

1 **GLICK LAW GROUP, P.C.**  
Noam Glick (SBN 251582)  
2 225 Broadway, Suite 1900  
San Diego, California 92101  
3 Tel: (619) 382-3400  
Fax: (619) 393-0154  
4 Email: noam@glicklawgroup.com

5 **NICHOLAS & TOMASEVIC, LLP.**  
Craig M. Nicholas (SBN 178444)  
6 Jake Schulte (SBN 293777)  
225 Broadway, Suite 1900  
7 San Diego, California 92101  
Tel: (619) 325-0492  
8 Fax: (619) 325-0496  
Email: cnicholas@nicholaslaw.org  
9 Email: jschulte@nicholaslaw.org

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.,

15 Plaintiff,

16 v.

17 CALI'FLOUR FOODS, LLC, a California  
18 limited liability company, and DOES 1 through  
19 100, inclusive,

20 Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

Case No. HG21104817

**[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 Cali’flour Foods, LLC (“Defendants” or “Cali’flour”) with EHA and Cali’flour 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 Defendants**

11 Cali’flour 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 Cali’flour manufactures, imports, sells, and distributes for sale pizza crust that  
16 contain acrylamide. EHA further alleges that Cali’flour 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 January 22, 2021, EHA served Cali’flour Foods, LLC, Ralph’s Grocery Company, the  
21 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice  
22 of Violation of California Health and Safety Code section 25249.6 *et seq.* (“Notice”). The Notice  
23 alleged that Cali’flour had violated Proposition 65 by failing to sufficiently warn consumers in  
24 California of the health hazards associated with exposures to acrylamide contained in its Cali’flour  
25 Foods Cauliflower Pizza Crust, Original Italian.

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

28 ///

1           **1.6    Product Description**

2           The products covered by this Consent Judgment are Cali’flour Foods Cauliflower Pizza Crust,  
3 manufactured or processed by Cali’flour that allegedly contain acrylamide and are imported, sold,  
4 shipped, delivered or distributed for sale to consumers in California by Releasees (as defined in  
5 section 4.1) (“Products”).

6           **1.7    State of the Pleadings**

7           On or about July 9, 2021, Plaintiff filed a Complaint against Cali’flour for the alleged  
8 violations of Proposition 65 that are subject of the Notice (“Complaint”).

9           On or about September 6, 2021, Cali’flour filed an Answer to EHA’s Complaint responding  
10 to the alleged violations of Health and Safety Code section 25249.6 that are subject to the Notice  
11 (“Answer”).

12           **1.8    No Admission**

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

21           **1.9    Jurisdiction**

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

26    ///

27    ///

28    ///

1           **1.10 Effective Date and Compliance Date**

2           For purposes of this Consent Judgment, the term “Effective Date” means the date on which the  
3 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. The  
4 Compliance Date is the date that is six (6) months after the Effective Date.

5           **2. INJUNCTIVE RELIEF: REFORMULATION OF PRODUCTS**

6           **2.1** Except as otherwise provided herein, any Products that are manufactured by Cali’flour  
7 on and after the Compliance Date that Cali’flour sells in California or distributes for sale in California  
8 shall not exceed 350 parts per billion (“ppb”) for acrylamide, using tests performed by a laboratory  
9 accredited by the State of California, a federal agency, or a nationally recognized accrediting  
10 organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), unless such Products  
11 comply with the warning requirements of Section 2.2. As used in this Section 2, “distributed for sale  
12 in California” means to directly ship Products into California or to sell Products to a distributor  
13 Cali’flour know will sell Products in California.

14           **2.2 Warnings**

15           **2.2.1** If Cali’flour provides warnings under Section 2.1, Products may be sold in California  
16 with one of the following warning statements:

17           **Option 1:**

18                           **WARNING:** Consuming this product can expose you to  
19 chemicals including Acrylamide, which is known to the  
20 State of California to cause cancer and birth defects or other  
reproductive harm. For more information go to  
[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

21           **Option 2:**

22                           **WARNING:** Cancer and Reproductive Harm –  
[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

23           The warning shall be provided through one of the following methods: (1) a product specific  
24 warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point of  
25 display of the product; or (2) a product-specific warning provided via any electronic device or process  
26 that automatically provides the warning to the purchaser prior to or during the purchase of the  
27 consumer product, without requiring the purchaser to seek out the warning; or (3) a warning on the  
28 label that is securely affixed to or printed upon the label and complies with this Section 2.2 If the

1 warning statement is displayed on the Products' label, it must be set off from other  
2 surrounding information.

