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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 JONES POTATO CHIP CO., an Ohio  
18 corporation, THE KROGER CO., an Ohio  
corporation, RALPHS GROCERY  
19 COMPANY, an Ohio corporation, and DOES  
1 through 100, inclusive,

20 Defendants.

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Case No. RG20075973

**[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 Jones Potato Chip Co. (“Defendant” or “Jones Potato”) with EHA and  
5 Jones Potato 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          Jones Potato 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 Jones Potato manufactures, imports, sells, and distributes for sale Kroger  
16 Potato Sticks that contain acrylamide. EHA further alleges that Jones Potato does so without  
17 providing a sufficient health hazard warning as required by Proposition 65 and related Regulations.  
18 Pursuant to Proposition 65, acrylamide is listed as a chemical known to cause cancer, birth defects  
19 and other reproductive harm.

20          **1.5 Notice of Violation**

21          On or around July 2, 2020, EHA served The Kroger Co., Ralphs Grocery Company, the  
22 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice  
23 of Violation of Proposition 65 (“Initial Notice”). The Initial Notice alleged that The Kroger Co. had  
24 violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards  
25 associated with exposures to acrylamide contained in Kroger Potato Sticks.

26          On or around February 23, 2021, EHA served Jones Potato, The Kroger Co., Ralphs Grocery  
27 Company, the California Attorney General, and all other required public enforcement agencies with  
28 a 60-Day Notice of Violation of Proposition 65 (“Amended Notice”). The Amended Notice corrected

1 the manufacturer of Kroger Potato Sticks to Jones Potato.

2 No public enforcer has commenced or is otherwise prosecuting an action to enforce the  
3 violations alleged in the Initial Notice or Amended Notice (hereinafter, the “Notices”).

4 **1.6 Product Description**

5 The products covered by this Consent Judgment are Kroger Potato Sticks manufactured or  
6 processed by Jones Potato that allegedly contain acrylamide and are manufactured, imported, sold,  
7 shipped, delivered, or distributed for sale to consumers in California by Releasees (as defined in  
8 section 4.1) (“Covered Products”).

9 **1.7 State of the Pleadings**

10 On or around October 6, 2020, EHA filed a Complaint against The Kroger Co. for the alleged  
11 violations of Proposition 65 that are the subject of the Notices. (“Complaint”).

12 On or around July 7, 2021, EHA amended the Complaint to name Jones Potato Chip Co.

13 **1.8 No Admission**

14 Jones Potato denies the material factual and legal allegations of the Notices and Complaint.  
15 Jones Potato further asserts that it had no knowledge that its customer sold the Covered Products in  
16 California. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,  
17 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment  
18 be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.  
19 This Section shall not, however, diminish or otherwise affect Jones Potato’ obligations,  
20 responsibilities, and duties under this Consent 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 Jones Potato as to the allegations in the Complaint, that venue is proper in  
24 the 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 **1.10 Effective Date and Compliance Date**

27 For purposes of this Consent Judgment, the term “Effective Date” means the date on  
28 which the Court enters this Consent Judgment after granting the motion for its approval, as

1 discussed in Section 5.

2 The "Compliance Date" is the date that is six (6) months after the Effective Date, provided  
3 that the Compliance Date may be extended up to an additional three (3) months by Jones Potato  
4 notifying EHA at least thirty (30) days before the Compliance Date that good cause exists for such  
5 extension. If EHA believes in good faith that such extension is without basis, EHA shall notify  
6 Jones Potato of such determination and the parties shall meet and confer to resolve the dispute. The  
7 Parties acknowledge that the owner of the private label must approve all elements of the product  
8 labeling. If the owner of the private label does not timely approve the inclusion of the warning  
9 required under this Consent Judgment, the Parties agree that Jones Potato shall so notify EHA's  
10 counsel and that such event shall be deemed good cause to extend the Compliance Date (up to a  
11 maximum of three (3) months) even if such notification occurs later than thirty (30) days before the  
12 Compliance Date.

13 **2. INJUNCTIVE RELIEF**

14 **2.1 Reformulation of Covered Products**

15 On and after the Compliance Date, Covered Products that Jones Potato manufactures either  
16 shall comply with the reformulation standard described herein ("Reformulated Covered Products")  
17 or shall carry warnings as described in Section 2.2. Reformulated Covered Products are Covered  
18 Products that do not exceed 281 parts per billion ("ppb") for acrylamide, using tests performed by a  
19 laboratory accredited by the State of California, a federal agency, or a nationally recognized  
20 accrediting organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry). No  
21 warnings for acrylamide shall be required for Reformulated Covered Products.

