

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE is entered into by and between Kim Embry (“Complainant”) on the one hand and Earthbound Farm, LLC, (“Earthbound,”), on the other hand, (each a “Party” and collectively, the “Parties”), as of the date last signed below by all Parties (the “Effective Date”). The provisions of this Agreement concerning confidentiality, specifically including but not limited to Paragraphs 3 and 9 below, are additionally entered into between Earthbound, on the one hand, and the Glick Firm and Nicholas & Tomasevic Firm (defined below), on the other hand, as of the Effective Date.

1. Definitions and Recitals. Unless otherwise indicated, capitalized terms and phrases used in this Agreement shall have the following meanings:

- 1.1 “Agreement” means this Settlement Agreement and General Release by and between Complainant and the Glick Firm, on the one hand, and Earthbound, on the other hand.
- 1.2 “Complainant” means Kim Embry, an individual residing in the State of California.
- 1.3 “Glick Firm” means the law practice of the Glick Law Group and all of its predecessors, successors, assigns, parents, subsidiaries, affiliates, licensees, transferees, principals, servants, agents, associates, partners, members, officers, directors, employees, representatives, shareholders, attorneys, insurers, legal representatives, executors, administrators, and all other persons acting under, by, through, or in concert with any of them.
- 1.4 “Nicholas & Tomasevic Firm” means the law practice of the Nicholas & Tomasevic, LLP, and all of its predecessors, successors, assigns, parents, subsidiaries, affiliates, licensees, transferees, principals, servants, agents, associates, partners, members, officers, directors, employees, representatives, shareholders, attorneys, insurers, legal representatives, executors, administrators, and all other persons acting under, by, through, or in concert with any of them.
- 1.5 “Earthbound” means Earthbound Farm, LLC, and its current and former successors, predecessors, and assigns, officers, directors, shareholders, members, agents, attorneys, insurers, employees and former employees, partners and former partners, representatives, and all persons acting under, by, through, or in concert with any of them.
- 1.6 The “Matter” means the proposed litigation entitled *Embry v. Earthbound Farm, LLC* that was threatened as part of Complainant’s demand letter, dated June 29, 2017. The Matter alleged that sales of Earthbound Farm’s Roasted Organic Red Potatoes (the “Product”) violate California’s Proposition 65 by failing to warn consumers of the alleged presence of, or exposure to, acrylamide. As set forth

below in greater detail, Earthbound has denied wrongdoing and makes no admission of liability as to the Matter or any of the Claims therein in settling this Matter.

1.7 “Closing” means the execution and delivery of this Agreement by the Parties along with the delivery of all required W-9 forms.

1.8 “Claims” means any allegation, theory of recovery or relief, cause of action, or other assertion or wrongdoing or liability that was raised or could have been raised in the Matter.

2. The Parties now, with the advice and consent of their respective legal counsel, have agreed to settle their differences regarding the Matter.

3. The Glick Firm and Nicholas & Tomasevic Firm covenant that they have not made any disclosure, reference, statement, remark, inference, or implication in any manner whatsoever to any third party concerning the terms of this Agreement, other than pursuant to the disclosure obligations set forth in Cal. Health & Safety Code § 25249.7(f)(1) *et seq.*

NOW THEREFORE, in consideration of the foregoing and the terms, conditions, promises and covenants set forth in this Agreement, and for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

4. Consideration.

4.1 In consideration of the settlement and releases contained in this Agreement, Earthbound shall pay to the Glick Firm, Nicholas & Tomasevic Firm, Complainant, and the California Office of Environmental Health Hazard Assessment (“OEHHA”) the total sum of Forty Thousand Dollars (\$40,000.00) (the “Settlement Amount”), as follows:

