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16 Environmental Health Advocates, Inc.

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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **IN AND FOR THE COUNTY OF ALAMEDA**

20 ENVIRONMENTAL HEALTH
21 ADVOCATES, INC., a California
22 corporation,

23 Plaintiff,

24 v.

25 FALCON TRADING COMPANY dba
26 "SUNRIDGE FARMS", a California
27 corporation, BRISTOL FARMS, a
28 California corporation, and DOES 1 through
100, inclusive,

Defendants.

Case No. RG21101826

[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
4 Advocates, Inc., (“EHA” or “Plaintiff”) and Falcon Trading Company dba “Sunridge Farms”
5 (“Defendant” or “FTC”) with EHA and FTC each individually referred to as a “Party” and
6 collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

8 EHA is a corporation organized in the state of California, acting in the interest
9 of the general public. It seeks to promote awareness of exposures to toxic chemicals and to
10 improve human health by reducing or eliminating hazardous substances contained in
11 consumer products.

12 **1.3 Defendant**

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

16 **1.4 General Allegations**

17 EHA alleges that FTC manufactures, imports, sells, and distributes for sale Cinnamon
18 Vanilla Almonds that contain acrylamide. EHA further alleges that FTC does so without
19 providing a sufficient health hazard warning as required by Proposition 65 and related
20 Regulations. Pursuant to Proposition 65, acrylamide is listed as a chemical known to cause
21 cancer, birth defects and other reproductive harm.

22 **1.5 Notices of Violation**

23 On or around September 23, 2020, EHA served Bristol Farms, the California Attorney
24 General, and all other required public enforcement agencies with a 60-Day Notice of
25 Violation of Proposition 65 (“Initial Notice”). The Initial Notice alleged that Bristol Farms
26 had violated Proposition 65 by failing to sufficiently warn consumers in California of the
27 health hazards associated with exposures to acrylamide contained in Cinnamon Vanilla
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1 Almonds.

2 On or around January 7, 2021, EHA served FTC, Bristol Farms, the California
3 Attorney General, and all other required public enforcement agencies with an Amended 60-
4 Day Notice of Violation of Proposition 65 (“Amended Notice”). The Amended Notice
5 corrected the manufacturer to FTC.

6 **1.6 Product Description**

7 The products covered by this Consent Judgment are Cinnamon Vanilla Almonds
8 manufactured or processed by FTC that allegedly contain acrylamide and are imported, sold,
9 shipped, delivered, or distributed for sale to consumers in California by Releasees (as defined
10 in section 4.1) (“Covered Products”).

11 **1.7 State of the Pleadings**

12 On or around June 14, 2021, EHA filed a Complaint against FTC for the alleged
13 violations of Proposition 65 that are the subject of the Notices (“Complaint”).

14 **1.8 No Admission**

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

24 **1.9 Jurisdiction**

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

3 **1.10 Effective Date**

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

7 **2. INJUNCTIVE RELIEF**

8 **2.1 Reformulation of the Covered Products**

9 Except as otherwise provided herein, any Covered Products that are manufactured by
10 FTC on and after the Effective Date that FTC sells in California or distributes for sale in
11 California shall not exceed 225 parts per billion (“ppb”) for acrylamide, using tests performed
12 by a laboratory accredited by the State of California, a federal agency, or a nationally
13 recognized accrediting organization, using LC-MS/MS (Liquid Chromatograph-Mass
14 Spectrometry), unless such Covered Products comply with the warning requirements of
15 Section 2.2. As used in this Section 2, “distributed for sale in California” means to directly
16 ship Covered Products into California or to sell Covered Products to a distributor FTC know
17 will sell Covered Products in California.

18 **2.2 Clear and Reasonable Warnings**

19 For Covered Products that contain acrylamide in a concentration exceeding the 225
20 ppb level set forth in section 2.1 above, and which are manufactured and packaged for
21 distribution for authorized sale or use in California on or after the Effective Date, FTC shall
22 provide one of the following warning statements.

23 **Option 1:**

24 **WARNING:** Consuming this product can expose you to chemicals, including
25 Acrylamide, which is known to the State of California to cause cancer and birth
26 defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov/food

27 **Option 2:**

28 **WARNING: Cancer and Reproductive Harm –**

1 www.P65Warnings.ca.gov/food

2 This warning statement shall be prominently displayed on the Covered Products, on
3 the packing of the Covered Products, or on a placard, shelf tag, or sign provided that the
4 statement is displayed with such conspicuousness, as compared with other words, statements,
5 or designs as to render it likely to be read and understood by an ordinary individual prior to
6 sale. If the warning statement is displayed on the Covered Products' packaging, it must be in
7 a type size no smaller than the largest type size used for other consumer information on the
8 product. In no case shall a warning statement displayed on the Covered Products' packaging
9 appear in a type size smaller than 6-point type. The same warning shall be posted on any
10 websites under the exclusive control of FTC where Covered Products are sold into California.
11 FTC shall instruct any third-party website to which it sells its Covered Products to include the
12 same warning as a condition of selling the Covered Products.

