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10 Environmental Health Advocates, Inc.

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

13 ENVIRONMENTAL HEALTH  
14 ADVOCATES, INC.,

15 Plaintiff,

16 v.

17 GRUPO HERDEZ, S.A.B. De C.V., a Mexican  
corporation, WALMART INC., a Delaware  
18 corporation, and DOES 1 through 100,  
inclusive,

19 Defendants.  
20

Case No.

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code Civ. Proc. § 664.6)

1 **1. DEFINITIONS**

2 **1.1** “Compliance Date:” Because the Covered Products are subject to regulatory  
3 requirements and any reformulation must ensure compliance with these other applicable regulatory  
4 requirements, the Compliance Date means the date that is six (6) months after the Effective Date.

5 **1.2** “Covered Products:” means all tortilla chip products manufactured, distributed, sold,  
6 and/or offered for sale in California by Settling Defendant or its subsidiaries and affiliates (together,  
7 “Subsidiaries”), whether branded or private label, at all grocery, retail, and other locations and sales  
8 channels, including on the Internet. This Consent Judgment covers the Covered Products to the extent  
9 that they are incorporated as an ingredient in any food product made or sold by others.

10 **1.3** “Effective Date:” means the date on which the Court grants the motion for approval  
11 of this Consent Judgment, as discussed in Section 11, below.

12 **2. INTRODUCTION**

13 **2.1** The Parties to this Consent Judgment are Environmental Health Advocates, Inc.,  
14 (“EHA”) on the one hand, and Utz Quality Foods, LLC (“Settling Defendant”), licensee of the  
15 Herdez brand name, on the other hand. EHA and Settling Defendant (collectively, the “Parties”)  
16 enter into this Consent Judgment to settle certain claims asserted by EHA against Settling Defendant  
17 and Defendants as set forth in the Complaint. Except as otherwise provided herein, this Consent  
18 Judgment is intended to apply to all Covered Products manufactured, sold, distributed, and/or offered  
19 for sale by Defendant Releasees (as the term is defined in Section 5.1) in California.

20 **2.2** On October 20, 2020, EHA served Settling Defendant’s licensor (Grupo Herdez, S.A.B.  
21 De C.V. (“Licensor”)), Walmart Inc., and the California Attorney General, and all other required public  
22 enforcement agencies with a 60-Day Notice of Violation of California Health and Safety Code  
23 section 25249.6 *et seq* (the “Notice”). The Notice alleged, *inter alia*, that Licensor violated Proposition  
24 65 by failing to sufficiently warn consumers in California of the health hazards associated with  
25 exposures to Acrylamide contained in Herdez brand tortilla chips. No public enforcer has  
26 commenced or is otherwise prosecuting an action to enforce the violations alleged in the Notice.

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1           **2.3**     Settling Defendant is a corporation or other business entity that manufactures,  
2 distributes, sells, or offers for sale Covered Products that are sold in the State of California or has  
3 done so at times relevant to the Complaint.

4           **2.4**     On February 24, 2021, EHA filed the Complaint in the above-captioned matter for the  
5 alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice  
6 (“Complaint”).

7           **2.5**     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
8 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
9 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County of  
10 Alameda, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full and  
11 final resolution of all claims which were or could have been raised in the Complaint based on the  
12 facts alleged therein and in the Notice with respect to Covered Products manufactured, distributed,  
13 shipped, sold and/or offered for sale by Defendant Releasees pursuant to Proposition 65 and Code of  
14 Civil Procedure section 664.6.

15           **2.6**     Nothing in this Consent Judgment is or shall be construed as an admission by the  
16 Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the  
17 Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of  
18 law, issue of law, or violation of law. Except as otherwise provided for herein, nothing in this Consent  
19 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may  
20 have in any other pending or future legal proceedings. This Consent Judgment is the product of  
21 negotiation and compromise and is accepted by the Parties solely for purposes of settling,  
22 compromising, and resolving issues disputed in this action in an efficient and economic manner.

