

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Chavez Supermarket Holding Corp. (“Chavez”), on the other hand, with EHA and Chavez each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Chavez 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, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that Chavez manufactures, sells, and distributed for sale in California, tostadas that contain acrylamide and that it did so without first providing the health hazard warning required by Proposition 65. Acrylamide is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, Chavez Supermarket Tostadas Caseras (“the Product”), that allegedly contained acrylamide and that was manufactured, sold or distributed for sale in California by Chavez.

1.4 Notice of Violation

On October 20, 2020, EHA served Chavez, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Chavez violated Proposition 65 when they failed to warn consumers in California of the health risks associated with exposures to acrylamide from the Product.

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently

prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Chavez denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Chavez of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Chavez of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Chavez. This Section shall not, however, diminish or otherwise affect Chavez's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean sixty (60) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

Commencing on the Effective Date, and continuing thereafter, Chavez agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California the Product that is sold with a health hazard warning as provided for in Section 2.2 or such other warning approved by statute. Products that were manufactured prior to the Effective Date or supplied to third parties by Chavez prior to the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled. Nothing in this Settlement Agreement shall require Chavez to provide labeling for any other product, even if such products have similar ingredients, components, names, designs, or other similar characteristics.

2.2 General Warning Requirements

Chavez agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be read and

understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California by Chavez that contains the following statements:

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

The warning shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”. The same warning shall be posted on any websites where the Product is sold in California. Alternatively, Chavez may provide a Proposition 65 warning in any other manner or method approved by statute.

2.3 Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress or voters with such requirements or permission, Chavez shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted providing that warnings as to acrylamide in this product are no longer required, a lack of warning by Chavez will not thereafter be a breach of this Agreement.

2.4 Sell-Through Period

Product that is manufactured or sold on or prior to the Effective Date shall be subject to release of liability pursuant to this Settlement Agreement, without regard to when such Product was, or is in the future, distributed or sold to customers. As a result, the obligation of Chavez, or any Releasees, does not apply to Product manufactured on or prior to the Effective Date.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Chavez agrees to pay two thousand dollars (\$2,000.00) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EHA. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, Chavez shall issue two separate checks for the civil penalty payment to (1) “OEHHA” in the amount of one thousand five hundred dollars (\$1,500.00) and (2) Environmental Health Advocates, Inc., in the amount of five hundred dollars (\$500.00).

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following addresses:

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 Federal Express 2-Day Delivery:

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

All penalty payments owed to EHA shall be sent to:

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

3.2 Attorneys' Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within twenty (20) days of the date this Settlement Agreement is executed by the Parties, Chavez agrees to twenty thousand dollars (\$20,000.00) to EHA's counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Chavez, and negotiating a settlement. Chavez's payment shall be delivered in the form of two checks: (1) one check for ten thousand dollars (\$10,000.00) payable to "Glick Law Group"; and (2) one check for ten thousand dollars (\$10,000.00) payable to "Nicholas & Tomasevic LLP."

3.3 Payment Address

All payments required under this Section shall be delivered to:

Noam Glick, PC
Glick Law Group
225 Broadway, Suite 1900
San Diego, CA 92101

Craig Nicholas
Nicholas & Tomasevic, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.4 Tax Documentation

Chavez agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Chavez cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Chavez receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Chavez

This Settlement Agreement is a full, final, and binding resolution of all claims under

Proposition 65 between EHA, on its own behalf and not on behalf of the public, and Chavez of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against Chavez and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by Chavez, and each entity to whom Chavez directly or indirectly distributes or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on the failure to warn about exposures to acrylamide required under Proposition 65 in the Product manufactured, sold or distributed for sale in California by Chavez before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Chavez and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to acrylamide required under Proposition 65 in the Product manufactured, distributed, sold or offered for sale by Chavez, before the Effective Date.

4.2 Chavez’s Release of EHA

Chavez, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken, or statements made by EHA and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Product will develop or be discovered. EHA on behalf of itself only, on the one hand, and Chavez on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Section 4.1 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws 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 for reasons, including but not limited to changes in the law, then Chavez shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected and Chavez may provide written notice to EHA of any asserted changes.

In the event the California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues an interpretive guideline that exempts the Products from meeting the requirements of Proposition 65; or if any court upholds the District Court decision to grant a preliminary injunction in *California Chamber of Commerce v. Becerra*, No. 2:19-cv-01019-KJM-JDP (E.D. Cal.); or if Proposition 65 is determined to be preempted by federal law or a burden on

First Amendment rights with respect to acrylamide in the Products or the Products substantially similar to Products, then R.W. Garcia shall be relieved of its obligation to comply with Section 2 herein.

8. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Chavez:

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

For EHA:

Noam Glick
Glick Law Group, PC
225 Broadway, Suite 1900
San Diego, CA 92101

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

11. FUTURE ACTIONS

In the event that another plaintiff brings a lawsuit against Chavez for violation of Proposition

65 with respect to the Product, and that lawsuit results in a court-approved settlement or Court judgment against Chavez, EHA shall indemnify Chavez for the amount it pays pursuant to the Judgment or court-approved settlement. However, EHA shall have no indemnity obligations for any lawsuit brought: (1) in conjunction with, at the direction of, or with the explicit or tacit encouragement of, Chavez or any of its directors, officers, employees, or agents, current or former; and/or (2) following a failure by Chavez to abide by the injunctive terms set forth in Paragraph 2 herein. In any action to enforce this provision, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

12. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

If a dispute arises with respect to either Party's compliance with the terms of this Settlement Agreement, 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 may be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

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15. ENTIRE AGREEMENT

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

AGREED TO:

AGREED TO:

Date: 9/2/2021

Date: 9/1/21

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
CHAVEZ SUPERMARKET HOLDING
CORP.