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

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

21 ENVIRONMENTAL HEALTH
22 ADVOCATES, INC.,

23 Plaintiff,

24 v.

25 R.W. GARCIA CO., INC., a Nevada
26 corporation, HARVEST RANCH MARKET, a
27 California corporation, and DOES 1 through
28 100, inclusive,

Defendants.

Case No. HG21085511

[PROPOSED] CONSENT JUDGMENT

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

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Environmental Health Advocates, Inc., (“EHA” or “Plaintiff”) and R.W. Garcia Co., Inc. (“Defendant” or “R.W. Garcia”) with EHA and R.W. Garcia each individually referred to as a “Party” and collectively referred to as the “Parties.”

1.2 Plaintiff

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

1.3 Defendant

R.W. Garcia employs ten or more individuals and is a “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.4 General Allegations

EHA alleges that R.W. Garcia manufactures, imports, sells, and distributes for sale RW Garcia Organic BBQ Corn Chips that contain acrylamide. EHA further alleges that R.W. Garcia does so without providing a sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65, acrylamide is listed as a chemical known to cause cancer, birth defects and other reproductive harm.

1.5 Notices of Violation

On or around October 5, 2020, EHA served R.W. Garcia, Harvest Ranch Market, the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Initial Notice”). The Initial Notice alleged that R.W. Garcia had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to acrylamide contained in RW Garcia Organic BBQ Corn Chips.

On or around January 22, 2021, EHA served R.W. Garcia, Harvest Ranch Market, Dallo & Co., Inc., the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Amended Notice”). The Amended Notice alleged that

1 R.W. Garcia had violated Proposition 65 by failing to sufficiently warn consumers in California
2 of the health hazards associated with exposures to acrylamide contained in RW Garcia Organic
3 BBQ Corn Chips.

4 On or around February 4, 2021, EHA served R.W. Garcia, Harvest Ranch Market,
5 Nectarz, Inc., the California Attorney General, and all other required public enforcement
6 agencies with a 60-Day Notice of Violation of Proposition 65 (“Second Amended Notice”).
7 The Second Amended Notice alleged that R.W. Garcia had violated Proposition 65 by failing
8 to sufficiently warn consumers in California of the health hazards associated with exposures to
9 acrylamide contained in RW Garcia Organic BBQ Corn Chips.

10 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
11 violations alleged in the Initial Notice or Amended Notice or Second Amended Notice
12 (hereinafter, the “Notices”).

13 **1.6 Product Description**

14 The products covered by this Consent Judgment are R.W. Garcia’s corn chips including,
15 but not limited to, RW Garcia Organic BBQ Corn Chips manufactured or processed by R.W.
16 Garcia that allegedly contain acrylamide and are imported, sold, shipped, delivered, or
17 distributed for sale to consumers in California by Releasees (as defined in section 4.1)
18 (“Covered Products”).

19 **1.7 State of the Pleadings**

20 On or around January 11, 2021, EHA filed a Complaint against R.W. Garcia for the
21 alleged violations of Proposition 65 that are the subject of the Notices. (“Complaint”).

22 **1.8 No Admission**

23 R.W. Garcia denies the material factual and legal allegations of the Notices and
24 Complaint and maintains that all of the Covered Products it has manufactured, imported, sold,
25 and/or distributed for sale in California, including Covered Products, have been, and are, in
26 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
27 of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance
28 with this Consent Judgment be construed as an admission of any fact, finding, conclusion of

1 law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect
2 R.W. Garcia's obligations, responsibilities, and duties under this Consent Judgment. This Consent
3 Judgement is the product of negotiation and compromise and is accepted by the Parties solely for
4 purposes of settling, compromising, and resolving issues disputed in this action in an efficient and
5 economic manner.

6 **1.9 Jurisdiction**

7 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
8 Court has jurisdiction over the allegations of violations contained in the Complaint and personal
9 jurisdiction over R.W. Garcia as to the allegations in the Complaint, that venue is proper in the County
10 of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
11 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6 as a full and final
12 resolution of all claims which were or could have been raised in the Complaint based on the facts
13 alleged therein and in the Notice with respect to the Covered Products manufactured, distributed, and/or
14 sold by R.W. Garcia.

15 **1.10 Effective Date and Compliance Date**

16 For purposes of this Consent Judgment, the term "Effective Date" means the date on which the
17 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. The
18 Compliance Date is the date that is sixty (60) days after the Effective Date.

