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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., a California corporation,  
21  
22 Plaintiff,  
23  
24 v.  
25  
26 CORPORACIO'N DINANT, S.A. de C.V., a  
27 Honduran corporation, MI RANCHO  
28 SUPERMARKET (SAN JOSE), INC., a  
California corporation, MEXILINK  
INCOPORATED, a Texas corporation, and  
DOES 1 through 100, inclusive,  
Defendants.

Case No. RG21088648  
**[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” or “Plaintiff”) and Mexilink Incorporated (“Defendant” or “Mexilink”) with EHA and  
5 Mexilink each 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 Defendant**

11 Mexilink 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 Mexilink imports, sells, and distributes for sale Zambos Chile Limon Flavored  
16 Plantain Chips that contain acrylamide. EHA further alleges that Mexilink does so without providing  
17 a sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant to  
18 Proposition 65, acrylamide is listed as a chemical known to cause cancer, birth defects and other  
19 reproductive harm.

20 **1.5 Notices of Violation**

21 On or around November 24, 2020, EHA served Mexilink, Corporación Dinant, S.A. de C.V.,  
22 Mi Rancho Supermarket (San Jose), Inc., the California Attorney General, and all other required public  
23 enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice  
24 alleged that Mexilink had violated Proposition 65 by failing to sufficiently warn consumers in  
25 California of the health hazards associated with exposures to acrylamide contained in Zambos Chile  
26 Limon Flavored Plantain Chips.

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





1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of the Covered Products**

3 Except as otherwise provided herein, Mexilink shall enter into an agreement with the  
4 manufacturer of the Covered Products providing that any Covered Products that Mexilink sells in  
5 California or distributes for sale in California after the Effective Date shall not exceed 380 parts per  
6 billion (“ppb”) for acrylamide, using tests performed by a laboratory accredited by the State of  
7 California, a federal agency, or a nationally recognized accrediting organization, using LC-MS/MS  
8 (Liquid Chromatograph-Mass Spectrometry), unless such Covered Products comply with the warning  
9 requirements of Section 2.2. If Mexilink cannot reach 380 ppb or less by the Effective Date, it shall be  
10 entitled to reformulate to the lowest level currently feasible as defined in Proposition 65 at 27 CCR  
11 § 25505(a). As used in this Section 2, to “distribute for sale in California” means to directly ship  
12 Covered Products into California or to sell Covered Products to a distributor or any other entity that  
13 Mexilink knows will sell Covered Products in California.

14 **2.2 Clear and Reasonable Warnings**

15 For Covered Products that do not meet the requirements set forth in section 2.1 above, and  
16 which are manufactured and packaged for distribution for authorized sale or use in California after the  
17 Effective Date, Mexilink shall enter into an agreement with the manufacturer of the Covered Products  
18 providing that the manufacturer will provide one of the following warning statements.

19 **Option 1:**

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

23 **Option 2:**

24 **WARNING:** Cancer and Reproductive Harm –  
[www.P65Warnings.cs.gov](http://www.P65Warnings.cs.gov)

25 This warning statement shall be prominently displayed on the Covered Products or on the  
26 packing of the Covered Products, provided that the statement is displayed with such conspicuousness,  
27 as compared with other words, statements, or designs as to render it likely to be read and understood  
28 by an ordinary individual prior to sale. If the warning statement is displayed on the Covered Products’

1 packaging, it must be in a type size no smaller than the largest type size used for other consumer  
2 information on the product. In no case shall a warning statement displayed on the Covered Products'  
3 packaging appear in a type size smaller than 6-point type. The same warning shall be posted on any  
4 websites under the exclusive control of Mexilink where Covered Products are sold into California.  
5 Mexilink shall instruct any third-party website to which it sells its Covered Products to include the  
6 same warning as a condition of selling the Covered Products.

### 7 **2.3 Sell-Through Period**

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

## 13 **3. MONETARY SETTLEMENT TERMS**

### 14 **3.1 Settlement Amount**

15 Mexilink shall pay seventy-five thousand dollars (\$75,000.00) in settlement and total  
16 satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This  
17 includes civil penalties in the amount of seven thousand five hundred dollars (\$7,500.00) pursuant to  
18 Health and Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of sixty-seven  
19 thousand five hundred dollars (\$67,500.00) pursuant to Code of Civil Procedure section 1021.5.

