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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 LA FORTALEZA, INC., a California  
26 corporation, and DOES 1 through 100,  
27 inclusive,

28 Defendants.

Case No. HG21091502

**[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 (Plaintiff or “EHA”) and La Fortaleza, Inc. (“Defendant” or “La Fortaleza”) with EHA and La  
5 Fortaleza 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  
9 by reducing or eliminating hazardous substances contained in consumer covered Products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 EHA alleges that La Fortaleza manufactures, imports, sells, and distributes for sale tortilla  
16 chips that contain acrylamide. EHA further alleges that La Fortaleza does so without providing a  
17 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. La Fortaleza denies that warnings are required under Proposition 65 for any  
20 exposure to acrylamide in Covered Products, and La Fortaleza maintains that it has complied with all  
21 applicable federal and state laws including, but not limited to, Proposition 65.

22  
23 **1.5 Notices of Violation**

24 On December 11, 2020, EHA served La Fortaleza, Inc., The Save Mart Companies, Inc., the  
25 California Attorney General, and all other required public enforcement agencies with a 60-Day  
26 Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that La Fortaleza had violated  
27 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards  
28 associated with exposures to acrylamide contained in its La Fortaleza Stone Ground Tortilla Chips

1 Restaurant Style.

2 On March 9, 2021, EHA served La Fortaleza, Inc., Save Mart Supermarkets, the California  
3 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of  
4 Violation of California Health and Safety Code section 25249.6 *et seq.* (“Amended Notice”). The  
5 Amended Notice corrected the distributor to Save Mart Supermarkets.

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

8 **1.6 “Covered Products” Description**

9 The products covered by this Consent Judgment are all corn-based tortilla chips including but  
10 not limited to La Fortaleza Stone Ground Tortilla Chips Restaurant Style manufactured or processed  
11 by La Fortaleza that allegedly contain acrylamide and are imported, sold, shipped, delivered or  
12 distributed for sale to consumers in California by Releasees (as defined in section 4.1) (“Covered  
13 Products”).

14 **1.7 State of the Pleadings**

15 On or around March 10, 2021, EHA filed a Complaint against La Fortaleza for the alleged  
16 violations of Health and Safety Code section 25249.6 that are the subject of the Notices  
17 (“Complaint”).

18 **1.8 No Admission**

19 La Fortaleza denies the material factual and legal allegations of the Notices and Complaint  
20 and maintains that all of the covered Products it has manufactured, imported, sold, and/or distributed  
21 for sale in California, including the Covered Products, have been, and are, in compliance with all  
22 laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,  
23 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
24 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.  
25 This Section shall not, however, diminish or otherwise affect La Fortaleza’s obligations,  
26 responsibilities, and duties under this Consent Judgment.

1           **1.9     Jurisdiction**

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

6           **1.10     Effective Date and Compliance Date**

7           For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
8 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. The  
9 Compliance Date is the date that is six months (180 days) days after the Effective Date.

10       **2.     INJUNCTIVE RELIEF: REFORMULATION OF COVERED PRODUCTS**

11       **2.1**     Except as otherwise provided herein, any Covered Products that are manufactured by  
12 La Fortaleza on and after the Compliance Date that La Fortaleza sells in California or distributes for  
13 sale in California shall not exceed 281 parts per billion (“ppb”) for acrylamide, using tests performed  
14 by a laboratory accredited by the State of California, a federal agency, or a nationally recognized  
15 accrediting organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), unless such  
16 Covered Products comply with the warning requirements of Section 2.2. As used in this Section 2,  
17 “distributed for sale in California” means to directly ship Covered Products into California or to sell  
18 Covered Products to a distributor La Fortaleza know will sell Covered Products in California.

19       **2.2     Warnings**

20       If La Fortaleza provides warnings under Section 2.1, Covered Products may be sold in  
21 California with one of the following warning statements:

22       **Option 1:**

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

26       **Option 2:**

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

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

### 8 **2.3 Sell-Through Period**

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

## 15 **3. MONETARY SETTLEMENT TERMS**

### 16 **3.1 Settlement Amount**

17 La Fortaleza shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction  
18 of all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes  
19 civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code  
20 section 25249.7(b) and attorney’s fees and costs in the amount of forty-five thousand dollars  
21 (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5. La Fortaleza's obligation to pay is  
22 contingent on the court's approval of this Consent Judgment.

