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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] AMENDED 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. 2:19-
23 cv-02019-KJM-EFB (“CalChamber), which was stayed by the Ninth Circuit while the injunction was
24 appealed. EHA agrees that entry into this Consent Judgment shall not prejudice Unilever or its affiliates
25 in any way as related to the injunction in the CalChamber case, and Unilever enters into this Consent
26 Judgment made without waiver of Unilever’s claim, which EHA disputes, that (i) EHA’s prosecution
27 of this action is subject to the injunction in CalChamber, and (ii) EHA’s efforts to prosecute this case
28

1 should be enjoined in accordance with the orders entered in that case. Unilever consents to the
2 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, using testing performed by a laboratory
11 accredited by the State of California, a federal agency, or a nationally recognized accrediting
12 organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) unless such Covered
13 Products comply with the warning requirements of Section 2.2. As used in this Section 2, “distributed
14 for sale in California” means to directly ship Covered Products into California or to sell Covered
15 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 the following warning
20 statement:

21 **⚠ CALIFORNIA WARNING:** Consuming this product can expose
22 you to acrylamide, a probable human carcinogen formed in some
23 foods during cooking or processing at high temperatures. Many
24 factors affect your cancer risk, including the frequency and amount
25 of the chemical consumed. For more information including ways to
26 reduce your exposure, see www.P65Warnings.ca.gov/acrylamide.

27 Bracketed language can be provided at Unilever’s option when it has reason to believe that the
28 exposure to acrylamide is at a level that requires a warning for reproductive toxicity. This warning
statement shall be prominently displayed on the Covered Products, on the packing of the Covered

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

11 **2.3 Sell-Through Period**

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

18 **3. MONETARY SETTLEMENT TERMS**

19 **3.1 Settlement Amount**

20 Unilever shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all
21 the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil
22 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
23 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00)
24 pursuant to Code of Civil Procedure section 1021.5.

25 **3.2 Civil Penalty**

26 The portion of the settlement attributable to civil penalties shall be allocated according to Health
27 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
28 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining

1 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars
2 (\$5,000.00) in civil penalties shall be paid as follows:

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

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

6
7 Isaac Fayman
8 Environmental Health Advocates
225 Broadway, Suite 2100
San Diego, CA 92101

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

11 For United States Postal Service Delivery:

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

16 For Federal Express 2-Day Delivery:

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

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

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

23 Relevant information is set out below:

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

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

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1 from Covered Products. This release does not extend to any third-party retailers selling the product on
2 a website who, after receiving instruction from Unilever to include a warning as set forth above in
3 section 2.2, do not include such a warning.

4 **4.2 EHA's Individual Release of Claims**

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

11 **4.3 Unilever's Release of EHA**

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

17 **4.4 No Other Known Claims or Violations**

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

21 **5. COURT APPROVAL**

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

25 **6. SEVERABILITY**

26 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
27 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.
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1 **7. GOVERNING LAW**

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

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

15 **8. ENFORCEMENT**

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

18 **9. NOTICE**

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

23 If to Unilever:

24 William F. Tarantino
25 Morrison Foerster LLP
26 425 Market Street
San Francisco, CA 94105
Wtarantino@mofo.com

If to EHA:

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

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

1 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

5 **11. POST EXECUTION ACTIVITIES**

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

15 **12. MODIFICATION**

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

19 **13. AUTHORIZATION**

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

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

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

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1 **15. 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:**

AGREED TO:

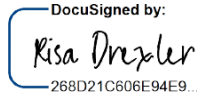
8 09/11/23

31 July 2023

9 Date: _____

Date: _____

10 By:  _____

10 By:  _____

11 ENVIRONMENTAL HEALTH
12 ADVOCATES, INC.

UNILEVER MANUFACTURING (US)
INC.

13
14 **IT IS SO ORDERED.**

15
16 Date: _____

17 JUDGE OF THE SUPERIOR COURT
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