13 **2.3 Sell-Through Period**

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

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Settlement Amount**

22 FTC shall pay fifty-five thousand dollars (\$55,000.00) in settlement and total
23 satisfaction of all the claims referred to in the Notices, the Complaint, and this Consent
24 Judgment. This includes civil penalties in the amount of five thousand dollars (\$5,000.00)
25 pursuant to Health and Safety Code section 25249.7(b) and attorneys' fees and costs in the
26 amount of fifty thousand dollars (\$50,000.00) pursuant to Code of Civil Procedure section
27 1021.5.

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3.2 Civil Penalty

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

All payments owed to EHA shall be delivered to the following address:
Environmental Health Advocates
225 Broadway, Suite 2100
San Diego, CA 92101

All payments owed to OEHHA (EIN: 68-0284486) 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

For Federal Express 2-Day Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

FTC agrees to provide EHA’s counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payments to EHA.

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

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

1 95814.

2 **3.3 Attorney's Fees and Costs**

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

7 FTC shall provide their payment to EHA's counsel in two checks, divided equally,
8 payable to Glick Law Group, PC for twenty-five thousand dollars (\$25,000.00) and Nicholas
9 & Tomasevic, LLP for twenty-five thousand dollars (\$25,000.00) respectively. The addresses
10 for these two entities are:

11 Noam Glick
12 Glick Law Group
13 225 Broadway, Suite 2100
14 San Diego, CA 92101

15 Craig Nicholas
16 Nicholas & Tomasevic, LLP
17 225 Broadway, 19th Floor
18 San Diego, CA 92101

19 **3.4 Timing**

20 The above-mentioned checks will be issued within fourteen (14) days of the Effective
21 Date.

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 EHA's Public Release of Proposition 65 Claims**

24 Plaintiff acting on its own behalf and in the public interest releases FTC and its
25 parents, subsidiaries, affiliated entities under common ownership, its directors, officers,
26 principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and
27 assigns ("Defendant Entities"), each entity to whom Defendant directly or indirectly
28 distributes, ships, or sells the Covered Products including but not limited to downstream
distributors, wholesalers, customers, and retailers (including but not limited to Bristol Farms)
franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of
the foregoing entities' owners, directors, officers, agents, principals, employees, attorneys,

1 insurers, accountants, representatives, predecessors, successors, and assigns (collectively
2 referred to as the "Releasees") from all claims for violations of Proposition 65 up through the
3 Effective Date based on exposure to acrylamide from Covered Products as set forth in the
4 Notices. Compliance with the terms of this Consent Judgment constitutes compliance with
5 Proposition 65 with respect to exposures to acrylamide from Covered Products as set forth in
6 the Notices. This release does not extend to any third-party retailers selling the product on a
7 website who, after receiving instruction from FTC to include a warning as set forth above in
8 section 2.2, do not include such a warning.

9 **4.2 EHA's Individual Release of Claims**

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

16 **4.3 FTC's Release of EHA**

17 FTC on its own behalf, and on behalf of Releasees as well as its past and current
18 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims
19 against EHA and its attorneys and other representatives, for any and all actions taken or
20 statements made by EHA and its attorneys and other representatives, whether in the course of
21 investigating claims, otherwise seeking to enforce Proposition 65 against them, in this matter
22 or with respect to the Covered Products.

23 **5. COURT APPROVAL**

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

27 **6. SEVERABILITY**

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1 Subsequent to the Court's approval and entry of this Consent Judgment, if any
2 provision is held by a court to be unenforceable, the validity of the remaining provisions shall
3 not be adversely affected.

4 **7. GOVERNING LAW**

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

11 In the event the California Office of Health Hazard Assessment adopts a regulation or
12 safe use determination, or issues an interpretive guideline that exempts Covered Products
13 from meeting the requirements of Proposition 65; or if acrylamide cases are permanently
14 enjoined by a court of competent jurisdiction; or if Proposition 65 is determined to be
15 preempted by federal law or a burden on First Amendment rights with respect to acrylamide
16 in Covered Products or Covered Products substantially similar to Covered Products, then
17 FTC shall be relieved of its obligation to comply with Section 2 herein.

18 **8. ENFORCEMENT**

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

21 **9. NOTICE**

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

26 If to FTC:
27 Michael Hambly
28 Salmas Law
The Food Lawyers

If to EHA:
Noam Glick
Glick Law Group
225 Broadway, Suite 2100

1 1880 Century Park East, STE 611
Los Angeles, CA 90067

San Diego, CA 92101

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

4 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

8 **11. POST EXECUTION ACTIVITIES**

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

18 **12. MODIFICATION**

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

22 **13. AUTHORIZATION**

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

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

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

4 **15. ENTIRE AGREEMENT**

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

11
12 **AGREED TO:**

AGREED TO:

13
14 Date: 03/21/2022

Date: 3-24-2022

15
16 By: 
17 ENVIRONMENTAL HEALTH
18 ADVOCATES, INC.

By: 
MORTON COHEN, FALCON
TRADING COMPANY dba
"SUNRIDGE FARMS"

19 **IT IS SO ORDERED.**

20
21
22 DATE: _____

JUDGE OF THE SUPERIOR COURT