

SETTLEMENT AGREEMENT

1. RECITALS

1.1 The Parties

This settlement agreement (“Settlement Agreement”) is entered into by and between Erika McCartney (“Ms. McCartney”) on the one hand, and NOW Health Group, Inc. (“NOW”). Ms. McCartney and NOW shall hereinafter collectively be referred to as the “Parties.”

Ms. McCartney is a citizen of the State of California. NOW is a person in the course of doing business as the term is defined in California Health and Safety Code Section 25249.6 *et seq.* (“Proposition 65”).

1.2 Allegations

Ms. McCartney alleges NOW manufactured, distributed, supplied, and/or sold the “NOW Foods Cacao Nibs” (the “Covered Product”) for use by consumers, causing users in California to be exposed to cadmium (the “Listed Substance”) in amounts exceeding the maximum allowable dosage level (“MADL”) established by the California Office of Environmental Health Hazard Assessment (“OEHHA”) without providing “clear and reasonable warnings,” in violation of Proposition 65. Cadmium is subject to Proposition 65 warning requirements because it is listed as known to the State of California to cause reproductive harm.

On May 3, 2017, a sixty-day notice of violation, along with a Certificate of Merit, was provided by Ms. McCartney to NOW and various public enforcement agencies regarding the alleged violation of Proposition 65 (“Notice”). No public prosecutor commenced any action in the 60-day period following issuance of the Notice.

1.3 No Admissions

NOW denies all allegations in Ms. McCartney’s 60-Day Notice and maintains that the Covered Product has been, and is, in compliance with all laws, and that NOW has not violated

Proposition 65. This Settlement Agreement shall not be construed as an admission of liability by NOW, but 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 Settlement Agreement.

1.4 Compromise

The Parties enter into this Settlement Agreement in order to resolve the controversy described above and to avoid prolonged and costly litigation between them.

1.5 Effective Date

The "Effective Date" shall be the date upon which this Settlement Agreement is signed by both Parties and delivered to the opposing Party.

2. INJUNCTIVE RELIEF

2.1 Warning Obligations for Covered Product

Beginning on the Effective Date, NOW shall not purchase or manufacture a Covered Product that it thereafter sells in California or distributes in California if an 18 gram serving contains more than 4.1 micrograms of cadmium, unless the packaging of the Covered Product complies with the warning requirements of Section 2.2.

2.2 Warning

If the Covered Product is subject to the warning requirement of Section 2.1, NOW shall provide a warning that complies with the requirements of Sections 2.2.1, 2.2.2, or 2.2.3. Provided however, for Covered Product manufactured after August 30, 2018, the warning option in Section 2.2.1 shall terminate and the warning options in Sections 2.2.2 or 2.2.3 shall apply only. The warning shall be displayed on the packaging of the Covered Product with such conspicuousness, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Product. The warning must be in a type size no smaller than the largest type size used for other consumer

information on the product. In no case shall the warning appear in a type size smaller than 6-point type.

2.2.1 Option 1

WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.


In place of the term “a chemical,” NOW may state “chemicals” at its sole option.

2.2.2 Option 2

WARNING: Consuming this product can expose you to chemicals including cadmium, which is known to the State of California to cause birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov/food.

If the warning is printed on the product label, it shall be set off from other surrounding information in the label and enclosed in a box.

2.2.3 Option 3

 **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov.

The pictogram specified in Section 2.2.3 shall be in yellow with a black exclamation mark; provided however, the pictogram may be in white instead of yellow if the Covered Product label does not contain the color yellow.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

NOW shall pay a civil penalty of \$7,500, to be apportioned in accordance with Health and Safety Code section 25249.12(c)(1) and (d), with 75% paid to State of California Office of Environmental Health Hazard Assessment, and the remaining 25% paid to Ms. McCartney.

