

## **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 El Ranchero Limited Partnership (“El Ranchero”), on the other hand, with EHA and El Ranchero 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. For purposes of this Settlement Agreement, the Parties agree that El Ranchero is a business entity that has employed ten or more persons at all times relevant to this action, and qualifies as 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 El Ranchero manufactures, sells, and distributes for sale in California, tortilla chips 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, El Ranchero Authentic Mexican Tortilla Chips (“Products”).

#### **1.4 Notice of Violation**

On March 18, 2021, EHA served El Ranchero, Target Corporation, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that El Ranchero 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**

El Rancho denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws or were not intended to be sold in California. Nothing in this Settlement Agreement shall be construed as an admission by El Rancho 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 El Rancho of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by El Rancho. This Section shall not, however, diminish or otherwise affect El Rancho'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**

Except as otherwise provided herein, any Products that are manufactured by El Rancho on and after the Effective Date that El Rancho sells in California or distributes for sale in California shall not exceed 350 parts per billion ("ppb") for acrylamide, 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, "distributed for sale in California" means to directly ship Products into California or to sell Products to a distributor El Rancho knows will sell Products in California.

## 2.2 Warnings

2.2.1 If El Rancho provides warnings under Section 2.1, Products may be sold in California with one of the following warning statements:

**Option 1:**

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

**Option 2:**

**WARNING:** Cancer and Reproductive Harm –  
[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

The word “**WARNING**” shall be displayed in all capital letters and bold print. The Warning shall be provided to California consumers in a manner that complies with 27 C.C.R. §25602(a). If the warning statement is displayed on the Products’ label, it must be set off from other surrounding information.

2.2.2 The warning requirements set forth herein are imposed pursuant to the terms of this and are recognized by the Parties as not being the exclusive manner of providing a warning for the Products. Warnings may be provided as specified in the Proposition 65 regulations or guidance from the California Office of Environmental Health Hazard Assessment for food in effect as of the Effective Date (Title 27, California Code of Regulations, section 25601, *et seq.*) or as such regulations may be amended in the future, or pursuant to a settlement agreement or consent judgment involving acrylamide. In addition, El Rancho may follow the notification procedure set out in Title 27, California Code of Regulations, section 25600.2 or a similar procedure where El Rancho instructs its distributor or retailer customers to provide warnings for the Products consistent with Section 2.2. The same warning shall be posted on any websites under control of El Rancho where the Product is sold in California. If subsequently enacted changes to Proposition 65 or its implementing regulations require the use of additional or different information on any warning specifically applicable to the Covered Products (the “New Safe Harbor Warning”), or if higher levels of acrylamide are permitted in the Covered Products, the Parties agree that the New Safe Harbor

Warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this Section, and the new reformulation level may be used by El Ranchero.

### **2.3 Sell-Through Period**

Products that are manufactured 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, distributed or sold to customers. As a result, the obligation of El Ranchero, or any Releasees, does not apply to Products manufactured 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, El Ranchero agrees to pay five hundred dollars (\$500) 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, El Ranchero shall issue two separate checks for the civil penalty payment to (1) “OEHHA” in the amount of three hundred and seventy-five dollars (\$375); and (2) Environmental Health Advocates, Inc., in the amount of one hundred and twenty-five dollars (\$125).

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 ten (10) days of the date this Settlement Agreement is executed by the Parties, El Rancho agrees to pay four thousand five hundred dollars) to EHA's counsel for all fees and costs incurred in investigating, bringing this matter to the attention of El Rancho, and negotiating a settlement. El Rancho's payment shall be delivered in the form of two checks: (1) one check for two thousand two hundred and fifty dollars (\$2,250) payable to "Glick Law Group"; and (2) one check for two thousand two hundred and fifty dollars (\$2,250) 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**

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

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 EHA's Release of El Ranchero**

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 El Ranchero 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 El Ranchero 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 El Ranchero, and each entity to whom El Ranchero directly or indirectly distributes or sells the Product, 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 manufactured, sold or distributed for sale in California by El Ranchero 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 El Ranchero 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 manufactured, distributed, sold or offered for sale by El Ranchero, before the Effective Date.

##### **4.2 El Ranchero's Release of EHA**

El Ranchero, 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 one the hand, and El Ranchero 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 Consent Judgment shall be governed by the laws of the state of California as applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable for reasons, including but not limited to changes in the law, then El Ranchero may provide written notice to EHA of any asserted change, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. In the event the California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues an interpretive guideline that exempts Products from meeting the requirements of Proposition 65; or if the Ninth Circuit Court of Appeals upholds the District Court decision to grant a preliminary injunction in California Chamber of Commerce v.

Becerra, No. 2:19-cv-01019-KJM-JDP (E.D. Cal.); or if Proposition 65 is determined to be preempted by federal law or a burden on First Amendment rights with respect to acrylamide in Products, then El Rancho shall be relieved of its obligation to comply with Section 2 herein.

**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 El Rancho:

Abhishek K. Gurnani  
Amin Talati Wasserman, LLP  
100 S. Wacker Dr. Suite 2000  
Chicago, IL 60606

For EHA:

Jake Schulte  
Nicholas & Tomasevic, LLP  
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: 08/06/2021

Date: 08/06/2021

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
EL RANCHERO LIMITED PARTNERSHIP