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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 UNILEVER MANUFACTURING (US),  
24 INC., a Delaware corporation,  
25 AMAZON.COM, INC., a Delaware  
26 corporation, and DOES 1 through 100,  
27 inclusive,

28 Defendants.

Case No. HG21103146

**[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 Unilever Manufacturing (US) Inc. (“Defendant” or “Unilever”) with EHA  
5 and Unilever 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 by  
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Unilever employs ten or more individuals and for purposes of this Consent Judgment only, is a  
12 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic  
13 Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that Unilever manufactures, imports, sells, and distributes for sale Knorr French  
16 Onion Recipe Mix and that it contains Acrylamide. EHA further alleges that Unilever does so without  
17 providing a sufficient warning as required by Proposition 65 and related Regulations. Unilever denies  
18 these allegations and asserts that its products are safe and in compliance with all applicable laws, rules  
19 and regulations.

20 **1.5 Notice of Violation**

21 On or around February 23, 2021, EHA served Defendant Unilever, Amazon.com, Inc., the  
22 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice  
23 of Violation of Proposition 65 (“Notice”). The Notice alleged that Unilever 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 Knorr French Onion Recipe Mix.

26 No public enforcer has commenced or is otherwise prosecuting an action to enforce the  
27 violations alleged in the Notice.  
28

1           **1.6     Product Description**

2           The products covered by this Consent Judgment are Knorr French Onion Recipe Mix (“Covered  
3 Products”).

4           **1.7     State of the Pleadings**

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

7           **1.8     No Admission**

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

16           **1.9     Jurisdiction**

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

21           The Parties acknowledge that, on April 25, 2023, Unilever sought to stay prosecution of this  
22 action based on the preliminary injunction entered in *CalChamber v. Beccera*, E.D.Cal. Case No. No.  
23 2:19-cv-02019-KJM-EFB (“CalChamber), which was stayed by the Ninth Circuit while the injunction  
24 was appealed. EHA agrees that entry into this Consent Judgment shall not prejudice Unilever or its  
25 affiliates in any way as related to the injunction in the CalChamber case, and Unilever enters into this  
26 Consent Judgment made without waiver of Unilever’s claim, which EHA disputes, that (i) EHA’s  
27 prosecution of this action is subject to the injunction in CalChamber, and (ii) EHA’s efforts to prosecute  
28

1 this case should be enjoined in accordance with the orders entered in that case. Unilever consents to  
2 the jurisdiction of this Court for the limited purpose of review and entry of the Consent Judgment.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this  
5 Consent Judgment is approved and entered as a judgment of the Court, as discussed in Section 5.

6 **2. INJUNCTIVE RELIEF**


7 **2.1 Reformulation of the Covered Products**

8 Except as otherwise provided herein, any Covered Products that are manufactured by Unilever  
9 on and after the Effective Date that Unilever sells in California or distributes for sale in California shall  
10 not exceed 280 parts per billion (“ppb”) for acrylamide, as prepared, using the average of three tests  
11 performed by a laboratory accredited by the State of California, a federal agency, or a nationally  
12 recognized accrediting organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry)  
13 unless such Covered Products comply with the warning requirements of Section 2.2. As used in this  
14 Section 2, “distributed for sale in California” means to directly ship Covered Products into California  
15 or to sell Covered Products to a distributor Unilever know will sell Covered Products in California.

16 **2.2 Clear and Reasonable Warnings**

17 For Covered Products that contain Acrylamide in a concentration exceeding the Reformulation  
18 Standard set forth in section 2.1 above, and which are distributed or directly sold by Unilever in the  
19 State of California on or after the Effective Date, Unilever shall provide one of the following warning  
20 statements. Bracketed language can be provided at Unilever’s option.

21 **Option 1:**

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

25 **Option 2:**

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

1       **Option 3:**

2               **⚠ CALIFORNIA WARNING:** Consuming this product can expose  
3               you to acrylamide, a probable human carcinogen formed in some  
4               foods during cooking or processing at high temperatures. Many  
5               factors affect your cancer risk, including the frequency and amount  
6               of the chemical consumed. For more information including ways to  
7               reduce your exposure, see [www.P65Warnings.ca.gov/acrylamide](http://www.P65Warnings.ca.gov/acrylamide).”

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

19              **2.3     Sell-Through Period**

20              Notwithstanding anything else in this Consent Judgment, Covered Products that are  
21              manufactured, packaged, or put into commerce on or after the date this Agreement is executed shall be  
22              subject to the release of liability pursuant to this Consent Judgment, without regard to when such  
23              Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations  
24              of Unilever, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products  
25              manufactured between the date this Agreement is executed and the Effective Date.

26              **3.     MONETARY SETTLEMENT TERMS**

27              **3.1     Settlement Amount**

28              Unilever shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all  
                the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil

1 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section  
2 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00)  
3 pursuant to Code of Civil Procedure section 1021.5. However, Unilever may take advantage of a timely  
4 payment credit of two-thousand five hundred dollars (\$2,500) if payment is received within three (3)  
5 days of entry of this Consent Judgment.

