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15 Attorneys for Plaintiff
16 Environmental Health Advocates, Inc.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **IN AND FOR THE COUNTY OF ALAMEDA**

19 ENVIRONMENTAL HEALTH
20 ADVOCATES, INC.,

21 Plaintiff,

22 v.

23 ANDEAN GOURMET, LLC, a Florida limited
24 liability company, MARSHALL'S OF MA,
25 INC., a Massachusetts corporation, and DOES
26 1 through 100, inclusive,

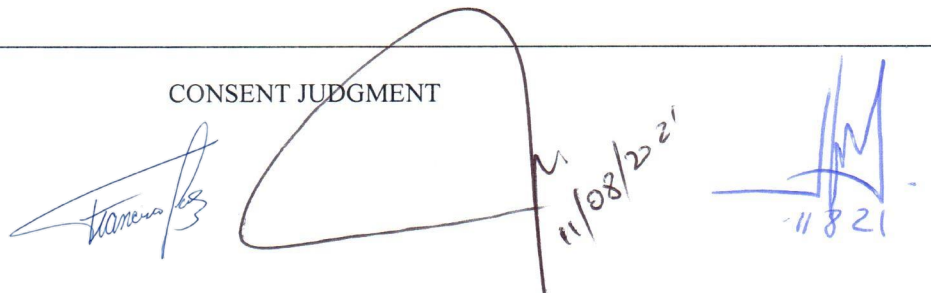
27 Defendants.

Case No. RG21089602

[PROPOSED] CONSENT JUDGMENT

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

28
CONSENT JUDGMENT

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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 ("EHA" or "Plaintiff"), on the one hand, and Andean Gourmet, LLC ("Defendant" or "Andean
5 Gourmet"), on the other hand, with EHA and Andean Gourmet each individually referred to as a
6 "Party" and collectively referred to as the "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
10 by reducing or eliminating hazardous substances contained in consumer products.

11 **1.3 Defendant**

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

15 **1.4 General Allegations**


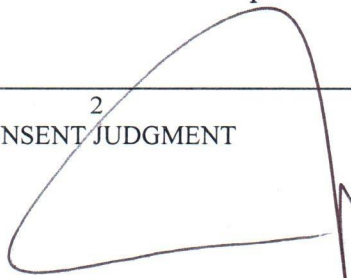
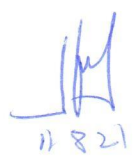
16 EHA alleges that Andean Gourmet manufactures, imports, sells, and distributes for sale
17 Shegraa Lime Plantain Chips that contain acrylamide. EHA further alleges that Andean Gourmet does
18 so without providing a sufficient health hazard warning as required by Proposition 65 and related
19 regulations pursuant to Proposition 65, acrylamide is listed as a chemical known to cause cancer, birth
20 defects and other reproductive harm.

21 **1.5 Notice of Violation**

22 On or around October 27, 2020, EHA served Andean Gourmet, Marshall's of MA, Inc., the
23 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice
24 of Violation of Proposition 65 ("Notice"). The Notice alleged that Andean Gourmet had violated
25 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated
26 with exposures to acrylamide contained in Shegraa Lime Plantain Chips.

27 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
28 violations alleged in the Notice.

2
CONSENT JUDGMENT

  11/08/2021  11 8 21

1 **1.6 Product Description**

2 The products covered by this Consent Judgment are Shegraa Lime Plantain Chips
3 manufactured or processed by Andean Gourmet that allegedly contain acrylamide and are imported,
4 sold, shipped, delivered, or distributed for sale to consumers in California by Releasees (as defined in
5 section 4.1) (“Covered Products”).

6 **1.7 State of the Pleadings**

7 On or around February 24, 2021, EHA filed a Complaint against Andean Gourmet for the
8 alleged violations of Proposition 65 that are the subject of the Notice (“Complaint”).

