

CLERK'S CERTIFICATE OF MAILING

Action No. RG20 073668

Case Name: Environmental Health Advocates, Inc. Vs. Mary's Gone Crackers

I certify that the following is true and correct: I am the clerk of the above-named Court and not a party to this cause. I served Amended Judgment Pursuant to Terms of Proposition 65 Settlement and Consent Judgment as to Defendant Mary's Gone Crackers by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices to the addresses listed below to both parties addressed below and by email as noted below.

Dated: January 20, 2021

CHAD FINKE

Executive Officer/Clerk of the Superior Court

By Nancy A. Rose

✓
Glick, Noam
Glick Law Group, P.C.
225 Broadway, Suite 2100
San Diego, CA 92101_____

✓
Niemann, Robert S.
Keller and Heckman LLP
Three Embarcadero Center
Suite 1420
San Francisco, CA 94111_____



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**FILED
ALAMEDA COUNTY**

JAN 07 2020

CLERK OF THE SUPERIOR COURT
By Michelle Hawkins Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

ENVIRONMENTAL HEALTH
ADVOCATES, INC., a California corporation,

Plaintiff,

v.

MARY'S GONE CRACKERS, a Nevada
corporation, AMAZON.COM, INC., a Delaware
corporation, and DOES 1 through 100, inclusive,

Defendants.

Case No.: RG20073668
Reservation No.: R-2210128

**AMENDED [PROPOSED]
JUDGMENT PURSUANT TO
TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT AS TO DEFENDANT
MARY'S GONE CRACKERS**

Date: December 9, 2020
Time: 1:30 p.m.
Dept.: 521
Judge: Hon. Richard L. Seabolt

Case Filed: September 15, 2020
Trial Date: None set

Plaintiff Environmental Health Advocates, Inc and Defendant Mary's Gone Crackers
agreed through their respective counsel to enter judgment pursuant to the terms of their settlement
in the form of a stipulated judgment ("Consent Judgment"). This Court issued an Order approving
the Proposition 65 Settlement and Consent Judgment on DEC 09 2020.

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AMENDED [PROPOSED] JUDGMENT PURSUANT TO TERMS
OF PROPOSITION 65 SETTLEMENT AND CONSENT
JUDGMENT

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and
 2 Safety Code, section 25249.7(1)(4) and Code of Civil Procedure, section 664.6, judgment is
 3 hereby entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit**
 4 **A.**

5 By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement
 6 under Code of Civil Procedure, section 664.6.

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 8 **IT IS SO ORDERED.**

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Dated: JAN 07 2020



JUDGE OF THE SUPERIOR COURT

EXHIBIT A

1 **GLICK LAW GROUP, PC**
 2 Noam Glick (SBN 251582)
 225 Broadway, 19th Floor
 San Diego, California 92101
 3 Tel: (619) 382-3400
 Fax: (619) 393-0154
 4 Email: noam@glicklawgroup.com

5 **NICHOLAS & TOMASEVIC, LLP**
 Craig M. Nicholas (SBN 178444)
 6 Jake Schulte (SBN 293777)
 225 Broadway, 19th Floor
 7 San Diego, California 92101
 Tel: (619) 325-0492
 8 Fax : (619) 325-0496
 Email: cnicholas@nicholaslaw.org
 9 Email: jschulte@nicholaslaw.org

10 Attorneys for Plaintiff
 Environmental Health Advocates, Inc.

11
 12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF ALAMEDA**

14 ENVIRONMENTAL HEALTH
 15 ADVOCATES, INC., a California corporation,

16 Plaintiff,

17 v.

18 MARY'S GONE CRACKERS, a Nevada
 corporation, AMAZON.COM, INC., a
 Delaware corporation, and DOES 1 through
 19 100, inclusive,

20 Defendants.

Case No. RG20073668

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
 Code Civ. Proc. § 664.6)

1 **I. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 (“EHA”) on the one hand, and Mary’s Gone Crackers (“Defendant” or “MGC”) on the other hand, with
5 EHA and MGC each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is an organization residing in California, acting in the interest of the general public. It
8 seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing
9 or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 MGC employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that MGC manufactures, imports, sells, and distributes for sale Products that
16 contain acrylamide. EHA further alleges that MGC does so without providing a sufficient health hazard
17 warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65, acrylamide
18 is listed as a chemical known to cause cancer and reproductive harm

19 **1.5 Notices of Violation**

20 On March 13, 2020, EHA served MGC, Kameda USA, Inc., Amazon.com, the California
21 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of
22 Violation of California Health and Safety Code section 25249.6 *et seq.* (“Notice”). The Notice alleged
23 that MGC violated Proposition 65 by failing to sufficiently warn consumers in California of the health
24 hazards associated with exposures to acrylamide contained in its “Mary’s Gone Crackers Super Seed
25 Everything”.

