

AMENDED SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 Parties

This Amended Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Cibo Vita Inc. (“Cibo Vita”), on the other hand, with EHA and Cibo Vita 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. Cibo Vita is a consumer packaged goods manufacturer with a focus on high-quality, innovative, “better for you” snacks.

1.2 General Allegations

EHA alleges that Cibo Vita manufactures, sells, and/or distributes for sale in California, almonds products that contain lead and that it does so without first providing the health hazard warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and reproductive harm. Cibo Vita denies the allegations.

1.3 Product Description

The product covered by this Amended Settlement and Release Agreement are defined as, and expressly limited to, Nature's Garden Nashville BBQ Almonds (“Covered Product”) (UPC# 846548084689), that is manufactured, sold and/or distributed for sale in California by Cibo Vita.

1.4 Notice of Violation

On or around January 31, 2024, EHA served Cibo Vita, the California Attorney General, and certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Cibo Vita was in violation of California Health & Safety Code section 25249.6 (Proposition 65) for failing to sufficiently warn consumers that the Covered

Product exposed users in California to lead.

To the best of the parties' knowledge, no public enforcer has commenced or is otherwise prosecuting the allegations set forth in the Notice. EHA and EHA's counsel are not aware of any other alleged violation of Proposition 65 by Cibo Vita as of the Effective Date of this Amended Settlement and Release Agreement.

1.5 No Admission and Denial of All Allegations by Cibo Vita

The Parties enter into this Amended Settlement and Release Agreement to settle all disputed claims between them as set forth herein and in the Notice concerning Cibo Vita's compliance with Proposition 65. Cibo Vita denies the material factual and legal allegations in the Notice and maintains that all of the products it has manufactured for sale and distribution in California, including the Covered Product, have been, and are, in compliance with Proposition 65 and all other applicable laws, regulations, common law, and equitable doctrines. Nothing in this Amended Settlement and Release Agreement shall be construed as an admission by Cibo Vita of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Amended Settlement and Release Agreement constitute or be construed as an admission by Cibo Vita of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Cibo Vita. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Amended Settlement and Release Agreement.

1.6 Effective Date

For purposes of this Amended Settlement and Release Agreement, the term "Effective Date" shall mean the date the original Settlement and Release Agreement was fully executed (fully signed) by the Parties—June 20, 2024.

1.7 Compliance Date

For purposes of this Amended Settlement and Release Agreement, the term “Compliance Date” means six (6) months from the Effective Date—December 20, 2024.

2. INJUNCTIVE-TYPE RELIEF: COMPLIANCE AND WARNINGS

2.1 Compliance Generally

As of the Compliance Date, Cibo Vita, at its sole discretion, agrees to either (a) cease selling, offering for sale, or distributing the Covered Product in California, (b) manufacture, import, otherwise source for authorized sale in California Covered Product pursuant to Section 2.2 below, or (c) provide a clear and reasonable Proposition 65 warning on the Covered Product pursuant to Section 2.3 below.

2.2 Compliance Standard

The Covered Product shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if consumption of the Covered Product results in exposures less than 0.5 micrograms of lead per day. Covered Product that enters the stream of commerce prior to six (6) months after the Compliance Date shall be deemed exempted from the requirements of Section 2 and shall be permitted to be sold through as previously manufactured, packaged, and labeled.

2.3 Warning Option

Covered Product that does not meet the warning exemption standard set forth in Section 2.2 above shall be accompanied by a warning as described below. This warning option shall only be required as to Covered Product that is manufactured, distributed, marketed, imported, sold, shipped for sale, or offered for sale to consumers by Cibo Vita in the State of California. No Proposition 65 warning shall be required for any Covered Product that enters the stream of commerce prior to six (6) months after the Compliance Date, and all such Covered Product is hereby deemed to be exempt from Proposition 65 enforcement.

Where required to meet the criteria set forth in Section 2.3, Cibo Vita shall display one of the following warning statements on the packaging label of the Covered Product that does not meet the warning exemptions set forth in Sections 2.2 and 2.3:

1) **WARNING:** Consuming this product can expose you to chemicals including lead, which [is] are 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.

OR

2) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov/food.

The warning statement shall be set off from other surrounding information, enclosed in a box, and otherwise comply with 27 Cal. Code Regs. § 25607.1. This warning statement shall be displayed on the Covered Product in a manner that shall conform with California rules, regulations, and law. Cibo Vita shall use “cancer and” in the warning if consumption of the Covered Product results in an exposure that exceeds the No Significant Risk Level (“NSRL”) of 15 micrograms per day (or, if this number is revised, the new NSRL). At its sole discretion, Cibo Vita may include the names of additional chemicals in the warning if they are present in the Covered Product at a level that Cibo Vita reasonably believes would require a Proposition 65 warning. The requirements for warnings set forth above are imposed pursuant to the terms of this Amended Settlement and Release Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. Cibo Vita shall be deemed to be in compliance with the warning requirements of this Amended Settlement and Release Agreement by either adhering to this Section or by complying with the Proposition 65 warning requirements adopted by the State of California Office of Environmental Health Hazard Assessment (“OEHHA”) as of or after the Effective Date. If Proposition 65 warnings for lead should no longer be required,

Cibo Vita shall have no further obligations pursuant to this Amended Settlement and Release Agreement.