9 **1.8 No Admission**

10 Andean Gourmet denies the material factual and legal allegations of the Notice and Complaint
11 and maintains that all of the Covered Products it has manufactured, imported, sold, and/or distributed
12 for sale in California, including Covered Products, have been, and are, in compliance with all laws.
13 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion
14 of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed
15 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. Andean
16 Gourmet maintains that the issue of enforceability regarding acrylamide exposure under Proposition
17 65 remains in dispute as the scientific literature does not support a conclusion of acrylamide being an
18 established and confirmed human carcinogen. This Section shall not, however, diminish or otherwise
19 affect Andean Gourmet’s obligations, responsibilities, and duties under this Consent Judgment.

20 **1.9 Jurisdiction**

21 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
22 Court has jurisdiction over Andean Gourmet as to the allegations in the Complaint, that venue is
23 proper in the County of Alameda, and that the Court has jurisdiction to enter and enforce the
24 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section
25 664.6.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
28 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Clear and Reasonable Warnings**

3 For Covered Products that are manufactured and packaged for distribution for authorized sale
4 or use in California on or after the Effective Date, Andean Gourmet shall provide one of the following
5 warning statements.

6 **Option 1:**

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

10 **Option 2:**

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

12 This warning statement shall be prominently displayed on the Covered Products, on the
13 packaging of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is
14 displayed with such conspicuousness, as compared with other words, statements, or designs as to
15 render it likely to be read and understood by an ordinary individual prior to sale. If the warning
16 statement is displayed on the Covered Products' packaging, it must be in a type size no smaller than
17 the largest type size used for other consumer information on the product. In no case shall a warning
18 statement displayed on the Covered Products' packaging appear in a type size smaller than 6-point
19 type. The same warning shall be posted on any websites under the exclusive control of Andean
20 Gourmet where Covered Products are sold into California.

21 **2.2 Sell-Through Period**

22 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
23 manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to this
24 Consent Judgment, without regard to when such Covered Products were, or are in the future,
25 distributed or sold to customers. As a result, the obligation of Andean Gourmet, or any Releasees (if
26 applicable), do not apply to these Covered Products manufactured on or prior to the Effective Date.

27 ///

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Settlement Amount**

3 Andean Gourmet shall pay fifty thousand dollars (\$50,000.00) in settlement and total
4 satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This
5 includes civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and
6 Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand
7 dollars (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5.

8 **3.2 Civil Penalty**

9 The portion of the settlement attributable to civil penalties shall be allocated according to
10 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
11 penalty, three thousand seven hundred and fifty dollars (\$3,750.00), paid to the California Office of
12 Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%)
13 of the penalty, one thousand two hundred and fifty dollars (\$1,250.00), paid to EHA individually.
14 These payments will be sent to the below addresses within sixty (60) days of the Effective Date.

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

16 Environmental Health Advocates
17 225 Broadway, Suite 1900
18 San Diego, CA 92101

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

21 For United States Postal Service Delivery:

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

27 For Federal Express 2-Day Delivery:

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

1 Andean Gourmet agrees to provide EHA's counsel with a copy of the check payable to
2 OEHHA, simultaneous with its penalty payments to EHA.

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

- 5 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 6 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section
7 3.2(a)(i); and
- 8 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA
9 95814.

10 **3.3 Attorneys' Fees and Costs**

11 The portion of the settlement attributable to attorneys' fees and costs, forty-five thousand
12 dollars (\$45,000.00), shall be paid to Glick Law Group, P.C. and Nicholas & Tomasevic, LLP
13 (collectively, "EHA's Counsel"), who are entitled to attorneys' fees and costs incurred by it in this
14 action, including but not limited to investigating potential violations, bringing this matter to Andean
15 Gourmet's attention, as well as litigating and negotiating a settlement in the public interest.