### 23 **3.2 Civil Penalty**

24 The portion of the settlement attributable to civil penalties shall be allocated according to  
25 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the  
26 penalty, three thousand seven hundred and fifty dollars (\$3,750.00), paid to the California Office of  
27 Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%)  
28

1 of the penalty, one thousand two hundred and fifty dollars (\$1,250.00), paid to EHA individually.  
2 These payments will be sent to the below addresses within thirty (30) days of the Effective Date.

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

4 Environmental Health Advocates  
5 225 Broadway, Suite 1900  
6 San Diego, CA 92101

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

8 For United States Postal Service Delivery:

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

14 For Federal Express 2-Day Delivery:

15 Mike Gyurics  
16 Fiscal Operations Branch Chief  
17 Office of Environmental Health Hazard Assessment  
18 1001 I Street  
19 Sacramento, CA 95814

20 La Fortaleza agrees to provide EHA's counsel with a copy of the check payable to OEHHA,  
21 simultaneous with its penalty payments to EHA.

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

- 24 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 25 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
- 26 and
- 27 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA  
28 95814.

### 29 **3.3 Attorneys' Fees and Costs**

30 The portion of the settlement attributable to attorneys' fees and costs, forty-five thousand  
31 dollars (\$45,000.00), shall be paid to EHA's counsel, who are entitled to attorney's fees and costs

1 incurred by it in this action, including but not limited to investigating potential violations, bringing  
2 this matter to La Fortaleza's attention, as well as litigating and negotiating a settlement in the public  
3 interest.

4 La Fortaleza shall provide their payment to EHA's counsel in two installments starting within  
5 thirty (30) days of the Effective Date and continuing thereafter for sixteen (16) days. The first  
6 installment shall be in the amount of twenty thousand dollars (\$20,000.00), payable to Glick Law  
7 Group, PC and twenty thousand dollars (\$20,000.00), payable to Nicholas & Tomasevic, LLP,  
8 respectively. The second installment shall be in the amount of two thousand five hundred dollars  
9 (\$2,500.00), payable to Glick Law Group, PC and two thousand five hundred dollars (\$2,500.00),  
10 payable to Nicholas & Tomasevic, LLP, respectively. For example, if the Effective Date is October 1,  
11 2021, La Fortaleza's first installment would be due October 15, 2021 and their second installment  
12 would be due November 1, 2021. If the first installment of forty thousand dollars (\$40,000.00) is paid  
13 on time, then the second installment of five thousand dollars (\$5,000.00) will be waived by EHA and  
14 EHA's counsel. The addresses for EHA's counsel where payment shall be sent is listed below:

15 Noam Glick  
16 Glick Law Group  
17 225 Broadway, 19<sup>th</sup> Floor  
18 San Diego, CA 92101

19 Craig Nicholas  
20 Nicholas & Tomasevic, LLP  
21 225 Broadway, 19th Floor  
22 San Diego, CA 92101

### 23 **3.4 Timing**

24 The first installment of the above-mentioned payments will be sent within thirty (30) days of  
25 the Effective Date; and the second installment, unless waived pursuant to Section 3.3, will be sent  
26 within forty five (45) days of the Effective Date. If the deadline is on Sunday or holiday, it will be  
27 extended until the next day that is not a holiday.

