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16 Attorneys for Plaintiff  
17 Environmental Health Advocates, Inc.

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

20 ENVIRONMENTAL HEALTH  
21 ADVOCATES, INC.,  
22  
23 Plaintiff,  
24  
25 v.  
26 VICENZI S.p.A., an Italian Corporation, and  
27 DOES 1 through 100, inclusive,  
28 Defendants.

Case No. RG20077146  
**[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”), on the one hand, and Vicenzi S.p.A. (“Defendant” or “Vicenzi”) on the other hand, with  
5 EHA and Vicenzi each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is an organization residing in California, acting in the interest of the general public. It  
8 seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing  
9 or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Vicenzi 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 Vicenzi manufactures, imports, sells, and distributes for sale puff pastry with  
16 butter that contains acrylamide. EHA further alleges that Vicenzi does so without providing a sufficient  
17 warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65, acrylamide  
18 is listed as a chemical known to cause cancer and reproductive harm.

19 **1.5 Notice of Violation**

20 On August 13, 2020, EHA served Vicenzi, Cost Plus World Market, Vicenzi USA, Inc., the  
21 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice  
22 of Violation of Proposition 65. The notice alleged that Vicenzi violated Proposition 65 by failing to  
23 sufficiently warn consumers in California of the health hazards associated with exposures to acrylamide  
24 contained in its “Matilde Vicenzi Puff Pastry with Butter (Ciambellone Al Burro)”.

25 On February 17, 2021, EHA served Vicenzi, the California Attorney General, and all other  
26 required public enforcement agencies with a second 60-Day Notice of Violation of Proposition 65. The  
27 second notice alleged that Vicenzi violated Proposition 65 by failing to sufficiently warn consumers in  
28 California of the health hazards associated with exposures to acrylamide contained in its “Matilde

1 Vicenzi Puff Pastry with Butter (Millefogile d'Italia Classiche)” and other puff pastries with butter.

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

4 **1.6 Products Description**

5 The products EHA alleges to be in violation that are covered by this Consent Judgment are  
6 “Matilde Vicenzi Puff Pastry with Butter (Ciambelline Al Burro)” and “Matilde Vicenzi Puff Pastry  
7 with Butter (Millefogile d'Italia Classiche)” and any other puff pastries with butter manufactured or  
8 sold by Vicenzi that allegedly contain acrylamide and are imported, sold, shipped, delivered or  
9 distributed for sale to consumers in California by Releasees (as defined in section 4.1) (“Products”),  
10 whether sold under the Vicenzi brand, any other brand, or some other private label at all grocery, retail,  
11 and other locations and sales channels, including on the Internet.

12 **1.7 Complaint**

13 On October 16, 2020, EHA filed a Complaint against Vicenzi for the alleged violations of  
14 Proposition 65 that are the subject of the August notice (“Complaint”). The Court hereby deems the  
15 Complaint amended to include the allegations permissible pursuant to the second notice of February  
16 17, 2021.

17 **1.8 No Admission**

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

26 **1.9 Jurisdiction**

27 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
28 Court has jurisdiction over Vicenzi as to the allegations in the Complaint, that venue is proper in the

1 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this  
2 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
5 notice of entry of this Consent Judgment is served on Vicenzi. Due to the fact that the Products are  
6 subject to other regulatory requirements and any reformulation must ensure compliance with these  
7 other applicable regulatory requirements, the Compliance Date is the date that is six (6) months after  
8 the Effective Date.

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

10 **2.1 Reformulation of Products**

11 Any Products that are manufactured or sold by or for Vicenzi on and after the Compliance Date  
12 that are thereafter sold or distributed for sale in California by Vicenzi shall not exceed 100 parts per  
13 billion (“ppb”) acrylamide on average, as set forth in this Section 2. As used in this Section 2.1,  
14 “distributed for sale in California” means to directly ship a Product into California or to sell a Product  
15 to a distributor that Vicenzi knows will sell the Product in California.

16 **2.2 Testing**

17 (a) Compliance with the average level shall be determined using LC-MS/MS  
18 (Liquid Chromatograph-Mass Spectrometry), GC/MS/MS (Gas Chromatography/Mass Spectrometry),  
19 or any other testing method agreed upon by the Parties. Any testing for purposes of Section 2.1 shall  
20 be performed by any laboratory accredited by the State of California, a federal agency, or a recognized  
21 accrediting organization.

