

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Victoria Jamison (“Jamison”) and UTZ Quality Foods, LLC (“UTZ”). Together, Jamison and UTZ are collectively referred to as the “Parties.” Jamison is an individual residing in San Diego County, California. Jamison alleges that she seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Jamison alleges that UTZ is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

1.2 General Allegations. Jamison alleges UTZ has exposed individuals in the State of California to Acrylamide from its sales of Utz brand Potato Stix without first providing consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. Acrylamide is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 Product Description. The products covered by this Settlement Agreement are all Utz brand Potato Stix, of any size (the “Covered Products”) that have been imported, distributed, offered for sale and/or sold in California by UTZ.

1.4 Notice of Violation. On April 17, 2020, Jamison served UTZ and Walmart Inc. (“Walmart”) and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*” (the “Notice”). The Notice was intended to provide UTZ, and Walmart and such others, including public enforcers, with notice that alleged that UTZ and Walmart are in violation of California Health & Safety Code § 25249.6 for failing to warn California consumers and customers that use of the Covered Products will expose them to Acrylamide. UTZ is the supplier/manufacturer of the Covered Products. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admission. UTZ denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Covered Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by UTZ of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by UTZ of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by UTZ. However, this Section 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, UTZ maintains that it has not knowingly manufactured or caused to be manufactured, imported, distributed, offered for sale and/or sold the Covered Products in California in violation of Proposition 65.

1.6 Compliance Date: For purposes of this Settlement Agreement, the "Compliance Date" shall mean the date sixty (60) days after this Agreement is last executed by the Parties.

1.7 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation of Covered Products. Except as otherwise permitted by this Settlement Agreement, upon the applicable Compliance Date, UTZ shall not manufacture, ship, sell, or offer for sale Covered Products that will be sold or offered for sale in California that exceed the acrylamide concentration level of 281 parts per billion ("ppb") by weight (the "Reformulation Level"), 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. Any samples of a Covered Product tested shall be homogenized before testing for acrylamide content.

2.1.1 The Reformulation Level is determined by randomly selecting and testing at least one (1) sample each from at least three (3) and up to ten (10) different lots of the Covered Products (or the maximum number of lots available for testing if less than 3) during a testing period

of at least three hundred sixty-five (365) days. The mean and standard deviation shall be calculated using the sampling data. Any data points that are more than three standard deviations outside the mean shall be discarded, and the mean and standard deviation recalculated using the remaining data points.

2.1.2 For avoidance of doubt, Covered Products either purchased, manufactured, distributed, shipped, sold and/or offered for sale by UTZ prior to the applicable Compliance Date are not subject to the Reformulation Levels, even if such products are sold or offered for sale in California after the applicable Compliance Date.

2.2 Clear and Reasonable Warnings. A Covered Product purchased, manufactured, distributed, shipped, sold or offered for sale by UTZ may, as an alternative to meeting the Reformulation Level, be sold or offered for sale in California with a Clear and Reasonable Warning that complies with the provisions of this Section 2.2.

WARNING: Consuming this product can expose you to chemicals including acrylamide, which are known to the State of California to cause cancer. Acrylamide is a chemical that can form in some foods during high-temperature cooking processes, such as frying, roasting, and baking. For more information go to www.P65Warnings.ca.gov/food.

The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning statement shall be prominently displayed on the Covered Product, on the packaging of the Covered Product, or on a placard or sign provided that the statement is displayed with such conspicuousness, as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Covered Product’s label, it must be set off from other surrounding information and enclosed in a text box. If the warning statement is displayed on a placard or sign where the Covered Product is offered for sale, the warning placard or sign must enable an ordinary individual to easily determine which specific Covered Products the warning applies to, and to differentiate between that Covered Product and other products to which the

warning statement does not apply. For internet, catalog or any other sale where the consumer is not physically present, the warning statement shall be displayed in such a manner that it is likely to be read and understood by an ordinary individual prior to the authorization of or actual payment. Nothing in this Settlement Agreement requires that warnings be provided for Covered Products that are not sold or offered for sale in California. To comply with this Section 2.2, UTZ may rely on the procedure for notifying retailers set out in Title 27, California Code of Regulations, section 25600.2, in effect as of the applicable Compliance Date.

