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15 Attorneys for Plaintiff
16 Environmental Health Advocates, Inc.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

19 ENVIRONMENTAL HEALTH
20 ADVOCATES, INC.,

21 Plaintiff,

22 v.

23 THE K MARKET, a California corporation,
24 NEW KUKJE, INC., a California corporation,
25 and DOES 1 through 100, inclusive,

26 Defendants.

Case No. RG21092923

[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,
4 Inc., (“EHA” or “Plaintiff”), on the one hand, and The K Market and New Kukje, Inc. (collectively,
5 “Settling Defendants”), on the other hand, with EHA and Settling Defendants each individually
6 referred to as a “Party” and 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 of the general
9 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health
10 by reducing or eliminating hazardous substances contained in consumer products.

11 **1.3 Defendant**

12 Settling Defendants employ ten or more individuals and are “person in the course of doing
13 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
14 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 EHA alleges that Settling Defendants manufacture, import, sell, and distribute for sale K-
17 Bakery Almond Crisps and Burdock Crisps that contain Acrylamide. EHA further alleges that
18 Settling Defendants do so without providing a sufficient health hazard warning as required by
19 Proposition 65 and related regulations pursuant to Proposition 65, Acrylamide is listed as a
20 chemical known to cause cancer, birth defects and other reproductive harm.

21 **1.5 Notices of Violation**

22 On or around November 24, 2020, EHA served The K Market, the California Attorney
23 General, and all other required public enforcement agencies with a 60-Day Notice of Violation of
24 Proposition 65 (“K-Bakery Notice”). The K-Bakery Notice alleged that The K Bakery had violated
25 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards
26 associated with exposures to Acrylamide contained in K-Bakery Almond Crisps.

27 On or around February 4, 2021, EHA served Settling Defendants, the California Attorney
28 General, and all other required public enforcement agencies with a 60-Day Notice of Violation of

1 Proposition 65 (“Amended K-Bakery Notice”). The Amended K-Bakery Notice included New
2 Kukje, Inc.

3 On or around March 18, 2021, EHA served Settling Defendants, Sea World Co., Ltd.,
4 Chang-Tuh (L.A.), Inc., the California Attorney General, and all other required public enforcement
5 agencies with a 60-Day Notice of Violation of Proposition 65 (“Burdock Notice”). The Burdock
6 Notice alleged that Settling Defendants had violated Proposition 65 by failing to sufficiently warn
7 consumers in California of the health hazards associated with exposures to Acrylamide contained in
8 Burdock Crisps.

9 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
10 violations alleged in the K-Bakery Notice, Amended K-Bakery Notice, and Burdock Notice.
11 (hereinafter, the “Notices”).

12 **1.6 Product Description**

13 The products covered by this Consent Judgment are K-Bakery Almond Crisps and Burdock
14 Crisps manufactured or processed by Settling Defendants that allegedly contain Acrylamide and are
15 imported, sold, shipped, delivered, or distributed for sale to consumers in California by Releasees
16 (as defined in section 4.1) (“Covered Products”).

17 **1.7 State of the Pleadings**

18 On or around March 24, 2021, EHA filed a Complaint against for the alleged violations of
19 Proposition 65 that are the subject of the K-Bakery Notice and Amended K-Bakery Notice (“K-
20 Bakery Complaint”).

21 On or around June 18, 2021, EHA filed a Complaint against for the alleged violations of
22 Proposition 65 that are the subject of the Burdock Notice (“Burdock Complaint”).

23 K-Bakery Complaint and Burdock Complaint are collectively referred to as the
24 “Complaints”.

25 **1.8 No Admission**

26 Settling Defendants deny the material factual and legal allegations of the Notices and
27 Complaints and maintain that all of the Covered Products they have manufactured, imported, sold,
28

1 and/or distributed for sale in California, including Covered Products, have been, and are, in compliance
2 with all laws. Nothing in this Consent Judgment shall be construed as an admission of
3 any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this
4 Consent Judgment be construed as an admission of any fact, finding, conclusion of law, issue of
5 law, or violation of law. This Section shall not, however, diminish or otherwise affect Settling
6 Defendants' obligations, responsibilities, and duties under this Consent Judgment.

