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17 Attorneys for Plaintiff  
18 Environmental Health Advocates, Inc.

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

21 ENVIRONMENTAL HEALTH  
22 ADVOCATES, INC., a California corporation,

23 Plaintiff,

24 v.

25 MARY'S GONE CRACKERS, a Nevada  
26 corporation, AMAZON.COM, INC., a  
27 Delaware corporation, and DOES 1 through  
28 100, inclusive,

Defendants.

Case No. RG20073668

**[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     ("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.

28    ///

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.

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](http://www.P65Warnings.ca.gov).



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1 Mike Gyurics  
2 Fiscal Operations Branch Chief  
3 Office of Environmental Health Hazard Assessment  
4 P.O. Box 4010  
5 Sacramento, CA 95812-4010

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics  
8 Fiscal Operations Branch Chief  
9 Office of Environmental Health Hazard Assessment  
10 1001 I Street  
11 Sacramento, CA 95814

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

14 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.  
15 Relevant information is set out below:

- 16 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 17 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
- 18 and
- 19 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA  
20 95814.

### 21 **3.3 Attorney's Fees and Costs**

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

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

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

**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: (1) 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



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.

**9. COUNTERPARTS; DIGITAL SIGNATURES**

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.

**10. POST EXECUTION ACTIVITIES**

EHA agrees to comply with the reporting form requirements referenced in Health and Safety 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 mutually employ their best efforts, including those of their counsel, to support the entry of this 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 approval, responding to any objection that any third-party may make, and appearing at the hearing before the Court if so requested.

**11. MODIFICATION**

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.

**12. AUTHORIZATION**

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**

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

1 **14. ENTIRE AGREEMENT**

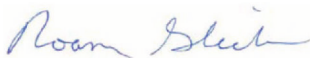
2 This Consent Judgement contains the sole and entire agreement and understanding of the Parties  
3 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,  
4 commitments, and understandings related hereto. No representations, oral or otherwise, express or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

7 **AGREED TO:**

8 **AGREED TO:**

9 Date: October 19, 2020

10 Date: October 20, 2020

11 By:   
12 ENVIRONMENTAL HEALTH  
13 ADVOCATES, INC.

14 By:   
15 MARY'S GONE CRACKERS

16 **IT IS SO ORDERED.**

17 Date: \_\_\_\_\_

18 \_\_\_\_\_  
19 JUDGE OF THE SUPERIOR COURT

20 4843-3941-4734, v. 1