22 (b) The Average Level is determined by randomly selecting and testing, over no less  
23 than a ten-day period, one sample from at least five lots (or from as many lots as are available, if fewer  
24 than five) and a maximum of ten lots of Products produced at locations that supply such Products to  
25 California (“Sampling Data”). The mean and standard deviation shall be calculated using the Sampling  
26 Data. Any data points that are more than three standard deviations outside the mean shall be discarded  
27  
28

1 once, and the mean and standard deviation recalculated using the remaining data points. The arithmetic  
2 mean determined in accordance with this procedure shall be deemed the “Average Level.”

3 (c) For at least three consecutive years after the Compliance Date, Vicenzi shall  
4 arrange for testing under Section 2.2. The testing shall be at least once per year, with the first testing  
5 occurring prior to the Compliance Date. No further testing shall be required unless Vicenzi materially  
6 modifies the ingredients or cooking process of a Product, at which point testing shall recommence on  
7 an annual basis for at least three years.

### 8 **2.3 Grace Period for Existing Inventory of Products**

9 Notwithstanding anything else in this Consent Judgment, the Products that are manufactured  
10 on or prior to the Compliance Date shall be subject to release of liability pursuant to this Consent  
11 Judgment, without regard to when such Products were, or are in the future, distributed or sold to  
12 customers. As a result, the obligation of Vicenzi, or any Releasees (if applicable), do not apply to these  
13 Products manufactured on or prior to the Compliance Date.

### 14 **2.4 Clear and Reasonable Warnings**

15 For Products that contain acrylamide in an average concentration exceeding the ppb level set  
16 forth in Section 2.1 above, and which are manufactured and packaged for distribution, for authorized  
17 sale or use in California on or after the Compliance Date, Vicenzi shall provide one of the following  
18 Proposition 65 warnings:

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

22 **2) WARNING:** Cancer and Reproductive Harm –  
23 [www.P65Warnings.cs.gov](http://www.P65Warnings.cs.gov)

24 The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning  
25 statement shall be prominently displayed on the packaging of the Products, or on a placard, shelf tag,  
26 or sign provided that the statement is displayed with such conspicuousness, as compared with other  
27 words, statements, or designs as to render it likely to be read and understood by an ordinary individual  
28 prior to sale. If the warning statement is displayed on the Products’ label, it must be set off from other

1 surrounding information. The same warning shall be posted on any websites where Products are sold  
2 into California

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Settlement Amount**

5 Vicenzi shall pay fifty-eight thousand dollars (\$58,000.00) in settlement and total satisfaction  
6 of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes  
7 civil penalties in the amount of six thousand dollars (\$6,000.00) pursuant to Health and Safety Code  
8 section 25249.7(b) and attorney's fees and costs in the amount of fifty-two thousand dollars  
9 (\$52,000.00) pursuant to Code of Civil Procedure section 1021.5.

10 **3.2 Civil Penalty**

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

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

16 Samantha Dice  
17 Environmental Health Advocates  
225 Broadway, Suite 2100  
18 San Diego, CA 92101

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

21 For United States Postal Service Delivery:

22 Mike Gyurics  
23 Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
24 Sacramento, CA 95812-4010

25 For Non-United States Postal Service Delivery:  
26  
27  
28

1 Mike Gyurics  
2 Fiscal Operations Branch Chief  
3 Office of Environmental Health Hazard Assessment  
4 1001 I Street  
5 Sacramento, CA 95814

6 Vicenzi agrees to provide EHA's counsel with a copy of the check payable to OEHHA,  
7 simultaneous with its penalty payments to EHA.

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

9 Relevant information is set out below:

- 10 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 11 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
- 12 and
- 13 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA  
14 95814.

15 **3.3 Attorney's Fees and Costs**

16 The portion of the settlement attributable to attorney's fees and costs (\$52,000.00) shall be paid  
17 to EHA's counsel, who are entitled to attorney's fees and costs incurred by it in this action, including  
18 but not limited to investigating potential violations, bringing this matter to Vicenzi's attention, as well  
19 as litigating and negotiating a settlement in the public interest.

20 Vicenzi shall provide its payment to EHA's counsel in two checks, divided equally, payable to  
21 Glick Law Group, PC (\$26,000.00) and Nicholas & Tomasevic, (\$26,000.00) respectively. The  
22 addresses for these two entities are:

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

27 Craig Nicholas  
28 Nicholas & Tomasevic, LLP  
225 Broadway, 19<sup>th</sup> Floor  
San Diego, CA 92101

**3.4 Timing**

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

1     **4.     CLAIMS COVERED AND RELEASED**

2             **4.1     EHA’s Public Release of Proposition 65 Claims**

3             For any claim or violation arising under Proposition 65 alleging a failure to warn about  
4 exposures to acrylamide from Products manufactured, imported, sold, or distributed by Vicenzi prior  
5 to the Compliance Date, EHA, acting for the general public, releases Vicenzi of any and all liability.  
6 This includes Vicenzi’s owners, parents, subsidiaries, affiliated entities under common ownerships,  
7 its directors, officers, agents, employees, attorneys, and each entity to whom Vicenzi directly or  
8 indirectly distributes or sells Products, including but not limited to downstream distributors,  
9 wholesales, customers, retailers, franchisees, cooperative members and licensees, (collectively, the  
10 “Releasees”). Releasees include Vicenzi, its parent, and all subsidiaries and affiliates thereof and  
11 their respective employees, agents, and assigns that sell Vicenzi’s Products. Compliance with the  
12 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to the alleged  
13 or actual failure to warn about exposures to acrylamide from Products manufactured, imported, sold,  
14 or distributed by Vicenzi after the Effective Date. This Consent Judgment is a full, final and binding  
15 resolution of all claims that were or could have been asserted against Vicenzi or Releasees for failure  
16 to provide warnings for alleged exposure to acrylamide contained in Products.

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

18             EHA, in its individual capacity, also waives all rights to institute or participate in, directly or  
19 indirectly, any form of legal action, and discharges and releases all claims against all Releasees,  
20 including Vicenzi, under Proposition 65 or any statutory or common law from the alleged failure to  
21 provide warnings for any exposures to acrylamide, or for causing any exposures to acrylamide, in the  
22 Products manufactured, purchased, distributed, or sold by Defendant. This release in this Section 4.2  
23 is effective as a full and final accord and satisfaction of, as well as a bar to, all actions, causes of  
24 action, obligations, costs, expenses, attorney’s fees, damages, losses, claims, liabilities, and demands  
25 of every nature, character, and kind, whether known or unknown, suspected or unsuspected. EHA  
26 acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as  
27 follows:

28                             A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
                                  CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO



1                   EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
2                   AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
3                   AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
4                   PARTY.

5 EHA understands and acknowledges the significance and consequence of this waiver of California  
6 Civil Code section 1542.

7                   **4.3     Vicenzi's Release of EHA**

8                   Vicenzi, on its own behalf, and on behalf of its affiliated Releasees as well as its past and  
9                   current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims  
10                  against EHA and its attorneys and other representatives, for any and all actions taken or statements  
11                  made by EHA and its attorneys and other representatives, whether in the course of investigating  
12                  claims, otherwise seeking to enforce Proposition 65 against it, in this matter or with respect to the  
13                  Products.

14                  **5.     COURT APPROVAL**

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

18                  **6.     SEVERABILITY**

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

21                  **7.     GOVERNING LAW**

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

27                  **8.     NOTICE**

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

1 If to Vicenzi :

2 Gary M. Roberts  
3 Dentons US LLP  
4 601 South Figueroa Street, STE 2500  
5 Los Angeles, CA 90017

If to EHA:

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

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

7 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

11 **10. POST EXECUTION ACTIVITIES**

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

21 **11. MODIFICATION**

22 11.1 **Modification.** This Consent Judgment may be modified by: (i) a written agreement of  
23 the Parties and entry of a modified consent judgment thereon by the Court; or (ii) a successful motion  
24 or application of any Party, and the entry of a modified consent judgment thereon by the Court.

25 11.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
26 attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the  
27 Consent Judgment.

