

1 **GLICK LAW GROUP, P.C.**

2 Noam Glick (SBN 251582)
3 225 Broadway, Suite 1900
4 San Diego, California 92101
5 Tel: (619) 382-3400
6 Fax: (619) 393-0154
7 Email: noam@glicklawgroup.com

8 **NICHOLAS & TOMASEVIC, LLP.**

9 Craig M. Nicholas (SBN 178444)
10 Jake Schulte (SBN 293777)
11 225 Broadway, Suite 1900
12 San Diego, California 92101
13 Tel: (619) 325-0492
14 Fax: (619) 325-0496
15 Email: cnicholas@nicholaslaw.org
16 Email: jschulte@nicholaslaw.org

17 Attorneys for Plaintiff
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 MAGNOLIA FOODS, LLC, a California
26 corporation, and DOES 1 through 100,
27 inclusive,

28 Defendants.

Case No.: RG21091750

[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 Magnolia Foods, LLC (“Magnolia” or “Defendant”) with EHA and
5 Magnolia 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 Magnolia 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 Magnolia manufactures, imports, sells, and distributes for sale tortilla chips
16 that contain acrylamide. EHA further alleges that Magnolia does so without providing a sufficient
17 health hazard warning as required by Proposition 65 and related Regulations. Acrylamide is a listed
18 chemical under Proposition 65 known to cause cancer, birth defects and other reproductive harm.

19 **1.5 Notices of Violation**

20 On October 20, 2020, EHA served Magnolia, Food for Less of Southern California, Inc., The
21 Kroger Co., the California Attorney General, and all other required public enforcement agencies with
22 a 60-Day Notice of Violation of California Health and Safety Code section 25249.6 *et seq.* (“Notice”).
23 The Notice alleged that Magnolia violated Proposition 65 by failing to sufficiently warn consumers in
24 California of the health hazards associated with exposures to acrylamide contained in its Magnolia El
25 Comal Totopos de Maiz Homestyle Tortilla Chips (“Products”).

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

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1 **1.6 Product Description**

2 The products covered by this Consent Judgment are tortilla chips including, but not limited to,
3 Magnolia El Comal de Maiz Homestyle Tortilla Chips, manufactured or processed by Magnolia that
4 allegedly contain acrylamide and are imported, sold, shipped, delivered or distributed for sale to
5 consumers in California by Releasees (as defined in section 4.1) (“Products”).

6 **1.7 Complaint**

7 On March 12, 2021, EHA filed a Complaint against Magnolia for the alleged violations of
8 Proposition 65 that are the subject of the Notice (“Complaint”).

9 **1.8 No Admission**

10 Magnolia denies the material factual and legal allegations of the Notice and Complaint and
11 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
12 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
13 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
14 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an admission
15 of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,
16 diminish or otherwise affect Magnolia’s obligations, responsibilities, and duties under this Consent
17 Judgment.

18 **1.9 Jurisdiction**

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

23 **1.10 Effective Date**

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

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of Products**

3 Except as otherwise provided herein, any Products that are manufactured by Magnolia on and
4 after the Effective Date that Magnolia sells in California or distributes for sale in California shall not
5 exceed 281 parts per billion (“ppb”) for acrylamide, using tests performed by a laboratory accredited
6 by the State of California, a federal agency, or a nationally recognized accrediting organization, using
7 LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), unless such Products comply with the
8 warning requirements of Section 2.2. As used in this Section 2, “distributed for sale in California”
9 means to directly ship Products into California or to sell Products to a distributor Magnolia knows will
10 sell Products in California.

11 **2.2 Clear and Reasonable Warnings**

12 For Products that contain acrylamide in a concentration exceeding the ppb level set forth in
13 Section 2.1 above, and which are manufactured and packaged for distribution for authorized sale or use
14 in California on or after the Effective Date, Magnolia shall provide one of the following warning
15 statements:

16 **Option 1:**

17 **WARNING:** This product can expose you to chemicals
18 including Acrylamide, which is known to the State of
19 California to cause cancer, birth defects or other
20 reproductive harm. For more information go to
21 www.P65Warnings.ca.gov.

22 **Option 2:**

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

25 The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning
26 statement shall be prominently displayed on the packaging of the Products, or on a placard, shelf tag,
27 or sign provided that the statement is displayed with such conspicuousness, as compared with other
28 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

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1 surrounding information. The same warning shall be posted on any websites under the exclusive
2 control by Magnolia where Products are sold into California.

3 **2.3 Sell-Through Period**

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

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Settlement Amount**

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

16 **3.2 Civil Penalty**

17 The portion of the settlement attributable to civil penalties shall be allocated according to Health
18 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
19 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
20 twenty-five percent (25%) of the penalty paid to EHA individually.

