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10 Attorneys for Plaintiff  
11 Environmental Health Advocates, Inc.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF ALAMEDA**

14 ENVIRONMENTAL HEALTH  
15 ADVOCATES, INC.,  
16 Plaintiff,  
17 v.  
18 RALEY'S, a California corporation, and  
19 DOES 1 through 100, inclusive,  
20 Defendants.

Case No. RG21102745  
**[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”) and Raley’s (“Defendants” or “Raley’s”) with EHA and Raley’s each individually referred  
5 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 Defendants**

11 Raley’s 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 Raley’s manufactures, imports, sells, and distributes for sale tortilla chips that  
16 contain acrylamide. EHA further alleges that Raley’s does so without providing a sufficient health  
17 hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65,  
18 acrylamide is listed as a chemical known to cause cancer, birth defects and other reproductive harm.  
19 Raley’s denies that warnings are required under Proposition 65 for any exposure to acrylamide in  
20 Products, and Raley’s maintains that it has complied with all applicable federal and state laws  
21 including, but not limited to, Proposition 65.

22 **1.5 Notices of Violation**

23 On March 18, 2021, EHA served Raley’s, the California Attorney General, and all other  
24 required public enforcement agencies with a 60-Day Notice of Violation of California Health and  
25 Safety Code section 25249.6 *et seq.* (“Notice”). The Notice alleged that Raley’s violated Proposition

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1 65 by failing to sufficiently warn consumers in California of the health hazards associated with  
2 exposures to acrylamide contained in its Raley's Tortilla Chips.

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

5 **1.6 Covered Product Description**

6 The products covered by this Consent Judgment are Raley's Tortilla Chips manufactured or  
7 processed by Raley's that allegedly contain acrylamide and are imported, sold, shipped, delivered or  
8 distributed for sale to consumers in California by Releasees (as defined in section 4.1) ("Products").

9 **1.7 State of the Pleadings**

10 On or around June 21, 2021, EHA filed a Complaint against Raley's for the alleged violations  
11 of Health and Safety Code section 25249.6 that are the subject of the Notice ("Complaint"), and  
12 served that Complaint, with a Notice of Acknowledgement and Receipt, on July 7, 2021.

13 Raley's agrees to file an Answer to EHA's Complaint (within the time frames provided by the  
14 Code of Civil Procedure) responding to the alleged violations of Health and Safety Code section  
15 25249.6 that are subject to the Notice ("Answer").

16 **1.8 No Admission**

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

25 **1.9 Jurisdiction**

26 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
27 Court has jurisdiction over Raley's as to the allegations in the Complaint, that venue is proper in the  
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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 and Compliance Date**

4 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the  
5 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. The  
6 Compliance Date is the date that is six (6) months after the Effective Date.

7 **2. INJUNCTIVE RELIEF: REFORMULATION OF PRODUCTS**

8 **2.1** Except as otherwise provided herein, any Products that are manufactured by Raley’s on  
9 and after the Compliance Date that Raley’s sells in California or distributes for sale in California shall  
10 not exceed 281 parts per billion (“ppb”) for acrylamide, using tests 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 Products  
13 comply with the warning requirements of Section 2.2. As used in this Section 2, “distributed for sale  
14 in California” means to directly ship Products into California for purpose of selling the Products in  
15 California or to sell Products to a distributor Raley’s know will sell Products in California.

16 **2.2 Warnings**

17 **2.2.1** If Raley’s provides warnings under Section 2.1, Products may be sold in California with  
18 the following warning statement or materially similar language:

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

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

3 **2.2.2** The warning requirements set forth herein are imposed pursuant to the terms of this  
4 Consent Judgment and are recognized by the Parties as not being the exclusive manner of providing a  
5 warning for the Products. Warnings may be provided as specified in the Proposition 65 regulations  
6 (Title 27, California Code of Regulations, section 25601, *et seq.*) for food in effect as of the Effective  
7 Date or as such regulations may be amended in the future, or pursuant to a settlement agreement or  
8 consent judgment involving acrylamide. In addition, Raley's may follow the notification procedure set  
9 out in Title 27, California Code of Regulations, section 25600.2 or a similar procedure to provide  
10 warnings for the Products consistent with Section 2.2. The same warning shall be posted on any  
11 websites where the Product is sold in California.