22 **2.2 Clear and Reasonable Warnings**

23 On or after the Compliance Date, Jones Potato shall provide one of the following warning  
24 statements for Covered Products. If the Office of Environmental Health Hazard Assessment  
25 promulgates regulations pertaining to the warning text and/or method of transmitting warnings for  
26 acrylamide in food products, Jones Potato may, at its sole option, implement such warnings without  
27 being deemed in breach of this Consent Judgment.

1           **Option 1:**

2                   **WARNING:** Consuming this product can expose you to chemicals  
3                   including Acrylamide, which are known to the State of California to  
4                   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).

5           **Option 2:**

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

7           This warning statement shall be prominently displayed on the Covered Products, on  
8           the packing of the Covered Products, or on a placard, shelf tag, or sign provided that the  
9           statement is displayed with such conspicuousness, as compared with other words, statements,  
10          or designs as to render it likely to be read and understood by an ordinary individual prior to  
11          sale. If the warning statement is displayed on the Covered Products' label, it must be set off  
12          from other surrounding information. The same warning shall be posted on any websites under  
13          the exclusive control of Jones Potato where Jones Potato knows Covered Products are sold  
14          into California.

15           **2.3    Sell-Through Period**

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

21           **3.    MONETARY SETTLEMENT TERMS**

22           **3.1    Settlement Amount**

23          Jones Potato shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction  
24          of all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes  
25          civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code  
26          section 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars  
27          (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5. As set forth in Section 3.3., five  
28          thousand dollars (\$5,000.00) of the attorneys' fee payment shall be waived.



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

### 7 **3.3 Attorneys’ Fees and Costs**

8 The portion of the settlement attributable to attorneys’ fees and costs, forty-five  
9 thousand dollars (\$45,000.00), shall be paid to EHA’s counsel, who are entitled to attorneys’  
10 fees and costs incurred by it in this action, including but not limited to investigating potential  
11 violations, bringing this matter to Jones Potato’s attention, as well as litigating and negotiating  
12 a settlement in the public interest.

13 Jones Potato shall provide their payment to EHA’s counsel in four (4) monthly  
14 installments starting on or before fourteen (14) days from the Effective Date, but no earlier  
15 than December 15, 2021, and continuing thereafter for four (4) months. The first installment  
16 shall be in the amount of five thousand dollars (\$5,000.00), payable to Glick Law Group, PC  
17 and five thousand (\$5,000.00), payable to Nicholas & Tomasevic, LLP, respectively. The  
18 second installment shall be in the amount of five thousand dollars (\$5,000.00), payable to  
19 Glick Law Group, PC and five thousand dollars (\$5,000.00), payable to Nicholas &  
20 Tomasevic, LLP, respectively. The third installment shall be in the amount of five thousand  
21 dollars (\$5,000.00), payable to Glick Law Group, PC and five thousand dollars (\$5,000.00),  
22 payable to Nicholas & Tomasevic, LLP, respectively. The fourth installment shall be in the  
23 amount of five thousand dollars (\$5,000.00), payable to Glick Law Group, PC and five  
24 thousand dollars (\$5,000.00), payable to Nicholas & Tomasevic, LLP, respectively. A fifth  
25 installment shall be in the amount of two thousand five hundred dollars (\$2,500.00), payable  
26 to Glick Law Group, PC and two thousand five hundred dollars (\$2,500.00), payable to  
27 Nicholas & Tomasevic, LLP, respectively. If the first four installments of forty thousand  
28 dollars (\$40,000.00) are paid on time, then the fifth installment of five thousand dollars

1 (\$5,000.00) shall be automatically waived by EHA and EHA’s counsel.

2 The payments required in this section may be electronically deposited by Jones Potato and the  
3 Glick Law Group shall provide to Jones Potato the necessary banking information for all such  
4 recipients within two (2) business days of Jones Potato’s request for same, which may be made by  
5 email to Noam Glick at [noam@glicklawgroup.com](mailto:noam@glicklawgroup.com). The mailing addresses for these two entities are:

6 Noam Glick  
7 Glick Law Group  
8 225 Broadway, 19<sup>th</sup> Floor  
9 San Diego, CA 92101

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

### 14 **3.4 Timing**

15 The first installment of the above-mentioned payments will be sent on or before fourteen (14)  
16 days from the Effective Date, but no earlier than December 15, 2021; the second installment will be  
17 sent on or before forty-five (45) days from the Effective Date; the third installment will be sent on or  
18 before seventy-five (75) days from the Effective Date; the fourth installment will be sent on or before  
19 one hundred and five (105) days from the Effective Date. The fifth installment, unless waived  
20 pursuant to Section 3.3, will be sent on or before one hundred and thirty-five (135) days from the  
21 Effective Date. If the deadline for any payment is on Sunday or holiday, it will be extended until the  
22 next day that is not a holiday.

