park Plaza, Suite 1100  
Irvine, CA 92614  
Tel: +1 (213) 321 6704 Direct  
rlandis@gsrm.com

13. Each of the individuals who executes this Agreement represents and warrants he/she has the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and has read, understood, and agreed to all the terms and conditions in this Agreement.

DATED:

9.19.23

THE CHEMICAL TOXIN WORKING GROUP  
INC. DBA HEALTHY LIVING FOUNDATION  
INC.

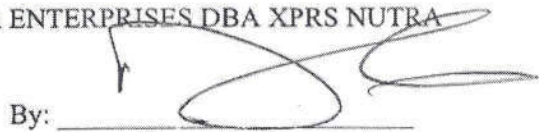
By: 

Name: David Steinman

Title: Chief Officer

DATED: September 19, 2023

PRINA ENTERPRISES DBA XPRS NUTRA

By: 

Name: David A. Prina

Title: Owner

## EXHIBIT A

### Notice to Retailers and Distributors

This is to notify you that Prina Enterprises dba XPRS Nutra (“Prina”) has entered into a settlement with The Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc. regarding violations of California Health and Safety Code §§ 25246.5 et seq. (“Proposition 65”) for the presence of lead and cadmium in:

**(1) XPRS Nutra, Organic Spinach Powder, SKU: X002XM7FCF (“Covered Product” or “Covered Products”).**

Under the terms of this settlement, Prina is providing the following notice to you regarding the Covered Products and the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) of California (Proposition 65”)

- The consumption of the Covered Products may result in an exposure to lead and cadmium, and therefore requires a warning under Proposition 65.
- For any Covered Product sold online or over the internet by you or your downstream distributors, customers, retailers (collectively “Purchaser(s)”) in or to California, you or the Purchaser **must provide a warning to a consumer** which meets the “Content Requirements” and “Method of Transmission” below:

#### Content Requirements:

The warning shall be in one of the following forms:

- (c) Standard Warning. The Standard Warning shall consist of the statement:
  - **WARNING:** Consuming this product can expose you to chemicals including lead, which is known to the State of California to cause cancer, and lead and cadmium, which are known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).
- (d) Short-Form Warning. The Short-Form Warning shall consist of the statement:
  - **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

#### Method of Transmission:

The warning shall be prominently displayed as follows: (a) on the primary display page for the Covered Product; (b) as a clearly marked hyperlink using the word “WARNING” in all capital and bold letters on the Covered Product’s primary display page; (c) the Proposition 65 warning shall be provided on the product display page or prominently displayed to the California customer at any time prior to the customer’s completion of the online purchase and with the warning clearly



associated with the Covered Product to indicate that the product is subject to the warning; or (d) by otherwise prominently displaying the warning to the purchaser prior to completing the purchase.

Confirmation of receipt:

You must confirm receipt of this notice within 30 days of receiving it either electronically or in writing, by filling out the form below and returning a signed copy, to acknowledge that you have received this notice and that the warnings for internet sales will be posted in accordance with these specifications.

You must also send a copy of this notice to your downstream Purchasers.

Acknowledged by:

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print Name)

\_\_\_\_\_ (Company/Store Location)

\_\_\_\_\_ (Date)