

## SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND VITAL PROTEINS, 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 Vital Proteins LLC (merged into and now known as Nestlé HealthCare Nutrition, Inc., “Vital Proteins”). APS&EE and Vital Proteins 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 Vital Proteins 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 Vital Proteins distributed, sold or made available for sale in the State of California Vital Proteins Daily Greens supplement, including but not limited to 8-10089-95482-4 (“Daily Greens” or the “Product”) causing users in California to be exposed to lead without providing a “clear and reasonable warning” 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 June 26, 2025, APS&EE served a Sixty-Day Notice of Violation (“60-Day Notice”), along with a Certificate of Merit, to Vital Proteins and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Daily Greens. On July 23, 2025, APS&EE served a Supplemental Sixty-Day Notice of Violation (“Supplemental 60-Day Notice”), along with a Certificate of Merit, to Vital Proteins and the

various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Daily Greens; the Supplemental 60-Day Notice also included an allegation that Vital Proteins Plant Protein, including but not limited to 8-10089-95534-0 (“Plant Protein”), causes users in California to be exposed to lead without providing a “clear and reasonable warning” in violation of Proposition 65. APS&EE hereby withdraws its allegations in the Supplemental 60-Day Notice related to the Plant Protein only. The 60-Day Notice and Supplemental 60-Day Notice shall hereinafter be referred to as the “Notices”.

### **1.3 No Admissions**

Vital Proteins denies all allegations in APS&EE’s Notices and maintains that the Products have been, and are, in compliance with all laws, including but not limited to Proposition 65. This Agreement shall not be construed as an admission of liability by Vital Proteins 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.

### **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, Vital Proteins shall not sell, distribute, or cause the Product to be offered for sale in California unless: (a) the Product exposes 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 Product is distributed, sold, or offered for sale with a clear and reasonable 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 Product) shall be defined by the serving size set forth on the label of the Product under "Nutrition Facts", "Supplement Facts", or equivalent. If the label, package, or Product display page on the internet<sup>1</sup> 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, Vital Proteins 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/food](http://www.P65Warnings.ca.gov/food)

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<sup>1</sup> The “Product display page on the internet” applies to Products purchased therefrom, not to Products purchased elsewhere, such as a brick-and-mortar retail store.

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

Nothing in this Agreement shall prevent Vital Proteins from modifying any warning contained in Option 1 or 2 to disclose the presence of additional chemicals if Vital Proteins 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 Product 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 Vital Proteins 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 Product that Vital Proteins provides for a downstream entity to sell on the internet to persons located in California, Vital Proteins shall comply with 27 CCR section 25600.2(b) and (c) and include an instruction that the entity comply with the warning requirements of this section.

#### **2.4 Grace Period for Existing Inventory of the Product**

The injunctive requirements of Section 2 shall not apply to Product that is already in the stream of commerce downstream from Vital Proteins as of the Effective Date, which Product is expressly subject to the releases provided in Section 4.1.

### **3. PAYMENTS**

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

In settlement of all claims referred to in this Agreement, Vital Proteins 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.

Vital Proteins shall issue these payments as part of the total payment described below in Section 3.2 via mailed check to Law Offices of Lucas T. Novak. After receipt of the check, 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**

Vital Proteins 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 twenty-six thousand dollars (\$26,000.00). Accordingly, Vital Proteins shall remit total payment via mailed check to Law Offices of Lucas T. Novak in the amount of twenty-eight thousand dollars (\$28,000.00) which includes the civil penalty described in Section 3.1, within fourteen (14) calendar days of the Effective Date, provided that Vital Proteins is in receipt of the IRS W-9 forms for Law Offices of Lucas T. Novak.

### **4. RELEASES**

#### **4.1 APS&EE’s Release Of Vital Proteins**

APS&EE, on behalf of itself and each of its current and former agents, representatives, attorneys, employees, shareholders, directors, officers, members, successors, and assigns (the “Releasing Parties”), in consideration of the promises and monetary payments contained herein, hereby fully releases and discharges Vital Proteins, its current and former 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, and retailers (collectively,

“Released Parties”), from any and all claims, actions, causes of actions, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted up to and through the Effective Date, regarding any alleged violation of Proposition 65 for failure to warn about exposures to lead from the Daily Greens sold or distributed by Vital Proteins for sale or potential sale in California before the Effective Date.

In further consideration of the promises and monetary payments herein, APS&EE, on behalf of each of the Releasing Parties, hereby irrevocably covenants not to sue, initiate, pursue, prosecute, or participate in, directly or indirectly, any form of legal action, proceeding, complaint, notice of violation (whether new or supplemental), or claim of any kind against any of the Released Parties, solely for an alleged violation of Proposition 65 for failure to warn about exposures to lead from the Vital Proteins plant protein product with SKU 8-10089-95534-0 sold or distributed by Vital Proteins for sale or potential sale in California. Within fourteen (14) calendar days after receipt of the full payments described in Section 3 above, APS&EE agrees to withdraw the Supplemental 60-Day Notice regarding the alleged violation related to the Plant Protein only by filing the appropriate Notice of Withdrawal with the California Attorney General.

#### **4.2 Vital Proteins’ Release Of APS&EE**

Vital Proteins, on behalf of itself and each of the Released Parties, 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 Vital Proteins in this matter.

#### **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. PUBLIC BENEFIT**

It is Vital Proteins' understanding that the commitments it has agreed to herein, and actions to be taken by Vital Proteins under this Settlement Agreement confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Vital Proteins that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Vital Proteins' alleged failure to provide a warning concerning actual or alleged exposure to lead from use of the Daily Greens it has manufactured, distributed, sold, or offered for sale in California, such private party action would not confer a significant benefit on the general public as to the Daily Greens addressed in this Settlement Agreement, provided that Vital Proteins is in material compliance with this Settlement Agreement.

**6. 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.

**7. 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.

**8. 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:

<p>TO VITAL PROTEINS: Alexander Tablan, Esq. Hogan Lovells US LLP 4 Embarcadero Center Suite 3500 San Francisco, CA 94111</p> <p>CC: Nestlé HealthCare Nutrition, Inc. 1007 US Highway 202/206, Bldg JR2, Bridgewater, NJ 08807 Attention: General Counsel</p>	<p>TO APS&amp;EE: Lucas Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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**9. 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.

**10. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by, or relied on, any Party.

**12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

APS&EE and its attorneys agree to comply with the reporting requirements referenced in

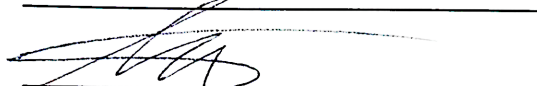
California Health and Safety Code §25249.7(f).

**13. 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: May 5, 2026

By:   
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date: May 4, 2026

By: Signed by:   
Authorized Representative of Vital Proteins, LLC (merged into and now known as Nestlé HealthCare Nutrition, Inc.)