

## **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 Lion Foods, LLC. (“Lion Foods”), on the other hand, with EHA and Lion Foods 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. Lion Foods 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 Lion Foods manufactures, sells, and distributes for sale in California, Tostada Caseras that contain acrylamide and that it does 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, Fresco Supermarket Tostada Casera (“the Product”), that contains acrylamide and that is manufactured, sold or distributed for sale in California by Lion Foods.

#### **1.4 Notice of Violation**

On October 27, 2020, EHA served Lion Foods, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Lion Foods and others violated Proposition 65 when they failed to warn its customers and 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**

Lion Foods 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 constitutes or shall be construed as an admission by Lion Foods 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 Lion Foods of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Lion Foods. This Section shall not, however, diminish or otherwise affect Lion Foods'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 ninety (90) days following the execution of this Settlement Agreement by the Parties.

## **2. INJUNCTIVE RELIEF**

### **2.1 Clear and Reasonable Warnings**

For Products that are manufactured and packaged for distribution for authorized sale or use in California on or after the Effective Date, Lion Foods shall provide one of the following Proposition 65 warnings:

- 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](http://www.P65Warnings.ca.gov).
- 2) **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.cs.gov](http://www.P65Warnings.cs.gov)
- 3) Such other WARNING that complies with Proposition 65's clear and reasonable warning regulations, including 27 California Code of Regulations Section 25600 et seq. If Proposition 65 warnings for acrylamide for any reason should no longer be required, Lion Foods shall have no further obligations pursuant to this Settlement.

The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning statement shall be prominently displayed on the packaging of the 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 Products’ label, it must be set off from other surrounding information.

## **2.2 Sell-Through Period**

Notwithstanding anything else in this Settlement, the Products that are manufactured, distributed or sold on or prior to the Effective Date shall be subject to release of liability pursuant to this Settlement, without regard to when such Products were, or are in the future, distributed or sold to customers. As a result, the obligation of Lion Foods, or any Releasees (if applicable), do not apply to Products manufactured on or prior to the Effective Date.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

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, Lion Foods agrees to pay five hundred dollars (\$500.00) 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, Lion Foods shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of three hundred and seventy-five dollars (\$375.00) and (b) Environmental Health Advocates, Inc., in the amount of one hundred and twenty-five dollars (\$125.00).

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 Federal Express Two-Day Delivery:

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

For Federal Express Two-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:

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

### **3.2 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine codified at California Code of Civil Procedure Section 1021.5 and principles of contract law. Under these legal principles, within ten (10) days of the date this Settlement Agreement is executed by the Parties, Lion Foods agrees to pay seven thousand dollars (\$7,000) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Lion Foods' negotiating a settlement. Lion Foods shall provide its payment to EHA's counsel in two checks, divided equally, payable to Glick Law Group, PC (\$3,500) and Nicholas & Tomasevic (\$3,500) respectively.

### **3.3 Payment Address**

All payments required under this Section shall be delivered to:

Noam Glick  
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**

Lion Foods 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 Lion Foods cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Lion Foods receives the requisite W-9 forms from EHA's counsel.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 EHA's Release of Lion Foods of Proposition 65 Claims**

This Settlement Agreement is a full, final, and binding resolution between EHA, on its own behalf and not on behalf of the public, and Lion Foods 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 Lion Foods 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 Lion Foods, and each entity to whom Lion Foods 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"), for any violation arising under Proposition 65 pertaining to the failure to warn about exposures to Acrylamide in the Product manufactured, sold or distributed for sale in California by Lion Foods 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 Lion Foods 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 in the Product manufactured, distributed, sold or offered for sale by Lion Foods, before the Effective Date.

#### **4.2 Lion Foods's Release of EHA**

Lion Foods, 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 one hand, and Lion Foods 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 Sections 4.1 and 4.2 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.**

#### **5. 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.

#### **6. 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.

**7. 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 Lion Foods:

Lion Foods, LLC  
C/O Alexander Chan (Registered Agent)  
1838 N. Milpitas Blvd.  
Milpitas, CA 95035

For EHA:

Noam Glick  
Glick Law Group  
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.

**8. 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.

**9. 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).

**10. MODIFICATION**

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

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11. **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.

**AGREED TO:**

**AGREED TO:**

Date: 5/17/2021

Date: 5/5/21

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
LION FOODS, LLC.