- a. Thirteen Thousand Five Hundred Dollars (\$13,500.00) to Glick Firm, and Thirteen Thousand Five Hundred (\$13,500.00) to Nicholas & Tomasevic Firm within fourteen (14) calendar days of Closing.
- b. Three Thousand Dollars (\$3,000) in civil penalties pursuant to California Health & Safety Code § 25249.7(b) within fourteen (14) calendar days of Closing. Earthbound shall issue two separate checks for the civil penalty payment: (1) to "OEHHA" in the amount of Two Thousand Dollars (\$2,000); and (2) “Glick Law Group Client Trust Account” in the amount of One Thousand Dollars (\$1,000) representing Complainant’s share of the penalty.
- c. Earthbound shall pay to the Glick Firm and the Nicholas & Tomasevic Firm each the sum of Five Thousand Dollars (\$5,000.00) (\$10,000 total), within one hundred and eighty (180) calendar days of Closing on the express condition that no Proposition 65 Notice or state or federal

lawsuits, arbitrations, and/or administrative proceedings, is made against Earthbound by any person, class, entity, company, or group unaffiliated with Earthbound relating in whole or in part to the alleged presence of, or exposure to, acrylamide in the Product (whether such products are sold by Earthbound currently or after the Effective Date), and concerning or relating to the Claims. The foregoing shall not apply to any claim, action, litigation, or demand from retailer customers of Earthbound's products for resale. If an action described above is filed against Earthbound after the Effective Date, alleging claims concerning or relating to the presence of, or exposure to, acrylamide in the Product, the Glick Firm and Nicholas & Tomasevic firm are not entitled to the additional \$5,000 payments described in this paragraph 4.1.c.

- d. If the California Office of the Attorney General issues an objection to this Agreement or otherwise intervenes in a manner rendering this Agreement invalid, all settlement proceeds shall be refunded.
- e. Payments of the respective attorneys' fees and Complainant's share of the civil penalties shall be made as follows:
 - i. Payment of attorneys' fees to Glick Law Group, P.C., and Complainant's share of the civil penalties shall be sent via Federal Express to Glick Law Group, c/o Noam Glick, 225 Broadway, Suite 2100, San Diego, CA 92101.
 - ii. Payment of attorneys' fees to Nicholas & Tomasevic, LLP shall be sent via Federal Express to Nicholas & Tomasevic, LLC, c/o Craig Nicholas, 225 Broadway, 19th Floor, San Diego, CA 92101.
 - iii. The Glick Firm and Nicholas & Tomasevic Firm shall provide Earthbound with the appropriate, completed W-9 forms within three (3) days of the Effective Date. Provision of these forms is a condition precedent to any payment of the Settlement Amount by Earthbound.
- f. All payments owed to OEHHA (EIN: 68-0284486), pursuant to this section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street

4.2 The Glick Firm and Nicholas & Tomasevic Firm agree that receiving an allocation of the Settlement Amount as attorneys' fees is valuable consideration sufficient to bind the Glick Firm and Nicholas & Tomasevic Firm to the obligations described in this Agreement. Notwithstanding any other provision of this Agreement, Earthbound shall have no responsibility for the allocation of the Settlement Amount between Complainant and the Glick Firm or Nicholas & Tomasevic Firm or any other parties.

4.3 Earthbound agrees to modify the cooking instructions set forth on the Product's packaging. Specifically, Earthbound agrees that the existing pan fry instructions ("Original Instructions"), which read, "1. LIGHTLY COAT A FRY PAN WITH NON-STICK VEGETABLE SPRAY OR OIL. 2. PREHEAT FRY PAN OVER MEDIUM OR MEDIUM-LOW HEAT UNTIL HOT. 3. SLOWLY ADD DESIRED AMOUNT OF POTATOES. 4. COOK 8-10 MINUTES, TURNING OCCASIONALLY.", shall be revised to reduce the cooking temperature to a "low" setting until the product reaches an internal temperature of 165°F. Notwithstanding anything stated herein, the Parties agree that Earthbound may continue to sell through its inventory of the Product and/or packaging (existing or ordered) with then-existing labels in the ordinary course of business.

5. Attorneys' Fees. Each Party is specifically to bear its own attorneys' fees, costs, and expenses incurred in the Matter, including negotiating and finalizing this Agreement, except to enforce the terms of this Agreement as set forth in Sections 8, 9, 11.2, and 13.2 below.

