

FILED
ALAMEDA COUNTY

JUN 23 2022

CLERK OF THE SUPERIOR COURT

By *Danielle Salinas* Deputy

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7 Environmental Health Advocates, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF ALAMEDA

10 ENVIRONMENTAL HEALTH
11 ADVOCATES, INC., a California corporation,

12 Plaintiff,

13 v.

14 ATHENS FOODS, INC., an Ohio
corporation, THE VONS COMPANIES,
15 INC., a Michigan corporation, and DOES 1
through 100, inclusive,

16 Defendants.
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Case No. 21CV003613

**[PROPOSED] AMENDED CONSENT
JUDGMENT**

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Athens 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 Athens manufactures, imports, sells, and distributes for sale phyllo dough
16 that contains acrylamide. EHA further alleges that Athens does so without providing a sufficient
17 health hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition
18 65, acrylamide is listed as a chemical known to cause cancer, birth defects and other reproductive
19 harm.

20 **1.5 Notices of Violation**

21 On or around June 22, 2021, EHA served Athens, The Vons Company, Inc., the California
22 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of
23 Violation of Proposition 65 ("Notice"). The Notice alleged that Athens had violated Proposition 65
24 by failing to sufficiently warn consumers in California of the health hazards associated with exposures
25 to acrylamide contained in phyllo dough..

26 On or around September 2, 2021, EHA served Athens, The Vons Companies, Inc., the
27 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice
28 of Violation of Proposition 65 ("Amended Notice"). The Amended Notice corrected the

1 distributor/retailer to The Vons Companies, Inc.

2 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
3 violations alleged in the Notice or Amended Notice (hereinafter, the "Notices").

4 **1.6 Product Description**

5 The products covered by this Consent Judgment are phyllo dough (a/k/a/ fillo or filo) or
6 products that contain phyllo dough manufactured or processed by Athens that allegedly contain
7 acrylamide and are imported, sold, shipped, delivered, or distributed for sale to consumers in
8 California by Releasees (as defined in section 4.1) ("Covered Products").

9 **1.7 State of the Pleadings**

10 On or around December 6, 2021, EHA filed a Complaint against Athens and The Vons
11 Companies, Inc. for the alleged violations of Proposition 65 that are the subject of the Notices
12 ("Complaint").

13 **1.8 No Admission**

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

22 **1.9 Jurisdiction**

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

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1 **1.10 Effective Date and Compliance Date**

2 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
3 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5, and
4 "Compliance Date" shall mean six (6) months from the Effective Date.

5 **2. INJUNCTIVE RELIEF**

6 **2.1 Reformulation of the Covered Products**

7 Except as otherwise provided herein, any Covered Products that are manufactured by Athens
8 on and after the Compliance Date that Athens sells in California or distributes for sale in California
9 shall not exceed 225 parts per billion ("ppb") for acrylamide, using tests performed by a laboratory
10 accredited by the State of California, a federal agency, or a nationally recognized accrediting
11 organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), unless such Covered
12 Products comply with the warning requirements of Section 2.2. For Covered Products that contain
13 phyllo dough (and other ingredients), the phyllo dough portion shall not exceed 225 ppb. As used in
14 this Section 2, "distributed for sale in California" means to directly ship Covered Products into
15 California or to sell Covered Products to a distributor Athens know will sell Covered Products in
16 California.

17 **2.2 Clear and Reasonable Warnings**

18 For Covered Products that contain acrylamide in a concentration exceeding the 225 ppb level
19 set forth in section 2.1 above, and which are manufactured and packaged for distribution for
20 authorized sale or use in California on or after the Compliance Date, Athens shall provide one of the
21 following warning statements.

22 **Option 1:**

23 **WARNING:** This product can expose you to chemicals including |
24 Acrylamide, which is known to the State of California to cause cancer
25 and birth defects or other reproductive harm. For more information go
to www.P65Warnings.ca.gov/food.

26 **Option 2:**

27 **WARNING: Cancer and Reproductive Harm --**
28 www.P65Warnings.ca.gov/food.

1 The warning shall be provided through one of the following methods: (1) a product specific
2 warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point of
3 display of the product; or (2) a product-specific warning provided via any electronic device or process
4 that automatically provides the warning to the purchaser prior to or during the purchase of the
5 consumer product, without requiring the purchaser to seek out the warning; or (3) a warning on the
6 label that is securely affixed to or printed upon the label and complies with Section 2.2. If the warning
7 statement is displayed on the Covered Products' label, it must be set off from other surrounding
8 information. The same warning shall be posted on any websites under the exclusive control of Athens
9 where Covered Products are sold in California. The warning requirements set forth herein are imposed
10 pursuant to the terms of this and are recognized by the Parties as not being the exclusive manner of
11 providing a warning for the Covered Products. Warnings may be provided as specified in the
12 Proposition 65 regulations or guidance from the California Office of Environmental Health Hazard
13 Assessment for food in effect as of the Effective Date (Title 27, California Code of Regulations,
14 section 25601, et seq.) or as such regulations may be amended in the future. In addition, Athens may
15 follow the notification procedure set out in Title 27, California Code of Regulations, section 25600.2
16 or a similar procedure where Athens instructs its distributor or retailer customers to provide warnings
17 for Covered Products consistent with Section 2.2.

18 Athens shall instruct any third-party website to which it sells its Covered Products to include
19 the same warning as a condition of selling the Covered Products.

20 **2.3** If subsequently enacted changes to Proposition 65 or its implementing regulations
21 require or allow the use of additional or different information on any warning specifically applicable
22 to the Covered Products, the Parties agree that such warnings may be utilized in place of or in addition,
23 as applicable, the warnings set forth in this Section.

