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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 organization,  
23  
24 Plaintiff,  
25  
26 v.  
27  
28 LA FINCA TORTILLERIA INC., a California  
corporation, and DOES 1 through 100,  
inclusive,  
Defendants.

Case No.  
**[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") and La Finca Tortilleria Inc. ("Defendants" or "La Finca") with EHA and La Finca each  
5     individually referred to as a "Party" and collectively referred to as the "Parties."

6             **1.2 Plaintiff**

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

10            **1.3 Defendants**

11            La Finca 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 La Finca manufactures, imports, sells, and distributes for sale tostadas that  
16    contain acrylamide. EHA further alleges that La Finca does so without providing a sufficient health  
17    hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65,  
18    acrylamide is listed as a chemical known to cause cancer, birth defects and other reproductive harm.

19            **1.5 Notices of Violation**

20            On October 20, 2020, EHA served La Finca Tortilleria, Inc., Chavez Supermarket Holding  
21    Corp., the California Attorney General, and all other required public enforcement agencies with a 60-  
22    Day Notice of Violation of California Health and Safety Code section 25249.6 *et seq.* ("Notice"). The  
23    Notice alleged that La Finca had violated Proposition 65 by failing to sufficiently warn consumers in  
24    California of the health hazards associated with exposures to acrylamide contained in its La Finca  
25    Tostadas Caseras ("Products").

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           The products covered by this Consent Judgment are La Finca Tostadas Caseras manufactured  
3 or processed by La Finca that allegedly contain acrylamide and are imported, sold, shipped, delivered  
4 or distributed for sale to consumers in California by Releasees (as defined in section 4.1)  
5 (“Products”).

6           **1.7    State of the Pleadings**

7           On January 26, 2021, EHA filed a Complaint against La Finca for the alleged violations of  
8 Health and Safety Code section 25249.6 that are the subject of the Notice (“Complaint”).

9           **1.8    No Admission**

10          La Finca denies the material factual and legal allegations of the Notice and Complaint and  
11 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in  
12 California, including Products, have been, and are, in compliance with all laws. Nothing in this Consent  
13 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or  
14 violation of law, nor shall compliance with this Consent Judgment be construed as an admission of any  
15 fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,  
16 diminish or otherwise affect La Finca’s obligations, responsibilities, and duties under this Consent  
17 Judgment.

18          **1.9    Jurisdiction**

19          For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
20 Court has jurisdiction over La Finca as to the allegations in the Complaint, that venue is proper in the  
21 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this  
22 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

23          **1.10   Effective Date and Compliance Date**

24          For purposes of this Consent Judgment, the term “Effective Date” means the date on which the  
25 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. The  
26 Compliance Date is the date that is twelve months after the Effective Date.

1     **2.     INJUNCTIVE RELIEF: REFORMULATION OF PRODUCTS**

2             **2.1**     Except as otherwise provided herein, any Products that are manufactured by La Finca  
3     on and after the Compliance Date that La Finca sells in California or distributes for sale in California  
4     shall be deemed to comply with Proposition 65 with regard to acrylamide and be exempt from any  
5     Proposition 65 warning requirements for acrylamide if the Products do not exceed 350 parts per billion  
6     by weight (“ppb”) on average for acrylamide, based on averaging of five samples from at least three  
7     different lots, or 490 ppb for a single sample. As used in this Section 2, “distributed for sale in  
8     California” means to directly ship Products into California or to sell Products to a distributor La Finca  
9     knows will sell Products in California.

10            Compliance with the above reformulation level shall be determined by the Parties using LC-  
11    MS/MS (Liquid Chromatograph-Mass Spectrometry), GC/MS (Gas Chromatography/Mass  
12    Spectrometry), and shall be performed by a laboratory accredited by the State of California, a federal  
13    agency, or a nationally recognized organization. On the Compliance Date, and continuing thereafter,  
14    La Finca shall not manufacture Products that will be distributed for sale in California that exceed the  
15    requirements of Section 2.1.

16            Prior to the Compliance Date, La Finca shall arrange for testing under Section 2.2. La Finca  
17    shall provide a written statement of compliance to EHA prior to the Compliance Date, or, if the testing  
18    shows that La Finca has been unable to reach either of the section 2.1 standards by the Compliance  
19    Date, it will notify Plaintiff who will cooperate in good faith to seek a modification to this Consent  
20    Judgment as set forth in Section 11.2. Plaintiff agrees not to request more than \$10,000 in attorneys’  
21    fees, costs, and penalties for any such modification, subject to Court approval.

22            **2.2     Warnings**

23            **2.2.1**   If La Finca provides warnings under Section 2.1, Products may be sold in California  
24    with one of the following warning statements:

25            **Option 1:**

26                            **WARNING:** Consuming this product can expose you to  
27                            chemicals including Acrylamide, which is known to the  
28                            State of California to cause cancer and birth defects or other  
                              reproductive harm. For more information go to  
                              [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).



1           **Option 2:**

2                           **WARNING:** Cancer and Reproductive Harm –  
3                           www.P65Warnings.ca.gov

4           The warning in Option 2 may only be used if the warning appears on the product container or  
5           labeling. The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning  
6           statement shall be prominently displayed on the Products, on the packing of the Products, or on a  
7           placard, shelf tag, or sign provided that the statement is displayed with such conspicuousness, as  
8           compared with other words, statements, or designs as to render it likely to be read and understood by  
9           an ordinary individual prior to sale. If the warning statement is displayed on the Products’ label, it must  
10           be set off from other surrounding information.