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1     **3.     INJUNCTIVE RELIEF**

2             **3.1     Reformulation of Covered Products**

3                     **3.1.1   Average Level**

4             Any Covered Products that are manufactured on and after the Compliance Date that are  
5 thereafter sold or distributed for sale in California shall not exceed 281 ppb acrylamide by weight (the  
6 “Average Level”). As used in this Section 3, “distributed for sale in California” means to directly ship  
7 a Covered Product into California or to sell a Covered Product to a distributor that Settling Defendant  
8 or its Subsidiaries knows will sell the Covered Product in California.

9                             **3.1.1.1 Average Level Determination**

10            The Average Level is determined by randomly selecting and testing at least five (5) samples  
11 each from at least five (5) different lots of a Covered Product (or the maximum number of lots  
12 available for testing if less than five (5)) during a testing period of at least three hundred sixty-five  
13 (365) days. The mean and standard deviation shall be calculated using the sampling data. Any data  
14 points that are more than three standard deviations outside the mean shall be discarded, and the mean  
15 and standard deviation recalculated using the remaining data points. The mean determined in  
16 accordance with this procedure shall be deemed the “Average Level.”

17                     **3.1.2   Unit Level**

18            The acrylamide concentration of any individual unit of Covered Products Chips shall not exceed  
19 350 ppb by weight, based on a representative composite sample taken from the individual unit being  
20 tested (the “Unit Level”). The Average Level and Unit Level shall collectively be referred to herein as  
21 the “Reformulation Levels.” Any samples of a Covered Product tested under Sections 3.1.1 or 3.1.2  
22 shall be homogenized before testing for acrylamide content.

23            **3.1.3** For avoidance of doubt, Covered Products either purchased, manufactured,  
24 distributed, shipped, sold and/or offered for sale by Settling Defendant or its Subsidiaries prior to the  
25 Compliance Date are not subject to the Reformulation Levels, even if such products are sold or offered  
26 for sale in California after the applicable Compliance Date.

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1                                   **3.1.4 Testing**

2                   Compliance with the Average Level and Unit Level shall be determined in accordance with the  
3 methodology set forth in Sections 3.1.1.1 and 3.1.2 and using LC-MS/MS (Liquid Chromatograph-  
4 Mass Spectrometry), GC/MS/MS (Gas Chromatography/Mass Spectrometry), or any other testing  
5 method agreed upon by the Parties. Testing for purposes of Section 3.1 shall be performed by any  
6 laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting  
7 organization.

8                                   **3.2 Clear and Reasonable Warnings.**

9                   A Covered Product purchased, manufactured, distributed, shipped, sold or offered for sale by  
10 Defendant Releasees may, as an alternative to meeting the Reformulation Levels, be sold or offered for  
11 sale in California with a Clear and Reasonable Warning that complies with the provisions of this  
12 Section 3.2. A Clear and Reasonable Warning may only be provided for Covered Products that Settling  
13 Defendant or its Subsidiaries reasonably believe do not meet the Reformulation Levels. A Clear and  
14 Reasonable Warning under this Consent Judgment shall state:

15                   **WARNING:** Consuming this product can expose you to chemicals including acrylamide,  
16 which are known to the State of California to cause cancer. Acrylamide is a chemical that can  
17 form in some foods during high-temperature cooking processes, such as frying, roasting, and  
18 baking. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

19                   The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning  
20 statement shall be prominently displayed on the Covered Product, on the packaging of the Covered  
21 Product, or on a placard or sign provided that the statement is displayed with such conspicuousness, as  
22 compared with other words, statements or designs as to render it likely to be read and understood by  
23 an ordinary individual prior to sale. If the warning statement is displayed on the Covered Product’s  
24 label, it must be set off from other surrounding information and enclosed in a text box. If the warning  
25 statement is displayed on a placard or sign where the Covered Product is offered for sale, the warning  
26 placard or sign must enable an ordinary individual to easily determine which specific Covered Products  
27 the warning applies to, and to differentiate between that Covered Product and other products to which  
28 the warning statement does not apply. For internet, catalog or any other sale where the consumer is

