

# SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND PRIMAL HARVEST, LLC

## 1. RECITALS

### 1.1 The Parties

**1.1.1** This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and Primal Harvest, LLC (“Primal Harvest”). APS&EE and Primal Harvest shall hereinafter collectively be referred to as the “Parties”.

**1.1.2** APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

**1.1.3** APS&EE alleges that Primal Harvest is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

### 1.2 Allegations

**1.2.1** APS&EE alleges that Primal Harvest distributed, sold or made available for sale in the State of California Primal Greens supplement, including but not limited to 8-60002-61482-3 (hereinafter, the “Product(s)”) causing users in California to be exposed to hazardous levels of lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is listed by the State of California as known to cause cancer and birth defects or other reproductive harm.

**1.2.2** On December 30, 2024, APS&EE served a Sixty-Day Notice of Violation (“60-Day Notice”), along with a Certificate of Merit, to Primal Harvest, Amazon.com, Inc., and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

### **1.3 No Admissions**

Primal Harvest denies all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that Primal Harvest has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Primal Harvest but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Agreement.

### **1.4 Compromise**

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered on behalf of the public interest and to avoid prolonged and costly litigation between them.

### **1.5 Effective Date**

The "Effective Date" shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party or its counsel.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard**

As of the Effective Date, Primal Harvest shall not sell, distribute, or cause the Products to be offered for sale in California unless: (a) the Products expose a person to less than 0.5 micrograms of lead per day based on the recommended Daily Serving as calculated below in Section 2.2, or (b) the Products are distributed, sold, or offered for sale with a warning as described below in Section 2.3.

### **2.2 Exposure Calculation**

**2.2.1** A "Daily Serving" (for purposes of determining Proposition 65 compliance for chemicals present in the Products) shall be defined by the serving size set forth on the label of the Products under "Nutrition Facts", "Supplement Facts", or equivalent. If the label, package, or Product display page on the internet do not recommend a number of daily servings, then the number of daily servings shall be one.

**2.2.2** The daily exposure shall be calculated by using the following formula: micrograms of lead per gram, multiplied by grams of Product per serving, multiplied by servings of the Product per day.

### **2.3 Proposition 65 Warnings**

Whenever a warning is required under Section 2.1, Primal Harvest shall use one of the following options:

#### Option 1

**WARNING** [*or* **CA WARNING** *or* **CALIFORNIA WARNING**]:

Consuming this product can expose you to 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).

#### Option 2

**WARNING** [*or* **CA WARNING** *or* **CALIFORNIA WARNING**]: Risk of [cancer and] reproductive harm from exposure to lead. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

*or*

**WARNING** [*or* **CA WARNING** *or* **CALIFORNIA WARNING**]: Can expose you to lead, a [carcinogen and] reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

#### Option 3 (for Product manufactured and labeled before January 1, 2028)

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

If the daily exposure for the Product exceeds 15 micrograms of lead, where daily exposure is determined pursuant to Section 2.2, Primal Harvest shall include the phrase “cancer and” or “carcinogen and” in the warning.

Nothing in this Agreement shall prevent Primal Harvest from modifying any warning contained in Option 1 or 2 to disclose the presence of additional chemicals, if Primal Harvest determines that such disclosure is appropriate or required.

Under Option 3, the warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

Each warning shall be provided on the Product label, set off from other surrounding information, enclosed in a box. Additionally, if the Product contains consumer information in a foreign language, the warning must be provided in the foreign language. The Products shall carry said warning on each label with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is sold by Primal Harvest on the internet to persons located in California shall also provide the warning message to Californians by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the California purchaser before the purchaser completes his or her purchase of the Product. For Products that Primal Harvest provides for a downstream entity to sell on the internet to persons located in California, Primal Harvest shall comply with 27 CCR section 25600.2(b) and include an instruction that the entity comply with the warning requirements of this section.

#### **2.4 Additional Warnings Required or Permitted by Law or Regulation**

In addition to or in lieu of the warning requirements set forth in Section 2.3 above, Primal Harvest may comply with this Agreement by using any other warning or transmission method(s) set forth in 27 Cal. Code Regs. §§ 25601 *et seq.*, and amended subsequently thereafter, or other text or methods authorized or mandated by those regulations, or other State of California legislation pertaining to Proposition 65 warnings, that are applicable to the Products. In the event Proposition 65 warnings for Lead or reference to Lead is no longer be required by law, whether through a decision of the California Supreme Court, the United States Court of Appeals for the Ninth Circuit, or the United States Supreme Court finds such warning or any part of the warning to be unconstitutional, each operating as a final judgment and applicable to the Products, Primal

Harvest shall have no further obligations under Section 2 of this Agreement regarding reformulation or warning about exposure to Lead from the Product(s).

### **3. PAYMENTS**

#### **3.1 Civil Penalty Pursuant To Proposition 65**

In settlement of all claims referred to in this Agreement, Primal Harvest shall pay a total civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$500.00) for APS&EE.

Primal Harvest shall issue these payments as part of the total payment described below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective payments to OEHHA and APS&EE.

#### **3.2 Reimbursement Of APS&EE’s Fees And Costs**

Primal Harvest shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement, in the amount of seventeen thousand five hundred dollars (\$17,500.00). Accordingly, Primal Harvest shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of nineteen thousand five hundred dollars (\$19,500.00) which includes the civil penalty described in Section 3.1, within five (5) business days of the Effective Date. Wire instructions have been exchanged between the Parties.

### **4. RELEASES**

#### **4.1 APS&EE’s Release Of Primal Harvest**

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases Primal Harvest, its parents, subsidiaries, affiliated companies under common ownership or control, shareholders, directors, members, managers, officers, partners, agents, employees, representatives, attorneys, successors and assignees,

as well as its downstream distributors, wholesalers, retailers, and franchisees, including Amazon.com, Inc. (collectively, “Released Parties”), from any alleged Proposition 65 violation claims asserted in the Notice regarding failure to warn about lead exposure from the Products sold or distributed by Primal Harvest for sale or potential sale in California before the Effective Date.

#### **4.2 Primal Harvest’s Release Of APS&EE**

Primal Harvest, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Primal Harvest in this matter. If any Released Parties should institute any such action, then APS&EE’s release of said Released Party in this Agreement shall be rendered void and unenforceable.

#### **4.3 Waiver Of Unknown Claims**

Each of the Parties acknowledges that it is familiar with Section 1542 of California 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.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the

discovery of such additional or different facts.

**5. SEVERABILITY**

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

**6. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California. This Agreement is entered into in the State of California and may only be enforced in the State of California.

**7. NOTICES**

All correspondence and notices required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO PRIMAL HARVEST: Todd A. Harrison, Esq. Venable LLP 600 Massachusetts Av, NW Washington, DC 20001	TO APS&EE: Lucas Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
---	---

**8. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

**9. AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent


or interfere with the execution or performance of this Agreement by said Party.

**AGREED TO:**

Date: 3.21.2025

By:   
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date:   
Jacqueline Gomez (Mar 21, 2025 14:04 GMT+1)

By: Jacqueline Gomez  
Authorized Representative of Primal Harvest, LLC