

SETTLEMENT AGREEMENT

1. DEFINITIONS

1.1 “Covered Products” means IKEA Rösti Potato Fritters.

1.2 “Effective Date” means the date on which this Agreement is fully executed by the Parties.

2. INTRODUCTION

2.1 The Parties to this Settlement Agreement are the Center for Environmental Health (“CEH”), a California non-profit corporation, on the one hand, and IKEA Distribution Services Inc., IKEA North America Services, LLC, and IKEA U.S. West, Inc. (“IKEA Parties”), on the other hand. CEH and IKEA Parties are referred to herein as the “Parties”.

2.2 On November 29, 2016, CEH provided a 60-day Notice of Violation of Proposition 65 to the California Attorney General, to the District Attorneys of every county in California, to the City Attorneys of every California city with a population greater than 750,000, and to IKEA Parties, alleging that IKEA Parties violated Proposition 65 by exposing persons to acrylamide contained in Covered Products without first providing a clear and reasonable Proposition 65 warning.

2.3 Each Settling Defendant is a corporation or other business entity that manufactures, distributes, sells, or offers for sale Covered Products that are sold in the State of California or has done so in the past.

2.4 Nothing in this Settlement Agreement is or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Settlement Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any other pending or future legal proceedings. This Settlement Agreement is the product of

negotiation and compromise and is accepted by the Parties solely for purposes of settling, compromising, and resolving issues disputed in this Action.

3. INJUNCTIVE RELIEF

3.1 **Reformulation of Covered Products.** Except as provided in Section 3.2, commencing on the Effective Date, and continuing thereafter, IKEA Parties shall not ship, sell, or offer for sale in California any Covered Product that will be sold or offered for sale in California that exceeds the following acrylamide concentration limits (the “Reformulation Levels”), such concentration to be determined by use of a test performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or any other testing method agreed upon by the Parties:

3.1.1 The average acrylamide concentration of Covered Products as used per cooking instructions, shall not exceed, on average, 250 parts per billion (“ppb”) by weight (the “Average Level”). The Average Level is determined by randomly selecting at least 5 samples from 5 different lots of Covered Products (or the maximum number of lots available for testing if less than 5) during a testing period of at least 60 days.

3.1.2 The acrylamide concentration of any individual unit, as used per cooking instructions, shall not exceed 300 ppb by weight (the “Unit Level”).

Compliance with the Reformulation Levels shall be determined after cooking each Covered Product as if prepared for consumption in accordance with the instructions on the packaging label of that Covered Product.

3.2 **Clear and Reasonable Warnings.** A Covered Product shipped, sold or offered for sale by the IKEA Parties after the Effective Date may, as an alternative to meeting the Reformulation Levels, be sold or offered for sale in California with a Clear and Reasonable Warning that complies with the provisions of Section 3.2. A Clear and Reasonable Warning under this Agreement shall state either:

[PROPOSITION 65] WARNING:

This product contains [a] chemical[s] known to the State of California to cause cancer [and birth defects or other reproductive harm].

Or

[PROPOSITION 65] 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.

Or

[PROPOSITION 65] WARNING:

Consuming this product can expose you to chemicals including acrylamide [and ____], which 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.

In any case, the word “**WARNING**” shall be displayed in all capital letters and bold print, and the bracketed text may, but is not required to, be used. The warning statement shall be prominently displayed on a label, labeling or sign, and must be displayed with such conspicuousness, as compared with other words, statements designs or devices on the label, labeling, or sign, as to render the warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warning shall otherwise comply with applicable provisions of 27 California Code of Regulations § 25601, et seq. as currently in force and as they may be amended from time to time, including with respect to those regulations which shall become operative on August 30, 2018. For the avoidance of doubt, the parties agree that the form of warning in use by IKEA Parties at the time of the execution of this Agreement, a copy of which is attached hereto as Exhibit “A”, conforms to existing law.

3.3 **Technology Licensing.** The reformulation requirements set forth in Section 3.1 of this Settlement Agreement are not contingent upon the use of any particular method to achieve the Reformulation Level, but IKEA Parties shall license any patented technology used to meet the Reformulation Level, whether existing or in the future, to others for use in other food products, at a commercially reasonable price, and using other commercially reasonable terms.

4. ENFORCEMENT

4.1 **General Enforcement Provisions.** The Parties agree that any action based on a violation of Section 5 of this Agreement shall be brought in the Superior Court of California in Alameda County. For purposes of this Agreement, notwithstanding Section 2.3 above, the Parties agree that the Superior Court of California in Alameda County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of Alameda.

4.2 **Alleged Future Violations of Proposition 65.** Prior to bringing any action to enforce Proposition 65 with respect to acrylamide exposures from the Covered Products, CEH shall provide the IKEA Parties with thirty (30) days advanced written notice. The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, CEH may issue a 60-day pre-suit notice of violation under Proposition 65 to the IKEA Parties and pursue an action under Proposition 65. The Parties agree that this shall be CEH's sole remedy to enforce any alleged violations of Section 3 of this Agreement.

5. PAYMENTS

5.1 **Payments by the IKEA Parties.** Within five (5) days of the Effective Date, IKEA Parties shall pay the total sum of \$32,000 as a settlement payment as further set forth in this Section.