12 **3. MONETARY SETTLEMENT TERMS**

13 **3.1 Settlement Amount**

14 Raley's shall pay forty-five thousand dollars (\$45,000.00) in settlement and total satisfaction  
15 of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes  
16 civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code  
17 section 25249.7(b) and attorney's fees and costs in the amount of forty thousand dollars (\$40,000.00)  
18 to Code of Civil Procedure section 1021.5.

19 **3.2 Civil Penalty**

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

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

25 Environmental Health Advocates  
26 225 Broadway, Suite 1900  
27 San Diego, CA 92101

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

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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

Raley's agrees to provide EHA's counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payments to EHA. Raley's will transmit the payment directly to OEHHA.

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

Relevant information is set out below:

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

**3.3 Attorney's Fees and Costs**

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

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

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

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**3.4 Timing**

The above-mentioned checks will be issued within fourteen (14) days of the Effective Date and Raley's receipt of the tax forms described in Section 3.2.

**4. CLAIMS COVERED AND RELEASED**

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

For any claim or violation arising under Proposition 65 alleging a failure to warn about exposures to acrylamide from Products manufactured, imported, sold, or distributed by Raley's prior to the Effective Date, EHA, acting for the general public, releases Raley's of any and all liability arising under Proposition 65. This includes Raley's owners, parents, subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees, attorneys, and each entity to whom Raley's directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, franchisees, cooperative members and licensees (collectively, the "Releasees"). Releasees include defendants, their parents, and all subsidiaries and affiliates/ sister companies thereof and their respective employees, agents, and assigns that sell Raley's Products. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to acrylamide from Products manufactured, imported, sold, or distributed by Raley's after the Effective Date. This Consent Judgment is a full, final and binding resolution of all claims under Proposition 65 that were or could have been asserted against Raley's and/or Releasees for failure to provide warnings required under Proposition 65 for alleged exposure to acrylamide contained in Products.

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

EHA, in its individual capacity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release to Raley's and/or Releasees, which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, claims,

1 liabilities, and demands of every nature, character, and kind, whether known or unknown, suspected or  
2 unsuspected, arising out of alleged or actual exposures to acrylamide in Products manufactured,  
3 imported, sold, or distributed by Raley's before the Effective Date. EHA acknowledges that it is  
4 familiar with California Civil Code section 1542, which provides as follows:

5  
6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
7 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST  
8 IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND  
9 THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED  
10 HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

11 EHA, in its capacity only, and on behalf of itself, its past and current agents, representatives,  
12 attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and  
13 benefits which it may have under, or which may be conferred on it by the provisions of California  
14 Civil Code section 1542 as well as under any other state or federal statute or common law principle  
15 of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to  
16 the released matters. EHA acknowledges that it has been advised by legal counsel and is familiar  
17 with the provisions of California Civil Code Section 1542.

#### 18 **4.3 Raley's' Release of EHA**

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

#### 24 **5. COURT APPROVAL**

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

#### 28 **6. SEVERABILITY**

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



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 any reason, including but not limited to changes in the law, then Raley’s 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 Products are so affected.

7             **7.1     Change in Proposition 65**

8             If Proposition 65 or its implementing regulations (including but not limited to the published “no  
9 significant risk level” for acrylamide set forth at Cal. Code Regs., tit 27, section 25705, subdivision  
10 (c)(2) or any “alternative risk level” adopted by regulation or court decision) are changed from their  
11 terms as they exist on the date of entry of this Consent Judgment, or if OEHHA takes some other final  
12 regulatory action, including but not limited to a issuing a safe use determination or interpretive  
13 guideline, that determines that warnings for acrylamide are not required or modifies the standard for  
14 warnings for acrylamide, then Raley’s shall be relieved of its obligation to comply with Section 2  
15 herein.

