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8 Attorneys for Plaintiff,
9 VICTORIA JAMISON

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12 VICTORIA JAMISON, an individual

13 Plaintiff,

14 v.

15 BARNANA, PBC, a Delaware corporation;
16 AMAZON.COM, Inc., a Delaware corporation; and
17 DOES 1 through 10, inclusive

18 Defendants.

Case No. 37-2021-00005804-CU-MC-CTL

[PROPOSED] CONSENT JUDGMENT

19 **1. INTRODUCTION**

20 **1.1 The Parties.** This Consent Judgment (“Consent Judgment”) is entered into by
21 and between VICTORIA JAMISON (“PLAINTIFF”) and BARNANA, PBC (“DEFENDANT”).
22 Together, PLAINTIFF and DEFENDANT are collectively referred to as the “Parties.”
23 PLAINTIFF is an individual that reside in the State of California and seeks to promote awareness
24 of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
25 substances contained in consumer products. DEFENDANT is a person in the course of doing
26 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Cal. Health
27 & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

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CONSENT JUDGMENT

1 **1.2 General Allegations.** PLAINTIFF alleges acrylamide is listed pursuant to
2 Proposition 65 as a chemical known to the State of California to cause cancer. PLAINTIFF alleges
3 that DEFENDANT has exposed individuals to acrylamide from its sales of Plantain Chips without
4 first providing consumers of the product with a clear and reasonable cancer warning as required
5 pursuant to Proposition 65.

6 **1.3 Product Description.** The products covered by this Consent Judgment are Plantain
7 Chips, including, without limitation, all varieties and pack sizes of Plantain Chips that have been
8 manufactured, imported, distributed, offered for sale, and/or sold in California by DEFENDANT,
9 DEFENDANT Releasees (as defined in § 4.1, *infra*), or Downstream Releasees (as defined in §
10 4.1, *infra*) (each individually a “Product” and collectively the “Products”).

11 **1.4 Notice of Violation, Complaint, and Jurisdiction.** On August 6, 2020
12 PLAINTIFF served DEFENDANT and various public enforcement agencies with a document
13 entitled “Notice of Violation of California Health & Safety Code § 25249.6 et seq.” (the “Notice”).
14 The Notice provided DEFENDANT and such others, including public enforcers, with notice that
15 alleged that DEFENDANT was in violation of Proposition 65 for failing to warn California
16 consumers and customers that use of the Products will expose them to acrylamide. No public
17 enforcer has diligently prosecuted the allegations set forth in the Notice. On February 8, 2021,
18 based on the Notice and the absence of any authorized public prosecutor of Proposition 65 having
19 filed a suit based on the allegations contained therein, PLAINTIFF filed a complaint in the Superior
20 Court of and for San Diego County (the “Court”), Case No. 37-2021-00005804-CU-MC-CTL (the
21 “Action”). For purposes of this Consent Judgment, the Parties stipulate that the Court has
22 jurisdiction over the allegations in the Complaint and personal jurisdiction over DEFENDANT,
23 that venue is proper in the County of San Diego, and that the Court has jurisdiction to enter this
24 Consent Judgment as a full and final resolution of the claims and allegations which were or could
25 have been raised in the Action based on the facts alleged therein and/or in the Notice.

1 **1.5 No Admission.** This Consent Judgment resolves claims that are denied and
2 disputed. The Parties enter into this Consent Judgment as a full and final resolution of any and all
3 claims between the Parties for the purpose of avoiding prolonged litigation. DEFENDANT denies
4 each and every material allegation contained in the Notices and the Action and maintains that it
5 has not violated Proposition 65 and/or is not subject to that law. Nothing in this Consent Judgment
6 shall be construed as an admission by DEFENDANT of any fact, finding, issue of law, or violation
7 of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
8 by DEFENDANT of any fact, finding, conclusion, issue of law, or violation of law, such being
9 specifically denied by DEFENDANT. However, this Section 1.5 shall not diminish or otherwise
10 affect the obligations, responsibilities, and duties of DEFENDANT under this Consent Judgment.

