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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., a California organization,

23 Plaintiff,

24 v.

25 COSTADELSOL ENTERPRISES LLC dba
26 CBI INTERNATIONAL, a Florida limited
27 liability company, and DOES 1 through 100,
28 inclusive,

Defendants.

Case No. RG20083513

[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 CostadelSol Enterprises LLC dba CBI International (“CBI”), with EHA and CBI each
5 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 CostadelSol 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 CBI manufactures, imports, sells, and distributes for sale wafer cookies that
16 contain acrylamide. EHA further alleges that CostadelSol does so without providing a sufficient health
17 hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65,
18 acrylamide is listed as a chemical known to cause cancer, birth defects and other reproductive harm.

19 **1.5 Notices of Violation**

20 On August 13, 2020 and January 7, 2021, EHA served CBI, Productos Alimenticios Diana S.A.
21 de C.V., Cardenas Markets, LLC, the California Attorney General, and all other required public
22 enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notices”). The Notices
23 alleged that CBI, and others, violated Proposition 65 by failing to sufficiently warn consumers in
24 California of the health hazards associated with exposures to acrylamide in wafer products – Diana
25 Picnic Vanilla, Strawberry and Chocolate.

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

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1 **1.6 “Covered Products” Description**

2 “Covered Products” as used in this Consent Judgment is defined as, and expressly limited to,
3 wafer cookies, including Diana Picnic Vanilla, Diana Picnic Strawberry, and Diana Picnic Chocolate,
4 that allegedly contain acrylamide and that are manufactured, sold, imported, shipped, delivered, or
5 distributed for sale to consumers in California by CBI and Releasees (as defined in Section 4.1).

6 **1.7 Complaint**

7 On December 21, 2020, EHA filed a Complaint against CBI for the alleged violations of
8 Proposition 65 that are the subject of the Notices (“Complaint”).

9 **1.8 No Admission**

10 CBI denies the material, factual, and legal allegations of the Notices 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 Covered Products, have been, and are, in compliance with all laws. Nothing
13 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
14 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
15 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
16 not, however, diminish or otherwise affect CBI’s obligations, responsibilities, and duties under this
17 Consent 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 CBI as to the allegations in the Complaint, that venue is proper in the County
21 of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
22 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

23 **1.10 Effective Date and Compliance 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. The Compliance Date is the date that
26 is ninety (90) days after the Effective Date.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION OF PRODUCTS OR WARNINGS**

2 **2.1 Reformulation of Products**

3 Any Covered Products that CBI manufactures, sells, imports, or distributes for sale in California
4 on and after the Compliance Date shall: (a) contain an average acrylamide concentration by weight
5 (“Average Level”) not to exceed 115 parts per billion (“ppb”); or (b) be labeled with a clear and
6 reasonable warning pursuant to Section 2.2. The Average Level shall be determined by (a) randomly
7 selecting and testing at least one sample each from five different lots of the product (or the maximum
8 number of lots available for testing if less than five) that were produced on dates spread out roughly
9 evenly over a period of at least 60 days, and (b) using tests performed by a laboratory accredited by the
10 State of California, a federal agency, or a nationally recognized accrediting organization, using LC-
11 MS/MS (Liquid Chromatograph-Mass Spectrometry).

12 For three consecutive years after the Compliance Date, CBI shall arrange for testing as provided
13 under Section 2.1, above. The testing shall be at least once per year, with the first testing occurring
14 prior to the first anniversary of the Compliance Date. No further testing shall be required unless CBI
15 materially modifies the ingredients or cooking process of the Covered Products, at which point testing
16 shall recommence on an annual basis for three years.

17 **2.2 Clear and Reasonable Warnings**

18 For Covered Products that contain acrylamide in a concentration exceeding the ppb level set
19 forth in Section 2.1 above, and which are manufactured and packaged for distribution for authorized
20 sale or use in California on or after the Compliance Date, CBI shall provide clear and reasonable
21 warnings as set forth in Proposition 65 and related Regulations.

22 In the event that the Office of Environmental Health Hazzard Assessment (“OEHHA”)
23 promulgates one or more regulations requiring or permitting warning text, permitting the absence of
24 text and/or permitting methods of transmission different than those referenced above, CBI shall be

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1 entitled to use, at its discretion, such other warning text and/or method of transmission, without being
2 deemed in breach of this Consent Judgment.