6. Release.

6.1 In further consideration for the promises set forth in this Agreement, Complainant for herself and for her heirs, assigns, employees, representatives, attorneys, insurers, legal representatives, executors, administrators, and all other persons acting under, by, through, or in concert with any of them ("the Complainant Releasers") hereby release, remise, acquit and forever discharge Earthbound and its current and former corporate affiliates, parents, subsidiaries, affiliated businesses, successors, predecessors, and assigns, and all of their officers, directors, shareholders, members, agents, attorneys, insurers, employees and former employees, partners and former partners, representatives, and all persons acting under, by, through, or in concert with any of them ("the Earthbound Releasees"), from all of the Claims and any and all other causes of action, obligations, costs, expenses, damages, claims, losses, liabilities, and benefits (including attorneys' fees, expert fees, and costs actually incurred), of whatever character, in law or in equity, known or unknown, suspected or unsuspected,

matured or unmatured, liquidated or unliquidated, of any kind whatsoever, now existing, previously existing or arising in the future, based on any act, omission, event, occurrence, nonoccurrence, or information known or unknown, foreseen or unforeseen, actual or potential to the Complainant Releasors or their counsel, from the beginning of time to the Effective Date of this Agreement, including, but not limited to, any claims, damages, or causes of action arising out of or relating to the Claims. Notwithstanding the foregoing, the Complainant Releasors are not releasing any and all rights to enforce the terms of this Agreement.

6.2 After-Discovered Facts. It is understood by Complainant, on the one hand, and Earthbound, on the other hand, that there is a risk that subsequent to the execution of this Agreement, they may discover facts different from or in addition to the facts which they now know or believe to be true with respect to the Claims, or that certain debts, claims, expenses, or liabilities presently known may be or become greater than she now expects or anticipates. Complainant, on the one hand, and Earthbound, on the other hand, intend this Agreement to apply to all unknown or unanticipated results, as well as those known and anticipated, and it is Complainant's and Earthbound's intention hereby to fully, finally, absolutely, and forever resolve any and all claims and disputes which have existed, do exist, or may exist relating to the Matter.

6.3 Waiver Under California Civil Code Section 1542. It is understood that each release herein shall be, and shall remain in effect as, a full and complete general release, notwithstanding the discovery of different or additional facts. EACH PARTY ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

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

EACH PARTY BEING AWARE OF SAID CODE SECTION, HEREBY EXPRESSLY WAIVES ANY RIGHTS IT MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW DOCTRINES OF SIMILAR EFFECT.

7. No Admission of Liability. Each Party understands and agrees that:

- (1) The object of this Agreement is the complete compromise of all disputed claims raised in the Matter;

- (2) The consideration given and the responsibilities undertaken pursuant to this Agreement are not to be construed as admissions of any liability on the part of any Party, all such liability being expressly denied; and
- (3) The Parties intend by this Agreement to avoid further litigation and to have their peace.

8. Absolute Bar. Complainant shall not attempt to enforce (in any legal, equitable, administrative or other proceeding) any released claim covered by this Agreement. This Agreement and the introduction thereof into evidence shall constitute an absolute and unconditional bar to any such attempted enforcement. Any such attempted enforcement in violation of this provision shall be considered to be an act of tortious bad faith, entitling Earthbound to an award of exemplary damages and reasonable attorney fees in addition to such other relief as may be granted.

9. Confidentiality. Except as required pursuant to the disclosure obligations set forth in Cal. Health & Safety Code § 25249.7(f)(1) *et seq.*, the Parties and the Glick Firm and Nicholas & Tomasevic Firm agree that information concerning the Claims (collectively, the “Confidential Matters”), shall be treated confidentially by each and all of them. Complainant and the Glick Firm and Nicholas & Tomasevic Firm may not make any disclosures regarding these Confidential Matters to any non-party, except as specified herein. In addition to the disclosure obligations prescribed by Cal. Health & Safety Code § 25249.7(f)(1) *et seq.*, disclosure is allowed in the following situations:

- a. Disclosure of Confidential Matters may be made to their respective tax consultants, tax advisors, accountants, other financial advisors, auditors, parent or affiliated companies, or estate planners or estate counselors, who is/are reasonably consulted by them for tax reporting, tax planning or estate planning purposes, providing such third persons are fully and completely advised by them that any disclosures are confidential, and that such confidentiality provisions and obligations extend to those third persons.
- b. Disclosure may be made where required in response to the order of a court or administrative agency with jurisdiction over the party in question. If any Party or the Glick Firm or Nicholas & Tomasevic Firm become aware that such an order is being sought, the party from whom disclosure is sought shall notify Earthbound in writing within five business days that such disclosure is being sought.