2.2.1 The warning requirements set forth herein are imposed pursuant to the terms of this Settlement Agreement, and are recognized by the Parties as not being the exclusive manner of providing a warning for the Covered Products. Warnings may be provided as specified in Proposition 65 regulations for food in effect as of the applicable Compliance Date (Title 27, California Code of Regulations, section 25601, *et seq.*) or as such regulations may be amended in the future. UTZ shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.1 and 2.2 of this Settlement Agreement or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA").

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, UTZ shall pay \$4,000 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Jamison. The Civil Penalty payment(s) shall be delivered to the addresses identified in Section 3.2, below. For all amounts due and owing that are not received within the payment times set forth below, UTZ shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

3.1 Civil Penalty. UTZ shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$3,000 (75%); and to (b) "Law Offices of George Rikos in Trust for Victoria Jamison" in the amount of \$1,000 (25%). The Civil Penalty payment(s) shall be delivered to the addresses identified in Section 3.2, below. The Civil Penalty payments herein shall be paid within fifteen (15) calendar days of the Effective Date.

3.2 Payment Procedures.

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Jamison, pursuant to Section 3.1 shall be delivered to the following payment address:

George Rikos
Law Offices of George Rikos
555 West Beech, Suite 500
San Diego, CA 92101

(ii) The payment owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1, shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at either the following addresses, and shall be sent no later than fifteen (15) calendar days following the Effective Date:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

(b) **Copy of Payments to OEHHA.** UTZ agrees to provide Jamison's counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payments to

Jamison, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.

(C) **Tax Documentation.** Jamison agrees to provide IRS W-9 forms for each of the following payees under this Settlement Agreement along with her executed copy of the Settlement Agreement:

(i) "Law Offices of George Rikos" at the address provided in Section 3.2(a)(i); and

(ii) "Office of Environmental Health Hazard Assessment" at 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

UTZ shall reimburse Jamison's counsel \$30,000 for fees and costs incurred as a result of investigating and bringing this matter to UTZ's attention, and negotiating a settlement in the public interest. The check for fees and costs shall be made payable to the "Law Offices of George Rikos" for delivery to the address identified in Section 3.2(a)(i), above. The reimbursement of attorney fees and costs shall be paid within fifteen (15) calendar days of the Effective Date.

5. RELEASE OF ALL CLAIMS

5.1 Release of UTZ, Walmart and All Downstream Distributors and Retailers. This Settlement Agreement is a full, final and binding resolution between Jamison, acting on her own behalf, and UTZ, of any violation of Proposition 65 that was or could have been asserted by Jamison or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to acrylamide contained in the Covered Products, and Releasers hereby release any such claims against UTZ and Walmart, and each of their past and present parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors, assignees and downstream distributors and retailers (collectively, the "Releasees"), from all claims for violations of Proposition 65 through the

Compliance Date based on their failure to warn of alleged exposure to the chemical acrylamide from use of the Covered Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Jamison, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the chemical Acrylamide in the Covered Products.

5.2 California Civil Code § 1542. It is possible that other claims not known to Jamison arising out of the facts alleged in the Notice and relating to the Covered Products will develop or be discovered. Jamison on behalf of herself only acknowledges that this Agreement is expressly intended to cover and include all such claims up through the Compliance Date, including all rights of action relating thereto. Jamison acknowledges that the claims released in Section 5.1, above, may include unknown claims, and nevertheless waives California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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.

Jamison acknowledges and understands the significance and consequences of this specific waiver of California Civil Code § 1542.

5.3 Deemed Compliance with Proposition 65. Compliance by UTZ with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to acrylamide from use of the Covered Products.

