

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and Natural Intentions, Inc. (“Natural Intentions”) (together, the “Parties”).

### **1. INTRODUCTION**

**1.1.** On April 27, 2016, CEH, a non-profit corporation acting in the public interest, provided a “Notice of Violation of Proposition 65” (the “Notice”) to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and Natural Intentions regarding the presence of acrylamide in vegetable chips (“Covered Products”) manufactured, distributed, or sold by Natural Intentions.

**1.2.** The Notice alleges that the Covered Products contain acrylamide, a chemical known to the State of California to cause cancer. The Notice alleges that the Covered Products expose consumers of the Covered Products to acrylamide without first providing clear and reasonable warning to such persons regarding the carcinogenic toxicity of acrylamide. The Notice alleges that such conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65.

**1.3.** Natural Intentions asserts that it has fewer than ten (10) employees and thus is exempt from Proposition 65. However, after receiving the Notice, Natural Intentions promptly contacted CEH in an effort to resolve CEH’s claims regarding products manufactured, distributed, and/or sold by Natural Intentions in order to resolve any Proposition 65 liability its customers may have as a result of selling products manufactured, distributed, and/or sold by Natural Intentions.

**1.4.** The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Covered Products manufactured, distributed, and/or sold by Natural Intentions. By executing this Agreement, the Parties do not admit any facts or conclusions of law. Nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in this or any other or future legal proceedings.

## **2. INJUNCTIVE RELIEF**

**2.1. Reformulation of Covered Products.** Commencing on February 1, 2017 (the “Compliance Date”), Natural Intentions shall not purchase, manufacture, ship, sell or offer for sale Covered Products that will be sold or offered for sale in California that contain a concentration of more than 490 parts per billion (“ppb”) acrylamide by weight (the “Reformulation Level”).

**2.2. Testing.** Testing for acrylamide shall be performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or any other testing method agreed upon by the Parties. To test for compliance with the Reformulation Level, testing must establish that the mean of five samples is at or below the Reformulation Level with a 95% confidence level, i.e.,  $p < 0.05$ , using random sampling.

**2.3. Extension of Compliance Date.** If Natural Intentions is unable to satisfy the Reformulation Level prior to the Compliance Date, Natural Intentions shall provide written

notice to CEH at least 30 days before the Compliance Date of its need to extend the Compliance Date. Such written notice shall include: (a) a detailed description of Natural Intentions' efforts to satisfy the Reformulation and the status of those efforts, (b) a list by name and SKU or other identifier of Covered Products, if any, that will satisfy the Reformulation Level by the Compliance Date, and (c) a list by name and SKU or other identifier of Covered Products that will not satisfy the Reformulation Level by the Compliance Date and, for each such Covered Product, the anticipated date of compliance. In addition, if Natural Intentions avails itself of the extension allowed under this Section 2.3, Natural Intentions shall make the additional payments specified in Section 3.2 below. In no event shall the Compliance Date be extended beyond June 1, 2017 as to any Covered Product.

**2.4 Clear and Reasonable Warnings.** If Natural Intentions has not reached the Reformulation Levels by the Compliance Date (or any extensions pursuant to Section 2.3), then it shall provide a Clear and Reasonable Warning that complies with the provisions of Section 2.4. A Clear and Reasonable Warning under this Agreement shall state:

**2.4.1** For warnings on the packaging of the Covered Product:

**WARNING:** Consuming this product can expose you to acrylamide, which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

This statement shall be prominently displayed on the Covered Product. Or,

**2.4.2** For warnings on a placard or sign, and for internet, catalog or any other sale:

**WARNING:** Consuming this product can expose you to acrylamide, which is known to the State of California to cause cancer. Acrylamide is a chemical that can form in some foods during high-temperature cooking processes, such as frying, roasting, and baking. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

This statement shall be prominently 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 prior to sale. If the statement is displayed on a placard or sign where the Covered Product is offered for sale, the warning placard or sign must enable an ordinary individual to easily determine which specific Covered Products the warning applies to, and to differentiate between that Covered Product and other products to which the warning statement does not apply. For internet, catalog or any other sale where the consumer is not physically present, the warning statement shall be displayed in such a manner that it is likely to be read and understood by an ordinary individual prior to the authorization of or actual payment.