7 **1.9 Jurisdiction**

8 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
9 Court has jurisdiction over Settling Defendants as to the allegations in the Complaint, that venue is
10 proper in the County of Alameda, and that the Court has jurisdiction to enter and enforce the
11 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
12 section 664.6.

13 **1.10 Effective Date**

14 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
15 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

16 **2. INJUNCTIVE RELIEF**

17 **2.1 Clear and Reasonable Warnings**

18 As of the Effective Date, and continuing thereafter, a clear and reasonable Proposition 65
19 warning as set forth in this §§ 2.1 and 2.2 must be provided for all Covered Products that Settling
20 Defendants manufacture, supply and distribute for sale or use in California.

21 On or after the Effective Date, for Covered Products that are set forth in §§ 2.1, Settling
22 Defendants shall provide one of the following warning statements:

23 **Option 1:**

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

27 **Option 2:**

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

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

12 **2.2 Sell-Through Period**

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

19 **3. MONETARY SETTLEMENT TERMS**

20 **3.1 Settlement Amount**

21 Settling Defendants shall pay fifty thousand dollars (\$50,000.00) in settlement and total
22 satisfaction of all the claims referred to in the Notices, the Complaints, and this Consent Judgment.
23 This includes civil penalties in the amount of four thousand dollars (\$4,000.00) pursuant to Health
24 and Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of forty-six
25 thousand dollars (\$46,000.00) pursuant to Code of Civil Procedure section 1021.5.

26 **3.2 Civil Penalty**

27 The portion of the settlement attributable to civil penalties shall be allocated according to
28 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the

1 penalty, three thousand dollars (\$3,000.00), paid to the California Office of Environmental Health
2 Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) of the penalty, one
3 thousand dollars (\$1,000.00), paid to EHA individually. These payments will be sent to the below
4 addresses within fourteen (14) days of the Effective Date.

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

6 Environmental Health Advocates
7 225 Broadway, Suite 1900
8 San Diego, CA 92101

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

11 For United States Postal Service Delivery:

12 Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 P.O. Box 4010
16 Sacramento, CA 95812-4010

17 For Federal Express 2-Day Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 1001 I Street
22 Sacramento, CA 95814

23 Settling Defendants agree to provide EHA’s counsel with a copy of the check payable to
24 OEHHA, simultaneous with their penalty payments to EHA.

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

- 27 • “Glick Law Group” (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 28 • “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
95814.

3.3 Attorneys’ Fees and Costs

1 The portion of the settlement attributable to attorneys' fees and costs, forty-six thousand
2 dollars (\$46,000.00), shall be paid to Glick Law Group, P.C. and Nicholas & Tomasevic, LLP
3 (collectively, "EHA's Counsel"), who are entitled to attorneys' fees and costs incurred by it in this
4 action, including but not limited to investigating potential violations, bringing this matter to Settling
5 Defendants' attention, as well as litigating and negotiating a settlement in the public interest.

6 Settling Defendants shall provide their payments to EHA's Counsel in two installments as
7 follows. Payment may be by physical check or by electronic means, including wire transfers, at
8 Settling Defendants' discretion:

- 9 • The First Installment shall be in the amount of thirty-nine thousand dollars (\$39,000.00),
10 divided equally, in one check for nineteen thousand five hundred dollars (\$19,500.00)
11 payable to "Glick Law Group, PC", and in one check for nineteen thousand five hundred
12 dollars (\$19,500.00) payable to "Nicholas & Tomasevic, LLP", within ten (10) days of of
13 the Effective Date ("First Installment").
- 14 • The Second Installment shall be in the amount of seven thousand dollars (\$7,000.00),
15 divided equally, in one check for three thousand five hundred dollars (\$3,500.00) payable to
16 "Glick Law Group, PC", and in one check for three thousand five hundred dollars
17 (\$3,500.00) payable to "Nicholas & Tomasevic, LLP", within forty (40) days of the
18 Effective Date ("Second Installment"). **If the First Installment is timely made by Settling**
19 **Defendants or their counsel, then EHA and its counsel agree to waive the Second**
20 **Installment (such that the total settlement amount is \$43,000).** The addresses for these
21 two entities are:

