

1 **NICHOLAS & TOMASEVIC, LLP.**  
2 Craig M. Nicholas (SBN 178444)  
3 Jake Schulte (SBN 293777)  
4 225 Broadway, Suite 1900  
5 San Diego, California 92101  
6 Tel: (619) 325-0492  
7 Fax: (619) 325-0496  
8 Email: cnicholas@nicholaslaw.org  
9 Email: jschulte@nicholaslaw.org

6 **GLICK LAW GROUP, P.C.**  
7 Noam Glick (SBN 251582)  
8 225 Broadway, Suite 1900  
9 San Diego, California 92101  
10 Tel: (619) 382-3400  
11 Fax: (619) 393-0154  
12 Email: noam@glicklawgroup.com

10 Attorneys for Plaintiff  
11 Environmental Health Advocates, Inc.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF ALAMEDA**

14 ENVIRONMENTAL HEALTH  
15 ADVOCATES, INC.,

16 Plaintiff,

17 v.

18 THE FILLO FACTORY, INC., a New Jersey  
19 corporation, AMAZON.COM, INC., a  
20 Delaware corporation, and DOES 1 through  
21 100, inclusive,

22 Defendants.

Case No. HG21103083

**[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” or “Plaintiff”) and The Fillo Factory, Inc. (“Defendant” or “Fillo Factory”) with EHA and  
5 Fillo Factory 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  
9 by reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Fillo Factory 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 Fillo Factory manufactures, imports, sells, and distributes for sale fillo dough  
16 that contains acrylamide. EHA further alleges that Fillo Factory does so without providing a sufficient  
17 health hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition  
18 65, acrylamide is listed as a chemical known to cause cancer, birth defects and other reproductive  
19 harm.

20 **1.5 Notices of Violation**

21 On or around February 17, 2021, EHA served Fillo Factory, Amazon.com, Inc., the California  
22 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of  
23 Violation of Proposition 65 (“Notice”). The Notice alleged that Fillo Factory had violated Proposition  
24 65 by failing to sufficiently warn consumers in California of the health hazards associated with  
25 exposures to acrylamide contained in the fillo dough.

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

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1 **1.6 Product Description**

2 The products covered by this Consent Judgment are fillo dough or products that contain  
3 fillo dough manufactured or processed by Fillo Factory that allegedly contain acrylamide and  
4 are imported, sold, shipped, delivered, or distributed for sale to consumers in California by  
5 Releasees (as defined in section 4.1) (“Covered Products”).

6 **1.7 State of the Pleadings**

7 On or around June 24, 2021, EHA filed a Complaint against Fillo Factory for the alleged  
8 violations of Proposition 65 that are the subject of the Notice. (“Complaint”).

9 **1.8 No Admission**

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

18 **1.9 Jurisdiction**

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

24 **1.10 Effective Date & Compliance Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
26 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5, and  
27 “Compliance Date” shall mean six (6) months from the Effective Date

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1     **2.     INJUNCTIVE RELIEF**

2     **2.1     Reformulation of Covered Products**

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

11    **2.2     Clear and Reasonable Warnings**

12            For Covered Products that contain acrylamide in a concentration exceeding the 225-ppb level  
13    set forth in section 2.1 above, and which are manufactured and packaged for distribution for  
14    authorized sale or use in California on or after the Compliance Date, Fillo Factory shall provide one  
15    of the following warning statements.

16    **Option 1:**

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

20    **Option 2:**

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

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

1 same warning shall be posted on any websites under the exclusive control of Fillo Factory where  
2 Covered Products are sold into California. The warning requirements set forth herein are imposed  
3 pursuant to the terms of this and are recognized by the Parties as not being the exclusive manner of  
4 providing a warning for the Covered Products. Warnings may be provided as specified in the  
5 Proposition 65 regulations or guidance from the California Office of Environmental Health Hazard  
6 Assessment for food in effect as of the Effective Date (Title 27, California Code of Regulations, section  
7 25601, et seq.) or as such regulations may be amended in the future, or pursuant to a settlement  
8 agreement or consent judgment involving acrylamide. In addition, Fillo Factory may follow the  
9 notification procedure set out in Title 27, California Code of Regulations, section 25600.2 or a similar  
10 procedure where Fillo Factory instructs its distributor or retailer customers to provide warnings for the  
11 Products consistent with Section 2.2.

12       2.3 If subsequently enacted changes to Proposition 65 or its implementing  
13 regulations require the use of additional or different information on any warning specifically  
14 applicable to the Covered Products (the “New Safe Harbor Warning”), the Parties agree that the  
15 New Safe Harbor Warning may be utilized in place of or in addition to, as applicable, the  
16 warnings set forth in this Section.