5.2 **Allocation of Payments.** The total settlement amount for IKEA Parties shall be paid in four (4) separate checks in the amounts specified below and delivered as set forth below. Any failure by the IKEA Parties to comply with the payment terms herein shall be subject to a stipulated late fee to be paid by the IKEA Parties in the amount of \$100 for each day the full payment is not paid after the applicable payment due date set forth in Section 4.1. The late fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4.1 of this Settlement Agreement. The funds paid by the IKEA Parties shall be allocated as set forth below between the following

categories and made payable as follows:

5.2.1 \$4,100 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

The civil penalty payment shall be apportioned in accordance with Health & Safety Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty payment for \$3,075 shall be made payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

5.2.2 The CEH portion of the civil penalty payment for \$1,025 shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 \$27,900 as a reimbursement of a portion of CEH’s reasonable attorneys’ fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks as follows: (a) \$21,145 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$6,755 payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. These payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

6. MODIFICATION

6.1 **Modification.** This Settlement Agreement may be modified from time to time by

express written agreement of the Parties, and in accordance with law.

7. CLAIMS COVERED AND RELEASED

7.1 This Settlement Agreement is a full, final, and binding resolution between CEH on behalf of itself and the public interest and IKEA Parties and each entity's parents, subsidiaries, affiliated entities that are under common or overlapping ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which IKEA Parties directly or indirectly distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 based on failure to warn about alleged exposure to acrylamide contained in Covered Products that were sold, distributed, or offered for sale by the IKEA Parties prior to the Effective Date.

7.2 CEH, for itself, its agents, successors, and assigns, generally releases, waives, and forever discharges any and all claims against IKEA Parties, Defendant Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted by CEH individually or in the public interest regarding the failure to warn about exposure to acrylamide arising in connection with Covered Products manufactured, distributed, or sold by the IKEA Parties prior to the Effective Date.

7.3 Compliance with the terms of this Settlement Agreement by the IKEA Parties and Defendant Releasees shall constitute compliance with Proposition 65 by the IKEA Parties, Defendant Releasees, and Downstream Defendant Releasees with respect to any alleged failure to warn about acrylamide in Covered Products manufactured, distributed, or sold by the IKEA Parties after the Effective Date.

7.4 By their signatures below, CEH and its counsel, respectively, affirm on behalf of themselves and each of their members, partners, employees and agents, that none of them has, or currently represents any person with, claims against any of the IKEA Parties or any IKEA-

affiliated company, has not since the commencement of the Claim filed any action against any of the IKEA Parties or any IKEA-affiliated company, and has no present intention to serve any notice or file any claim or action of any kind against any of the IKEA Parties or any IKEA-affiliated company related to the subject matter of the Claim or otherwise. CEH's and its counsel's affirmation by their signatures below is a condition precedent to all of the IKEA Parties' obligations under this Agreement.

7.5 Nothing in this Agreement shall preclude CEH from pursuing any available remedies under Proposition 65 if the IKEA Parties do not comply with Section 3.1 or Section 3.2 of this Agreement and if the Parties are unable to resolve the alleged violations through Section 4 of this Agreement.

8. PROVISION OF NOTICE

8.1 When CEH is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class and electronic mail to:

Howard Hirsch
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

8.2 When IKEA Parties are entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class and electronic mail to:

Jennifer A. Frericks
IKEA North America Services, LLC
420 Alan Wood Rd
Conshohocken, PA 19428
jennifer.frericks@IKEA.com

With a copy to:
Michael A. Geibelson
Robins Kaplan LLP
2049 Century Park East, Suite 3400
Los Angeles, CA 90067
MGeibelson@RobinsKaplan.com

Any Party may modify the person and/or address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

9.1 CEH agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

10. GOVERNING LAW AND CONSTRUCTION

10.1 The terms of this Settlement Agreement shall be governed by the laws of the State of California.

11. ENTIRE AGREEMENT

11.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

12. AUTHORITY TO STIPULATE TO SETTLEMENT AGREEMENT

12.1 Each signatory to this Settlement Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Settlement Agreement and to enter into and execute the Settlement Agreement on behalf of the Party represented and legally to bind that Party.

13. NO EFFECT ON OTHER SETTLEMENTS

13.1 Nothing in this Settlement Agreement shall preclude CEH from resolving any claim against any entity other than IKEA Parties on terms that are different than those contained in this Settlement Agreement.

14. EXECUTION IN COUNTERPARTS

14.1 The stipulations to this Settlement Agreement may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

IT IS SO AGREED:

Dated: <u>29 Sept</u> , 2017	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <p>Signature</p> <p><u>Conchita Pizarro</u></p> <p>Printed Name</p> <p><u>ASSOCIATE DIRECTOR</u></p> <p>Title</p>
Dated: <u>10/10</u> , 2017	<p>IKEA DISTRIBUTION SERVICES INC.</p> <p></p> <p>Signature</p> <p><u>John Robinson</u> <u>Tracey Kelly</u></p> <p>Printed Name</p> <p><u>Treasurer</u> <u>Secretary</u></p> <p>Title</p>

Dated: 10/10, 2017

IKEA NORTH AMERICA SERVICES, LLC

John Robinson Tracey Kelly
Signature

John Robinson Tracey Kelly
Printed Name

Treasurer Secretary
Title

Dated: 10/10, 2017

IKEA U.S. WEST, INC.

John Robinson Tracey Kelly
Signature

John Robinson Tracey Kelly
Printed Name

Treasurer Secretary
Title