

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

The Chemical Toxin Working Group Inc. dba Healthy Living Foundation Inc. (“HLF”) and Supervalu, Inc., United Natural Foods, Inc., Instacart, Inc. and Vallarta Supermarkets (“Company”) enter into this Settlement Agreement and General Release (“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 Supervalu, Inc., United Natural Foods, Inc., Instacart, Inc. and Vallarta Supermarkets (collectively, the “Noticed Companies”) on April 21, 2023, California Attorney General’s number 2023-01094 (referred to as “Notice” or “NOV”). In the Notice(s), HLF alleges that the following product requires Warning for cadmium under Proposition 65: Springfield Cut Leaf Spinach (the “Product” or “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 90 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 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 Level” is an exposure to more than 4.1 µg of cadmium per day.

1.8 “Consumer Information” is used in his 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- cadmium- below the level specified in Section 1.7 of this Agreement.

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

1.13 “Reasonably Foreseeable” means that a reasonable inquiry would have revealed to the Company that a Distributor could sell Covered Products to California. Some, but not all examples of such circumstances include: where the Distributor sells products online/over the internet, telephone, telephone applications (apps), or mail-order; maintains or intends to maintain storage, warehouse(s), brick-and-mortar retail establishment(s) located in California.

1.14 “Distribute into the State of California” means to directly or indirectly sell Covered Product in California; ship Covered Product for sale in California, including to sell Covered Product to a Distributor that Company knows, or for which it is Reasonably Foreseeable that such distributor will sell Covered Product in California.

## **2. COMPANY’S DUTIES**

2.1 The Company agrees that the 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 Warning.**

2.2.1. A clear and reasonable exposure Warning must be provided for Covered Product(s) with Violative Daily Exposure Level 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); and the Online/Internet Warning under 2.3.3 if the Product is sold online.

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

**WARNING:** Consuming this product can expose you to chemicals including 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).

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

**WARNING:** 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.

2.2.2 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) display the Warning Symbol to the left of the word “WARNING:”;
- (c) display the Warning Symbol in a size no smaller than the height of the word “WARNING:”;
- (d) be affixed to or printed on the Products’ label, or on a placard, shelf tag, sign or electronic device;
- (e) 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;
- (f) be set off from other surrounding information;
- (g) be enclosed in a box with a black, bold border.

2.2.3 Online/Internet Warning. If Company or a Distributor sells Covered Products via internet websites to customers located in California, the Warning also must be displayed online prior to the purchase, either on one or on all of the below:

- (a) on the same web page on which a Covered Product is displayed and/or described;
- (b) on the same page as the price for the Covered Product is displayed;  
or
- (c) on one or more web pages displayed to a purchaser prior to completion of purchase during the checkout process.

2.2.4 Online Warning must comply with all requirements of Section 2.3.2 of this Agreement, except 2.3.2.(d).

2.2.5 Online Warning must be visible for an ordinary consumer without scrolling a page past Covered Product's image or price. Warning must be displayed next to the Covered Product's image or price, in a manner that clearly associates it with Covered Product(s) to which the Warning applies.

2.2.6 Online Short-Term Warning, in addition to other requirements, must display a Warning Symbol with the clickable word "WARNING" in bold, black font, in the font size no less than the largest font in the Consumer Information; must link to the text of the Standard Warning; and must link to the website <http://www.P65Warnings.ca.gov>.

### **3. SETTLEMENT PAYMENTS.**

3.1 In satisfaction of all claims for civil penalties and attorneys' fees and costs and damages related to the Notices, Company shall pay or cause to be paid a total settlement amount of \$205,000.00 (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 \$36,500 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 \$168,500 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 the 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, predecessors, 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, upstream manufacturers, downstream

distributors, wholesalers, customers, retailers, and marketplaces (including, but not limited to, Supervalu, Inc., United Natural Foods, Inc., Instacart, Inc. and Vallarta Supermarkets Inc., and their 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, costs and expenses, related to the NOV, that Releasors have, had or may have against the Released Parties from one year prior to NOV to the date of this Agreement, whether known or unknown, for failure to provide warnings for alleged exposures to cadmium, claims for violations of Proposition 65 through the Effective Date based on exposure to cadmium and in any way related to the manufacture, sale, marketing, distribution, use or consumption of the Covered Products, or all claims otherwise arising out of or relating to the Notice(s).

4.2 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.

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.

4.3 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 sixty (60) days’ advance written notice (“Notice Period”) of the alleged violation(s). HLF shall provide testing results, lot numbers, photographs of the Covered Product packaging for the Covered Product at issue. The Company shall have the duration of the Notice Period to cure the alleged violation. The Company shall provide written documentation of the cure. If HLF believes in good faith that the cure does not cure the violation, HLF can file a lawsuit.

4.4 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 cadmium in the Covered Products or Reformulated Products manufactured, purchased, distributed, or sold by Company after the Compliance Date.

**5. – 6. [SECTIONS 5-6 ARE INTENTIONALLY OMITTED].**

**7. MODIFICATION**

7.1 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.

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

7.3 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.

**8.** 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.

**9.** 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.

**10.** 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.

**11.** 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.

**12.** Any legal action to enforce this Agreement or related to this Matter may be brought in any California State court.

**13.** 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.

**14.** 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  
ap@poulsenlaw.org

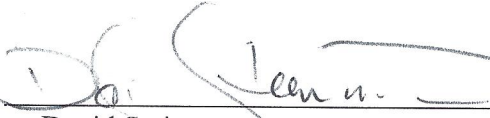
For Company:

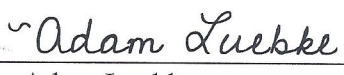
Taft, Stettinius & Hollister, LLP  
Attn: Andrew S. Dodsall  
2200 IDS Center, 80 South 8th Street  
Minneapolis, MN 55402-2210  
ADodsall@taftlaw.com

15. 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.

THE CHEMICAL TOXIN WORKING  
GROUP INC. dba Healthy Living Foundation,  
Inc.

UNITED NATURAL FOODS, INC.

By:   
Name: David Steinman  
Title: Chief Officer

By:   
Name: Adam Luebke  
Title: Senior Counsel  
Dated: January 25, 2024

Dated: 1.25.24