24 **2.4 Sell-Through Period**

25 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
26 manufactured on or prior to the Compliance Date shall be subject to release of liability pursuant to
27 this Consent Judgment, without regard to when such Covered Products were, or are in the future,
28

1 distributed or sold to customers. As a result, the obligation of Athens, or any Releasees (if applicable),
2 do not apply to these Covered Products manufactured on or prior to the Compliance Date.

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4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Settlement Amount**

6 Athens shall pay sixty thousand dollars (\$60,000.00) in settlement and total satisfaction of all
7 the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes civil
8 penalties in the amount of six thousand dollars (\$6,000.00) pursuant to Health and Safety Code section
9 25249.7(b) and attorneys' fees and costs in the amount of fifty-four thousand dollars (\$54,000.00)
10 pursuant to Code of Civil Procedure section 1021.5.

11 **3.2 Civil Penalty**

12 The portion of the settlement attributable to civil penalties shall be allocated according to
13 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
14 penalty, four thousand five hundred dollars (\$4,500.00), paid to the California Office of
15 Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%)
16 of the penalty, one thousand five hundred dollars (\$1,500.00), paid to EHA individually.

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

18 Environmental Health Advocates
19 225 Broadway, Suite 2100
San Diego, CA 92101

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

22 For United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
Sacramento, CA 95812-4010

26 For Federal Express 2-Day Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1001 I Street
Sacramento, CA 95814

Athens agrees to provide EHA's counsel with a copy of the check payable to OEHHHA, 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:

- "Entorno Law, LLP" (EIN: 68-0284486) at the address provided in Section 3.3; 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 attorneys' fees and costs shall be paid to EHA's counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not limited to investigating potential violations, bringing this matter to Athens' attention, as well as litigating and negotiating a settlement in the public interest.

Athens shall provide their payment to EHA's counsel in one check in the amount of fifty-four thousand dollars (\$54,000.00), payable to Entorno Law, LLP. The payment will be sent to the following address:

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

3.4 Timing

All payments mentioned above 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

Plaintiff acting on its own behalf and in the public interest releases Athens 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 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 The Vons Companies, Inc.), franchisees, franchisors, cooperative

1 members, suppliers, licensees, and licensors, and all of the foregoing entities' owners, directors,
2 officers, agents, principals, employees, attorneys, insurers, accountants, representatives,
3 predecessors, successors, and assigns (collectively referred to as the "Releasees") from all claims for
4 violations of Proposition 65 up through the Compliance Date based on exposure to acrylamide from
5 Covered Products as set forth in the Notices. Compliance with the terms of this Consent Judgment
6 constitutes compliance with Proposition 65 with respect to exposures to acrylamide from Covered
7 Products as set forth in the Notices. This release does not extend to any third-party retailers selling
8 the product on a website who, after receiving instruction from Athens to include a warning as set forth
9 above in section 2.2, do not include such a warning.

10 **4.2 EHA's Individual Release of Claims**

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

17 **4.3 Athens' Release of EHA**

18 Athens on its own behalf, and on behalf of Releasees as well as its past and current agents,
19 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
20 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
21 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
22 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

23 **5. COURT APPROVAL**

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

1 **6. SEVERABILITY**

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

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6 **7. GOVERNING LAW**

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

13 In the event the California Office of Health Hazard Assessment adopts a regulation or safe
14 use determination, or issues an interpretive guideline that exempts Covered Products from meeting
15 the requirements of Proposition 65; or if acrylamide cases are permanently enjoined by a court of
16 competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden
17 on First Amendment rights with respect to acrylamide in Covered Products or Covered Products
18 substantially similar to Covered Products, then Athens shall be relieved of its obligation to comply
19 with Section 2 herein.

20 **8. ENFORCEMENT**

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

23 **8. NOTICE**

24 Unless otherwise specified herein, all correspondence and notice required by this Consent
25 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
26 mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:
27
28

1 If to Athens:

2 Michael J. Gleason
3 Hahn Loeser & Parks LLP
4 One America Plaza
5 600 West Broadway, Suite 1500
6 San Diego, CA 92101

If to EHA:

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

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

9 **9. COUNTERPARTS: DIGITAL SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

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

23 **11. MODIFICATION**

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

27 **12. AUTHORIZATION**

28 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.

13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

5 **14. ENTIRE AGREEMENT**

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

11 **AGREED TO:**

AGREED TO:

12
13 Date: 06/03/2022

Date: 6/15/22

14
15 By: 


16 ENVIRONMENTAL HEALTH
17 ADVOCATES, INC.

15 By: 

16 ATHENS FOODS, INC.

17
18
19 **IT IS SO ORDERED.**

20
21 Date: 6-23-22



22
23 JUDGE OF THE SUPERIOR COURT
24 JULIA A. SPAIN

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 06/23/2022 Chad Finke, Executive Officer / Clerk of the Court
PLAINTIFF/PETITIONER: Environmental Health Advocates, Inc.		By: <u><i>Danielle Labrecque</i></u> Deputy D. Labrecque
DEFENDANT/RESPONDENT: Athens Foods, Inc., an Ohio corporation et al		
CERTIFICATE OF MAILING		CASE NUMBER: 21CV003613

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.

Michael James Gleason
Hahn Loeser & Parks LLP
One America Plaza, 600 W Broadway Ste 1500
San Diego, CA 92101

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

Chad Finke, Executive Officer / Clerk of the Court

Dated: 06/23/2022

By:

Danielle Labrecque

D. Labrecque, Deputy Clerk

CERTIFICATE OF MAILING