SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544	FILED Superior Court of California County of Alameda 05/12/2022
PLAINTIFF/PETITIONER: Environmental Health Advocates, Inc.	Chad Flake, Executive Officer / Clerk of the Count  By: Deputy
DEFENDANT/RESPONDENT: Jody's, Inc., a Virginia corporation et al	D. Labrecque
CERTIFICATE OF MAILING	CASE NUMBER: 22CV007094

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Hayward, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Noam Glick Entorno Law 225 Broadway Ste 1900 San Diego, CA 92101 Sophia Castillo Downey Brand 455 Market Street, Suite 1500 San Francisco, CA 94105

Chad Finke, Executive Officer / Clerk of the Court

Dated: 05/12/2022

By:

D. Labrecque, Deputy Clerk

Divil Habyen

1		TITE TITE		
2		FILED ALAMEDA COUNTY		
3		MAY 1 2 2022		
4		CLERK OF THE SUPERIOR COURT		
-11°5;1 <b>1</b> 1	Andrew III had band broad 1:	By Carriel Valuegue		
6		• •		
7				
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
9	IN AND FOR THE COUNTY OF ALAMEDA			
10	ENVIRONMENTAL HEALTH ADVOCATES, INC., a California corporation,	Case No.: 22CV007094 Reservation No.: 519673035986		
11	Plaintiff,	[PROPOSEB] JUDGMENT		
12	V.	PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT		
13	JODY'S, INC., a Virginia corporation, AMAZON.COM, INC., a Delaware	AND CONSENT JUDGMENT AS TO DEFENDANT JODY'S, INC.		
14	corporation, and DOES 1 through 100, inclusive	<b>Date:</b> May 3, 2022		
15	Defendants.	<b>Time</b> : 3:00 p.m. <b>Dept</b> .: 514		
16		Judge: Hon. Delbert C. Gee		
17		Case Filed: February 16, 2022 Trial Date: None set		
18				
19		s, Inc and Defendant Jody's, Inc., agreed through		
20	their respective counsel to enter judgment pursua	ant to the terms of their settlement in the form of		
21	a stipulated judgment ("Consent Judgment").	This Court issued an Order approving the		
22	Proposition 65 Settlement and Consent Judgment on			
23	[Rest of page intentionally left blank]			
24	·			
25				

27

28

1	IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and
2	Safety Code, section 25249.7(f)(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	<b>A</b> .
5	By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement
6	under Code of Civil Procedure, section 664.6.
7	
8	IT IS SO ORDERED.
9	
10	
11	Dated:
12	, JUDGE OF THE SUPERIOR COURT
13	
14	
15	
16	
17	
18	·
19	
20	
21	
22	
<ul><li>23</li><li>24</li></ul>	
25	
25 26	·
20 27	
28	

# **EXHIBIT A**

1 2 3 4 5	ENTORNO LAW, LLP Noam Glick (SBN 251582) Jake W. Schulte (SBN 293777) Craig M. Nicholas (SBN 178444) 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 629-0527 Email: noam@entornolaw.com Email: jake@entornolaw.com	
6	Email: craig@entornolaw.com	
7	Attorneys for Plaintiff Environmental Health Advocates, Inc.	
8	SUPERIOR COURT OF T	THE STATE OF CALIFORNIA
10	IN AND FOR THE (	COUNTY OF ALAMEDA
11	ENVIRONMENTAL HEALTH ADVOCATES, INC., a California corporation,	Case No. 22CV007094
	•	[PROPOSED] CONSENT JUDGMENT
12	Plaintiff,	(Health & Safety Code § 25249.6 et seq. and
13	V.	Code Civ. Proc. § 664.6)
14	JODY'S, INC., a Virginia corporation, AMAZON.COM, INC., a Delaware	
15	corporation, and DOES 1 through 100, inclusive,	
16	Defendants.	
17	2 orondamos.	
18		
19		
20		
21		
22.		
23		
24		
25		
26		
27		
28	·	

#### 1. <u>INTRODUCTION</u>

#### 1.1 Parties

This Consent Judgment is entered into by and between Environmental Health Advocates, Inc., ("EHA" or "Plaintiff") and Jody's, Inc. ("Defendant" or "Jody's") with EHA and Jody's each individually referred to as a "Party" and collectively referred to as the "Parties."

#### 1.2 Plaintiff

EHA is a corporation organized in the state of California, acting in the interest of the general public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

#### 1.3 Defendant

Jody's 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, Health and Safety Code section 25249.6 et seq. ("Proposition 65").

#### 1.4 General Allegations

EHA alleges that Jody's manufactures, imports, sells, and distributes for sale Jody's Gourmet Popcorn that contains acrylamide. EHA further alleges that Jody's does so without providing a sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65, acrylamide is listed as a chemical known to cause cancer, birth defects and other reproductive harm.

#### 1.5 Notices of Violation

On or around August 17, 2021, EHA served Jody's, Amazon.com, Inc., the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 ("Notice"). The Notice alleged that Jody's had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to acrylamide contained in Jody's Gourmet Popcorn.