In the event that the OEHHA promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Covered Product and the chemical at issue, which are different than those set forth above, Cibo Vita shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Amended Settlement and Release Agreement. If regulations or legislation are enacted providing that Proposition 65 warnings as to lead in this product are no longer required, a lack of warning by Cibo Vita will not thereafter be a breach of this Amended Settlement and Release Agreement. If Cibo Vita employs a warning for the Covered Product, Cibo Vita shall instruct any third-party website to which it sells its Covered Product to include the same warning as a condition of selling the Covered Product. If the Covered Product's packaging is in a foreign language, a warning statement in that language is required.

The injunctive requirements of Section 2 shall not apply to Covered Product that is already in the stream of commerce prior to six (6) months after the Compliance Date, and such Covered Product shall be deemed exempted from the requirements of Section 2 and shall be permitted to be sold through as previously manufactured, packaged, and labeled. For the avoidance of doubt, Covered Product in the stream of commerce specifically includes, but is not limited to, Covered Product in the process of manufacture.

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 Amended Settlement and Release Agreement, Cibo Vita agrees to pay three thousand dollars (\$3,000.00) 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 (\$2,250.00) paid to OEHHA and the remaining 25% of the penalty amount (\$750.00) retained by EHA. Cibo Vita shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" and (b) Environmental Health Advocates, Inc. as follows:

- One payment of \$2,250.00 to OEHHA, due 14 (fourteen) days after the Effective Date.
- One payment of \$750.00 to EHA, due 14 (fourteen) days after the Effective Date.

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
Sacramento, CA 95814

All penalty payments owed to EHA shall be sent to:

Isaac Fayman
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, Cibo Vita agrees to pay twenty seven thousand dollars (\$27,000.00) to EHA and its counsel for all fees

and costs incurred in investigating, bringing this matter the attention of Cibo Vita, and negotiating a settlement. This payment shall be payable to Entorno Law, LLP as follows:

- One payment of \$27,000.00, due fourteen (14) days after the Effective Date.

All payments required under this Section shall be delivered to:

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

3.3 Tax Documentation

Cibo Vita 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 Amended Settlement and Release Agreement. The Parties acknowledge that Cibo Vita cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Cibo Vita receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Cibo Vita

This Amended Settlement and Release Agreement is a full, final, and binding resolution of all claims between EHA, on its own behalf and not on behalf of the public, and Cibo Vita for all claims that can 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 Cibo Vita and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and any entity, including, but not limited to each entity to whom Cibo Vita directly or indirectly distributes or sells the Covered Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including but not limited to Amazon.com, Inc.), franchisees, cooperative members and licensees ("Releasees"), based on the

failure to warn about exposures to lead required under Proposition 65 in the Covered Product manufactured, sold or distributed for sale in California by Cibo Vita before the Compliance Date, as alleged in the Notice, or for any other reason.

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 Cibo Vita 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 lead required under Proposition 65 in the Covered Product manufactured, distributed, sold or offered for sale by Cibo Vita, before the Compliance Date.

4.2 Cibo Vita's Release of EHA

Cibo Vita, 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, its past and current agents, representatives, attorneys, successors, and/or assignees, on one hand, and Cibo Vita on behalf of itself only, on the other hand, acknowledge that this Amended Settlement

and Release Agreement is expressly intended to cover and include all such claims up through the Compliance 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.

EHA and Cibo Vita each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542 and expressly acknowledge having consulted with their attorneys regarding this specific waiver.

5 PUBLIC BENEFIT

To the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Cibo Vita's alleged failure to provide a warning concerning the Covered Product it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, it is Cibo Vita's intent that such private party action would not confer a significant benefit on the general public as to the Covered Product addressed in this Amended Settlement and Release Agreement, provided that Cibo Vita is in material compliance with this Amended Settlement and Release Agreement.

6. SEVERABILITY

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

7. GOVERNING LAW

The terms of this Amended Settlement and Release 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 by reason of law generally, or as to the Covered Product, then Cibo Vita shall have no further obligations pursuant to this Amended Settlement and Release Agreement.

8. ENFORCEMENT

In any action to enforce the monetary settlement terms of this Amended Settlement and Release Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs if determined to be appropriate by a court or arbitrator.

9. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Amended Settlement and Release 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 Cibo Vita:

Jae Lee
Nelson Mullins Riley & Scarborough LLP
750 B Street, Suite 2200
San Diego, CA 92101
jae.lee@nelsonmullins.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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Amended Settlement and Release 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.

11. 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).

12. ENTIRE AGREEMENT AND MODIFICATION

This Amended Settlement and Release Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties. This Amended Settlement and Release Agreement may be modified only by written agreement of the Parties.

13. AUTHORIZATION


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

AGREED TO:

AGREED TO:

Date: 07/03/2024

Date: 7/10/2024

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

DocuSigned by:
EMRE IMAMOGLU
By: 
CIBO VITA INC.

AGREED AS TO FORM:

AGREED AS TO FORM:

Date: 07/03/2024

Date: _____

By: *Ronan Gleib*
ENTORNO LAW, LLP

By: _____
NELSON MULLINS RILEY &
SCARBOROUGH LLP

AGREED AS TO FORM:

Date: 07/03/2024

By: *Ronan Eblin*
ENTORNO LAW, LLP

AGREED AS TO FORM:

Date: 7/11/2024

By: *Joe [Signature]*
NELSON MULLINS RILEY &
SCARBOROUGH LLP