

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Barnana, PBC (“Barnana”), on the other hand, with EHA and Barnana each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Barnana employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

#### **1.2 General Allegations**

EHA alleges that Barnana manufactures, sells, and distributes for sale in California, cookie brittle that contain Acrylamide and that it does so without first providing the health hazard warning required by Proposition 65. Acrylamide is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

#### **1.3 Product Description**

The product covered by this Settlement Agreement is defined as, and expressly limited to, Barnana Organic Cookie Brittle - Double Chunk Dark Chocolate (“the Product”), that contains Acrylamide and that is manufactured, sold or distributed for sale in California by Barnana.

#### **1.4 Notice of Violation**

On March 18, 2021, EHA served Barnana, PBC, Lazy Acres Market Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Barnana and others violated Proposition 65 when they failed to warn its customers and consumers in California of the health risks associated with exposures to Acrylamide from the Product.

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently

prosecuting an action to enforce the violations alleged in the Notice.

### **1.5     No Admission**

Barnana denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Barnana of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Barnana of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Barnana. This Section shall not, however, diminish or otherwise affect Barnana's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6     Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date of execution of this Settlement Agreement by the Parties.

## **2.     INJUNCTIVE RELIEF**

### **2.1     Reformulation or Clear and Reasonable Warnings**

Commencing eight months from the Effective Date ("Compliance Date"), and continuing thereafter, for Products sold or distributed for sales in or into California that contain Acrylamide concentrations of 281 parts per billion ("ppb") or less Barnana agrees to either (1) cease sales or distributions for sales of the Product in or into California, or (2) provide a Proposition 65 warning in compliance with Article 6 of OEHHA's Proposition 65 regulations, Tit. 27, Cal. Code Reg., sections 25601 et seq. As used in this Section 2.1, "distributions for sales . . . in or into California" means to directly ship Products into California or to sell Products to a distributor Barnana knows will sell Products in California.

### **2.2     Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2 shall not apply to Products that are already manufactured for sale or otherwise in the stream of commerce as of the Compliance Date, which Products are expressly subject to the releases provided in Section 4.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Barnana agrees to pay three thousand dollars (\$3,000) in civil penalties within 10 business days of the Effective Date. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EHA. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, Barnana shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of two thousand two hundred and fifty dollars (\$2,250) and (b) Environmental Health Advocates, Inc., in the amount of seven hundred and fifty dollars (\$750).

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 Federal Express 2-Day Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

All penalty payments owed to EHA shall be sent to:

Environmental Health Advocates  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **3.2 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within 10 business days of the date this Settlement Agreement is executed by the Parties, Barnana agrees to pay twenty-two thousand dollars (\$22,000) to Entorno Law, LLP and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Barnana's negotiating a settlement.

### **3.3 Payment Address**

All payments required under this Section shall be delivered to:

Noam Glick  
Entorno Law, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **3.4 Tax Documentation**

Barnana agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties agree that Barnana cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Barnana receives the requisite W-9 forms from EHA's counsel.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 EHA's Release of Barnana**

This Settlement Agreement is a full, final, and binding resolution between EHA, on its own behalf and not on behalf of the public, and Barnana of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against Barnana and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by Barnana, and each entity to whom Barnana directly or indirectly distributes or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensees, and Bristol Farms, dba Lazy Acres Market ("Releasees"), based on the failure

to warn about exposures to Acrylamide in the Product manufactured, sold or distributed for sale in California by Barnana before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Barnana and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to Acrylamide in the Product manufactured, distributed, sold or offered for sale by Barnana, before the Effective Date.

#### **4.2 Barnana's Release of EHA**

Barnana, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken or statements made by EHA and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

#### **4.3 California Civil Code Section 1542**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Product will develop or be discovered. EHA on behalf of itself only, on one hand, and Barnana on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**

**AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.**

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable for reasons, including but not limited to changes in the law, then Barnana may provide written notice to EHA of any asserted change, and shall have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

In the event the California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition 65; or if the Ninth Circuit Court of Appeals upholds the District Court decision to grant a preliminary injunction in *California Chamber of Commerce v. Becerra*, No. 2:19-cv-01019-KJM-JDP (E.D. Cal.); or if Proposition 65 is determined to be preempted by federal law or a burden on First Amendment rights with respect to Acrylamide in Covered Products or products substantially similar to Covered Products, then Barnana shall be relieved of its obligation to comply with Section 2 herein.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

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For Barnana:

Greg Sperla  
DLA Piper LLP (US)  
400 Capitol Mall, Suite 2400  
Sacramento, CA 95814

For EHA:

Noam Glick  
Entorno Law, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

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

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**10. MODIFICATION**

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

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: 07/22/2021

**AGREED TO:**

Date: \_\_\_\_\_

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By: \_\_\_\_\_  
BARNANA, PBC

For Barnana:

Greg Sperla  
DLA Piper LLP (US)  
400 Capitol Mall, Suite 2400  
Sacramento, CA 95814

For EHA:

Noam Glick  
Entorno Law, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

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**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

**AGREED TO:**

Date: 7/20/21

By:   
BARNANA, PBC