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

///

^-

///

///

#### 1.6 Product Description

The products covered by this Consent Judgment are popcorn including but not limited to all variations/flavors of Jody's Gourmet Popcorn manufactured or processed by Jody's and sold by Jody's or its customers that allegedly contain acrylamide and are imported, sold, shipped, delivered, or distributed for sale to consumers in California by Releasees (as defined in section 4.1) ("Covered Products").

#### 1.7 State of the Pleadings

On or around February 16, 2022, EHA filed a Complaint against Jody's for the alleged violations of Proposition 65 that are the subject of the Notice ("Complaint").

#### 1.8 No Admission

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

#### 1.9 Jurisdiction

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

#### 1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" means the date on which the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

#### 

# 

# 

# 

# 

# 

# 

# 

# 

# 

# 

## 

#### 

### 

### 

### 

### 

# 

# 

# 

# 

## 

# 

## 

#### 2. <u>INJUNCTIVE RELIEF</u>

#### 2.1 Reformulation of the Covered Products

Except as otherwise provided herein, any Covered Products that are manufactured by Jody's on and after the Effective Date that Jody's sells in California or distributes for sale in California shall not exceed 281 parts per billion ("ppb") for acrylamide, using tests performed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization, using LC-MS/MS (Liquid Chromatography-Mass Spectrometry), or any other test method approved by the State of California, unless such Covered Products comply with the warning requirements of Section 2.2. As used in this Section 2, "distributed for sale in California" means to directly ship Covered Products into California, for purposes of selling the Products in California, or to sell Covered Products to a distributor, retailer (including an online retailer), or co-packing customer Jody's knows may or will sell Covered Products in California.

#### 2.2 Clear and Reasonable Warnings

For Covered Products that contain acrylamide in a concentration exceeding the 281 ppb level set forth in section 2.1 above, and which are manufactured and packaged for distribution for authorized sale or use in California on or after the Effective Date, Jody's shall provide one of the following warning statements.

#### Option 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.

#### Option 2:

# **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.cs.gov

The warning requirements set forth herein are imposed pursuant to the terms of this Consent Judgment and are recognized by the Parties as not being the exclusive manner of providing a warning for the Products. Warnings may be provided as specified in the Proposition 65 regulations (Title 27, California Code of Regulations, section 25601, et seq.) in effect as of the Effective Date or as such

regulations may be amended in the future, or pursuant to any other settlement agreement or consent judgment involving acrylamide. In addition, Jody's may follow the notification procedure set out in Title 27, California Code of Regulations, section 25600.2 or a similar procedure to provide warnings for the Products consistent with the Consent Judgment. The same warning shall be posted on any websites under the exclusive control of Jody's where Covered Products are sold into California. Jody's shall instruct any third-party website to which it sells the Products to include the same warning as a condition of selling the Products.

#### 2.3 Sell-Through Period

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

### 3. MONETARY SETTLEMENT TERMS

#### 3.1 Settlement Amount

Jody's shall pay fifty thousand dollars (\$50,000.00) 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 (\$5,000.00) pursuant to Health and Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00) 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:

Environmental Health Advocates 225 Broadway, Suite 2100 San Diego, CA 92101

payable to Entorno Law, LLP, within fifteen (15) days of the transmittal to Jody's counsel

28

9

#### 10

i

13 14

11

12

16

15

17 18

19

2021

22

2324

25

26

2728

of the paperwork from the Court indicating the date on which the Court grants the motion for approval of this Consent Judgment.

The Second Installment shall be in the amount of ten thousand dollars (\$10,000.00), payable to Entorno Law, LLP, within forty (40) days of the Effective Date ("Second Installment"). If the First Installment is timely made by Jody's or its counsel, then EHA's and its counsel agree to waive the Second Installment.

Noam Glick Entorno Law, LLP 225 Broadway, Suite 2100 San Diego, CA 92101

#### 4. <u>CLAIMS COVERED AND RELEASED</u>

#### 4.1 EHA's Public Release of Proposition 65 Claims

Plaintiff acting on its own behalf and in the public interest releases Jody's and its parents, subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant Entities"), each entity to whom Defendant manufactures popcorn for, or directly or indirectly distributes, ships, or sells the Covered Products including but not limited to downstream distributors, wholesalers, customers, and retailers (including but not limited to Amazon.com, Inc., Crave, Inc. (and all its brands), Major Popcorn, LLC, and Team Butter, Inc.) franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns (collectively referred to as the "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposure to acrylamide from Covered Products as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to acrylamide from Covered Products as set forth in the Notice. This release does not extend to any third-party retailers selling the product on a website who, after receiving instruction from Jody's to include a warning as set forth above in section 2.2, do not include such a warning.

#### 4.2 EHA's Individual Release of Claims

EHA, in its individual capacity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, also provides a general release to Jody's 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, attorneys' 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 Covered Products manufactured, imported, sold, or distributed by Jody's and/or Releasees before the Effective Date. EHA acknowledges that it is familiar with California Civil Code section 1542, which provides 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, in its capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. EHA acknowledges that it has been advised by legal counsel and is familiar with the provisions of California Civil Code Section 1542.