16 Andean Gourmet shall provide their payment to EHA's counsel in a total of two monthly
17 installments starting on or before fourteen (14) days from the Effective Date and the following month.
18 Each monthly installment in the amount of twenty-two thousand five hundred dollars (\$22,500) shall
19 be divided equally in two amounts, with eleven thousand two hundred fifty (\$11,250.00) payable to
20 Glick Law Group, PC and eleven thousand two hundred fifty (\$11,250.00) payable to Nicholas &
21 Tomasevic, LLP, respectively. The addresses for these two entities are:

22
23 Noam Glick
24 Glick Law Group
25 225 Broadway, 19th Floor
26 San Diego, CA 92101

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

CONSENT JUDGMENT



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1 If Andean Gourmet wishes to pay by wire transfer, it shall request the wire transfer
2 instructions at least 48 hours prior to the deadline for payment, and EHA and the law firm
3 payees shall provide these instructions at least 24 hours prior to the deadline for payment.

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 EHA's Public Release of Proposition 65 Claims**

6 Plaintiff acting on its own behalf and in the public interest releases Andean Gourmet and its
7 parents, subsidiaries, affiliated entities under common ownership, its directors, officers, principals,
8 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns
9 ("Defendant Entities"), each entity to whom Defendant directly or indirectly distributes, ships, or
10 sells the Covered Products including but not limited to downstream distributors, wholesalers,
11 customers, and retailers (including but not limited to Marshall's of MA, Inc.), franchisees,
12 franchisors, cooperative members, suppliers, licensees, and licensors, and all of the foregoing
13 entities' owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants,
14 representatives, predecessors, successors, and assigns (collectively referred to as the "Releasees")
15 from all claims for violations of Proposition 65 up through the Effective Date based on exposure
16 to acrylamide from Covered Products as set forth in the Notice. Compliance with the terms of this
17 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
18 acrylamide from Covered Products as set forth in the Notice.

19 **4.2 EHA's Individual Release of Claims**

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

26 **4.3 Andean Gourmet's Release of EHA**

27 Andean Gourmet on its own behalf, and on behalf of Releasees as well as its past and current
28 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims

1 against EHA and its attorneys and other representatives, for any and all actions taken or statements
2 made by EHA and its attorneys and other representatives, whether in the course of investigating
3 claims, otherwise seeking to enforce Proposition 65 against them, in this matter or with respect to the
4 Covered Products.

5 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

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

12 **7. GOVERNING LAW**

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

19 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
20 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
21 requirements of Proposition 65; or if acrylamide cases are permanently enjoined by a court of
22 competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden
23 on First Amendment rights with respect to acrylamide in Covered Products or Covered Products
24 substantially similar to Covered Products, then Andean Gourmet shall be relieved of its obligation to
25 comply with Section 2 herein. In the event the California Office of Health Hazard Assessment adopts
26 a regulation setting a reformulation standard for a category of food products that could include Covered
27 Products, or a Consent Judgment is entered in a matter sets a reformulation standard for a category of
28 food products that could include Covered Products, then Andean Gourmet complies with this Consent

Judgment if it complies with the reformulation standard in either the OEHHA regulation or other Consent Judgment.

8. ENFORCEMENT

In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

9. NOTICE

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

If to Andean Gourmet:

Ryan Landis
CMBG3 Law, LLC
100 Spectrum Center Drive, Suite 820
Irvine, CA 92618

If to EHA:

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

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

10. COUNTERPARTS; DIGITAL SIGNATURES

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

11. POST EXECUTION ACTIVITIES

EHA agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which 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 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for

CONSENT JUDGMENT

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approval, responding to any objection that any third-party may make, and appearing at the hearing before the Court if so requested.

12. MODIFICATION

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

13. AUTHORIZATION

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

14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES


If a dispute arises with respect to either Party's compliance with the terms of this Consent Judgment entered by the Court, 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 or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

15. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter herein, and any 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:

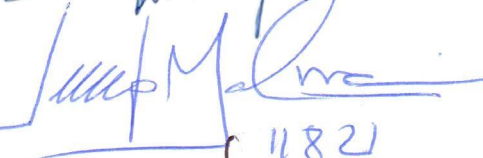
Date: 11/15/2021

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:

Date: 11/12/2021

By:  Francisco Paez
ANDEAN COUTURE, LLC


11821

08/11/2021

1 **IT IS SO ORDERED.**

2 Date: _____

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4 JUDGE OF THE SUPERIOR COURT

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