19 **2. INJUNCTIVE RELIEF**

20 **2.1 Reformulation of Covered Products**

21 Except as otherwise provided herein, any Covered Products that are manufactured by R.W.
22 Garcia on and after the Compliance Date that R.W. Garcia sells in California or distributes for sale in
23 California shall not exceed 281 parts per billion ("ppb") for acrylamide by weight, using tests
24 performed by a laboratory accredited by the State of California, a federal agency, or a nationally
25 recognized accrediting organization, using either GC/MS (Gas Chromatograph/Mass Spectrometry) or
26 LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), unless such Covered Products comply with
27 the warning requirements of Section 2.2. As used in this Section 2, "distributed for sale in California"
28

means to directly ship Covered Products into California or to sell Covered Products to a distributor R.W. Garcia knows will sell Covered Products in California.

2.1.1 The average acrylamide concentration shall not exceed 281 ppb by weight. The Average Level is determined by randomly selecting and testing at least 1 sample each from 5 different lots of a particular type of Covered Product (or the maximum number of lots available for testing if less than 5) during a testing period of at least 60 days. The mean and standard deviation shall be calculated using the sampling data. Any data points that are more than one standard deviation above mean shall be discarded once, and the mean and standard deviation recalculated using the remaining data points. The mean determined in accordance with this procedure shall be deemed the "Average Level."

2.2 Clear and Reasonable Warnings

For Covered Products that contain acrylamide in a concentration exceeding the 281 ppb level set forth in Section 2.1 and Section 2.1.1 above, and which are manufactured and packaged for distribution for authorized sale or use in California on or after the Effective Date, R.W. Garcia shall provide one of the following warning statements:

Option 1:

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

Option 2:

WARNING: Cancer and Reproductive Harm –
www.P65Warnings.cs.gov

This warning statement shall be prominently displayed on the Covered Products, on the packing of the Covered Products, or on a placard, shelf tag, 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 Products' label, it must be set off from other surrounding information. The same warning shall be posted on any websites under the exclusive control of R.W. Garcia where Covered Products are sold into California. Alternatively, R.W.

1 Garcia may provide a Proposition 65 warning in any other manner or method approved by statute.

2 **2.3 Sell-Through Period**

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

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Settlement Amount**

10 R.W. Garcia shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of
11 all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes civil
12 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
13 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00)
14 pursuant to Code of Civil Procedure section 1021.5.

15 **3.2 Civil Penalty**

16 The portion of the settlement attributable to civil penalties shall be allocated according to Health
17 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty. Three
18 thousand seven hundred and fifty dollars (\$3,750.00), paid to the California Office of Environmental
19 Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) of the penalty,
20 one thousand two hundred and fifty dollars (\$1,250.00), paid to EHA individually. These payments
21 will be sent to the below addresses within twenty (20) days of the Effective Date.

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

23 Environmental Health Advocates
24 225 Broadway, Suite 1900
25 San Diego, CA 92101

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

27 For United States Postal Service Delivery:

28 Mike Gyurics

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

For Federal Express 2-Day Delivery:

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

R.W. Garcia agrees to provide EHA's counsel with a copy of the check payable to OEHHA, 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:

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

3.3 Attorneys' Fees and Costs

The portion of the settlement attributable to attorneys' fees and costs, forty-five thousand dollars (\$45,000.00), 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 R.W. Garcia's attention, as well as litigating and negotiating a settlement in the public interest.

R.W. Garcia shall provide their payment to EHA's counsel in two payments starting within twenty (20) days of the Effective Date and continuing thereafter for sixteen (16) days. The first installment shall be in the amount of twenty thousand dollars (\$20,000.00), payable to Glick Law Group, PC and twenty thousand dollars (\$20,000.00), payable to Nicholas & Tomasevic, LLP, respectively. The second installment shall be in the amount of two thousand five hundred dollars (\$2,500.00), payable to Glick Law Group, PC and two thousand five

hundred dollars (\$2,500.00), payable to Nicholas & Tomasevic, LLP, respectively. For example, if the Effective Date is June 1st, R.W. Garcia's first payment would be due June 21th, and their second payment would be due July 7th, etc. If the first installment of forty thousand dollars (\$40,000.00) is paid on time, then the second installment of five thousand dollars (\$5,000.00) will be waived by EHA and EHA's counsel. The addresses for these two entities are:

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

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

3.4 Timing

The first installment of the above-mentioned payments will be sent within twenty (20) days of the Effective Date; and the second installment, unless waived pursuant to Section 3.3, will be sent within thirty-six (36) days of the Effective Date. If the deadline is on Sunday or holiday, it will be extended until the next day that is not a holiday.