Any breach of this section 9 shall be considered a material breach of this Agreement, and the Parties acknowledge that they deem confidentiality to be a material condition of this Agreement, absent which Earthbound would not have agreed to the terms set forth herein. Each Party shall cooperate in good faith with the other Parties in order to protect and maintain the confidentiality of all Confidential Matters as specified herein. Nothing in this section or in any other provision of this Agreement shall, or is intended to, limit any other rights or remedies the

Parties may have by virtue of this Agreement relating to injunctive relief and attorneys' fees and costs.

The Parties further agree that a breach of this confidentiality section would constitute an irreparable harm to the non-breaching Party, and that in the event of a breach of this section, the non-breaching Party may obtain injunctive relief (including an injunction prohibiting future breaches), damages, and any reasonable attorneys' fees and costs available under this Agreement for enforcing this provision, as well as any additional remedies available at law or equity. The Parties also agree that a breach of this Section by the Glick Firm and/or Nicholas & Tomasevic Firm shall render the Glick Firm and/or Nicholas & Tomasevic Firm liable to Earthbound for any and all damages and injuries incurred as a result of such a breach, and shall obligate the Glick Firm and/or Nicholas & Tomasevic Firm to disgorge and turn over to Earthbound, any and all monies, profits, or other consideration or benefits resulting from such a breach, and also including but not limited to return of all monetary consideration paid pursuant to this Agreement.

The Parties and the Glick Firm and Nicholas & Tomasevic Firm agree that the Glick Firm and Nicholas & Tomasevic Firm shall not use any information obtained in the correspondence, discussions, or negotiation of the Claims in any other litigation and that such use would constitute a breach of this section.

Enforcing these remedies shall be without prejudice to any other rights, remedies, claims, or defenses—legal or equitable—that Earthbound may have as a result of a violation of the terms of this section or elsewhere in this Agreement.

10. Covenant Not to Sue. Complainant covenants and agrees never to sue, institute, cause to institute, assist in instituting, or permit to be instituted by or on behalf of herself any proceeding in any court or any claim or other proceeding filed with any administrative body, state or federal, against Earthbound or any of its affiliates, predecessors, successors, subsidiaries, parents, assigns, insurers, directors, partners, officers, agents, employees or attorneys to charge any of them with any liability arising out of the Matter, or based on or on account of any claims, controversies, actions, causes of action, demands or liabilities of any nature whatsoever that are covered by this Agreement and/or that relate to the Matter. This Agreement shall constitute an agreement by Complainant that any action or proceeding brought by or on behalf of any of them in violation of this paragraph be immediately discontinued or dismissed.

11. Arbitration.

11.1 Any claim or controversy arising out of or relating to this Agreement or any breach thereof shall be submitted to arbitration in Los Angeles County, California. The arbitration will take place before a mutually selected experienced arbitrator licensed to practice law in California as the exclusive remedy for such claim or controversy. Any party desiring to arbitrate shall give written notice to the other parties within a reasonable period of time after the party becomes aware of the need for arbitration. The decision of the arbitrator shall be final and binding. Judgment on any award rendered by such arbitrator may be entered in any court having jurisdiction over the subject matter of the controversy.

11.2 Unless otherwise ordered by the arbitrator, the prevailing party in any dispute or arbitration proceeding held pursuant to this section shall receive an award of costs and expenses related to the arbitration, including attorneys' fees. The parties shall share equally the costs and expense of arbitration, which costs and expense shall then be allocated by the arbitrator upon rendering a final award or determination.