### **3. SETTLEMENT PAYMENTS**

**3.1.** In consideration of the mutual covenants and releases provided in this Agreement, within fifteen (15) days of execution of this Agreement, Natural Intentions shall pay a total of \$50,000 as a settlement payment. This total shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth below. Any failure by Natural Intentions to comply with the payment terms herein shall be subject to a stipulated late fee to be paid by Natural Intentions in the amount of \$50 for each day the full payment is not received after the applicable payment due date set forth in Section 3.1. The late fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 5 of this Agreement. The funds paid by Natural Intentions shall be allocated as set forth below between the following categories and made payable as follows:

**3.1.1 Civil Penalty.** Natural Intentions shall pay \$4,600 as a penalty pursuant to Health & Safety Code § 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of

California's Office of Environmental Health Hazard Assessment ("OEHHA"). Accordingly, the OEHHA portion of the civil penalty payment for \$3,450 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

Attn: Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS #19B  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street, MS #19B  
Sacramento, CA 95814

The CEH portion of the civil penalty payment for \$1,150 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

**3.1.2 Monetary Payment in Lieu of Civil Penalty.** Natural Intentions shall pay \$6,900 as payment to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11 § 3203(b). CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals. In addition, as part of its *Community Environmental Action and Justice Fund*, CEH will use four percent (4%) of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment pursuant to this Section shall be made payable to the Center for Environmental Health and

associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

**3.1.3 Attorneys' Fees and Costs.** Natural Intentions shall pay \$38,500 to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating the alleged violations, bringing this matter to Natural Intentions's attention, and negotiating a settlement in the public interest. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) \$32,665 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$5,835 payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

**3.2. Additional Payments.** If Natural Intentions avails itself of the extension option provided for by Section 2.3, within 30 days of electing to extend the Compliance Date Natural Intentions shall make an additional payment of \$15,000 as a civil penalty. This additional civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment for \$11,250 shall be made payable to OEHHA, associated with taxpayer identification number 68-0284486, and sent to the OEHHA address set forth in section 3.1.1 above. The CEH portion of the additional civil penalty payment for \$3,750 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

**4. MODIFICATION OF SETTLEMENT AGREEMENT**

**4.1.** This Agreement may be modified only by written agreement of the Parties.

**5. ENFORCEMENT OF SETTLEMENT AGREEMENT**

**5.1.** The Parties agree that any action based on a violation of this Agreement shall be brought in the Superior Court of California in Alameda County. For purposes of this Agreement, notwithstanding Section 1.3 above, the Parties agree that the Superior Court of California in Alameda County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of Alameda. Should a party to this Agreement prevail on any action to enforce the terms of this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

**5.2. Enforcement Procedures.** Prior to bringing any action to enforce the terms of Sections 2 and 3 of this Agreement, a Party seeking to enforce shall provide the violating Party thirty (30) days advanced written notice of its intent to enforce the alleged violation.

**5.2.1** In the event that CEH identifies a Covered Product that was sold or offered for sale to California consumers with a best-by or sell-by (or equivalent) date more than 4 months after the Compliance Date, and for which CEH has laboratory test results showing that the Covered Product has an acrylamide level exceeding the Reformulation Level, CEH may issue a Notice of Violation pursuant to this Section.

**5.2.1.1** Any Notice of Violation shall be sent to the person(s) identified in Section 10.1 to receive notices for Natural Intentions, and must be served within sixty (60) days of the later of the date the Covered Products at issue were purchased or otherwise acquired by CEH or the date that CEH can reasonably determine that the Covered Products at issue were

manufactured, shipped, sold or offered for sale by Natural Intentions, provided, however, that CEH may have up to an additional sixty (60) days to send the Notice of Violation if, notwithstanding CEH's good faith efforts, the test data required by Section 5.2.1.2 below cannot be obtained by CEH from its laboratory before expiration of the initial sixty (60) day period.