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

22 Environmental Health Advocates
23 225 Broadway, Suite 1900
24 San Diego, CA 92101

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

26 For Federal Express 2-Day Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1 P.O. Box 4010
2 Sacramento, CA 95812-4010

3 For Federal Express 2-Day Delivery:

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

9 Magnolia agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
10 simultaneous with its penalty payments to EHA.

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

12 Relevant information is set out below:

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

18 **3.3 Attorneys' Fees and Costs**

19 The portion of the settlement attributable to attorney's 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 investigation, bringing this matter to Magnolia's attention, as well as litigating and
22 negotiating a settlement in the public interest.

23 Magnolia shall provide their payment to EHA's counsel in two checks, divided equally, payable
24 to Glick Law Group, PC (\$33,750) and Nicholas & Tomasevic, LLP (\$33,750) respectively. The
25 addresses for these two entities are:

26 Noam Glick
27 Glick Law Group
28 225 Broadway, 19th Floor
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 checks will be issued as follows:

3 Within fourteen (14) days of the Effective Date: Magnolia will issue the civil penalty checks
4 to EHA (\$1,875) and OEHHA (\$5,625), as well as the \$33,750 check to Nicholas & Tomasevic.

5 Within twenty-eight (28) days of the Effective Date: Magnolia will issue the \$33,750 check to
6 the Glick Law Group.

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8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 EHA’s Public Release of Proposition 65 Claims**

10 For any claim or violation arising under Proposition 65 alleging a failure to warn about
11 exposures to acrylamide from Products manufactured, imported, sold, or distributed by Magnolia prior
12 to the Effective Date, EHA, acting for the general public, releases Magnolia of any and all liability
13 arising under Proposition 65. This includes Magnolia’s owners, parents, subsidiaries, affiliated entities
14 under common ownerships, its directors, officers, agents, employees, attorneys, and each entity to
15 whom Magnolia directly or indirectly distributes or sells Products, including but not limited to
16 downstream distributors, wholesales, customers, retailers, franchisees, cooperative members and
17 licensees, (collectively, the “Releasees”). Releasees include defendants, their parents, and all
18 subsidiaries and affiliates thereof and their respective employees, agents, and assigns that sell
19 Magnolia’s Products. Compliance with the terms of this Consent Judgment constitutes compliance with
20 Proposition 65 with respect to the alleged or actual failure to warn about exposures to acrylamide from
21 Products manufactured, imported, sold, or distributed by Magnolia after the Effective Date. This
22 Consent Judgment is a full, final, and binding resolution of all claims that were or could have been
23 asserted against Magnolia and/or Releasees for failure to provide warnings for alleged exposure to
24 acrylamide contained in Products.
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1 **4.2 EHA’s Individual Release of Claims**

2 EHA, in its individual capacity, also provides a release to Magnolia and/or Releasees, which
3 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
4 obligations, costs, expenses, attorney’s fees, damages, losses, claims, liabilities, and demands of every
5 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
6 alleged or actual exposures to acrylamide in Products manufactured, imported, sold, or distributed by
7 Magnolia before the Effective Date.
8

9 **4.3 Magnolia’s Release of EHA**

10 Magnolia on its own behalf, and on behalf of Releasees as well as its past and current agents,
11 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
12 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
13 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
14 seeking to enforce Proposition 65 against them, in this matter or with respect to the Products.
15

16 **5. COURT APPROVAL**

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

20 **6. SEVERABILITY**

21 Subsequent to the Court’s approval and entry of this Consent Judgment, if any provision is held
22 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.
23

24 **7. GOVERNING LAW**

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

3 **8. NOTICE**

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

7 If to Magnolia:

8 Michael J. Gleason
9 Hanh Loeser & Parks, LLP
10 600 W Broadway, Suite 1500
San Diego, CA 92101

If to EHA:

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

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

13 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

17 **10. POST EXECUTION ACTIVITIES**

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

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1 **11. 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 **12. 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 **13. 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.

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1 **14. ENTIRE AGREEMENT**

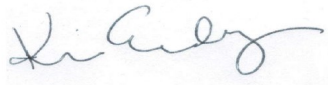
2 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
3 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
4 commitments, and understandings related hereto. No representations, oral or otherwise, express or
5 implied,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

7 **AGREED TO:**

AGREED TO:

8
9 Date: March 22, 2021.

Date: March 23, 2021.

10
11 By: 
12 ENVIRONMENTAL HEALTH
13 ADVOCATES, INC.

14
15 By: 
16 MAGNOLIA FOODS, LLC.

17 **IT IS SO ORDERED.**

18 Date: _____

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JUDGE OF THE SUPERIOR COURT