3 **2.2.2** The warning requirements set forth herein are imposed pursuant to the terms of this and  
4 are recognized by the Parties as not being the exclusive manner of providing a warning for the Products.  
5 Warnings may be provided as specified in the Proposition 65 regulations or guidance from the  
6 California Office of Environmental Health Hazard Assessment for food in effect as of the Compliance  
7 Date (Title 27, California Code of Regulations, section 25601, *et seq.*) or as such regulations may be  
8 amended in the future, or pursuant to a settlement agreement or consent judgment involving  
9 acrylamide. In addition, Cali'flour may follow the notification procedure set out in Title 27, California  
10 Code of Regulations, section 25600.2 or a similar procedure where Cali'flour instructs its distributor  
11 or retailer customers to provide warnings for the Products consistent with Section 2.2. The same  
12 warning shall be posted on any websites under the exclusive control of Cali'flour where Covered  
13 Products are sold into California. If subsequently enacted changes to Proposition 65 or its  
14 implementing regulations require the use of additional or different information on any warning  
15 specifically applicable to the Covered Products (the "New Safe Harbor Warning"), the Parties agree  
16 that the New Safe Harbor Warning may be utilized in place of or in addition to, as applicable, the  
17 warnings set forth in this Section.

18 **2.2.3** Notwithstanding anything else in this Consent Judgment, the Products that are  
19 manufactured on or prior to the Compliance Date shall be subject to release of liability pursuant to this  
20 Consent Judgment, without regard to when such Covered Products were, or are in the future, distributed  
21 or sold to customers. As a result, the obligation of Cali'flour, or any Releasees (if applicable), does  
22 not apply to Products manufactured on or prior to the Compliance Date.

23 **3. MONETARY SETTLEMENT TERMS**

24 **3.1 Settlement Amount**

25 Cali'flour shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of  
26 all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil  
27 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section  
28

1 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00)  
2 pursuant to Code of Civil Procedure section 1021.5.

3 **3.2 Civil Penalty**

4 The portion of the settlement attributable to civil penalties shall be allocated according to Health and  
5 Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty. Three  
6 thousand, seven hundred and fifty dollars (\$3,750.00), paid to the California Office of Environmental  
7 Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) of the penalty,  
8 one thousand, two hundred and fifty dollars (\$1,250.00), paid to EHA individually. These payments  
9 will be sent to the below addresses within fourteen (14) days of the Effective Date.

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

11 Environmental Health Advocates  
12 225 Broadway, Suite 1900  
13 San Diego, CA 92101

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

16  
17 For United States Postal Service Delivery:

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

23 For Federal Express 2-Day Delivery:

24 Mike Gyurics  
25 Fiscal Operations Branch Chief  
26 Office of Environmental Health Hazard Assessment  
27 1001 I Street  
28 Sacramento, CA 95814

29 Cali'flour agrees to provide EHA's counsel with a copy of the check payable to OEHHA,  
30 simultaneous with its penalty payments to EHA.

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

32 Relevant information is set out below:

- 1 • “Glick Law Group” (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 2 • “Nicholas & Tomasevic” (EIN: 46-3474065) at the address provided in Section
- 3 3.2(a)(i); and
- 4 • “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA
- 5 95814.

### 6 **3.3 Attorneys’ Fees and Costs**

7 The portion of the settlement attributable to attorneys’ fees and costs, forty-five  
8 thousand dollars (\$45,000.00), shall be paid to Glick Law Group, P.C. and Nicholas &  
9 Tomasevic, LLP (collectively, “EHA’s Counsel”), who are entitled to attorneys’ fees and costs  
10 incurred by it in this action, including but not limited to investigating potential violations,  
11 bringing this matter to Cali’flour’s attention, as well as litigating and negotiating a settlement  
12 in the public interest.