11           **2.2.2** The warning requirements set forth herein are imposed pursuant to the terms of this  
12           Agreement and are recognized by the Parties as not being the exclusive manner of providing a warning  
13           for the Covered Products. Warnings may be provided as specified in the Proposition 65 regulations for  
14           food in effect as of the Effective Date (Title 27, California Code of Regulations, section 25601, *et seq.*)  
15           or as such regulations may be amended in the future, or pursuant to a settlement agreement or consent  
16           judgment involving acrylamide. In addition, La Finca may follow the notification procedure set out in  
17           Title 27, California Code of Regulations, section 25600.2 or a similar procedure where La Finca  
18           instructs its distributor or retailer customers to provide warnings for the Covered Products consistent  
19           with Section 2.2. The same warning shall be posted on any websites where the Product is sold in  
20           California.

21           **3.       MONETARY SETTLEMENT TERMS**

22           **3.1     Settlement Amount**

23           La Finca shall pay sixty thousand dollars (\$60,000.00) in settlement and total satisfaction of all  
24           the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil  
25           penalties in the amount of six thousand dollars (\$6,000.00) pursuant to Health and Safety Code section  
26           25249.7(b) and attorney’s fees and costs in the amount of fifty-four thousand dollars (\$54,000.00)  
27           pursuant to Code of Civil Procedure section 1021.5.  
28







1 Proposition 65 with respect to the alleged or actual failure to warn about exposures to acrylamide from  
2 Products manufactured, imported, sold, or distributed by La Finca after the Effective Date. This  
3 Consent Judgment is a full, final and binding resolution of all claims that were or could have been  
4 asserted against La Finca and/or Releasees for failure to provide warnings for alleged exposure to  
5 acrylamide contained in Products.

6 **4.2 EHA's Individual Release of Claims**

7  
8 EHA, in its individual capacity, also provides a release to La Finca and/or Releasees, which  
9 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,  
10 obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands of every  
11 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of  
12 alleged or actual exposures to acrylamide in Products manufactured, imported, sold, or distributed by  
13 La Finca before the Effective Date.

14 **4.3 La Finca's Release of EHA**

15  
16 La Finca on its own behalf, and on behalf of Releasees as well as its past and current agents,  
17 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA  
18 and its attorneys and other representatives, for any and all actions taken or statements made by EHA  
19 and its attorneys and other representatives, whether in the course of investigating claims, otherwise  
20 seeking to enforce Proposition 65 against them, in this matter or with respect to the Products.

21 **5. COURT APPROVAL**

22  
23 This Consent Judgment is not effective until it is approved by the Court and shall be null and  
24 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or  
25 by such additional time as the Parties may agree to in writing.

26 **6. SEVERABILITY**

27  
28 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held  
by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.



1     **7. GOVERNING LAW**

2             The terms of this Consent Judgment shall be governed by the laws of the state of California as  
3 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
4 rendered inapplicable generally or specifically to the Products for any reasons, including but not limited  
5 to changes in the law or regulations, then La Finca may provide written notice to EHA of any asserted  
6 change, and shall have no further injunctive obligations pursuant to this Consent Judgment with respect  
7 to, and to the extent that, the Products are so affected. Any such change shall have no effect on La  
8 Finca's financial obligations as set forth in this Consent Judgment.

9     **8. NOTICE**

10            Unless otherwise specified herein, all correspondence and notice required by this Consent  
11 Judgment shall be in writing and sent by: (1) personal delivery; (ii) first-class, registered, or certified  
12 mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

13     If to La Finca:

14     Andrea Sumits  
15     Environmental General Counsel LLP  
16     2120 University Ave  
17     Berkeley, CA 94704

13     If to EHA:

14     Noam Glick  
15     Glick Law Group, PC  
16     225 Broadway, 19th Floor  
17     San Diego, CA 92101

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

20     **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

24     **10. POST EXECUTION ACTIVITIES**

25            EHA agrees to comply with the reporting form requirements referenced in Health and Safety  
26 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
27 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which  
28 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

1 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this  
2 Section, “best efforts” shall include, at a minimum, supporting the motion for approval, responding to  
3 any objection that any third-party may make, and appearing at the hearing before the Court if so  
4 requested.

5 **11. MODIFICATION**

6 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of  
7 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any  
8 Party, and the entry of a modified consent judgment thereon by the Court. Any such modification shall  
9 have no effect on La Finca’s financial obligations as set forth in this Consent Judgment.

10 **12. AUTHORIZATION**

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

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

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


18 **14. ENTIRE AGREEMENT**


19 This Consent Judgment contains the sole and entire agreement and understanding of the Parties  
20 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,  
21 commitments, and understandings related hereto. No representations, oral or otherwise, express or  
22

23 *[Remainder of page intentionally left blank.]*  
24  
25  
26  
27  
28



1 implied, other than those contained herein have been made by any Party. No other agreements, oral or  
2 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

3 **AGREED TO:**  
4  
5 Date: March 23, 2021.  
6 By:   
7 ENVIRONMENTAL HEALTH  
8 ADVOCATES, INC.

**AGREED TO:**  
Date: 03/24/2021  
By:   
LA FINCA TORTILLERIA, INC.

9  
10  
11 **IT IS SO ORDERED.**

12  
13 Date: \_\_\_\_\_

\_\_\_\_\_  
14 JUDGE OF THE SUPERIOR COURT