

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 Vallarta Food Enterprises, Inc. and VSI, Inc. (jointly hereafter referred to as “Vallarta”), on the other hand, with EHA and Vallarta 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. Vallarta 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 Vallarta manufactures, sells, and distributes for sale in California, tostadas and tortilla chips 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 Covered Products

The products covered by this Settlement Agreement are defined as, and expressly limited to, Vallarta Supermarkets Tostadas and Vallarta Supermarkets Tortilla Chips (“the Products”), that allegedly contain acrylamide and that are manufactured, sold, or distributed for sale in California by Vallarta.

1.4 Notice of Violation

On December 11, 2020, EHA served Vallarta, VSI, Inc., the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation of Proposition 65 (“Notice”), alleging that Vallarta violated Proposition 65 when it failed to warn consumers in California of the health risks associated with exposures to acrylamide from the Products.

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

Vallarta denies the material, factual, and legal allegations in the Notice and maintains that the Products it manufactured, sold and/or distributed for sale in California, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Vallarta 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 Vallarta of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Vallarta. This Section shall not, however, diminish or otherwise affect Vallarta'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 sixty (60) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

Commencing on the Effective Date, and continuing thereafter, Vallarta agrees to only manufacture, distribute, sell or offer for sale in California Products that either comply with the "safe harbor" no significant risk level ("NSRL") for acrylamide; or comply with a content level established by the Office of Health Hazard Assessment ("OEHHA") for acrylamide in the category of similar food products; or are sold with a Proposition 65 warning as provided for in Section 2.2 below.

In ascertaining its obligations under this Section, Vallarta shall be entitled to rely in good faith on test results for finished Products. Vallarta shall retain test results for a period of 3 years for the purpose of a meet and confer period of 30 days that the Parties agree to engage in prior to any enforcement of this Agreement or filing of a new action by EHA regarding the Products.

2.2 Warning Requirements

Vallarta shall prominently place a clear and reasonable warning on a posted sign, shelf tag, or shelf sign, at each point of display where the Products are sold with such conspicuousness, as

compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase.

For purposes of this Settlement Agreement, a clear and reasonable warning affixed to a posted sign, shelf tag, or shelf sign, at each point of display where the Products are sold at Vallarta locations shall contain one of the following statements or a substantially similar statement or any form of “safe harbor” warning applicable to the Products in regulations adopted by OEHHA:

 [California Prop 65] **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/food.

 [California Prop 65] **WARNING:** Consuming baked goods, snack foods, fried foods and potato products such as breads, pastries, cookies, chips, French fries, crisps, tortillas and tortilla chips can expose you to chemicals, including acrylamide, which is known to the State of California to cause cancer and reproductive toxicity. Acrylamide is not added to our products, but results from cooking, such as when baked goods are baked and potato products are fried. As a result, acrylamide is present in our tortillas and chips, cookies and other baked goods, potato products or other foods sold here in our grocery store or other retail locations. Your personal cancer risk is affected by a wide variety of factors. For more information regarding acrylamide, [see www.fda.gov](http://www.fda.gov). For more information about acrylamide and Proposition 65 go to www.P65Warnings.ca.gov/food.

Language in brackets is optional

2.3 Sell-Through Period

The injunctive requirements of Section 2 shall not apply to Products that are manufactured on or prior to 60 days after the Effective Date and/or already in the stream of commerce as of the Effective Date, may be sold at any time without a warning. Such Products are expressly subject to the releases provided in Section 4.1.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

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, Vallarta agrees to pay two thousand, five hundred dollars (\$2,500.00) 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 20 days of the date this Settlement Agreement is executed by the Parties, Vallarta shall issue two separate checks for the civil penalty payment to (1) “OEHHA” in the amount of one thousand, eight hundred seventy-five dollars (\$1,875.00) and (2) Environmental Health Advocates, Inc., in the amount of six hundred and twenty-five dollars (\$625.00).

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 United States Postal Service Delivery:

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

All penalty payments owed to EHA shall be sent to:

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

3.2 Attorneys’ Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within 20 days of the date this Settlement Agreement is executed by the Parties, Vallarta agrees to pay twenty thousand dollars (\$20,000.00) to EHA’s counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Vallarta, and negotiating a settlement. Vallarta’s payment shall be delivered in the form of two checks: (1) one check for ten thousand dollars (\$10,000.00) payable to “Glick Law Group”; and (2) one check for ten thousand dollars (\$10,000.00) payable to “Nicholas & Tomasevic LLP.”

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

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Vallarta

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EHA, on its own behalf and not on behalf of the public, and Vallarta 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 Vallarta and each of its respective parents, subsidiaries, affiliated companies or entities under common ownership or operation, directors, officers, members, employees, attorneys, each upstream entity from whom the Products were purchased by Vallarta, and each entity to whom Vallarta directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to acrylamide required under Proposition 65 in the Products manufactured, distributed, sold or offered for sale in California by Vallarta and Releasees 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 Vallarta 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 required under Proposition 65 in the Products manufactured, distributed, sold or offered for sale by Vallarta and Releasees, before the Effective Date.

As between the Parties, the Parties agree that Vallarta and Releasees shall be deemed in compliance with this Settlement Agreement and Proposition 65 by complying with Section 2.2.

4.2 Vallarta's Release of EHA

Vallarta, 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 Products.

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 Products will develop or be discovered. EHA on behalf of itself only, on the one hand, and Vallarta 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.

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

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 Vallarta:

Mr. David Alonzo
Vallarta Food Enterprises, Inc.
13287 Ralston Avenue
Sylmar, CA 91342

With copy to:

Renee D. Wasserman
Rogers Joseph O'Donnell
311 California Street, 10th Flr.
San Francisco, CA 94104

For EHA:

Noam Glick
Glick Law Group, PC
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.

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:

Date: 09/07/2021

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:

Date: 9/3/21

By: 
VAILARTA FOOD ENTERPRISES, INC.

By: 
VSI, INC.