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10 Attorneys for Plaintiff
Environmental Health Advocates, Inc.

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF ALAMEDA**

14 ENVIRONMENTAL HEALTH
ADVOCATES, INC., a California organization,

15 Plaintiff,

16 v.

17 WISE FOODS, INC. dba WISE FOODS, INC.
18 OF AREA CONTINENTAL, a Delaware
corporation, WALMART INC., a Delaware
19 corporation, and DOES 1 through 100,
inclusive,

20 Defendants.
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Case No.

[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”) and Wise Foods, Inc. dba Wise Foods, Inc. of Area Continental (“Wise Foods”), with EHA
5 and Wise Foods 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 Wise Foods employs ten or more individuals and is a “person in the course of doing business”
12 for 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 Wise Foods manufactures, imports, sells, and distributes for sale crispy wheat
16 snacks that contain acrylamide. EHA further alleges that Wise Foods 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.

20 **1.5 Notice of Violation**

21 On December 31, 2020, EHA served Wise Foods, Inc. dba Wise Foods, Inc. of Area
22 Continental, Walmart Inc., the California Attorney General, and all other required public enforcement
23 agencies with a 60-Day Notice of Violation of Proposition 65. (“Notice”). The Notice alleged that Wise
24 Foods, and others, violated Proposition 65 by failing to sufficiently warn consumers in California of
25 the health hazards associated with exposures to acrylamide in the product “Si Señor Ricachones Salt
26 and Lime Flavored” and “Si Señor Picachones Chile & Lime.”

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

2 **1.6 “Covered Products” Description**

3 “Covered Products” as used in this Consent Judgment is defined as, and expressly limited to,
4 “Si Senor Ricachones Salt and Lime Flavored” and “Si Senor Picachones Chile & Lime” that allegedly
5 contain acrylamide and that are manufactured, sold, imported, shipped, delivered, or distributed for
6 sale to consumers in California by Wise Foods and Releasees (as defined in Section 4.1).

7 **1.7 Complaint**

8 On March 10, 2021, EHA filed a Complaint against Wise Foods for the alleged violations of
9 Proposition 65 that are the subject of the Notice (“Complaint”).

10 **1.8 No Admission**

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

19 **1.9 Jurisdiction**

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

24 **1.10 Effective Date and Compliance Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
26 Court grants the motion for approval of this Consent Judgment. The Compliance Date is the date that
27 is six (6) months after the Effective Date.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION OF PRODUCTS OR WARNINGS**

2 **2.1 Clear and Reasonable Warnings**

3 Commencing on the Effective Date, and continuing thereafter, Wise Foods shall not distribute
4 for sale in California any Covered Products unless the label, as defined by Cal. Code Regs. tit. 27, §
5 25600.1, contains a clear and reasonable warning that complies with Proposition 65 warning
6 regulations, including Cal. Code Regs. tit. 27, § 25600 *et seq.*

7 Each warning shall be prominently placed with such conspicuousness, as compared with other
8 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
9 individual under customary conditions before purchase or use. Each warning shall be provided in a
10 manner such that the consumer or user understands to which *specific* Product the warning applies, so
11 as to minimize the risk of consumer confusion. For purposes of this Consent Judgment, a clear and
12 reasonable warning for the Covered Products shall consist of a warning affixed to the packaging,
13 label, tag, or directly to each Covered Products sold in California by Wise Foods that contains one of
14 the following statements:

15
16 **1) WARNING:** This product can expose you to chemicals
17 including Acrylamide, which is known to the State of
18 California to cause cancer, birth defects or other
19 reproductive harm. For more information go to
20 www.P65Warnings.ca.gov.

19 or,

20 **2) WARNING:** Cancer and Reproductive Harm –
21 www.P65Warnings.cs.gov

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

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4 **2.2 Sell-Through Period**

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

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Settlement Amount**

12 Wise Foods shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of
13 all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil
14 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
15 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000)
16 pursuant to Code of Civil Procedure section 1021.5.

17 **3.2 Civil Penalty**

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

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

24 For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 1001 I Street
5 Sacramento, CA 95814

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

7 Samantha Dice
8 Environmental Health Advocates
9 225 Broadway, Suite 2100
10 San Diego, CA 92101

11 Wise Foods agrees to provide EHA's counsel with a copy of the check payable 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 3.3;
- 16 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.3; and
- 17 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA
18 95814.

19 **3.3 Attorneys' Fees and Costs**

20 The Parties reached an accord on the compensation due to EHA and its counsel under the
21 private attorney general doctrine and principles of contract law. Under these legal principles, within
22 ten (10) days of the date this Settlement Agreement is executed by the Parties, Wise Foods agrees to
23 pay forty-five thousand dollars (\$45,000.00) to EHA and its counsel for all fees and costs incurred
24 in investigating, bringing this matter to the attention of Wise Foods' negotiating a settlement. All
25 payments for attorneys' fees and costs shall be divided equally between EHA's counsel in two
26 checks, with twenty-two thousand and five hundred dollars (\$22,500.00) payable to Glick Law
27 Group, PC and twenty-two thousand and five hundred dollars (\$22,500.00) payable to Nicholas &
28 Tomasevic, LLP, respectively. The addresses for these two entities are:

Noam Glick
Glick Law Group
225 Broadway, 19th Floor
San Diego, CA 92101

Craig Nicholas

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3 **4. CLAIMS COVERED AND RELEASED**

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

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

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

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4 **4.3 Wise Foods' Release of EHA**

5 Wise Foods on its own behalf, as well as its past and current agents, representatives, attorneys,
6 successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other
7 representatives, for any and all actions taken or statements made by EHA and its attorneys and other
8 representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition
9 65 against them, in this matter or with respect to the Covered Products.
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11 **5. COURT APPROVAL**

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

17 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
18 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.
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20 **7. GOVERNING LAW**

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

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

4 If to Wise Foods:

5 Meredith Jones-McKeown
6 Jasmine Wetherell
7 Perkins Coie LLP
8 1888 Century Park East Suite 1700
9 Los Angeles, CA 90067

If to EHA:

Noam Glick
Glick Law Group
225 Broadway, 19th Floor
San Diego, CA 92101

8 Mr. Angel Flores
9 Wise Foods
10 3065 Akers Mill Rd., Suite 200
11 Atlanta, GA 30339

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.

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. If a change in the governing
5 law occurs as described in Section 7, Wise Foods need only comply with the terms of Section 7 and is
6 not obligated to seek a modification of the Consent Judgment.

7 **12. AUTHORIZATION**

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

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11 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

16 **14. ENTIRE AGREEMENT**


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

22 **AGREED TO:**

AGREED TO:

23 Date: March 19, 2021

24 Date: March 15, 2021

25 By: 

26 By: 

27 ENVIRONMENTAL HEALTH
28 ADVOCATES, INC.

WISE FOODS, INC. dba WISE FOODS,
INC. OF AREA CONTINENTAL

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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT