

1 **GLICK LAW GROUP, P.C.**
Noam Glick (SBN 251582)
2 225 Broadway, Suite 1900
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, Suite 1900
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
ADVOCATES, INC., a California organization,

15 Plaintiff,

16 v.

17 LITTLE SECRETS, LLC, a Delaware
18 corporation, and DOES 1 through 100,
inclusive,

19 Defendants.
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Case No. HG20062732

[PROPOSED] 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 (“Plaintiff” or “EHA”), on the one hand, and Little Secrets, LLC (“Defendant” or “Little Secrets”), on
5 the other hand, with EHA and Little Secrets each individually referred to as a “Party” and collectively
6 referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 EHA alleges that Little Secrets manufactures, imports, sells, and distributes for sale wafer
17 cookies that contain acrylamide. EHA further alleges that Little Secrets does so without providing a
18 sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant to
19 Proposition 65, acrylamide is listed as a chemical known to cause cancer, birth defects and other
20 reproductive harm. Little Secrets denies that warnings are required under Proposition 65 for any
21 exposures to acrylamide in Covered Products, and Little Secrets maintains that it has complied with all
22 applicable federal and state laws, including but not limited to Proposition 65

23 **1.5 Notices of Violation**

24 On various dates, including December 5, 2019, October 8, 2020, February 26, 2021, and March
25 18, 2020, EHA served Little Secrets, Bed Bath & Beyond, Inc., Cost Plus, Inc., the California Attorney
26 General, and all other required public enforcement agencies with 60-Day Notices of Violation of
27 Proposition 65. (“Notices”). The Notices alleged that Little Secrets violated Proposition 65 by failing
28 to sufficiently warn consumers in California of the health hazards associated with exposures to

1 acrylamide contained in the Covered Products.

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

4 **1.6 “Covered Products” Description**

5 “Covered Products” as used in this Consent Judgment is defined as, and expressly limited to,
6 wafer cookies, including Little Secrets Crispy Wafers: Dark Chocolate with Sea Salt, Peanut Butter in
7 Dark Chocolate, Milk Chocolate with Sea Salt, Almond Butter in Dark Chocolate with Sea Salt, and
8 Peppermint Bark in Dark Chocolate that allegedly contain acrylamide and that are manufactured, sold,
9 imported, shipped, delivered, or distributed for sale to consumers in California by Little Secrets and
10 Releasees (as defined in Section 4.1).

11 **1.7 Complaint**

12 On May 29, 2020, EHA filed a Complaint against Little Secrets for the alleged violations of
13 Proposition 65 that are the subject of the Notices (“Complaint”).

14 **1.8 No Admission**

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

23 **1.9 Jurisdiction**

24 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
25 Court has jurisdiction over Little Secrets as to the allegations in the Complaint, that venue is proper in
26 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
27 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.
28

1 **1.10 Effective Date and Compliance Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
3 Court grants the motion for approval of this Consent Judgment. The Compliance Date is the date that
4 is ninety (90) days after the Effective Date.

5 **2. INJUNCTIVE RELIEF: REFORMULATION OF PRODUCTS OR WARNINGS**

6 **2.1 Reformulation of Products**

7 Any Covered Products that Little Secrets sells, imports, or distributes for sale in California on
8 and after the Compliance Date shall not exceed 115 parts per billion (“ppb”) for acrylamide, using tests
9 performed by a laboratory accredited by the State of California, a federal agency, or a nationally
10 recognized accrediting organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry),
11 unless such Covered Products comply with the warning requirements of Section 2.2.

12 **2.2 Clear and Reasonable Warnings**

13 For Covered Products that contain acrylamide in a concentration exceeding the ppb level set
14 forth in Section 2.1 above, and which are manufactured and packaged for distribution for authorized
15 sale or use in California on or after the Compliance Date, Little Secrets shall provide one of the
16 following Proposition 65 warnings:

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

20 **2) WARNING:** Cancer and Reproductive Harm –
21 www.P65Warnings.cs.gov

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

25 The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning
26 statement shall be prominently displayed on the packaging of the Covered Products, or on a placard,
27 shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared with
28 other words, statements, or designs as to render it likely to be read and understood by an ordinary

1 individual prior to sale. If the warning statement is displayed on the Covered Products' label, it must
2 be set off from other surrounding information. The same warning shall be posted on any websites
3 where Covered Products are sold into California.

4 **2.3 Sell-Through Period**

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

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Settlement Amount**

12 Little Secrets shall pay eighty thousand dollars (\$80,000.00) in settlement and total satisfaction
13 of all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes
14 civil penalties in the amount of eight thousand dollars (\$8,000.00) pursuant to Health and Safety Code
15 section 25249.7(b) and attorneys' fees and costs in the amount of seventy-two thousand dollars
16 (\$72,000) pursuant to Code of Civil Procedure section 1021.5.