The civil penalty shall be made by (1) a check or money order made payable to “Office of Environmental Health Hazard Assessment” in the amount of \$5,625; and (2) a check or money order made payable to “Erika McCartney” in the amount of \$1,875. NOW shall remit the payments within ten (10) days of the Effective Date, via regular or certified U.S. Mail to:

Pacific Justice Center
ATTN: Robert B. Hancock, Esq.
50 California Street, Suite 1500
San Francisco, CA 94111

3.2 Payment of Attorneys' Fees and Expenses

In full satisfaction of all claims for attorneys' fees, costs, and expenses incurred in connection with the Notice and negotiation of this Settlement Agreement, NOW shall pay Ms. McCartney the amount of \$32,500. This payment shall be made by check or money order made payable to "Robert B. Hancock." NOW shall remit the payments within ten (10) days of the Effective Date, via regular or certified U.S. Mail to:

Pacific Justice Center
ATTN: Robert B. Hancock, Esq.
50 California Street, Suite 1500
San Francisco, CA 94111

Any failure to remit any of the foregoing payments shall be deemed to be a material breach of this Settlement Agreement, and the Parties agree that in that event the Settlement Agreement shall be rescinded in full, and the Parties restored to their respective positions as though the Settlement Agreement had never existed.

4. RELEASES

4.1 Ms. McCartney's Release of NOW

Ms. McCartney, acting in her individual capacity, her past and current agents, representatives, attorneys, successors, and/or assignees, in consideration of the promises and monetary payments contained herein, hereby releases and waives all rights to institute or participate in (directly or indirectly) any form of legal action and releases and discharges: (a) NOW and each entity to which NOW has directly or indirectly distributed or sold the Covered Product, including but not limited to all retailers, distributors, wholesalers, and customers; and (b) all past and current parents, subsidiaries, affiliates, directors, officers, employees,

shareholders, agents, attorneys, successors, and assignees of the entities identified in (a) above (the released entities and individuals identified in (a) and (b) above are collectively referred to as "Releasees"), with respect to any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees (including but not limited to investigation fees, attorneys' fees, and expert fees), costs, and expenses arising under Proposition 65 or any other statutory or common law based on any exposures to, or failure to warn about any exposures to, cadmium in the Covered Product.

The Parties agree that compliance with the requirements of this Settlement Agreement by NOW shall constitute compliance with Proposition 65 by any Releasee with respect to any exposure to cadmium in the Covered Product manufactured or purchased by NOW after the Effective Date.

4.2 NOW's Release of Ms. McCartney

NOW, by this Settlement Agreement, waives all rights to institute any form of legal action against Ms. McCartney, her past and current agents, representatives, attorneys, experts, successors, and/or assignees, for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against NOW in this matter.

4.3 Waiver of Unknown Claims

Each of the Parties acknowledges that they are familiar with Section 1542 of California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of the 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 pertaining to the claims in this Settlement Agreement. 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 in Sections 4.1 and 4.2 and that such releases are intended to cover known and unknown claims. The Parties agree that this Settlement Agreement and the releases contained herein shall be and remain effective in all respects, notwithstanding the discovery of such additional or different facts.

Nothing in Section 4 prevents or limits a Party's right to enforce the terms of this Settlement Agreement.

5. SEVERABILITY

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

6. GOVERNING LAW

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

7. INTEGRATION

This Settlement Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and may not be amended or modified except in writing executed by both Parties.

8. COUNTERPARTS

This Settlement 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 Settlement Agreement by e-mail, facsimile, or other electronic

means shall constitute legal and binding execution and delivery. Any photocopy of the executed Settlement Agreement shall have the same force and effect as the originals.

9. MODIFICATION

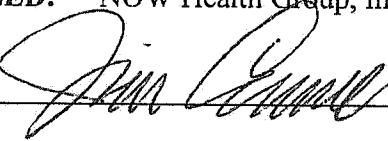
This Settlement Agreement may be modified by written stipulation of the Parties.

10. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Party. Each Party has read, understands, and agrees to all of the terms and conditions of this Settlement Agreement. Each Party warrants to the other that it is free to enter into this Settlement Agreement and not subject to any conflicting obligation which will or might prevent or interfere with the execution or performance of this Settlement Agreement by said Party.

AGREED: NOW Health Group, Inc.

Date: _____

 12/27/17

By: Jim Emme

Its: CEO

AGREED:

Date: _____

Erika McCartney

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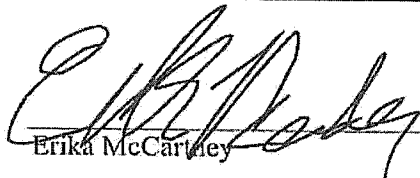
Date: _____

By: Jim Emme

Its: CEO

AGREED:

12/22/2017
Date: _____


Erika McCartney