

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Gourmet International, Inc. (“Gourmet”), on the other hand, with EHA and Gourmet each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Gourmet employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that Gourmet sells, and distributes for sale, in California, biscuits that contain acrylamide and that it does so without first providing the health hazard warning required by Proposition 65. Acrylamide is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, Hill Biscuits Ginger Nuts (“the Product”), that allegedly contains acrylamide and that is distributed for sale in California by Gourmet.

1.4 Notice of Violation

On March 18, 2021, EHA served Gourmet, Cost Plus, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Gourmet violated Proposition 65 when they failed to warn consumers in California of the health risks associated with exposures to acrylamide from the Product.

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently

prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Gourmet denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold, or distributed for sale, in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Gourmet of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Gourmet of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Gourmet. This Section shall not, however, diminish or otherwise affect Gourmet's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean sixty (60) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Removal of Product from California Market

Notwithstanding any Product sold, or distributed for sale, in California on or prior to the Effective date as provided for in Section 2.2, Gourmet shall no longer sell or distribute for sale the Product in California.

2.2 Sell-Through Period

Product that is sold, or distributed for sale, in California on or prior to the Effective Date shall be subject to release of liability pursuant to this Settlement Agreement, without regard to when such Product was, or is in the future, sold or distributed to customers. As a result, the obligation of Gourmet, or any Releasees, does not apply to Product sold, or distributed for sale, in California on or prior to the Effective Date.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged

in the Notice or referred to in this Settlement Agreement, Gourmet agrees to pay one thousand five hundred dollars (\$1,500.00) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EHA. Within fourteen (14) days of the date this Settlement Agreement is executed by the Parties, Gourmet shall issue two separate checks for the civil penalty payment to (1) “OEHHA” in the amount of one thousand one hundred twenty-five dollars (\$1,125.00) and (2) Environmental Health Advocates, Inc., in the amount of three hundred and seventy-five dollars (\$375.00).

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

For United States Postal Service Delivery:

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

For Federal Express 2-Day Delivery:

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

All penalty payments owed to EHA shall be sent to:

Environmental Health Advocates
225 Broadway, Suite 1900
San Diego, CA 92101

3.2 Attorneys’ Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within fourteen (14) days of the date this Settlement Agreement is executed by the Parties, Gourmet agrees

to seventeen thousand dollars (\$17,000.00) to EHA's counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Gourmet, and negotiating a settlement. Gourmet's payment shall be delivered in the form of two checks: (1) one check for eight thousand and five hundred dollars (\$8,500.00) payable to "Glick Law Group"; and (2) one check for eight thousand and five hundred dollars (\$8,500.00) payable to "Nicholas & Tomasevic LLP."

3.3 Payment Address

All payments required under this Section shall be delivered to:

Noam Glick
Glick Law Group
225 Broadway, Suite 1900
San Diego, CA 92101

Craig Nicholas
Nicholas & Tomasevic, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.4 Tax Documentation

Gourmet agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Gourmet cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Gourmet receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Gourmet

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EHA, on its own behalf and not on behalf of the public, and Gourmet of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against Gourmet and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by Gourmet, and each entity to whom Gourmet directly or indirectly sold, or distributed for sale, in

California, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees (“Releasees”), based on the failure to warn about exposures to acrylamide required under Proposition 65 in the Product sold, or distributed for sale, in California by Gourmet before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Gourmet and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to acrylamide required under Proposition 65 in the Product distributed, sold or offered for sale by Gourmet, before the Effective Date.

4.2 Gourmet’s Release of EHA

Gourmet, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken or statements made by EHA and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Product will develop or be discovered. EHA on behalf of itself only, on the one hand, and Gourmet on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Gourmet:

Dennis Raglin
Steptoe & Johnson LLP
633 West Fifth Street, Suite 1900
Los Angeles, CA 90071

For EHA:

Noam Glick
Glick Law Group, PC
225 Broadway, Suite 1900
San Diego, CA 92101

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

8. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

10. **MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

11. **AUTHORIZATION**


The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: August 2, 2021

Date: Aug. 2, 2021

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By:  President
GOURMET INTERNATIONAL, INC.