26 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
27 violations alleged in the Notice.

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1 **1.6 Product Description**

2 For purposes of this Consent Judgment, the “Product” or “Products” are defined as MGC’s
3 Super Seed Everything crackers that allegedly contain acrylamide and are manufactured, imported,
4 sold, or distributed for sale in California by Defendant and Releasees.

5 **1.7 Complaint**

6 On September 15, 2020 EHA filed a Complaint against MGC for the alleged violations of
7 Health and Safety Code section 25249.6 that are the subject of the Notice (“Complaint”).

8 **1.8 No Admission**

9 MGC denies the material factual and legal allegations of the Notice and Complaint, and
10 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
11 California, including Products, have been, and are, in compliance with all laws. Nothing in this Consent
12 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
13 violation of law, nor shall compliance with this Consent Judgment be construed as an admission of any
14 fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,
15 diminish or otherwise affect MGC’s obligations, responsibilities, and duties under this Consent
16 Judgment.

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
19 Court has jurisdiction over MGC as to the allegations in the Complaint, that venue is proper in the
20 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
21 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
24 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. Since the
25 reformulation described below must ensure compliance with applicable regulatory requirements, the
26 Compliance Date means the date six (6) months after the Effective Date.

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of the Product**

3 Any Products that are manufactured by MGC on and after the Compliance Date that are
4 thereafter sold in California or distributed for sale in California shall not exceed 350 ppb on average
5 for acrylamide, based on averaging of two samples. As used in this Section 2.1, "distributed for sale in
6 California" means to directly ship Products into California or to sell Products to a distributor MGC
7 knows will sell Products in California.

8 **2.2 Testing**

9 (a) Compliance with the average level shall be determined using LC-MS/MS (Liquid
10 Chromatograph-Mass Spectrometry), GC/MS (Gas Chromatography/Mass Spectrometry), or any other
11 testing method agreed upon by the Parties. On the Compliance Date, and continuing thereafter, MGC
12 shall not manufacture Products that will be sold or offered for sale in California that exceed, on average,
13 the aforementioned concentration limits, such concentration to be determined by use of a test performed
14 by a laboratory accredited by the State of California, a federal agency, or a nationally recognized
15 organization.

16 (b) For at least three consecutive years after the Compliance Date, MGC shall arrange for
17 testing under Section 2.2. The testing shall be at least once per year, with the first testing occurring
18 prior to the Compliance Date. No further testing shall be required unless MGC materially modifies the
19 ingredients or cooking process of Products, at which point testing shall recommence on an annual basis
20 for at least three years.

21 **2.3 Clear and Reasonable Warnings**

22 For Products that contain acrylamide in a concentration exceeding the ppb level set forth in
23 Section 2.1 above, and which are manufactured and packaged for distribution for authorized sale or use
24 in California on or after the Compliance Date, MGC shall provide one of the following Proposition 65
25 warnings:

- 26 **1) WARNING:** This product can expose you to chemicals
27 including Acrylamide, which is known to the State of
28 California to cause cancer and birth defects or other
reproductive harm. For more information go to
www.P65Warnings.ca.gov.

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

The warning shall be set off in a box.

2.4 Sell-Through Period

Notwithstanding anything else in this Consent Judgment, the Products that are manufactured on or prior to the Compliance Date shall be subject to release of liability pursuant to this Consent Judgment, without regard to when such Products were, or are in the future, distributed or sold to customers. As a result, the obligation of MGC, or any Releasees (if applicable), do not apply to these Products manufactured on or prior to the Compliance Date.

3. MONETARY SETTLEMENT TERMS

3.1 Settlement Amount

MGC shall pay fifty thousand dollars (\$50,000) in settlement and total satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil penalties in the amount of five thousand dollars (\$5,000) pursuant to Health and Safety Code section 25249.7(b) and attorney’s fees and costs in the amount of forty-five thousand dollars (\$45,000) pursuant to Code of Civil Procedure section 1021.5.

3.2 Civil Penalty

The portion of the settlement attributable to civil penalties shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty paid to EHA individually.