### 6 **3.2 Civil Penalty**

7 The portion of the settlement attributable to civil penalties shall be allocated according to Health  
8 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid  
9 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining  
10 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars  
11 (\$5,000.00) in civil penalties shall be paid as follows:

- 12 • One payment of \$3,750.00 to OEHHA, due 14 (fourteen) days after the Effective date.
- 13 • One payment of \$1,250.00 to EHA, due 14 (fourteen) days after the Effective date.

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

15  
16 Isaac Fayman  
17 Environmental Health Advocates  
225 Broadway, Suite 2100  
San Diego, CA 92101

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

20 For United States Postal Service Delivery:

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

25 For Federal Express 2-Day Delivery:

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

1 Unilever agrees to provide EHA's counsel with a copy of the check payable to OEHHA,  
2 simultaneous with its penalty payment to EHA.

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

- 5 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- 6 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

7 All payments referenced in this section shall be paid within fourteen (14) days of the date the  
8 Court approves EHA's motion to approve this Consent Judgment.

### 9 **3.3 Attorney's Fees and Costs**

10 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's  
11 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not  
12 limited to investigating potential violations, bringing this matter to Unilever's attention, as well as  
13 litigating and negotiating a settlement in the public interest.

14 Unilever shall provide its payment for attorneys' fees and costs to EHA's counsel by physical  
15 check or by electronic means, including wire transfers, at Unilever's discretion.

16 The attorney fee payment in the amount of forty-five thousand dollars (\$45,000.00), less any  
17 applicable \$2,500 credit per section 3.1 of this Agreement, shall be made payable to Entorno Law,  
18 LLP, and shall be due within fourteen (14) days after the Court approves EHA's motion to approve this  
19 Consent Judgment. The address for this entity is:

20 Noam Glick  
21 Entorno Law, LLP  
22 225 Broadway, Suite 1900  
23 San Diego, CA 92101

## 24 **4. CLAIMS COVERED AND RELEASE**

### 25 **4.1 EHA's Public Release of Proposition 65 Claims**

26 Plaintiff, acting on its own behalf and in the public interest, releases Unilever, and its parents,  
27 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals,  
28 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant  
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, and

1 marketplaces franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all  
2 of the foregoing entities' owners, directors, officers, agents, principals, employees, attorneys, insurers,  
3 accountants, representatives, predecessors, successors, and assigns (collectively referred to as the  
4 "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on  
5 exposure to Acrylamide from Covered Products as set forth in the Notice(s). Compliance with the terms  
6 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to  
7 Acrylamide from Covered Products as set forth in the Notice(s). This Consent Judgment is a full, final,  
8 and binding resolution of all claims under Proposition 65 that were or could have been asserted against  
9 Unilever and/or Releasees for failure to comply with Proposition 65 for alleged exposure to Acrylamide  
10 from Covered Products. This release does not extend to any third-party retailers selling the product on  
11 a website who, after receiving instruction from Unilever to include a warning as set forth above in  
12 section 2.2, do not include such a warning.

#### 13 **4.2 EHA's Individual Release of Claims**

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

#### 20 **4.3 Unilever's Release of EHA**

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

#### 26 **4.4 No Other Known Claims or Violations**

27  
28



1 EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged  
2 violations of Proposition 65 by Unilever or for which Unilever bears legal responsibility other than  
3 those that are fully resolved by this Consent Judgment.

4 **5. COURT APPROVAL**

5 This Consent Judgment is not effective until it is approved by the Court and shall be null and  
6 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or  
7 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 is held  
10 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the state of California as  
13 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 Unilever may  
15 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations  
16 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so  
17 affected.

18 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use  
19 determination, or issues an interpretive guideline that exempts Covered Products from meeting the  
20 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 burden  
22 on First Amendment rights with respect to Acrylamide in Covered Products or Covered Products  
23 substantially similar to Covered Products, then Unilever shall be relieved of its obligation to comply  
24 with Section 2 herein.

25 **8. ENFORCEMENT**

26 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled  
27 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; and (iv) with a copy by email; to  
4 the following addresses:

5 If to Unilever:

6 William F. Tarantino  
7 Morrison Foerster LLP  
8 425 Market Street  
9 San Francisco, CA 94105  
10 Wtarantino@mofo.com

If to EHA:

Noam Glick  
Entorno Law, LLP  
225 Broadway, Suite 2100  
San Diego, CA 92101  
noam@entornolaw.com

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

11 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

15 **11. POST EXECUTION ACTIVITIES**

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

25 **12. MODIFICATION**

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

1 **13. AUTHORIZATION**

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

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

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

9 **15. ENTIRE AGREEMENT**


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

15 **AGREED TO:**

**AGREED TO:**

16  
17 Date: 07/31/23

Date: 31 July 2023

18  
19 By:   
20 ENVIRONMENTAL HEALTH  
21 ADVOCATES, INC.

By:   
UNILEVER MANUFACTURING (US)  
INC.

22 **IT IS SO ORDERED.**

23  
24 Date: \_\_\_\_\_

25  
26  
27  
28 JUDGE OF THE SUPERIOR COURT