## 23 **4. CLAIMS COVERED AND RELEASED**

### 24 **4.1 EHA’s Public Release of Proposition 65 Claims**

25 Plaintiff acting on its own behalf and in the public interest releases Jones Potato and its parents,  
26 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,  
27 employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant  
28 Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered  
Products including but not limited to downstream distributors, wholesalers, customers, retailers  
(including but not limited to Ralphs Grocery Company), franchisees, franchisors, cooperative



1 members, marketplace hosts, suppliers, licensees, and licensors, and all of the foregoing entities'  
2 owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants,  
3 representatives, predecessors, successors, and assigns (collectively referred to as the "Releasees")  
4 from all claims for violations of Proposition 65 up through the Compliance Date based on exposures  
5 to acrylamide from Covered Products as set forth in the Notices and Complaint. Compliance with the  
6 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures  
7 to acrylamide from Covered Products as set forth in the Notices and Complaint.

8 **4.2 EHA's Individual Release of Claims**

9 EHA, in its individual capacity, also provides a release to Jones Potato and/or  
10 Releasees, which shall be a full, final and binding accord and satisfaction of, as well as a bar  
11 to, all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,  
12 claims, liabilities, and demands of every nature, character, and kind, whether known or  
13 unknown, suspected or unsuspected, arising out of alleged or actual exposures to acrylamide  
14 in Covered Products manufactured, imported, sold, or distributed by Jones Potato before the  
15 Compliance Date.

16 **4.3 Jones Potato's Release of EHA**

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

23 **5. COURT APPROVAL**

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

27 **6. SEVERABILITY**

28 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision

1 is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely  
2 affected.

3 **7. GOVERNING LAW**

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

10 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use  
11 determination, or issues an interpretive guideline that exempts Covered Products from meeting the  
12 requirements of Proposition 65; or Proposition 65 acrylamide in food cases are permanently enjoined  
13 by a court of competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law  
14 or a burden on First Amendment rights with respect to acrylamide in Covered Products or Covered  
15 Products substantially similar to Covered Products, then Jones Potato shall be relieved of its obligation  
16 to comply with Section 2 herein.

17 **8. NOTICE**

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

22 If to Jones Potato:

23 Bob Jones  
24 Jones Potato Chip Co.  
25 823 Bowman St.  
26 Mansfield, OH 44903  
27 bobjones@joneschips.com  
28

If to EHA:

Noam Glick  
Glick Law Group, PC  
225 Broadway, 19th Floor  
San Diego, CA 92101  
[noam@glicklawgroup.com](mailto:noam@glicklawgroup.com)

1 Ann G. Grimaldi  
2 Grimaldi Law Offices  
3 75 Broadway St. Suite 202  
4 San Francisco, CA 94111  
5 ann.grimaldi@grimaldilawoffices.com

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

8 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

12 **10. POST EXECUTION ACTIVITIES**

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

22 Upon execution of this Consent Judgment by the Parties, EHA shall file a Request for  
23 Dismissal of the remaining defendants in this action.

24 **11. MODIFICATION**

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

28 **12. AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment and acknowledge

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

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

7 **14. ENTIRE AGREEMENT**


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

13 **AGREED TO:**

**AGREED TO:**

14 Date: September 30, 2021

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

15  
16 By:   
17 ENVIRONMENTAL HEALTH  
18 ADVOCATES, INC.

By: \_\_\_\_\_  
JONES POTATO CHIP CO.

19 **IT IS SO ORDERED.**

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

\_\_\_\_\_

JUDGE OF THE SUPERIOR COURT

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

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4 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in  
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10 commitments, and understandings related hereto. No representations, oral or otherwise, express or  
11 implied, other than those contained herein have been made by any Party. No other agreements, oral or  
12 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

13 **AGREED TO:**

**AGREED TO:**

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

Date: 9-30-21

15  
16 By: \_\_\_\_\_  
17 ENVIRONMENTAL HEALTH  
18 ADVOCATES, INC.

By: Robert G. Jones President  
JONES POTATO CHIP CO.

19 **IT IS SO ORDERED.**

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

\_\_\_\_\_

21  
22 JUDGE OF THE SUPERIOR COURT  
23  
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25  
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28