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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.,

23 Plaintiff,

24 v.

25 MM FOOD PRODUCTS, INC., a California
26 corporation, BODEGA LATINA
27 CORPORATION, a California Corporation
28 and DOES 1 through 100, inclusive,

Defendants.

Case No. RG21091340

[PROPOSED] CONSENT JUDGMENT

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

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 ("Plaintiff" or "EHA") and Marquez & Marquez Food Products, Inc. ("Defendant" or "M&M Food")
5 with EHA and M&M Food each individually referred to as a "Party" and collectively referred to as the
6 "Parties."

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 M&M Food employs ten or more individuals and is a "person in the course of doing business"
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
14 section 25249.6 *et seq.* ("Proposition 65").

15 **1.4 General Allegations**

16 EHA alleges that M&M Food manufactures, imports, sells, and distributes for sale tostadas that
17 contain acrylamide. EHA further alleges that M&M Food does so without providing a sufficient health
18 hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65,
19 acrylamide is listed as a chemical known to cause cancer, birth defects, and other reproductive harm.
20 M&M Food denies that warnings are required under Proposition 65 for any exposure to acrylamide in
21 Covered Products, and M&M Food maintains that it has complied with all applicable federal and state
22 laws including, but not limited to, Proposition 65.

23 **1.5 Notices of Violation**

24 On October 27, 2020, EHA served M&M Food, Bodega Latina Corporation, the California
25 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of
26 Violation of Proposition 65 ("Notice"). The Notice alleged that M&M Food violated Proposition 65
27 by failing to sufficiently warn consumers in California of the health hazards associated with exposures
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1 to acrylamide contained in its “El Paraiso Tostadas Caseritas.”

2 On July 7, 2021, EHA served M&M Food, Bodega Latina Corporation, the California Attorney
3 General, and all other required public enforcement agencies with a 60-Day Amended Notice of
4 Violation of Proposition 65 (“Amended Notice”). The Amended Notice corrected M&M Food’s name
5 from “MM Food Products, Inc.” to “Marquez & Marquez Food Products, Inc.” and expanded the scope
6 of products covered to all tostadas manufactured by M&M Food including, but not limited to, “El
7 Paraiso Tostadas Caseritas.”

8 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
9 violations alleged in the Notice and Amended Notice (hereinafter, the “Notices”).

10 **1.6 “Covered Products” Description**

11 The products covered by this Consent Judgment are tostadas including, but not limited to, “El
12 Paraiso Tostadas Caseritas” manufactured or processed by M&M Food that allegedly contain
13 acrylamide and are imported, sold, shipped, delivered or distributed for sale to consumers in California
14 by Releasees as defined in section 4.1 (“Covered Products”), whether sold under the brand name M&M
15 Food, or any other brand or private label at all grocery, retail, and other locations and sales channels,
16 including the Internet.

17 **1.7 State of the Pleadings**

18 On March 10, 2021, EHA filed a Complaint against M&M Food (incorrectly named as MM
19 Food Products, Inc.) for the alleged violations of Proposition 65 that are the subject of the Notices
20 (“Complaint”).

21 On July 8, 2021, M&M Food filed an Answer.

22 On July 23, 2021, the Parties filed a stipulation to amend the Complaint to correct Defendant’s
23 name from “MM Food Products, Inc.” to “Marquez & Marquez Food Products, Inc.”

24 On August 3, 2021, Plaintiff filed a Request for Dismissal, with prejudice, as to named Defendant,
25 BODEGA LATINA CORPORATION, a California Corporation, only. Defendant, BODEGA
26 LATINA CORPORATION, a California Corporation, has not appeared in this case.

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1 **1.8 No Admission**

2 M&M Food denies the material factual and legal allegations of the Notices and Complaint and
3 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
4 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing
5 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
6 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
7 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
8 not, however, diminish or otherwise affect M&M Food’s obligations, responsibilities, and duties under
9 this Consent Judgment.

10 **1.9 Jurisdiction**

11 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
12 Court has jurisdiction over M&M Food as to the allegations in the Complaint, that venue is proper in
13 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
14 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

15 **1.10 Effective 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.