1           **11.3 Change in Proposition 65.** If Proposition 65 or its implementing regulations  
2 (including but not limited to the published “no significant risk level” for acrylamide set forth at Cal.  
3 Code Regs., tit 27, section 25705, subdivision (c)(2) or any “alternative risk level” adopted by  
4 regulation or court decision) are changed from their terms as they exist on the date of entry of this  
5 Consent Judgement, or if OEHHA takes some other final regulatory action that determines that  
6 warnings for acrylamide are not required or modifies the standard for warnings for acrylamide, then  
7 Vicenzi may seek to modify this Consent Judgement.

8           **11.4 Other Court Decisions.** If a final decision of a court determines that warnings for  
9 acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are  
10 preempted or otherwise unlawful or unconstitutional, then Vicenzi may move to modify this Consent  
11 Judgement to conform to such ruling in order to avoid unfair, inconsistent, or anti-competitive results.

12           **11.5 Federal Agency Action and Preemption.** If a court of competent jurisdiction or an  
13 agency of the federal government, including, but not limited to, the U.S. Food and Drug  
14 Administration, states through any guidance, regulation or legally binding act that federal law has  
15 preemptive effect on any of the requirements of this Consent Judgement, then this Consent  
16 Judgement may be modified in accordance with the procedure for noticed motions set forth in Section  
17 11.1 to bring it into compliance with or avoid conflict with federal law.

18           **11.6 Scientific Studies.** If an agency of the federal government, including, but not limited  
19 to the U.S. Food and Drug Administration, states through any guidance, regulation, or other legally  
20 binding act, following a review of scientific studies and following public notice and comment, a  
21 cancer potency estimate for acrylamide that equates to a no significant risk level higher than 0.2  
22 micrograms per day, then Vicenzi shall be entitled to seek a modification of this Consent Judgement.

23           **11.7** Before filing any motion to modify the Consent Judgement, Vicenzi shall provide  
24 written notice to EHA to initiate the meet and confer procedure in Section 11.2. If the Parties do not  
25 agree on the proposed modification during informal meet and confer efforts, Vicenzi may file a motion  
26 to modify the Consent Judgment within sixty (60) days of the date of the written notice that Vicenzi  
27 provides to EHA under this Section 11.  
28

1           11.8 Any modifications to this Consent Judgment provided herein shall have no effect on  
2 Vicenzi's financial obligations as contained in this Agreement.

3 **12. RETENTION OF JURISDICTION**

4           This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.  
5 Notwithstanding the provisions of Section 11, nothing in this Consent Judgment limits or affects the  
6 Court's authority to modify this Consent Judgment as provided by law.

7 **13. AUTHORIZATION**

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

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

11           Prior to bringing any motion or order to show cause to enforce the terms of this Consent  
12 Judgment, a Party seeking to enforce the Consent Judgment shall provide the other Party written notice  
13 of the alleged violation. The Parties shall meet and confer in an effort to try to reach agreement on an  
14 appropriate cure for the alleged violation. EHA shall not bring an enforcement action or institute a  
15 judicial proceeding if Vicenzi demonstrates it has complied with the requirements of Section 2. Vicenzi  
16 is entitled to designate such information as confidential.

17           In the event that meet and confer efforts are unsuccessful, the Party alleging a violation may  
18 initiate a judicial proceeding to enforce this Consent Judgment no earlier than 60 days after issuing the  
19 written notice specified in this Section 14. In the event that a Party initiates such a judicial proceeding,  
20 the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs.

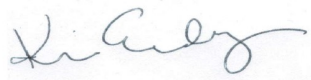
21 **15. ENTIRE AGREEMENT**

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

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**AGREED TO:**

Date: February 23, 2021.

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

**AGREED TO:**

Date: 23<sup>rd</sup> FEBRUARY 2021

By: MRS. GIULIANA VICENZI  
VICENZI S.p.A

**VICENZI S.p.A.**  
Via Forte Garofolo n. 1  
☎ 045.8262800 - Fax 045.8262870  
37057 S. GIOVANNI LUPATOTO (VR)  
Cod. Fisc. e Part. IVA.: 0027320231



**IT IS SO ORDERED.**

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

116468700

JUDGE OF THE SUPERIOR COURT