### 20 **3.2 Civil Penalty**

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

25 All payments owed to OEHHA (EIN: 68-0284486) shall be paid directly to OEHHA (Memo  
26 Line "Prop 65 Penalties") by wire transfer or other appropriate means at the following addresses:

27 For United States Postal Service Delivery:

28 Mike Gyurics



1 Fiscal Operations Branch Chief  
2 Office of Environmental Health Hazard Assessment  
3 P.O. Box 4010  
4 Sacramento, CA 95812-4010

5 For Federal Express 2-Day Delivery:

6 Mike Gyurics  
7 Fiscal Operations Branch Chief  
8 Office of Environmental Health Hazard Assessment  
9 1001 I Street  
10 Sacramento, CA 95814

11 Mexilink agrees to provide EHA's counsel with a copy of the payment to OEHHA,  
12 simultaneous with its penalty payments to EHA.

13 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.

14 Relevant information is set out below:

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

18 **3.3 Attorney's Fees and Costs**

19 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's  
20 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not  
21 limited to investigating potential violations, bringing this matter to Mexilink's attention, as well as  
22 litigating and negotiating a settlement in the public interest.

23 Mexilink shall provide their payment to EHA's counsel in two wire transfers, divided equally,  
24 payable to Glick Law Group, PC thirty-three thousand seven hundred and fifty dollars (\$33,750.00)  
25 and Nicholas & Tomasevic, LLP thirty-three thousand seven hundred and fifty dollars (\$33,750.00)  
26 respectively. The addresses for these two entities are:

27 Noam Glick  
28 Glick Law Group  
225 Broadway, Suite 2100  
San Diego, CA 92101

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

1           **3.4    Timing**

2           The above-mentioned payments will be issued within fourteen (14) days of the Effective Date.

3    **4.    CLAIMS COVERED AND RELEASED**

4           **4.1    EHA's Public Release of Proposition 65 Claims**

5           Plaintiff acting on its own behalf and in the public interest releases Mexilink and its parents,  
6 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,  
7 employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant  
8 Entities"), each entity to or for whom Defendant directly or indirectly distributes, ships, or sells the  
9 Covered Products including but not limited to downstream distributors, wholesalers, customers, and  
10 retailers, franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, upstream  
11 vendors and suppliers (but only as to Product directly or indirectly distributed, shipped, or sold by  
12 Defendant), and all of the foregoing entities' owners, directors, officers, agents, principals, employees,  
13 attorneys, insurers, accountants, representatives, predecessors, successors, and assigns (collectively  
14 referred to as the "Releasees") from all claims for violations of Proposition 65 up through the Effective  
15 Date based on exposure to acrylamide from Covered Products as set forth in the Notice(s). Compliance  
16 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to  
17 exposures to acrylamide from Covered Products as set forth in the Notice(s). This release does not  
18 extend to any third-party retailers selling the product on a website who, after receiving instruction from  
19 Mexilink to include a warning as set forth above in section 2.2, do not include such a warning.

20           **4.2    EHA's Individual Release of Claims**

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

27           **4.3    Mexilink's Release of EHA**

28           Mexilink on its own behalf, and on behalf of Releasees as well as its past and current agents,

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1 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA  
2 and its attorneys and other representatives, for any and all actions taken or statements made by EHA  
3 and its attorneys and other representatives, whether in the course of investigating claims, otherwise  
4 seeking to enforce Proposition 65 against them, in this matter or with respect to the 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  
15 rendered inapplicable for reasons, including but not limited to changes in the law, then Mexilink 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 Mexilink shall be relieved of its obligation to comply  
25 with Section 2 herein.

26 **8. ENFORCEMENT**

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



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2 **9. NOTICE**

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

6 **If to Mexilink:**

7 August Horvath  
8 Foley Hoag LLP  
9 1301 Avenue of the Americas, 25th Floor  
New York, NY 10019

**If to EHA:**

Noam Glick  
Glick Law Group  
225 Broadway, Suite 2100  
San Diego, CA 92101

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

12 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

16 **11. POST EXECUTION ACTIVITIES**

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

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1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

8 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

13 **15. ENTIRE AGREEMENT**

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

19  
20 **AGREED TO:**

**AGREED TO:**

21 Date: 03/09/2022

Date: 03/15/2022

22  
23 By:  \_\_\_\_\_

By:  \_\_\_\_\_

24 ENVIRONMENTAL HEALTH  
25 ADVOCATES, INC.

MEXILINK INCORPORATED

26  
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28 **IT IS SO ORDERED.**

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Date: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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