3 **2.3 Sell-Through Period**

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

10 **2.4 Court Approval of Less Onerous Compliance Measures**

11 If a California court approves a Proposition 65 consent judgment concerning acrylamide
12 for one or more competitors of CBI or any Releasee that provides for materially less onerous
13 compliance measures, the Court, upon application by CBI, may modify this Consent Judgment to
14 replace the more onerous compliance measures set forth herein with those less onerous compliance
15 measures.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Settlement Amount**

18 CBI shall pay eighty thousand dollars (\$80,000.00) in settlement and total satisfaction of all the
19 claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil penalties
20 in the amount of eight thousand dollars (\$8,000.00) pursuant to Health and Safety Code section
21 25249.7(b) and attorneys' fees and costs in the amount of seventy-two thousand dollars (\$72,000)
22 pursuant to Code of Civil Procedure section 1021.5.

23 **3.2 Apportionment of Settlement Amount**

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

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

2 Environmental Health Advocates
3 225 Broadway, Suite 1900
4 San Diego, CA 92101

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

6 For United States Postal Service Delivery:

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

11 For Non-United States Postal Service Delivery:

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

16 CBI agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
17 simultaneous with its penalty payments to EHA.

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

19 Relevant information is set out below:

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

25 **3.3 Attorneys' Fees and Costs**

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

1 CBI shall provide their payment to EHA’s counsel in two checks, divided equally, payable to
2 Glick Law Group, PC (\$36,000) and Nicholas & Tomasevic, LLP (\$36,000) respectively. The
3 addresses for these two entities are:

4
5 Noam Glick
6 Glick Law Group
7 225 Broadway, 19th Floor
8 San Diego, CA 92101

9
10 Craig Nicholas
11 Nicholas & Tomasevic, LLP
12 225 Broadway, 19th Floor
13 San Diego, CA 92101

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15 **3.4 Timing**

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

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18 **4. CLAIMS COVERED AND RELEASED**

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20 **4.1 EHA’s Public Release of Proposition 65 Claims**

21 EHA, acting on its own behalf and in the public interest, releases CBI and its owners, parents,
22 subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees,
23 attorneys, and each entity from and to whom CBI directly or indirectly buys, distributes or sells
24 Covered Products, including but not limited to Productos Alimenticios Diana S.A. de C.V. as
25 manufacturer of the Covered Products, and downstream distributors, wholesales, customers, retailers
26 (including Cardenas Markets, LLC, its affiliates and subsidiaries), franchisees, cooperative members
27 and licensees, (collectively, the “Releasees”), from all claims for violations of Proposition 65 up
28 through the Compliance Date alleging failure to warn based on exposure to acrylamide from Covered
Products manufactured, imported, sold or distributed by Releasees, as set forth in the Notices.

Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
65 with respect to the alleged or actual failure to warn about exposures to acrylamide from Covered
Products manufactured, imported, sold, or distributed by Releasees after the Compliance Date. This

1 Consent Judgment is a full, final and binding resolution of all claims that were or could have been
2 asserted against CBI and/or Releasees for failure to provide warnings for alleged exposure to
3 acrylamide contained in Covered Products.

4 **4.2 EHA's Individual Release of Claims**

5 EHA, in its individual capacity, also provides a release to Releasees, which shall be a full and
6 final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs,
7 expenses, attorney's fees, damages, losses, claims, liabilities, and demands of every nature, character,
8 and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
9 exposures to acrylamide in Covered Products manufactured, imported, sold, or distributed by CBI
10 and/or Releasees before the Compliance Date, and/or that were or could have been alleged or asserted
11 in the Complaint.
12

13 **4.3 CBI's Release of EHA**

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

20 **5. COURT APPROVAL**

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

25 **6. SEVERABILITY**

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

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

8 **8. NOTICE**

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

12 If to CBI:

13 Neil Klein
14 McKasson & Klein LLP
15 18401 Von Karman Ave, Suite 330
16 Irvine, CA 92612

12 If to EHA:

13 Jake Schulte
14 Nicholas & Tomasevic LLP
15 225 Broadway, 19th Floor
16 San Diego, CA 92101

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

18 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

22 **10. POST EXECUTION ACTIVITIES**

23 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
24 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
25 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
26 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
27 employ their best efforts, including those of their counsel, to support the entry of this agreement as
28 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this

1 Section, “best efforts” shall include, at a minimum, supporting the motion for approval, responding to
2 any objection that any third-party may make, and appearing at the hearing before the Court if so
3 requested.

4 **11. MODIFICATION**

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

8 **12. AUTHORIZATION**

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

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.

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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: 02/08/2021

Date: 02/09/2021

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

14
15 By: 
16 COSTADELSOL ENTERPRISES LLC dba
17 CBI INTERNATIONAL

18 **IT IS SO ORDERED.**

19 Date: _____

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JUDGE OF THE SUPERIOR COURT