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 Covered Products manufactured, imported, sold, or distributed by R.W. Garcia prior to the Compliance Date, EHA, acting for the general public, releases R.W. Garcia of any and all liability arising under Proposition 65. This includes R.W. Garcia's owners, parents, subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, insurers, shareholders, successors, assigns, employees, attorneys, and all entities to whom R.W. Garcia directly or indirectly distributes or sells Covered Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees, (collectively, the "Releasees"). Releasees include, but are not limited to, defendants, their parents, and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns that sell R.W. Garcia's

1 Covered Products. Compliance with the terms of this Consent Judgment constitutes
2 compliances with Proposition 65 with respect to the alleged or actual failure to warn about
3 exposures to acrylamide from Covered Products manufactured, imported, sold, or distributed
4 by R.W. Garcia after the Effective Date. This Consent Judgment is a full, final, and binding
5 resolution of all claims under Proposition 65 that were or could have been asserted against R.W.
6 Garcia and/or Releasees for failure to provide warnings required under Proposition 65 for
7 alleged exposure to acrylamide contained in Covered Products.

8 **4.2 EHA's Individual Release of Claims**

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

15 4.2.1 Compliance with Section 2 of this Consent Judgement shall constitute
16 compliance with Proposition 65 by R.W. Garcia and Releasees with respect to any alleged
17 failure to warn about acrylamide in Covered Products manufactured, distributed, or sold by
18 R.W. Garcia after the Effective Date.

19 **4.3 Waiver of Civil Code Section 1542**

20 With respect to the foregoing waivers and releases in this Settlement Agreement, EHA
21 hereby knowingly and specifically waives any and all rights and benefits which it now has, or
22 in the future may have, conferred by virtue of the provisions of Section 1542 of the California
23 Civil Code, which provides as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
25 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN
26 HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
27 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
28 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

1 EHA expressly waives and relinquishes and any and all rights and benefits that it may have
2 under, or that may be conferred upon it by, the provisions of Civil Code section 1542 as well as under
3 any other state or federal statute or common law principle of similar effect, to the fullest extent that it
4 may lawfully waive such rights or benefits pertaining to the released matters.

5 **4.4 R.W. Garcia's Release of EHA**

6 R.W. Garcia on its own behalf, and on behalf of Releasees as well as its past and current agents,
7 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
8 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
9 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
10 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

11 **5. COURT APPROVAL**

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

15 **6. SEVERABILITY**

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

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the state of California as
20 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
21 rendered inapplicable for reasons, including but not limited to changes in the law, then R.W. Garcia
22 shall have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to
23 the extent that, the Covered Products are so affected and R.W. Garcia may provide written notice to
24 EHA of any asserted changes.

25 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
26 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
27 requirements of Proposition 65; or if the Ninth Circuit Court of Appeals upholds the District Court
28 decision to grant a preliminary injunction in *California Chamber of Commerce v. Becerra*, No. 2:19-

1 cv-01019-KJM-JDP (E.D. Cal.); or if Proposition 65 is determined to be preempted by federal
2 law or a burden on First Amendment rights with respect to acrylamide in Covered Products or
3 Covered Products substantially similar to Covered Products, then R.W. Garcia shall be relieved
4 of its obligation to comply with Section 2 herein.

5 **8. NOTICE**

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

10 If to R.W. Garcia:

11 Allonn E. Levy
12 Arthur E. Rothrock
13 Hopkins & Carley
70 South First Street
San Jose, CA 95113

If to EHA:

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

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

16 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

20 **10. POST EXECUTION ACTIVITIES**

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

3 **11. MODIFICATION**

4 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
5 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
6 Party, and the entry of a modified consent judgment thereon by the Court. Any Party seeking to modify
7 this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to
8 filing a motion to modify the Consent Judgment.

9 **12. AUTHORIZATION**

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

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

13 If a dispute arises with respect to either Party's compliance with the terms of this Consent
14 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
15 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
16 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 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
6 or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.


7 **AGREED TO:**

AGREED TO:

8 Date: 08/17/2021

Date: 8/16/21

9 By: 
10 ENVIRONMENTAL HEALTH
11 ADVOCATES, INC.

By: 
R.W. GARCIA CO., INC.

12 **IT IS SO ORDERED.**

13 Date: _____

14 JUDGE OF THE SUPERIOR COURT