17 **3.2 Civil Penalty**

18 The portion of the settlement attributable to civil penalties (\$8,000.00) shall be paid within ten
19 (10) days of the Effective Date and allocated according to Health and Safety Code section
20 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of
21 Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%)
22 of the penalty paid to EHA individually.

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

25 For United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

1 For Non-United States Postal Service Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street
6 Sacramento, CA 95814

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

8 Environmental Health Advocates
9 225 Broadway, Suite 2100
10 San Diego, CA 92101

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

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

14 Relevant information is set out below:

- 15 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.3;
- 16 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.3; and
- 17 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA
18 95814.

19 **3.3 Attorneys' Fees and Costs**

20 The portion of the settlement attributable to attorney's fees and costs (\$72,000.00) shall be paid
21 to EHA's counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including
22 but not limited to investigating potential violations, bringing this matter to Little Secrets' attention, as
23 well as litigating and negotiating a settlement in the public interest.

24 Attorneys' fees and costs shall be paid in two payments as follows:

- 25 • The first payment of thirty-six thousand dollars (\$36,00.00) shall be paid within ten (10)
26 days of the Effective Date.
- 27 • Second payment of thirty-six thousand dollars (\$36,00.00) shall be paid within seventy
28 (70) days of the Effective Date.

1 Each payment shall be divided equally between EHA's counsel in two checks – i.e., eighteen
2 thousand dollars (\$18,000.00) payable to Glick Law Group, PC and Nicholas & Tomasevic LLP,
3 respectively. The checks shall be mailed to EHA's counsel at the following addresses:

4
5 Noam Glick
6 Glick Law Group
7 225 Broadway, 19th Floor
8 San Diego, CA 92101

9
10 Craig Nicholas
11 Nicholas & Tomasevic, LLP
12 225 Broadway, 19th Floor
13 San Diego, CA 92101

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 EHA's Public Release of Proposition 65 Claims**

16 For any claim or violation arising under Proposition 65 alleging a failure to warn about
17 exposures to acrylamide from Covered Products manufactured, imported, sold, or distributed by Little
18 Secrets prior to the Compliance Date, EHA, acting for the general public, releases Little Secrets of any
19 and all liability. This includes Little Secrets' owners, parents, subsidiaries, affiliated entities under
20 common ownerships, its directors, officers, agents, employees, attorneys, and each entity to whom
21 Little Secrets directly or indirectly distributes or sells Covered Products, including but not limited to
22 downstream distributors, wholesales, customers, retailers, franchisees, cooperative members and
23 licensees, (collectively, the "Releasees"). Releasees include defendants, their parents, and all
24 subsidiaries and affiliates thereof and their respective employees, agents, and assigns that sell Covered
25 Products. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
26 65 with respect to the alleged or actual failure to warn about exposures to acrylamide from Covered
27 Products manufactured, imported, sold, or distributed by Little Secrets after the Compliance Date. This
28 Consent Judgment is a full, final and binding resolution of all claims that were or could have been
asserted against Little Secrets and/or Releasees for failure to provide warnings for alleged exposure to
acrylamide contained in Covered Products.

1 **4.2 EHA’s Individual Release of Claims**

2 EHA, in its individual capacity, also provides a release to Little Secrets and Releasees, which
3 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
4 obligations, costs, expenses, attorney’s fees, damages, losses, claims, liabilities, and demands of every
5 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
6 alleged or actual exposures to acrylamide in Covered Products manufactured, imported, sold, or
7 distributed by Little Secrets before the Compliance Date.
8

9 **4.3 Little Secrets’ Release of EHA**

10 Little Secrets on its own behalf, and on behalf of Releasees as well as its past and current agents,
11 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
12 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
13 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
14 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.
15

16 **5. COURT APPROVAL**

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

20 **6. SEVERABILITY**

21 Subsequent to the Court’s approval and entry of this Consent Judgment, if any provision is held
22 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.
23

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of California as
26 applied within the state of California. If Proposition 65 is repealed, or is otherwise rendered
27 inapplicable for reasons, including but not limited to changes in the law, then Little Secrets may provide
28

1 written notice to EHA of any asserted change, and shall have no further injunctive obligations pursuant
2 to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

3 **8. NOTICE**

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

7 If to Little Secrets:

8 Michael Sachs
9 Clark Hill LLP
10 505 Montgomery Street, 13th Floor
San Francisco, CA 94111

If to EHA:

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

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

13 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

17 **10. POST EXECUTION ACTIVITIES**

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

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

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

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

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1 **14. ENTIRE AGREEMENT**


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


7 **AGREED TO:**

AGREED TO:

8
9 Date: 3/19/2021

Date: 3/19/2021

10
11 By: 
12 ENVIRONMENTAL HEALTH
13 ADVOCATES, INC.

11 By: 
12 LITTLE SECRETS, LLC
13 Jeremy Vandervoet
14 CEO

15
16 **IT IS SO ORDERED.**

17 Date: _____

18 _____
19 JUDGE OF THE SUPERIOR COURT