#### 4.3 Jody's Release of EHA

Jody's on its own behalf, and on behalf of Releasees as well as 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 them, in this matter or with respect to the Covered Products.

# 

# 

### 

# 

#### 

#### 5. **COURT APPROVAL**

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

#### 6. <u>SEVERABILITY</u>

Subsequent to the Court's approval and entry of this Consent Judgment, if any provision 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 Consent Judgment shall be governed by the laws of the state of California as applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable for any reason, including but not limited to changes in the law, then Jody's 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 Covered Products are so affected.

#### 7.1 Change in Proposition 65

If Proposition 65 or its implementing regulations (including but not limited to the published "no significant risk level" for acrylamide set forth at Cal. Code Regs., tit 27, section 25705, subdivision (c)(2) or any "alternative risk level" adopted by regulation or court decision) are changed from their terms as they exist on the date of entry of this Consent Judgment, or if OEHHA takes some other final regulatory action, including but not limited to a issuing a safe use determination or interpretive guideline, that determines that warnings for acrylamide are not required then Jody's shall be relieved of its obligation to comply with Section 2 herein.

#### 7.2 Other Court Decisions

If a final decision of a court (including, but not limited to, the 9<sup>th</sup> Circuit Court of Appeals and/or the United States District Court for the Eastern District of California in the litigation entitled *California Chamber of Commerce v. Bonta*, No. 2:19-cv-02019-KJM-JDP (E.D. Cal.)) determines that warnings for acrylamide exposures, or that enforcement of Proposition 65 claims for acrylamide

///

///

: 

exposures, are preempted or otherwise unlawful or unconstitutional, then Jody's may file a motion to modify this Consent Judgment and be relieved of its obligation to comply with Section 2 herein, and the parties shall meet and confer and good faith before such motion is filed.

#### 7.3 Federal Agency Action and Preemption

If a court of competent jurisdiction or an agency of the federal government, including, but not limited to, the U.S. Food and Drug Administration, states through any guidance, regulation or legally binding act that federal law has preemptive effect on any of the requirements of this Consent Judgment, then this Consent Judgment may be modified to bring it into compliance with or avoid conflict with federal law. The Parties agree to meet and confer in good faith to modify this Consent Judgment, and EHA agrees not to oppose any such modification, except for good cause shown.

#### 7.4 Scientific Studies

If an agency of the federal government, including, but not limited to the U.S. Food and Drug Administration, states through any guidance, regulation, or other legally binding act, following a review of scientific studies and following public notice and comment, a cancer potency estimate for acrylamide that equates to a no significant risk level higher than 0.2 micrograms per day, then Jody's shall be entitled to seek a modification of this Consent Judgment to be relieved of its obligations to meet any requirements of herein that are inconsistent with such a change. The Parties agree to meet and confer in good faith to modify this Consent Judgment to conform to such changes, and EHA agrees not to oppose any such modification except for good cause shown.

#### 8. <u>ENFORCEMENT</u>

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

#### 9. NOTICE

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

#### If to Jody's:

Sophia Castillo Downey Brand LLP 455 Market Street, Suite 1500 San Francisco, CA 94105

#### If to EHA:

Noam Glick Entorno Law, LLP 225 Broadway, Suite 2100 San Diego, CA 92101

4 5

1

2

3

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

6 7

8

9

10

11

# 10. <u>COUNTERPARTS; DIGITAL SIGNATURES</u>

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

EHA agrees to comply with the reporting form requirements referenced in Health and Safety

#### 11. POST EXECUTION ACTIVITIES

12 13

14

15

Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to

16

mutually employ their best efforts, including those of their counsel, to support the entry of this

1718

agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for

19

approval, responding to any objection that any third-party may make, and appearing at the hearing

2021

# 12. MODIFICATION

before the Court if so requested.

2223

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

2425

## 13. <u>AUTHORIZATION</u>

26

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

2728

# 14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

1	If a dispute arises with respect to either Party's compliance with the terms of this Conservation		
2	Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or i		
3	writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be file		
4	in the absence of such a good faith attempt to resolve the dispute beforehand.		
5	·		
6	15. ENTIRE AGREEMENT		
7	This Consent Judgment contains the sole and entire agreement and understanding of the		
8	Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations		
9	commitments, and understandings related hereto. No representations, oral or otherwise, express or		
10	implied, other than those contained herein have been made by any Party. No other agreements, oral or		
11	otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.		
12			
13	AGREED TO:		
14	Date: 02/15/2022 Date: 2-17-22		
15	Date. 2-11-22		
16	By:		
17	ENVIRONMENTAL HEALTH JODY'S, INC. ADVOCATES, INC.		
18			
19			
20			
21	IT IS SO ORDERED.		
22	Date: 5-12-22		
23			
24	JUDGE OF THE SUPERIOR COURT		
25	JUDGE DELBERT C. GEE		
26			
27			
28			