16             **7.2     Other Court Decisions**

17             If a final decision of a court (including, but not limited to, the 9<sup>th</sup> Circuit Court of Appeals  
18 and/or the United States District Court for the Eastern District of California in the litigation entitled  
19 *California Chamber of Commerce v. Bonta*, No. 2:19-cv-02019-KJM-JDP (E.D. Cal.)) determines that  
20 warnings for acrylamide exposures, or that enforcement of Proposition 65 claims for acrylamide  
21 exposures, are preempted or otherwise unlawful or unconstitutional, then Raley’s shall be relieved of  
22 its obligation to comply with Section 2 herein.

23             **7.3     Federal Agency Action and Preemption**

24             If a court of competent jurisdiction or an agency of the federal government, including, but not  
25 limited to, the U.S. Food and Drug Administration, states through any guidance, regulation or legally  
26 binding act that federal law has preemptive effect on any of the requirements of this Consent Judgment,  
27 then this Consent Judgment may be modified to bring it into compliance with or avoid conflict with  
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1 federal law. The Parties agree to meet and confer in good faith to modify this Consent Judgment, and  
2 EHA agrees not to oppose any such modification, except for good cause shown.

3 **7.4 Scientific Studies**

4 If an agency of the federal government, including, but not limited to the U.S. Food and Drug  
5 Administration, states through any guidance, regulation, or other legally binding act, following a  
6 review of scientific studies and following public notice and comment, a cancer potency estimate for  
7 acrylamide that equates to a no significant risk level higher than 0.2 micrograms per day, then Raley's  
8 shall be entitled to seek a modification of this Consent Judgment to be relieved of its obligations to  
9 meet any requirements of herein that are inconsistent with such a change. The Parties agree to meet  
10 and confer in good faith to modify this Consent Judgment to conform to such changes, and EHA agrees  
11 not to oppose any such modification except for good cause shown.

12 **8. NOTICE**

13 Unless otherwise specified herein, all correspondence and notice required by this Consent  
14 Judgment shall be in writing and sent by: (1) personal delivery; (ii) first-class, registered, or certified  
15 mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

16 If to Raley's:

17 Sophia B. Castillo  
18 Downey Brand LLP  
19 455 Market Street, Suite 1500  
San Francisco, CA 94105

If to EHA:

Noam Glick  
Glick Law Group, PC  
225 Broadway, 19th Floor  
San Diego, CA 92101

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

22 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

26 **10. POST EXECUTION ACTIVITIES**

27 EHA agrees to comply with the reporting form requirements referenced in Health and Safety  
28 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code

1 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which  
2 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually  
3 employ their best efforts, including those of their counsel, to support the entry of this agreement as  
4 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this  
5 Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to  
6 any objection that any third-party may make, and appearing at the hearing before the Court if so  
7 requested.

8 **11. MODIFICATION**

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

12 **12. AUTHORIZATION**

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

15 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

20 **14. ENTIRE AGREEMENT**

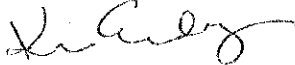
21 This Consent Judgment contains the sole and entire agreement and understanding of the Parties  
22 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,  
23 commitments, and understandings related hereto. No representations, oral or otherwise, express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

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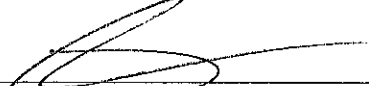
**AGREED TO:**

Date: 07/20/2021

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

**AGREED TO:**

Date: 7/21/2021

By:   
RALEY'S

**IT IS SO ORDERED.**

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

\_\_\_\_\_

JUDGE OF THE SUPERIOR COURT