13 Cali’flour shall provide their payment to EHA’s Counsel in three installments as follows:

- 14 • The first installment shall be in the amount of seventeen thousand five hundred dollars  
15 (\$17,500.00), with \$8,750.00 payable to Glick Law Group, PC and \$8,750.00 payable  
16 to Nicholas & Tomasevic, LLP, within ten (10) days of the Effective Date (“First  
17 Installment”);
- 18 • The second installment shall be in the amount of seventeen thousand five hundred  
19 dollars (\$17,500.00), with \$8,750.00 payable to Glick Law Group, PC and \$8,750.00  
20 payable to Nicholas & Tomasevic, LLP, within forty (40) days of the Effective Date  
21 (“Second Installment”).
- 22 • The third installment shall be in the amount of ten thousand dollars (\$10,000), with  
23 \$5,000.00 payable to Glick Law Group, PC and \$5,000.00 payable to Nicholas &  
24 Tomasevic, LLP, within seventy (70) days of the Effective Date (“Third Installment”).  
25 If the First Installment and Second Installment are timely received by EHA’s Counsel,  
26 then EHA’s Counsel agrees to waive the Third Installment.. The addresses for these  
27 two entities are:

1 Noam Glick  
2 Glick Law Group  
3 225 Broadway, 19<sup>th</sup> Floor  
4 San Diego, CA 92101

5 Craig Nicholas  
6 Nicholas & Tomasevic, LLP  
7 225 Broadway, 19th Floor  
8 San Diego, CA 92101

9 **3.4 Timing**

10 If the deadline for any payment under this Agreement is on Sunday or holiday, it will be  
11 extended until the next day that is not a holiday.

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 EHA's Public Release of Proposition 65 Claims**

14 Plaintiff acting on its own behalf and in the public interest releases Cali'flour and its parents,  
15 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,  
16 employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant  
17 Entities"), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Products  
18 including but not limited to downstream distributors, wholesalers, customers, and retailers (including  
19 but not limited to Ralphs Grocery Company), franchisees, franchisors, cooperative members, suppliers,  
20 licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents, principals,  
21 employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns  
22 (collectively referred to as the "Releasees") from all claims for violations of Proposition 65 up through  
23 the Effective Date based on exposure to acrylamide from Products as set forth in the Notice.  
24 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with  
25 respect to exposures to acrylamide from Products as set forth in the Notice.

26 **4.2 EHA's Individual Release of Claims**

27 EHA, in its individual capacity, also provides a release to Cali'flour and/or Releasees, which  
28 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,  
obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands of every

///



1 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of  
2 alleged or actual exposures to acrylamide in Products manufactured, imported, sold, or distributed by  
3 Cali'flour before the Compliance Date.

#### 4 **4.3 Cali'flour's Release of EHA**

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

#### 10 **5. COURT APPROVAL**

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

#### 14 **6. SEVERABILITY**

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

#### 17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the state of California as  
19 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
20 rendered inapplicable for reasons, including but not limited to changes in the law, then Cali'flour may  
21 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations  
22 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.  
23

24 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use  
25 determination, or issues an interpretive guideline that exempts Products from meeting the requirements  
26 of Proposition 65; or if the Ninth Circuit Court of Appeals upholds the District Court decision to grant  
27 a preliminary injunction in California Chamber of Commerce v. Becerra, No. 2:19-cv-01019-KJM-  
28

1 JDP (E.D. Cal.); or if Proposition 65 is determined to be preempted by federal law or a burden on First  
2 Amendment rights with respect to acrylamide in Products, then Cali'flour shall be relieved of its  
3 obligation to comply with Section 2 herein.

4 **8. NOTICE**

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

8 If to Cali'flour:

9 Abhishek K. Gurnani  
10 Amin Talati Wasserman, LLP  
11 100 S. Wacker Dr., Suite 2000  
Chicago, Illinois 60606

If to EHA:

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

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

14 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

18 **10. POST EXECUTION ACTIVITIES**

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

28 ///

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.

13 *[Rest of page intentionally left blank]*

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: September 21, 2021

Date: September 22, 2021

10  
11 By: 

By:  CEO

12 ENVIRONMENTAL HEALTH  
13 ADVOCATES, INC.

CAL'FLOUR FOODS, LLC.

14  
15 **IT IS SO ORDERED.**

16  
17 Date: \_\_\_\_\_

18 \_\_\_\_\_  
19 JUDGE OF THE SUPERIOR COURT