11 **1.6 Effective Date.** For purposes of this Consent Judgment, the term “Effective Date”
12 shall mean the date this Consent Judgment has been approved by the Court and PLAINTIFF has
13 provided notice to DEFENDANT that it has been entered in the Court’s records as a consent
14 judgment.

15 **1.7 Compliance Date.** For purposes of this Consent Judgment, the term “Compliance
16 Date” shall mean the date that is nine months after the Effective Date.

17 **2. INJUNCTIVE RELIEF**

18 **2.1 Reformulation of Product**

19 Subject to Section 2.2, any Products that DEFENDANT elects to manufacture, import,
20 distribute, sell, or offer for sale in California manufactured after the Compliance Date shall not
21 exceed 270 parts per billion (“ppb”) on average for acrylamide (“Reformulation Level”), as set
22 forth in Section 2.3. As used in this Section 2.1, “for sale in California” means to directly ship a
23 Product into California or to sell a Product to a distributor that DEFENDANT knows will sell the
24 Product in California. As used in this Section 2.1, “on average” means the average acrylamide
25 concentration level derived from three samples from three different production lots or batches of
26 the Product at issue (or from as many lots or batches as are available if there are fewer than three)
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1 manufactured within a one-year period that may or will be Distributed in California.

2 **2.1.1. Sell-Through Provision.** Notwithstanding anything else in this Consent
3 Judgment, DEFENDANT shall not be subject to further liability for any Products that were
4 manufactured before the Compliance Date, regardless of when such Products were, or are in the
5 future, distributed or sold to customers.

6 **2.2 Reformulation Level and Changes in Proposition 65**

7 (a) Nothing in this Consent Judgment shall be interpreted to mean that the
8 Reformulation Level is the lowest feasible level for acrylamide in the Products or that it is even a
9 feasible level for the Products.

10 (b) Nothing in this Consent Judgment shall prejudice DEFENDANT from, at its
11 option, establishing that an alternative acrylamide concentration level is more appropriate based
12 on the criteria set forth under Proposition 65 and its implementing regulations.

13 (c) If (i) Proposition 65 or its implementing regulations are changed from their terms
14 as they exist on the date the Parties stipulated to this Consent Judgment with respect to levels of
15 acrylamide that trigger Proposition 65's warning obligations; or (ii) a California agency in charge
16 of overseeing Proposition 65 (e.g., the California Office of Environmental Health Hazard
17 Assessment) takes some other final regulatory action concerning acrylamide and products similar
18 to the Products, including but not limited to establishing whether and when there is any exposure
19 to acrylamide from products similar to the Products and/or that alternative acrylamide levels
20 trigger warning requirements for products similar to the Products, then: DEFENDANT, at its sole
21 and absolute discretion, shall be entitled to comply with such law, regulation, or action or the
22 requirements of this Consent Judgment.

23 **2.3 Testing**

24 (a) Compliance with the Reformulation Level and testing conducted to determine
25 average levels under Section 2.1 shall be determined using:

26 i. GC/MS (Gas Chromatograph/Mass Spectrometry),
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- 1 ii. LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), or
2 iii. any other testing method agreed upon by the Parties.

3 Any testing for purposes of this Consent Judgment shall be performed by Eurofins, Silliker,
4 KPrime, or any laboratory accredited by the State of California, a federal agency, or a nationally
5 recognized organization.