22 Noam Glick
23 Glick Law Group
24 225 Broadway, 19th Floor
25 San Diego, CA 92101

26 Craig Nicholas
27 Nicholas & Tomasevic, LLP
28 225 Broadway, 19th Floor
San Diego, CA 92101

4. **CLAIMS COVERED AND RELEASED**

1 **4.1 EHA’s Public Release of Proposition 65 Claims**

2 Plaintiff acting on its own behalf and in the public interest releases Settling Defendants and
3 their parents, subsidiaries, affiliated entities under common ownership, their directors, officers,
4 principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns
5 (“Defendant Entities”), each entity to whom Settling Defendants directly or indirectly distribute,
6 ship, or sell the Covered Products including but not limited to downstream distributors, wholesalers,
7 customers, and retailers, franchisees, franchisors, cooperative members, suppliers, licensees, and
8 licensors, and all of the foregoing entities’ owners, directors, officers, agents, principals, employees,
9 attorneys, insurers, accountants, representatives, predecessors, successors, and assigns (collectively
10 referred to as the “Releasees”) from all claims for violations of Proposition 65 up through the
11 Effective Date based on exposure to Acrylamide from Covered Products as set forth in the Notices.
12 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
13 with respect to exposures to Acrylamide from Covered Products as set forth in the Notices. This
14 release does not extend to any third-party retailers selling the product on a website who, after
15 receiving instruction from Settling Defendants to include a warning as set forth above in section 2.1,
16 do not include such a warning.

17 **4.2 EHA’s Individual Release of Claims**

18 EHA, in its individual capacity, also provides a release to Settling Defendants and/or
19 Releasees, which shall be a full and final accord and satisfaction of, as well as a bar to, all actions,
20 causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities,
21 and demands of every nature, character, and kind, whether known or unknown, suspected or
22 unsuspected, arising out of alleged or actual exposures to Acrylamide in Covered Products
23 manufactured, imported, sold, or distributed by Settling Defendants before the Effective Date.

24 **4.3 Settling Defendants’ Release of EHA**

25 Settling Defendants on their own behalf, and on behalf of Releasees as well as their past and
26 current agents, representatives, attorneys, successors, and assignees, hereby waives any and all
27 claims against EHA and its attorneys and other representatives, for any and all actions taken or
28 statements made by EHA and its attorneys and other representatives, whether in the course of

1 investigating claims, otherwise seeking to enforce Proposition 65 against them, in this matter or
2 with respect to the Covered Products.

3 **5. COURT APPROVAL**

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

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

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

18 In the event the California Office of Health Hazard Assessment adopts a regulation or safe
19 use determination, or issues an interpretive guideline that exempts Covered Products from meeting
20 the requirements of Proposition 65; or if Acrylamide cases are permanently enjoined by a court of
21 competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a
22 burden on First Amendment rights with respect to Acrylamide in Covered Products or Covered
23 Products substantially similar to Covered Products, then Settling Defendants shall be relieved of its
24 obligation to comply with Section 2 herein.

25 **8. ENFORCEMENT**

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

28 **9. 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 Settling Defendants:

5 Marc Libarle
6 Law Offices of Marc Libarle
7 1388 Sutter St, Ste 910
8 San Francisco, CA 94109

If to EHA:

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

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

9 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

13 **11. POST EXECUTION ACTIVITIES**

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

23 **12. MODIFICATION**

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

27 **13. AUTHORIZATION**

28 The undersigned are authorized to execute this Consent Judgment and acknowledge that

1 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
2 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

3 **15. ENTIRE AGREEMENT**

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

9
10 **AGREED TO:**

AGREED TO:

11 Date: _____

11 Date: 4.28.2022

12
13 By: _____
14 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

13 By: 
14 NEW KUKJE, INC.

15 **IT IS SO ORDERED.**

16
17 Date: _____

18 JUDGE OF THE SUPERIOR COURT

1 they have read, understand, and agree to all of the terms and conditions contained herein.

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

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

7 **15. ENTIRE AGREEMENT**

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

14
15 **AGREED TO:**

AGREED TO:

16 Date: 04/29/2022

Date: _____

17
18 By: 
19 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: _____
NEW KUKJE, INC.

20 **IT IS SO ORDERED.**

21
22 Date: _____

JUDGE OF THE SUPERIOR COURT