

## **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 inGRAINED, Inc. (“inGRAINED”), on the other hand, with EHA and inGRAINED 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. InGRAINED 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 inGRAINED manufactures, sells, and/or distributes for sale in California, chips 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, Ka-Pop! Super Grains Popped Chips (“Covered Products”), that contains acrylamide and that is manufactured, sold, and/or distributed for sale in California by inGRAINED.

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

On September 16, 2021, November 12, 2021, and March 8, 2022, EHA served Krisp Beverages + Natural Foods, Super Jr., Inc, Awakened Foods LLC, and inGRAINED (collectively, the “Noticed Parties”), the California Attorney General and other requisite public enforcers with 60-Day Notices of Violation (“Notice”), alleging that the Noticed Parties violated Proposition 65 when they failed to warn their customers and consumers in California of the health risks associated with

exposures to acrylamide from the Covered Products.

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**

InGRAINED 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 Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by inGRAINED 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 inGRAINED of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by inGRAINED. This Section shall not, however, diminish or otherwise affect inGRAINED' obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean fourteen (14) days following the execution of this Settlement Agreement by the Parties.

## **2. INJUNCTIVE RELIEF**



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

Commencing on the Effective Date, and continuing thereafter, inGRAINED agrees to manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California, Covered Products containing acrylamide concentrations of 280 parts per billion ("ppb") or less. As used in this Section 2.1, "distributed for sale in California" means to directly ship Covered Products into California or to sell Covered Products to a distributor inGRAINED knows will sell Covered Products in California. For Covered Products that contain acrylamide in a concentration exceeding 280 ppb, and which are manufactured, supplied and distributed for sale or use in California, inGRAINED shall provide one of the following Proposition 65 warnings as provided for in Section 2.2.

### **2.2 General Warning Requirements**

InGRAINED agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Covered Products the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Products shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered Products sold in California by inGRAINED that contains the following statements:

- 1)  **WARNING:** Consuming this product can expose you to chemicals including acrylamide, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).
  
- 2)  **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.cs.gov/food](http://www.P65Warnings.cs.gov/food)

This warning statement shall be prominently displayed on the Covered Products, on the packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is 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 warning statement is displayed on the Covered Products' packaging, it 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 a warning statement displayed on the Covered Products' packaging appear in a type size smaller than 6-point type. The same warning shall be posted on any websites under the exclusive control of inGRAINED where Covered Products are sold into California.

- (i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment or another

authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress, or voters with such requirements or permission, inGRAINED shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations, legislation, or judicial decisions provide that warnings as to acrylamide in this product are no longer required, a lack of warning by inGRAINED will not thereafter be a breach of this Agreement. InGRAINED shall instruct any third-party website to which it sells its Covered Products to include the same warning as a condition of selling the Covered Products.

### **2.3 Grace Period for Existing Inventory of Covered Products**

The injunctive requirements of Section 2 shall apply only to Covered Products that are manufactured after the Effective Date, which Covered Products are expressly subject to the releases provided in Section 4.1.

## **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, inGRAINED agrees to pay one thousand dollars (\$1,000.00) in civil penalties. 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, inGRAINED shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of seven hundred and fifty dollars (\$750.00) and (b) Environmental Health Advocates, Inc., in the amount of two hundred and fifty dollars (\$250.00).

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

Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required. Relevant information is set out below:

- “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

### **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 fourteen (14) days of the date this Settlement Agreement is executed by the Parties, inGRAINED agrees to pay fourteen thousand dollars (\$14,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of inGRAINED’s negotiating a settlement. The fourteen thousand dollars (\$14,000.00) in Attorney’s Fees and Costs payable to “Entorno Law, LLP” shall be paid in payments as follows:

- One payment of four thousand dollars (\$4,000.00), due ten (10) days after this Agreement is fully executed. The remaining two payments of five thousand dollars (\$5,000.00) (“Payment #2) and four thousand dollars (\$4,000.00) (“Payment #3), to be issued on or before the following dates: (1) Payment #2: September 1, 2022; Payment #3: November 1, 2022.

### **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**

inGRAINED 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 acknowledge that inGRAINED cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after inGRAINED receives the requisite W-9 forms from EHA's counsel.

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

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

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EHA, on its own behalf and not on behalf of the public, and inGRAINED 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 inGRAINED and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity including but not limited to Awakened Foods, LLC from whom the Covered Products was purchased by inGRAINED and each entity to whom inGRAINED directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, Krisp Beverages + Natural Foods; Super Jr., Inc. (collectively, "Releasees"), based on the failure to warn about exposures to acrylamide required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale in California by inGRAINED before the Effective Date, as alleged in the Notice. This release does not extend to any third-party retailers selling the product on a website who, after receiving instruction from inGRAINED to include a warning as set forth above in section 2.2, do not include such a warning.

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 inGRAINED 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 required under Proposition 65 in the Covered Products manufactured, distributed, sold or offered for sale by inGRAINED, before the Effective Date.

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

InGRAINED, 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 Covered Products.

#### **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 Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and inGRAINED 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.

**7. ENFORCEMENT**

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

**8. 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:

For inGRAINed:

Vanessa C. Adriance  
DLA Piper LLP (US)  
550 South Hope St.  
Suite 2400  
Los Angeles, CA 90071  
Vanessa.adriance@dlapiper.com

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.



**9. 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.

**10. 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).

**11. MODIFICATION**

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

**12. 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:**

**AGREED TO:**

Date: 07/13/2022

Date: 8/3/22

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
INGRAINED, INC.