6 **3. CONSENT JUDGMENT PAYMENTS**

7 **3.1 Civil Penalties**

8 DEFENDANT shall pay \$4,000 as a civil penalty, allocated in accordance with Cal. Health
9 & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the penalty to be remitted to the California
10 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
11 Penalty remitted to PLAINTIFF no later than ten (10) calendar days following the Effective Date.
12 More specifically, DEFENDANT shall issue two separate checks for the civil penalty payment to
13 (a) “Office of Environmental Health Hazard Assessment” in the amount of \$3,000 (75%); and to
14 (b) “Law Offices of George Rikos in Trust” in the amount of \$1,000 (25%). Within ten (10)
15 calendar days of the Effective Date, DEFENDANT shall deliver these payments as follows:

16 (i) The penalty payment owed to PLAINTIFF shall be delivered to the
17 following address:

18 George Rikos
19 Law Offices of George Rikos
20 555 West Beech, Suite 500
21 San Diego, CA 92101

22 (ii) The penalty payment owed to OEHHA (EIN: 68-0284486) shall be
23 delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following address:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 Attn. Prop 65 Penalties – PLAINTIFFS v. DEFENDANTS Consent Judgment
28 1001 I Street
Sacramento, CA 95814

1 DEFENDANT shall provide PLAINTIFF'S counsel with a copy of the check it sends to OEHHA
2 with its penalty payment to PLAINTIFF. In association with the issuance of the payments under
3 this Consent Judgment, DEFENDANT will issue IRS 1099 forms as appropriate given the payees.

4 **3.2 Attorneys' Fees and Litigation Costs**

5 Within ten (10) calendar days of the Effective Date, DEFENDANT shall reimburse
6 PLAINTIFF's counsel \$76,000 for fees and costs incurred as a result of investigating and bringing
7 this matter to DEFENDANT'S attention, negotiating a Consent Judgment in the public interest,
8 and obtaining the Court's approval of the Consent Judgment and its entry as a consent judgment.
9 DEFENDANT shall issue a check for this amount payable to "Law Offices of George Rikos" and
10 deliver it to the address identified in Section 3.1 above. DEFENDANT'S payment obligations
11 shall be tolled until it receives an IRS W-9 form for this payee.

12 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

13 **4.1 Release of DEFENDANT and Downstream Customers and Entities.** This
14 Consent Judgment is a full, final and binding resolution between PLAINTIFFS, acting on his own
15 behalf and in the public interest, and DEFENDANT of any violation of Proposition 65 that was or
16 could have been asserted by PLAINTIFFS or on behalf of his past and current agents,
17 representatives, attorneys, predecessors, successors, and/or assigns (collectively, "Releasers") for
18 failure to provide warnings for alleged exposures to acrylamide contained in the Products, and
19 Releasers hereby release any such claims against DEFENDANT and their parents, shareholders,
20 members, directors, officers, managers, employees, representatives, agents, attorneys, divisions,
21 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
22 successors, and assigns (collectively, "DEFENDANT Releasees"), and each entity to whom
23 DEFENDANT directly or indirectly distributes or sells the Products, including but not limited to,
24 downstream distributors, wholesalers, customers, and retailers, and their respective subsidiaries,
25 affiliates and parents, franchisees, cooperative members, licensees, and all other entities in the
26 distribution chain of the Product, including Amazon.com, Inc. (collectively, "Downstream
27

1 Releasees”), from all claims for violations of Proposition 65 with respect to any Products
2 manufactured, distributed, and/or sold by DEFENDANT prior to the Compliance Date based on
3 failure to warn of alleged exposure to the chemical acrylamide from the Products.

4 In further consideration of the promises and agreements herein contained, and for the
5 payments to be made pursuant to Section 3 above, PLAINTIFF, on behalf of herself, her past and
6 current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to
7 sue and waives any right to institute or participate in, directly or indirectly, any form of legal action
8 and releases all claims that he may have, including without limitation, all actions and causes of
9 action in law and in equity, all obligations, expenses (including without limitation all attorneys’
10 fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands
11 against any of the DEFENDANT Releasees and/or Downstream Releasees of any nature,
12 character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising
13 out of the alleged or actual exposure to chemicals contained in DEFENDANT’S Product.

14 **4.2 DEFENDANT’S Release of PLAINTIFF.** DEFENDANT, on behalf of
15 themselves, their past and current agents, representatives, attorneys, successors, and/or assignees,
16 hereby waives any and all claims against PLAINTIFF, her attorneys, and other representatives, for
17 any and all actions taken or statements made by PLAINTIFF and/or her attorneys and other
18 representatives, whether in the course of investigating claims or otherwise seeking to enforce
19 Proposition 65 against it in this matter.