#### 17 **2.4 Sell-Through Period**

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

### 24 **3. MONETARY SETTLEMENT TERMS**

#### 25 **3.1 Settlement Amount**

26       Fillo Factory shall pay fifty thousand dollars (\$50,000.00) in settlement and total  
27 satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent  
28 Judgment. This includes civil penalties in the amount of five thousand dollars (\$5,000.00)

1 pursuant to Health and Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of  
2 forty-five thousand dollars (\$45,000.00) 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  
5 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the  
6 penalty. Three thousand, seven hundred and fifty dollars (\$3,750.00), paid to the California Office of  
7 Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%)  
8 of the penalty, one thousand, two hundred and fifty dollars (\$1,250.00), paid to EHA individually.  
9 These payments 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 For United States Postal Service Delivery:

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

22 For Federal Express 2-Day Delivery:

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

28 Fillo Factory 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:

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- 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 3.2(a)(i); and
- 3 • “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4 **3.3 Attorneys’ Fees and Costs**

5 The portion of the settlement attributable to attorneys’ fees and costs, forty-five thousand dollars  
6 (\$45,000.00), shall be paid to Glick Law Group, P.C. and Nicholas & Tomasevic, LLP (collectively,  
7 “EHA’s Counsel”), who are entitled to attorneys’ fees and costs incurred by it in this action, including  
8 but not limited to investigating potential violations, bringing this matter to Fillo Factory’s attention,  
9 as well as litigating and negotiating a settlement in the public interest.

10 Fillo Factory shall provide their payment to EHA’s Counsel in three installments as follows:

- 11 • The first installment shall be in the amount of seventeen thousand five hundred dollars  
12 (\$17,500.00), with \$8,750.00 payable to Glick Law Group, PC and \$8,750.00 payable to  
13 Nicholas & Tomasevic, LLP, within ten (10) days of the Effective Date (“First  
14 Installment”);
- 15 • The second installment shall be in the amount of seventeen thousand five hundred dollars  
16 (\$17,500.00), with \$8,750.00 payable to Glick Law Group, PC and \$8,750.00 payable to  
17 Nicholas & Tomasevic, LLP, within forty (40) days of the Effective Date (“Second  
18 Installment”) .
- 19 • The third installment shall be in the amount of ten thousand dollars (\$10,000), with \$5,000.00  
20 payable to Glick Law Group, PC and \$5,000.00 payable to Nicholas & Tomasevic, LLP, within seventy  
21 (70) days of the Compliance Date (“Third Installment”). If the First Installment and Second Installment  
22 are timely received by EHA’s Counsel, then EHA’s Counsel agrees to waive the Third Installment.

23 The addresses for these two entities are:

24 Noam Glick  
25 Glick Law Group  
26 225 Broadway, 19<sup>th</sup> Floor  
27 San Diego, CA 92101

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

1    **3.4    Timing**

2            If the deadline for any payment due under this Consent Judgment is on a Sunday or holiday, it  
3 will be extended until the next day that is not a holiday.

4    **4.       CLAIMS COVERED AND RELEASED**

5    **4.1    EHA's Public Release of Proposition 65 Claims**

6            Plaintiff acting on its own behalf and in the public interest releases Fillo Factory and its  
7 parents, subsidiaries, affiliated entities under common ownership, its directors, officers, principals,  
8 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns  
9 (“Defendant Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or  
10 sells the Products including but not limited to downstream distributors, wholesalers, customers, and  
11 retailers (including but not limited to Amazon.com, Inc.), franchisees, franchisors, cooperative  
12 members, suppliers, licensees, and licensors, and all of the foregoing entities’ owners, directors,  
13 officers, agents, principals, employees, attorneys, insurers, accountants, representatives, predecessors,  
14 successors, and assigns (collectively referred to as the “Releasees”) from all claims for violations of  
15 Proposition 65 up through the Effective Date based on exposure to acrylamide from Products as set  
16 forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with  
17 Proposition 65 with respect to exposures to acrylamide from Products as set forth in the Notice.

18    **4.2    EHA's Individual Release of Claims**

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

25    **4.3    Fillo Factory's Release of EHA**

26            Fillo Factory on its own behalf, and on behalf of Releasees as well as its past and current  
27 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against  
28 EHA and its attorneys and other representatives, for any and all actions taken or statements made by



1 EHA and its attorneys and other representatives, whether in the course of investigating claims,  
2 otherwise seeking to enforce Proposition 65 against them, in this matter or with respect to the  
3 Covered Products.

4 **5. COURT APPROVAL**

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

8 **6. SEVERABILITY**

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

12 **7. GOVERNING LAW**

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

19 In the event the California Office of Health Hazard Assessment adopts a regulation or  
20 safe use determination, or issues an interpretive guideline that exempts Covered Products from  
21 meeting the requirements of Proposition 65; or if the Ninth Circuit Court of Appeals upholds  
22 the District Court decision to grant a preliminary injunction in *California Chamber of*  
23 *Commerce v. Becerra*, No. 2:19-cv-01019-KJM-JDP (E.D. Cal.); or if Proposition 65 is  
24 determined to be preempted by federal law or a burden on First Amendment rights with respect  
25 to acrylamide in Covered Products or Covered Products substantially similar to Covered  
26 Products, then Fillo Factory shall be relieved of its obligation to comply with Section 2 herein.

1 **8. NOTICE**

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

6 **If to Fillo Factory:**

7 Abhishek Gurnani  
8 Amin Talati Wasserman, LLP  
9 100 S. Wacker Dr. STE 2000  
Chicago, IL 60606

**If to EHA:**

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

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

12 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

16 **10. POST EXECUTION ACTIVITIES**

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

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**11. MODIFICATION**

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

**12. AUTHORIZATION**

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


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


If a dispute arises with respect to either Party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed 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:**  
8  
9 Date: September 21, 2021  
10 By:   
11 ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

**AGREED TO:**  
Date: 9.22.21  
By:   
THE FILLO FACTORY, INC.

13 **IT IS SO ORDERED.**

14 Date: \_\_\_\_\_

15  
16 JUDGE OF THE SUPERIOR COURT