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

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

1 For any claim or violation arising under Proposition 65 alleging a failure to warn about  
2 exposures to acrylamide from Covered Products manufactured, imported, sold, or distributed by La  
3 Fortaleza prior to the Compliance Date, EHA, acting for the general public, releases La Fortaleza of  
4 any and all liability arising under Proposition 65. This includes La Fortaleza's owners, parents,  
5 subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees,  
6 attorneys, and each entity to whom La Fortaleza directly or indirectly distributes or sells Covered  
7 Products, including but not limited to downstream distributors, wholesales, customers, retailers,  
8 (including Save Mart Supermarkets), franchisees, cooperative members and licensees, (collectively,  
9 the "Releasees"). Releasees include defendants, their parents, and all subsidiaries and affiliates  
10 thereof and their respective employees, agents, and assigns that sell La Fortaleza's Covered Products.  
11 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
12 with respect to the alleged or actual failure to warn about exposures to acrylamide from Covered  
13 Products manufactured, imported, sold, or distributed by La Fortaleza after the Compliance Date.  
14 This Consent Judgment is a full, final and binding resolution of all claims under Proposition 65 that  
15 were or could have been asserted against La Fortaleza and/or Releasees for failure to provide  
16 warnings required under Proposition 65 for alleged exposure to acrylamide contained in Covered  
17 Products.  
18  
19

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

21 EHA, in its individual capacity, and on behalf of its past and current agents, representatives,  
22 attorneys, successors, and assignees, also provides a release to La Fortaleza and/or Releasees, which  
23 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,  
24 obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands of  
25 every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out  
26 of alleged or actual exposures to acrylamide in Covered Products manufactured, imported, sold, or  
27 distributed by La Fortaleza before the Effective Date.  
28



1                   **4.3     La Fortaleza’s Release of EHA**

2                   La Fortaleza on its own behalf, and on behalf of Releasees as well as its past and current  
3 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against  
4 EHA and its attorneys and other representatives, for any and all actions taken or statements made by  
5 EHA and its attorneys and other representatives, whether in the course of investigating claims,  
6 otherwise seeking to enforce Proposition 65 against them, in this matter or with respect to the  
7 Covered Products.

8                   **4.4     Mutual Release of Known and Unknown Claims**

9                   The Parties certify that they have read the following provision of California Civil Code  
10 Section 1542:  
11

12                               **A general release does not extend to claims that the creditor or**  
13                               **releasing party does not known or suspect to exist in his or her favor**  
14                               **at the time of executing the release and that, if known by him or her,**  
15                               **would have materially affected his or her settlement with the debtor**  
16                               **or released party.**  
17

18                   The Parties expressly waive and relinquish all rights and benefits which they may have under  
19 Section 1542 of the Civil Code to the full extent such provisions may lawfully be waived. Each Party  
20 hereto acknowledges that they may hereafter discover facts different from or in addition to those  
21 which they now know or believe to be true with respect to the claims, demands, debts, liabilities,  
22 accounts, obligations, and cause of action of every kind so released, and each agrees that the release  
23 so given shall be and remain in effect as full and complete release of notwithstanding the discovery of  
24 any such new, different or additional facts.  
25  
26  
27  
28

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,  
4 or 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  
7 held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely  
8 affected.  
9

10       **7. GOVERNING LAW**

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

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

24       **8. NOTICE**

25           Unless otherwise specified herein, all correspondence and notice required by this Consent  
26 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified  
27 mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:  
28

1 If to La Fortaleza:

If to EHA:

2 Matthew Agren  
3 Agren Law Firm, PC  
4 2600 Michelson, Suite 770  
Irvine, CA 92612

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  
6 which 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  
16 mutually employ their best efforts, including those of their counsel, to support the entry of this  
17 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For  
18 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for  
19 approval, responding to any objection that any third-party may make, and appearing at the hearing  
20 before the Court if so requested.

21 **11. MODIFICATION**

22 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry  
23 of 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.  
28

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  
8 Parties 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.

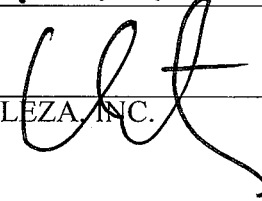
12 **AGREED TO:**

13  
14 Date: 8/19/2021

15 By:   
16 ENVIRONMENTAL HEALTH  
17 ADVOCATES, INC.

**AGREED TO:**

14 Date: 8/19/21

15 By:   
16 LA FORTALEZA, INC.

18  
19 **IT IS SO ORDERED.**

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

\_\_\_\_\_  
21 JUDGE OF THE SUPERIOR COURT

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