

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 Pure’s Food Specialties, LLC (“PFS”), on the other hand, with EHA and PFS 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. PFS 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 PFS manufactures, sells, and distributes for sale in California, grahams 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 Products Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, graham-type cookies, including Great Value Honey Mini Bear Grahams (“the Product(s)”), that contain Acrylamide and that are manufactured, sold or distributed for sale in California by PFS.

1.4 Notice of Violation

On February 2, 2021, EHA served Walmart Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Walmart Inc. and others violated Proposition 65 when they failed to warn its customers and consumers in California of the health risks associated with exposures to Acrylamide from the Products.

On March 3, 2021, EHA served PFS, Walmart Inc., the California Attorney General and other requisite public enforcers with an amended 60-Day Notice of Violation ("Amended Notice"). The Amended Notice corrected the manufacturer to PFS.

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 and Amended Notice (hereinafter, the "Notices").

1.5 No Admission

PFS denies the material, factual, and legal allegations in the Notices and maintains that all of the products it sold and/or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by PFS 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 PFS of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by PFS. This Section shall not, however, diminish or otherwise affect PFS'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 fourteen (14) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation or Clear and Reasonable Warnings

Commencing on the Effective Date, and continuing thereafter, PFS agrees to manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California, Products containing acrylamide concentrations of 281 parts per billion ("ppb") or less based on an average of 5 units from different batches ("Average Level"), and not exceeding 350 ppb for any one unit, using tests performed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), unless such Products comply with the warning requirements of Section 2.2. As used in this Section 2.1, "distributed for sale in California" means to directly ship Products into

California or to sell Products to a distributor PFS knows will sell Products in California. For Products that contain acrylamide in a concentration exceeding the Average Level, and which are manufactured, supplied and distributed for sale or use in California, PFS shall provide one of the following Proposition 65 warnings as provided for in Section 2.2.

2.2 General Warning Requirements

PFS agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Products the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, shelf sign, or directly to each Products sold in California by PFS that contains one of the following statements, or a statement substantially similar:

- 1) **[CA PROPOSITION 65]WARNING:** Consuming this product can expose you to chemicals including Acrylamide, which is known to the State of California to cause cancer [and birth defects or other reproductive harm]. For more information go to www.P65Warnings.ca.gov/food.
- 2) **[CA PROPOSITION 65]WARNING:** Cancer [and Reproductive Harm] – www.P65Warnings.cs.gov/food.

Language in brackets is optional. If the warning statement is displayed on the Products' packaging, it must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall a warning statement displayed on the Products' packaging appear in a type size smaller than 6-point type. The same warning shall be posted on any websites where the Products are sold in California.

- (i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment or another

authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress or voters with such requirements or permission, PFS shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted providing that warnings as to Acrylamide in this product are no longer required, a lack of warning by PFS will not thereafter be a breach of this Agreement.

2.3 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to Products that are already manufactured and/or in the stream of commerce as of the Effective Date., which Products are expressly subject to the releases provided in Section 4.1.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

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, PFS agrees to pay two thousand five hundred dollars (\$2,500.00) 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 ten (10) days of the date this Settlement Agreement is executed by the Parties, PFS shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of one thousand eight hundred and seventy-five dollars (\$1,875.00) and (b) Environmental Health Advocates, Inc., in the amount of six hundred and twenty-five dollars (\$625.00). These payments will be sent to the below addresses within fourteen (14) days of the Effective Date.

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:

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

3.2 Attorney 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 seventy (75) days of the Effective date this Settlement Agreement is executed by the Parties, PFS agrees to pay thirty thousand dollars (\$30,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of PFS's negotiating a settlement.

PFS shall provide their payment to EHA's counsel in three (3) monthly installments starting on or before fourteen (14) days from the Effective Date and continuing thereafter for two (2) months. Each monthly installment shall be in the amount of ten thousand dollars (\$10,000.00) payable to Entorno Law, LLP. The first installment will be sent on or before fourteen (14) days from the Effective Date; the second installment will be sent on or before forty-five (45) days from the Effective Date; the third installment will be sent on or before seventy-five (75) days from the Effective Date.

3.3 Payment Address

All payments required under this Section shall be delivered to:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101

3.4 Tax Documentation

PFS 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 PFS cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after PFS receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of PFS

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 PFS 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 PFS and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Products was purchased by PFS, and each entity to whom PFS directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, including but not limited to Walmart Inc., franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to Acrylamide required under Proposition 65 in the Products manufactured, sold or distributed for sale in California by PFS and/or the Releasees 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 PFS 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 Products manufactured, distributed, sold or offered for sale by PFS and/or the Releasees. before the Effective Date.

4.2 PFS's Release of EHA

PFS, 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 Products.

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 Products will develop or be discovered. EHA on behalf of itself only, on one hand, and PFS 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.

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

7. ENFORCEMENT

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

8. 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 PFS:

Pure's Food Specialties, LLC
2929 S. 25h Ave.
Broadview, IL 60155

With copy to:

Renée D. Wasserman
Rogers, Joseph O'Donnell
311 California Street, 10th Floor
San Francisco, CA 94104

For EHA:

Noam Glick
Glick Law Group
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.

9. 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.

10. 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).

11. MODIFICATION

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

12. 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: 11/04/2021

Date: 11/08/21

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
PURE FOOD SPECIALTIES, LLC.