18 **2. INJUNCTIVE RELIEF**

19 **2.1 Clear and Reasonable Warnings**

20 For Covered Products that are manufactured and packaged for distribution for authorized sale
21 or use in California on or after the Effective Date, M&M Food shall provide one of the following
22 Proposition 65 warnings:

23 **Option 1:**

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

27 **Option 2:**

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

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1 The word **“WARNING”** shall be displayed in all capital letters and bold print. This warning
2 statement shall be prominently displayed on the packaging of the Covered Products, or on a placard,
3 shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared with
4 other words, statements, or designs as to render it likely to be read and understood by an ordinary
5 individual prior to sale. If the warning statement is displayed on the Covered Products’ label, it must
6 be set off from other surrounding information. The same warning shall be posted on any websites
7 under the exclusive control of M&M Food where Covered Products are sold into California.

8 **2.2 Sell-Through Period**

9 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
10 manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to this
11 Consent Judgment, without regard to when such Covered Products were, or are in the future, distributed
12 or sold to customers. As a result, the obligation of M&M Food, or any Releasees (if applicable), do
13 not apply to these Covered Products manufactured on or prior to the Effective Date.

14 **3. MONETARY SETTLEMENT TERMS**

15 **3.1 Settlement Amount**

16 M&M Food shall pay fifty-five thousand dollars (\$55,000.00) in settlement and total
17 satisfaction of all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This
18 includes civil penalties in the amount of five thousand and five hundred dollars (\$5,500.00) pursuant
19 to Health and Safety Code section 25249.7(b) and attorneys’ fees and costs in the amount of forty-nine
20 thousand and five hundred dollars (\$49,500.00) pursuant to Code of Civil Procedure section 1021.5.

21 **3.2 Civil Penalty**

22 The portion of the settlement attributable to civil penalties shall be allocated according to Health
23 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
24 to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
25 twenty-five percent (25%) of the penalty paid to EHA individually.

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

27 Environmental Health Advocates
28 225 Broadway, Suite 1900
San Diego, CA 92101

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

3 For United States Postal Service Delivery:

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

9 For Federal Express 2-Day Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

15 M&M Food agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
16 simultaneous with its penalty payments to EHA.

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

- 19 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 20 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
- 21 and
- 22 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA
23 95814.

24 3.3 Attorneys' Fees and Costs

25 The portion of the settlement attributable to attorneys' fees and costs (\$49,500) shall be paid to
26 EHA's counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but
27 not limited to investigating potential violations, bringing this matter to M&M Food's attention, as well
28 as litigating and negotiating a settlement in the public interest.

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3.4 Timing

The above-mentioned checks for the civil penalty and attorneys' fees and costs shall be paid in seven (7) payments as follows:

- The first payment of five thousand and five hundred dollars (\$5,500) related to the civil penalty portion of the settlement shall be paid within ten (10) days of the Effective Date.
 - \$1,375 to EHA
 - \$4,125 to OEHHHA
- The second payment of eight thousand and two hundred fifty dollars (\$8,250) related to EHA's attorneys' fees and costs shall be paid within forty (40) days of the Effective Date.
 - \$4,125 to Glick Law Group
 - \$4,125 to Nicholas & Tomasevic
- The third payment of eight thousand and two hundred fifty dollars (\$8,250) related to EHA's attorneys' fees and costs shall be paid within seventy (70) days of the Effective Date.
 - \$4,125 to Glick Law Group
 - \$4,125 to Nicholas & Tomasevic
- The fourth payment of eight thousand and two hundred fifty dollars (\$8,250) related to EHA's attorneys' fees and costs shall be paid within one hundred (100) days of the Effective Date.
 - \$4,125 to Glick Law Group
 - \$4,125 to Nicholas & Tomasevic
- The fifth payment of eight thousand and two hundred fifty dollars (\$8,250) related to EHA's attorneys' fees and costs shall be paid within one hundred and thirty (130) days of the Effective Date.

