

NP Nutra, Inc.

Settlement/Release Agreement

This Settlement and Release Agreement ("Agreement") is entered into by and between the California Department of Food and Agriculture (the "Department") and Nature's Power Nutraceuticals Corporation, doing business as NP Nutra, Inc. ("Respondent"). The Department and Respondent are referred to collectively herein as the "Parties."

Respondent neither admits nor denies the allegations made in the Accusation in OAH Case No. 2013010696 ("Accusation"). Accordingly, this Agreement is not and may not be used as an admission of intentional or willful violation of state or federal law by Respondent.

Respondent is placed on probation until June 10, 2016 with regard to all agricultural products covered under National Organic Program Certificate Number C0041545-NOPHDS-2, on the terms and conditions stated below. The following terms and conditions shall apply to Respondent's probation:

1. **Payment.** Within seven (7) days of the Effective Date, the Department will file with the Office of Administrative Hearings an executed Notice of Settlement and Request for Termination. Within fourteen (14) days of the dismissal, Respondent shall pay the Department the sum of Ten Thousand Dollars (\$10,000.00), in full and complete satisfaction of the claims made against Respondent in the Accusation in OAH Case No. 2013010696.
2. **Unannounced Inspection during probationary period.** In addition to the annual on-site inspections mandated by existing state and federal law, Respondent shall permit the certifying agent to conduct one additional on-site inspection during the first year of the probationary period, which may be an unannounced inspection. Respondent shall reimburse the certifying agent for the cost of the inspection conducted, which is in addition to the annual on-site inspection.
3. **Maintain valid certification.** Respondent shall maintain valid certification. Should Respondent's certification, by operation of law or otherwise, expire, upon renewal, Respondent's certification shall be subject to any and all terms of this probation not previously satisfied.
4. **Additional Agricultural Products.** Should Respondent add additional agricultural products to its existing organic certification after the Effective Date but before the end of the probationary period (June 10, 2016), those agricultural products shall be subject to any and all terms of this probation for the remainder of the probationary period. Furthermore, if Respondent successfully applies for and is granted organic certification at a future date prior to June 10, 2016 for an agricultural product other than those covered under National Organic Program Certificate Number C0041545-NOPHDS-2, then that certification also shall be subject to any and all terms of this probation for the remainder of the probationary period.
5. **Obey all organic statutes and regulations.** Respondent shall obey all federal and state regulations and statutes governing the federal Organic Product Act of 1990, Title 7, Code of Federal Regulations Part 205 et seq., Food and Agricultural Code §46000 et seq. (California

Organic Products Act), and Title 3, California Code of Regulations §1391 et seq. in managing its certified organic operations.

6. **Violation of probation.** If Respondent violates any of the conditions of this probation during the probationary period, then Respondent's organic certification(s) will be subject to immediate revocation. Upon revocation, Respondent is limited to contesting the factual basis for the revocation, in a manner consistent with the procedures provided in Title 3 of the California Code of Regulations sections 1391.5 and 1391.6.
7. **Non-waiver.** Should the Department decline to take immediate disciplinary action for a violation of a statute, regulation, or any term(s) of this Agreement, this shall not constitute a waiver by the Department of the right to raise that violation at a later date in a disciplinary or other judicial proceeding, or any other context.
8. **No limitation.** Nothing in this Agreement shall be construed as a limitation on the powers or responsibilities of the California Department of Food and Agriculture under the laws of the State of California.
9. **Settlement of all disputes.** Upon receipt of the consideration mentioned in Paragraph 1, the Department, on behalf of itself, its agents, representatives, attorneys, employees, subcontractors, servants, affiliates, predecessors, successors and assigns, both past and present, and any person or entity acting by, through, under or in concert with each of them, does hereby release, and forever discharge Respondent, and each of its respective agents, representatives, attorneys, employees, servants, affiliates, parents, predecessors, successors and assigns, subsidiaries, both past and present, and any person or entity acting by, through, under or in concert with each of them, from any and all monies, sums, actions, causes or causes of action, in law or equity, suits, debts, liens, contracts, agreements, promises, liabilities, claims, demands, obligations, rights, breaches of contract, breaches of duty of any relationship, acts, omissions, misfeasance, malfeasance, sums of money, compensation, accounts, contracts, controversies, promises, losses, damages, costs, attorneys' fees, expenses of any type, kind, nature, description or character whatsoever which are stated, or could have been stated arising out of the facts or claim(s) described in the Accusation. Nothing in this Agreement shall constitute or be construed as a satisfaction or release from liability for any violations of law other than those that are the subject of the Accusation.
10. **Effect of Agreement.** This Agreement is binding upon and shall inure to the benefit of the executing Parties, their respective agents, attorneys, and representatives, assigns and successors-in-interest, to the extent permitted by law.
11. **Effective Date.** This Agreement shall be effective immediately upon its execution by all of the Parties. This Agreement may be executed in counterparts and in duplicate originals. If executed in counterparts, then upon proof of execution of at least one copy, the Agreement shall be effective from the date of the last signature. If executed in duplicate, each duplicate copy shall be valid as an original copy.

12. **Applicable Law.** The laws of the State of California shall govern and control the enforcement and interpretation of this Settlement Agreement.
13. **Subsequent Changes to Agreement.** No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, is valid or enforceable unless it is in writing and signed by all Parties to this Agreement.
14. **Agreement shall not be construed as Drafted by One Party.** This Agreement is the product of negotiation between the Parties and is deemed to have been drafted equally by the Parties; any rule of construction causing a document to be construed against the party who drafted an agreement shall not be applicable to this Agreement.
15. **Entire Agreement.** This Agreement contains the entire agreement between the Parties, and supersedes any prior agreements concerning the same subject matter. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto.
16. **Paragraph Headings.** The paragraph headings have been inserted for convenience only and shall not affect the interpretation or construction of this Settlement Agreement.
17. **Authority of Signatories.** Each person executing this Agreement does hereby represent and warrant to the other signatories that he or she has the authority necessary to execute this Agreement; that no other consents or approvals of anyone are required or necessary for this Agreement to be binding; and, that they have respectively not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, causes of action, demands, damages, judgments, costs, loss of services, expenses and/or compensation referred to in this Agreement.

IN WITNESS THEREOF, each Party has executed this Agreement as of the date set forth beside their signatures below.

For Nature's Power Nutraceuticals Corporation,
doing business as NP Nutra, Inc.

Dated: June 5, 2013



Marco Bulgarini,

For the Secretary of the California Department of Food and Agriculture

Dated: June 7, 2013



Rick S. Jensen,
Director, Inspection Services