20 **4.3 California Civil Code Section 1542.** It is possible that other claims not known to
21 the Parties arising out of the facts alleged in the Notice and relating to the Products will develop
22 or be discovered. PLAINTIFF on behalf of herself only, on one hand, and DEFENDANT, on the
23 other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all
24 such claims up through the Compliance Date, including all rights of action therefor. The Parties
25 acknowledge that the claims released in Sections 4.1 and 4.2, above, may include unknown claims,
26 and nevertheless waive California Civil Code Section 1542 as to any such unknown claims.

1 California Civil Code Section 1542 reads as follows:

2 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
3 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR**
4 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
5 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**
6 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**
7 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

8 PLAINTIFF and DEFENDANT each acknowledge and understand the significance and
9 consequences of this specific waiver of California Civil Code Section 1542.

10 **4.4 Deemed Compliance with Proposition 65.** Compliance by DEFENDANT with
11 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposure to
12 acrylamide from the Products. Products distributed by DEFENDANT prior to the Compliance
13 Date may be sold through as previously manufactured and labeled.

14 **5. ENTRY OF CONSENT JUDGMENT**

15 The Parties hereby request that the Court promptly enter this Consent Judgment as a
16 consent judgment based on the motion for its approval PLAINTIFF will be making pursuant to
17 Section 10 below. Upon entry of the Consent Judgment as a consent judgment, PLAINTIFF and
18 DEFENDANT waive their respective rights to a hearing or trial on the allegations contained in the
19 Complaint.

20 **6. SEVERABILITY**

21 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
22 Consent Judgment are deemed by a court to be unenforceable, the validity of the enforceable
23 provisions remaining shall not be adversely affected but only to the extent the deletion of the
24 provision deemed unenforceable does not materially affect, or otherwise result in the effect of the
25 Consent Judgment being contrary to, the intent of the Parties in entering into this Consent
26 Judgment.

27 **7. GOVERNING LAW/ENFORCEMENT**

28 The terms of this Consent Judgment shall be governed by the law of the State of California

1 and apply within the State of California. The rights to enforce the terms of this Consent Judgment
2 are exclusively conferred on the Parties hereto. Any Party may, after providing sixty (60) days'
3 written notice and meeting and conferring within a reasonable time thereafter to attempt to resolve
4 any issues, by motion or application for an order to show cause before this Court, enforce the terms
5 and conditions contained in this Consent Judgment. In the event that Proposition 65 or its
6 regulations applicable to the Products are repealed, or are otherwise rendered inapplicable or
7 invalid, including but not limited to by reason of law generally, due to federal preemption, or the
8 First Amendment commercial speech rights of the U.S. Constitution, as determined by a court of
9 competent jurisdiction of an agency of the federal government, then DEFENDANT shall provide
10 written notice to PLAINTIFF of any asserted repeal or determination. Upon DEFENDANT'S
11 written notice, DEFENDANT shall have no further obligations pursuant to this Consent Judgment
12 to the extent such repeal or determination affects DEFENDANT'S obligations with respect to the
13 Product.

14 **8. NOTICES**

15 Unless specified herein, all correspondence and notices required to be provided pursuant
16 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class
17 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
18 Party by the other Party to the following addresses:

19 For DEFENDANT:

20 Al Multari
21 Chief Executive Officer
22 Barnana, PBC
23 2272 Westwood Blvd.
24 Los Angeles, CA 90064

25 with a copy to:

26 George Gigounas
27 Sean Newland
28 DLA Piper LLP (US)
555 Mission Street, Suite 2400
San Francisco, CA 94105

1 For PLAINTIFF:

2 George Rikos, Esq.
3 Law Offices of George Rikos
4 555 West Beech, Suite 500
San Diego, CA 92101
Email: george@georgerikoslaw.com

5 Either Party, from time to time, may specify in writing to the other Party a change of address to
6 which all notices and other communications shall be sent.