**5.2.1.2** The Notice of Violation shall, at a minimum, set forth: (a) the date the alleged violation was observed; (b) the location at which the Covered Products were offered for sale; (c) a description of the Covered Products giving rise to the alleged violation, including the name and address of the retail entity from which the sample was obtained and if available information that identifies the product lot; and (d) all test data obtained by CEH regarding the Covered Products and supporting documentation sufficient for validation of the test results, including any laboratory reports, quality assurance reports and quality control reports associated with testing of the Covered Products. Notwithstanding Section 2.2, CEH may issue a Notice of Violation based on laboratory testing of a single unit of Covered Products.

**5.2.1.3** Notice of Election of Response. No more than thirty (30) days after effectuation of service of a Notice of Violation, Natural Intentions shall provide written notice to CEH whether it elects to contest the allegations contained in a Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election within thirty (30) days of effectuation of service of a Notice of Violation shall be deemed an election to contest the Notice of Violation. Upon notice to CEH, Natural Intentions may have up to an additional sixty (60) days to elect if, notwithstanding Natural Intentions' good faith efforts, Natural Intentions is unable to verify the test data provided by CEH before expiration of the initial thirty (30) day period.

**5.2.1.4** If a Notice of Violation is contested, the Notice of Election shall



include all then-available documentary evidence regarding the alleged violation, including all test data, if any is available. If Natural Intentions or CEH later acquires additional test or other data regarding the alleged violation, it shall notify the other party and promptly provide all such data or information to the party. If Natural Intentions' Notice of Election includes testing conducted in accordance with Section 2.2 that demonstrates the Covered Product at issue satisfies the Reformulation Level, CEH shall withdraw the Notice of Violation.

**5.2.1.5 Meet and Confer.** If a Notice of Violation is contested, CEH and Natural Intentions shall meet and confer to attempt to resolve their dispute. If no informal resolution of a Notice of Violation results within thirty (30) days of a Notice of Election to contest, CEH may file an enforcement action pursuant to Section 5.1. In any such proceeding, CEH may seek whatever fines, costs, penalties, attorneys' fees or other remedies that are provided by law.

**5.2.1.6 Non-Contested Notices.** If Natural Intentions elects to not contest the allegations in a Notice of Violation, it shall identify on a confidential basis to CEH (by proper name, address of principal place of business and telephone number) the person or entity that sold the Covered Products to Settling Defendant. In addition, the Parties shall meet and confer on an appropriate resolution of the violations alleged in the Notice. If the Parties are unable to agree on an appropriate resolution within thirty (30) days of a Notice of Election not to contest, CEH may file an enforcement action pursuant to Section 5.1. In any such proceeding, CEH may seek whatever fines, costs, penalties, attorneys' fees or other remedies that are provided by law.

## **6. APPLICATION OF SETTLEMENT AGREEMENT**

**6.1.** This Agreement shall apply to and be binding upon the Parties hereto, their divisions, subdivisions, and subsidiaries, and the successors or assigns of any of them.

## **7. CLAIMS COVERED**

**7.1.** Except as otherwise provided herein, CEH hereby releases and discharges Natural Intentions with respect to any violation of Proposition 65 (or any other claim related to failure to warn about exposures to acrylamide in the Covered Products) that was or could have been asserted against Natural Intentions, or its parents, subsidiaries, directors, officers, employees, agents, and all entities to whom they directly or indirectly distribute or sell Covered Products, including but not limited to distributors (including, KeHE Distributors, LLC), wholesalers, customers, marketplace hosts, retailers (including but not limited to Wal-Mart Stores, Inc. and Walmart.com USA LLC and their respective parents, subsidiaries and affiliates, successors or assigns), franchisees, cooperative members, and licensees, regarding the failure to warn about exposures to acrylamide arising in connection with Covered Products manufactured, distributed, or sold by Natural Intentions on or before the execution of this Agreement.