All payments owed to EHA shall be delivered to the following address:

Samantha Dice
Environmental Health Advocates
225 Broadway, 19th Floor
San Diego, CA 92101

All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

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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

MGC agrees to provide EHA's counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payments to EHA.

Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.

Relevant information is set out below:

- "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
- and
- "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

3.3 Attorney's Fees and Costs

The portion of the settlement attributable to attorney's fees and costs (\$45,000) shall be paid to EHA's counsel, who are entitled to attorney's fees and costs incurred by it in this action, including but not limited to investigating potential violations, bringing this matter to MGC's attention, as well as litigating and negotiating a settlement in the public interest.

MGC shall provide its payment to EHA's counsel in two checks, divided equally, payable to Glick Law Group, PC (\$22,500) and Nicholas & Tomasevic, LLP (\$22,500) respectively. The addresses for these two entities are:

Noam Glick
Glick Law Group
225 Broadway, 19th Floor
San Diego, CA 92101

Craig Nicholas
Nicholas & Tomasevic, LLP
225 Broadway, 19th Floor
San Diego, CA 92101

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3.4 Timing

The above-mentioned checks will be issued within fourteen (14) days of the Effective Date.

4. CLAIMS COVERED AND RELEASED

4.1 EHA’s Public Release of Proposition 65 Claims

For any claim or violation arising under Proposition 65 alleging a failure to warn about exposures to acrylamide from Products or related products manufactured, imported, sold, or distributed by MGC prior to the Compliance Date, EHA, acting for the general public, releases MGC of any and all liability. This includes MGC’s owners, parents, subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees, attorneys, and each entity to whom MGC directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesales, customers, retailers, franchisees, cooperative members and licensees, (collectively, the “Releasees”). Releasees include Defendant, its parent, and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns that sell MGC’s Products. Compliance with the terms of this Consent Judgement constitutes compliances with Proposition 65 with respect to the alleged or actual failure to warn about exposures to acrylamide from Products manufactured, imported, sold, or distributed by MGC after the Effective Date. This Consent Judgement is a full, final and binding resolution of all claims that were or could have been asserted against MGC and/or Releasees for failure to provide warnings for alleged exposure to acrylamide contained in Products.

4.2 EHA’s Individual Release of Claims

EHA, in its individual capacity, also provides a release to MGC and/or Releasees, which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs, expenses, attorney’s fees, damages, losses, claims, liabilities, and demands of every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to acrylamide in Products manufactured, imported, sold, or distributed by MGC before the Compliance Date.

1 **4.3 MGC's Release of EHA**

2 MGC, on its own behalf, and on behalf of Releasees as well as its past and current agents,
3 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
4 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
5 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
6 seeking to enforce Proposition 65 against it, in this matter or with respect to the Products.

7 **5. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved by the Court and shall be null and
9 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
10 by such additional time as the Parties may agree to in writing

11 **6. SEVERABILITY**

12 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
13 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

14 **7. GOVERNING LAW**

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

20 **8. NOTICE**

21 Unless otherwise specified herein, all correspondence and notice required by this Consent
22 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
23 mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

24 If to MGC:

25 Robert (Bob) Niemann
26 Keller and Heckman, LLP
27 Three Embarcadero Center, STE 1420
28 San Francisco, CA 94111

If to EHA:

 Noam Glick
 Glick Law Group
 225 Broadway, 19th Floor
 San Diego, CA 92101

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

3 **9. COUNTERPARTS: DIGITAL SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
5 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
6 same document.

7 **10. POST EXECUTION ACTIVITIES**

8 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
9 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
10 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
11 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
12 employ their best efforts, including those of their counsel, to support the entry of this agreement as
13 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this
14 Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to
15 any objection that any third-party may make, and appearing at the hearing before the Court if so
16 requested.

17 **11. MODIFICATION**

18 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
19 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
20 Party, and the entry of a modified consent judgment thereon by the Court.

21 **12. AUTHORIZATION**

22 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
23 have read, understand, and agree to all of the terms and conditions contained herein.

24 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

25 If a dispute arises with respect to either Party's compliance with the terms of this Consent
26 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
27 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
28 in the absence of such a good faith attempt to resolve the dispute beforehand.

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14. ENTIRE AGREEMENT


This Consent Judgement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

AGREED TO:

AGREED TO:

Date: October 19, 2020

Date: October 20, 2020

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
MARY'S GONE CRACKERS

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

4843-3941-4734, v. 1