7 **9. COUNTERPARTS: SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature,
9 each of which shall be deemed an original, and all of which, when taken together, shall constitute
10 one and the same document.

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

12 PLAINTIFF agrees to comply with the reporting requirements referenced in Health &
13 Safety Code Section 25249.7(f) and to seek, by formal and properly noticed motion (including
14 with service to the Office of the California Attorney General being fully effectuated at least forty-
15 five (45) days prior to a requested hearing thereon), approval of this Consent Judgment's terms
16 pursuant to Proposition 65 and its associated entry as a consent judgment by the Court.

17 **11. MODIFICATION**

18 Unless otherwise provided for herein, this Consent Judgment may be modified only by a
19 written agreement of the Parties and the approval of the Court or upon a duly noticed motion of
20 either Party for good cause shown. A showing of technical infeasibility or commercial
21 unreasonableness in meeting the requirements of Section 2 with respect to the Products shall be
22 deemed to constitute good cause for a modification to substitute an alternative no significant risk
23 level on the basis of 27 Cal. Code Regs. § 25703(b) in place of the cancer risk level and
24 presumptive ppb average concentration threshold set forth in Sections 2.1 and 2.2, and such a
25 modification shall not be opposed by PLAINTIFF. Any proposed modification shall be sent to the
26 Office of the California Attorney General in advance of its submission to the Court such that the
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1 Attorney General has a reasonable opportunity to review and comment thereon.

2 **12. ENTIRE AGREEMENT**

3 This Consent Judgment contains the sole and entire agreement of the Parties and any and
4 all prior negotiations and understandings related hereto shall be deemed to have been merged
5 within it. No representations or terms of agreement other than those contained herein exist or have
6 been made by any Party with respect to the other Party or the subject matter hereof. This Consent
7 Judgment shall have no effect if it is not approved by the Court and entered as a consent judgment.

8 **13. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment and have read,
10 understood and agree to all of the terms and conditions contained in this Consent Judgment.

<p>APPROVED AS TO FORM:</p> <p>Date:</p> <p>By: George Rikos, Esq. Counsel to PLAINTIFF</p>	<p>APPROVED AS TO FORM:</p> <p>Date: 03/17/2021</p> <p>By: George Gigounas, Esq. Counsel for DEFENDANT</p>
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17 **AGREED TO:**

AGREED TO:

18 Date: _____

Date: 3/17/21

20 By: _____

By: 

21 Victoria Jamison

21 Al Multari
22 Chief Executive Officer
23 Barnana, PBC

25 [Court Order on Following Page]

1 Attorney General has a reasonable opportunity to review and comment thereon.

2 **12. ENTIRE AGREEMENT**

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4 all prior negotiations and understandings related hereto shall be deemed to have been merged
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9 The undersigned are authorized to execute this Consent Judgment and have read,
10 understood and agree to all of the terms and conditions contained in this Consent Judgment.

<p>APPROVED AS TO FORM:</p> <p>Date: March 17, 2021</p> <p>By: <i>George Rikos</i> George Rikos, Esq. Counsel to PLAINTIFF</p>	<p>APPROVED AS TO FORM:</p> <p>Date: 03/17/2021</p> <p>By: <i>[Signature]</i> George C. [unclear], Esq. Counsel for DEFENDANT</p>
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17 **AGREED TO:**
18 Date: 3/17/21

AGREED TO:
Date: 3/17/21

19
20 By: *[Signature]*
21 Victoria Jamison

By: *[Signature]*
Al Multari
Chief Executive Officer
Barnana, PBC

[Court Order on Following Page]

1 **IT IS SO ORDERED, ADJUDGED AND DECREED THAT THE CONSENT**
2 **JUDGMENT SET FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A**
3 **CONSENT JUDGMENT BY THIS COURT:**

4 DATED: _____

5 _____
6 JUDGE OF THE SUPERIOR COURT

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CONSENT JUDGMENT _____