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- \$4,125 to Glick Law Group
- \$4,125 to Nicholas & Tomasevic
- The sixth payment of eight thousand and two hundred fifty dollars (\$8,250) related to EHA's attorneys' fees and costs shall be paid within one hundred and seventy (170) days of the Effective Date.
 - \$4,125 to Glick Law Group
 - \$4,125 to Nicholas & Tomasevic
- The seventh payment of eight thousand and two hundred fifty dollars (\$8,250) related to EHA's attorneys' fees and costs shall be paid within two hundred (200) day of the Effective Date.
 - \$4,125 to Glick Law Group
 - \$4,125 to Nicholas & Tomasevic

The addresses for EHA's counsel where payment shall be sent is listed below:

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

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 M&M Food prior to the Effective Date, EHA, acting for the general public, releases M&M Food of any and all liability arising under Proposition 65. This includes M&M Food's owners, parents, subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees, attorneys, and

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1 each entity to whom M&M Food directly or indirectly distributes or sells Covered Products, including
2 but not limited to downstream distributors, wholesales, customers, retailers (including Bodega Latina
3 Corporation), franchisees, cooperative members and licensees, (collectively, the "Releasees").
4 Releasees include defendants, their parents, and all subsidiaries and affiliates thereof and their
5 respective employees, agents, and assigns that sell M&M Food's Covered Products. Compliance with
6 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to the
7 alleged or actual failure to warn about exposures to acrylamide from Covered Products manufactured,
8 imported, sold, or distributed by M&M Food after the Effective Date. This Consent Judgment is a full,
9 final and binding resolution of all claims under Proposition 65 that were or could have been asserted
10 against M&M Food and/or Releasees for failure to provide warnings required under Proposition 65 for
11 alleged exposure to acrylamide contained in Covered Products.
12

13 **4.2 EHA's Individual Release of Claims**

14 EHA, in its individual capacity, also provides a release to M&M Food and all Releasees, which
15 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
16 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every
17 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
18 alleged or actual exposures to acrylamide in Covered Products manufactured, imported, sold, or
19 distributed by M&M Food before the Effective Date.
20

21 **4.3 M&M Food's Release of EHA**

22 M&M Food on its own behalf, and on behalf of Releasees as well as its past and current agents,
23 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
24 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
25 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
26 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.
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1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

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

8 **7. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the state of California as
10 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
11 rendered inapplicable for reasons, including but not limited to changes in the law, then M&M Food
12 may provide written notice to EHA of any asserted change, and shall have no further injunctive
13 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
14 Products are so affected.

15 In the event OEHHA adopts a regulation or safe use determination, or issues an interpretive
16 guideline that exempts the Covered Products from meeting the requirements of Proposition 65; or if
17 the Ninth Circuit Court of Appeals upholds the District Court decision to grant a preliminary injunction
18 in *California Chamber of Commerce v. Becerra*, No. 2:19-cv-01019-KJM-JDP (E.D. Cal.); or if
19 Proposition 65 is determined to be preempted by federal law or a burden on First Amendment rights
20 with respect to acrylamide in Covered Products, then M&M Food shall be relieved of its obligation to
21 comply with Section 2 herein.

22 **8. NOTICE**

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

2 Michael I. Schiller
3 The Law Offices of Michael I. Schiller
4 21515 Hawthorne Blvd. #1550
Torrance, CA 90503

If to EHA:

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

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

7 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

11 **10. POST EXECUTION ACTIVITIES**

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

21 **11. MODIFICATION**

22 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
23 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
24 Party, and the entry of a modified consent judgment thereon by the Court.

25 **12. AUTHORIZATION**

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

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

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

6 **14. ENTIRE AGREEMENT**


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

12 **AGREED TO:**

AGREED TO:

13
14 Date: 7/27/2021

Date: 7/26/2021

15 By: 
16 ENVIRONMENTAL HEALTH
17 ADVOCATES, INC.

By: 
MARQUEZ & MARQUEZ FOOD
PRODUCTS, INC.

18
19
20 **IT IS SO ORDERED.**

21 Date: _____

JUDGE OF THE SUPERIOR COURT