12. Warranties and Representations. Each Party represents and warrants to the other as follows:

- 12.1** Each Party has the full right and power to execute, deliver and perform this Agreement according to its terms, without the necessity of consent of or joinder with another. When executed and delivered, this Agreement shall constitute a valid and binding agreement, enforceable according to its terms;
- 12.2** Each Party has had the benefit and advice of independent counsel in connection with the Matter and in connection with the negotiation, execution, delivery and performance of this Agreement;
- 12.3** No claim referred to in the foregoing releases contained in this Agreement has been assigned, transferred, hypothecated, pledged, mortgaged or set over in any manner whatsoever, in whole or in part, to any third person not a party to this Agreement, and each party hereto has the sole and exclusive right to release and discharge all of the claims; and
- 12.4** With the exception of the commitments, consideration, promises, releases, representations, warranties, and covenants expressly set forth herein, which shall survive Closing, this Agreement is executed and delivered without reliance upon any statement, representation, promise, inducement, understanding or agreement by or on behalf of any party hereto or by or on behalf of any representative or agent employed by either of them.
- 12.5** Claimant and the Glick Firm and Nicholas & Tomasevic Firm each represent and warrant that they: (a) are not aware of any other potential claimant, plaintiff, or class member or attorney who intends to make demands or to bring any action against Earthbound; (b) have no knowledge of any claim, including but not limited to formal demands, state or federal lawsuits, arbitrations, administrative proceedings, and/or formal or informal complaints to the United States Food & Drug Administration that could implicate the conditions precedent expressed in Paragraph 4.1.b above; (c) have no present intention to bring any action against Earthbound; (d) are not actively soliciting, and do not intend to solicit actively, potential claimants to make demands on or bring any action against Earthbound based on the Claims; and (e) will not use any information obtained in corresponding about, discussing, or negotiating the Claims in any future actual or potential claim, action, or proceeding. This provision does not preclude the

Parties from using such information in any arbitration proceeding permitted by this agreement.

13. Miscellaneous.

13.1 Governing Law. This Agreement shall be governed by the laws of the State of California, and any legal action regarding the breach or enforcement of this Agreement shall be litigated in the appropriate federal or state court located in the State of California.

13.2 Attorneys' Fees and Costs. If any arbitration, litigation, action, suit or other proceeding is instituted to remedy, prevent or obtain relief from a breach of this Agreement, or pertaining to a declaration of rights under this Agreement, the prevailing party shall be entitled to recover all its reasonable attorneys' fees and costs incurred in each and every such action, suit, or other proceeding, including any and all appeals or petitions therefrom.

13.3 Severability. Should any provision in this Agreement be determined to be invalid, the validity of the remaining provisions shall not be affected thereby, and the invalid provision shall be deemed not to be part of this Agreement, and all remaining provisions shall remain valid and enforceable.

13.4 Entire Agreement. This Agreement constitutes a single integrated written agreement that sets forth the entire agreement between the Parties and supersedes any prior oral, written, or implied agreements between the Parties pertaining to the subject matter of this Agreement.

13.5 No Oral Modification or Waiver. No modification or waiver of the terms of this Agreement shall be effective unless it appears in a writing signed by all parties to this Agreement.

13.6 Interpretation of Agreement. The language of all parts in this Agreement shall be construed as a whole, according to fair meaning, and not strictly for or against any party. All parties participated in the drafting of this Agreement. The headings provided in boldface are inserted for the convenience of the parties and shall not be construed to limit or modify the text of this Agreement.


13.7 Successors. This Agreement shall be binding upon the Parties, and their representatives, executors, administrators, successors, and assigns, and shall inure to the benefit of each and all of the Earthbound Releasees, and to their representatives, executors, administrators, successors, predecessors, parents, subsidiaries, affiliates, employees, attorneys and assignees.

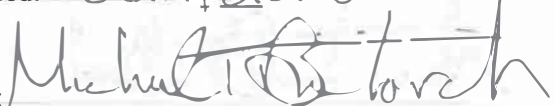
13.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Furthermore, signatures delivered via

facsimile transmission or PDF shall have the same force effect as the originals thereof.

IN WITNESS WHEREOF, the Parties have executed, or caused to be executed by the undersigned thereunto duly authorized, and delivered this Agreement as of the day and year first above written.

Dated: February 1, 2018


By: 
Kim Embry

Dated: Feb. 1, 2018
By: 
MICHAEL BRAUTOVICH
for Earthbound Farm, LLC

Dated: February 1, 2018

By: 
Noam Glick, Esq.
for Glick Law Group

Dated: February 1, 2018

By: 
Craig Nicholas, Esq.
for Nicholas & Tomasevic, LLP