**7.2.** Compliance with the terms of this Agreement by Natural Intentions constitutes compliance with Proposition 65 for purposes of exposures to acrylamide from the Covered Products.

## **8. SPECIFIC PERFORMANCE**

**8.1.** The Parties expressly recognize that Natural Intentions' obligations under this Agreement are unique. In the event that Natural Intentions is found to be in breach of this Agreement for failure to comply with the provisions of Section 2 hereto, the Parties agree that it would be extremely impracticable to measure any resulting damages and that such breach would

cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and Natural Intentions expressly waives the defense that a remedy in damages will be adequate.

## **9. GOVERNING LAW**

**9.1.** The terms of this Agreement shall be governed by the laws of the State of California.

## **10. PROVISION OF NOTICE**

**10.1.** All notices required pursuant to this Agreement and correspondence shall be sent by first class and electronic mail to the following:

For CEH:

Howard Hirsch  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
hhirsch@lexlawgroup.com

For Natural Intentions:

Hassan Alireza  
Natural Intentions, Inc.  
PO Box 6688  
Folsom, CA 95763

With a copy to:

David Biderman, Esq.  
Wilma Palma-Solana, Esq.  
Perkins Coie LLP  
1888 Century Park East, Suite 1700  
Los Angeles, CA 90067  
dbiderman@perkinscoie.com

Any Party may modify the person and/or address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

## **11. EFFECT OF SUBSEQUENT SETTLEMENT**

**11.1** The Parties contemplate that CEH may enter into a separate settlement with other companies that supply Covered Products to Natural Intentions. To the extent any such settlement includes a different Reformulation Level or Compliance Date, Natural Intentions may request, at its sole discretion, and CEH shall agree to a modification of this Agreement to incorporate the same Reformulation Level or Compliance Date as CEH's settlement with Natural Intentions' supplier(s).

## **12. ENTIRE AGREEMENT**

**12.1.** This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

**13. NO EFFECT ON OTHER SETTLEMENTS**

13.1. Nothing in this Agreement shall preclude CEH from resolving any claim against any entity that is not Natural Intentions on terms that are different from those contained in this Agreement.

**14. EXECUTION IN COUNTERPARTS**

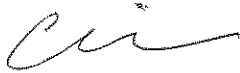
14.1. The stipulations to this Agreement may be executed in counterparts by facsimile or portable document format (PDF) signature sent by electronic mail, which taken together shall be deemed to constitute one document.

**15. AUTHORIZATION**

15.1. Each signatory to this Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Agreement and to enter into and execute the Agreement on behalf of the party represented and legally bind that party. The undersigned have read, understand, and agree to all of the terms and conditions of this Agreement. Except as explicitly provided herein, each party is to bear its own fees and costs.

**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**



---

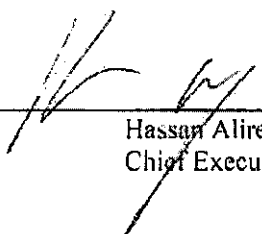
Charlie Pizarro  
Associate Director

Dated: \_\_\_\_\_

29 SEP 2016

NATURAL INTENTIONS, INC.

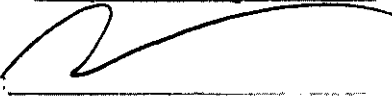
Dated: 9/28/16

\_\_\_\_\_  
  
\_\_\_\_\_  
Hassan Alireza  
Chief Executive Officer

APPROVED AS TO FORM:


LEXINGTON LAW GROUP

Date: 9/29/16

By:   
\_\_\_\_\_  
Howard Hirsch  
Counsel for Center for  
Environmental Health

PERKINS COIE LLP

Date: 9/29/2016

By:   
\_\_\_\_\_  
David Biderman  
Counsel for Natural Intentions, Inc.