5.4 Public Benefit. It is UTZ's understanding that the commitments it has agreed to herein, and actions to be taken by UTZ under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of UTZ that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to UTZ's failure to provide a warning concerning exposure to acrylamide prior to use of the Covered Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that UTZ is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. CHANGE IN PROPOSITION 65

If Proposition 65 or its implementing regulations (including but not limited to the "safe harbor 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 Effective Date in a manner that impacts the Reformulation Level, or if OEHHA takes some other final regulatory action for products similar to the Covered Products in a manner that bears upon the Reformulation Level or that determines that warnings for acrylamide are not required for such products, then this Settlement Agreement shall be automatically modified such that UTZ shall be relieved of its obligations to meet any requirements of this Settlement Agreement that are inconsistent with such a change.

8. COURT DECISION REGARDING SIMILAR PRODUCTS

If a court of competent jurisdiction renders a final judgment that one or more Covered Products or Sliced Chip products, as that phrase is defined by the Consent Judgment referenced in Section 13 hereof, do not require a warning for acrylamide under Proposition 65, where such products contain levels of acrylamide at or above the Reformulation Level, then this Settlement Agreement shall be automatically modify to conform to such ruling with respect to such portion of the Covered Products as is appropriate.

9. OTHER COURT DECISIONS

If a final decision of a court determines that warnings for acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are preempted or otherwise unlawful or unconstitutional with respect to products that are similar to any of the Covered Products, then this Settlement Agreement shall be automatically modified to such final decision or ruling in order to avoid unfair, inconsistent, or anti-competitive results.

10. 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 this Settlement Agreement shall be automatically modified such that UTZ shall be relieved of its obligations to meet any requirements of this Settlement Agreement that are inconsistent with such a change.

11. 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 other legally binding act that federal law has preemptive effect on any of the requirements of this Settlement Agreement, then this Settlement Agreement shall be automatically modified to bring it into compliance with or avoid conflict with federal law. Any such modification shall be limited to those

changes that are necessary to bring this Settlement Agreement into compliance with or avoid conflict with federal law.

12. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Covered Products, UTZ shall provide written notice to Jamison of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Covered Product is so affected.

13. PRIOR SETTLEMENT

On December 3, 2019, the Court approved and entered a Consent Judgment as to Utz in the case *Center for Environmental Health v. Snikkdy, LLC, et al.* Ca*se No. RG 16-838609) in the Alameda Superior Court, that covered, among other products, fried or baked potato based snack food products manufactured, distributed, sold, and/or offered for sale by Utz with regard to requirements concerning acrylamide in such products. The *CEH* judgment remains in full force and effect and this Settlement Agreement is not intended to conflict with or modify that Consent Judgment.

14. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses

For UTZ:

Richard Fama, Esq.
Cozen O'Connor
601 S. Figueroa Street, Suite 3700
Los Angeles, CA 90017
Email: rfama@cozen.com

For Jamison:

George Rikos
LAW OFFICES OF GEORGE RIKOS
555 West Beech, Suite 500
San Diego, CA 92101

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

15. COUNTERPARTS: SIGNATURES

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

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

Jamison agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

17. MODIFICATION

Except as otherwise set for herein, this Settlement Agreement may be modified only by a written agreement of the Parties.

18. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

19. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

20. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

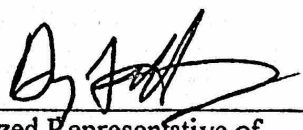
Within twelve months of the execution of this Settlement Agreement, UTZ may ask Jamison, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a

proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If so requested, Jamison agrees to reasonably cooperate with UTZ and to use her best efforts, and that of her counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, UTZ will reimburse Jamison and her counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$10,000, exclusive of fees and cost that may be incurred on appeal. UTZ will remit payment to the Law Offices of George Rikos, at the address set forth in Section 3.2(a) above. Such additional fees shall be paid by UTZ, within ten (10) days after its receipt of any invoice from Jamison for work performed under this paragraph. UTZ understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph.

AGREED TO:


Date: August 24, 2020

Print Name:


Authorized Representative of
UTZ Quality Foods, LLC

AGREED TO:

Date: August 18, 2020


Victoria Jamison