1 not physically present, the warning statement shall be displayed in such a manner that it is likely to be  
2 read and understood by an ordinary individual prior to the authorization of or actual payment. Nothing  
3 in this Consent Judgment requires that warnings be provided for Covered Products that are not sold or  
4 offered for sale in California. To comply with Section 3.2, Settling Defendant and its Subsidiaries may  
5 rely on the procedure for notifying retailers set out in Title 27, California Code of Regulations, section  
6 25600.2, in effect as of the applicable Compliance Date.

7 The warning requirements set forth herein are imposed pursuant to the terms of this Consent  
8 Judgment and are recognized by the Parties as not being the exclusive manner of providing a warning  
9 for the Covered Products. Warnings may be provided as specified in Proposition 65 regulations for  
10 food in effect as of the applicable Compliance Date (Title 27, California Code of Regulations, section  
11 25601, *et seq.*) or as such regulations may be amended in the future.

### 12 **3.3 Grace Period for Existing Inventory of Products**

13 Notwithstanding anything else in this Consent Judgment, Covered Products that are  
14 manufactured on or prior to the Compliance Date shall be subject to release of liability pursuant to this  
15 Consent Judgment, without regard to when such Products were, or are in the future, distributed or sold  
16 to customers. As a result, the obligation of Settling Defendant, or any Releasees (if applicable), do not  
17 apply to these Covered Products manufactured on or prior to the Compliance Date.

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1 **4. MONETARY SETTLEMENT TERMS**

2 **4.1 Settlement Amount**

3 Settling Defendant shall pay Sixty Thousand Dollars (\$60,000) in settlement and total  
4 satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This  
5 includes civil penalties in the amount of Six Thousand Dollars (\$6,000) pursuant to Health and Safety  
6 Code section 25249.7(b) and attorney's fees and costs in the amount of Fifty-Four Thousand Dollars  
7 (\$54,000) pursuant to Code of Civil Procedure section 1021.5.

8 **4.2 Civil Penalty**

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

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

14 Samantha Dice  
15 Environmental Health Advocates  
16 225 Broadway, Suite 2100  
17 San Diego, CA 92101

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

19 For United States Postal Service Delivery:

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

25 For Non-United States Postal Service Delivery:

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

1 Settling Defendant agrees to provide EHA's counsel with a copy of the check payable to  
2 OEHHA, simultaneous with its penalty payments to EHA.

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

4 Relevant information is set out below:

- 5 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 4.3;
- 6 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 4.3; and
- 7 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA  
8 95814.

#### 10 **4.3 Attorney's Fees and Costs**

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

15  
16 Settling Defendant shall provide its payment to EHA's counsel in two checks, divided equally,  
17 payable to Glick Law Group, PC (\$27,000) and Nicholas & Tomasevic (\$27,000) respectively. The  
18 addresses for these two entities are:

19  
20 Noam Glick  
Glick Law Group  
225 Broadway, Suite 1900  
San Diego, CA 92101

21  
22 Craig Nicholas  
Nicholas & Tomasevic, LLP  
225 Broadway, 19th Floor  
23 San Diego, CA 92101

1           **4.4     Timing**

2           The above-mentioned checks will be issued within fourteen (14) days after the Effective Date  
3 or the date upon which Plaintiff’s counsels provide Settling Defendant with their respective IRS  
4 1099, W-9 , or other required tax forms, whichever is later.

5           **5.     CLAIMS COVERED AND RELEASED**

6           **5.1     EHA’s Public Release of Proposition 65 Claims**

7           For any claim or violation arising under Proposition 65 alleging a failure to warn about  
8 exposures to Acrylamide from Covered Products or related products manufactured, imported, sold, or  
9 distributed by Defendants and Settling Defendant or its Subsidiaries prior to the Compliance Date,  
10 EHA, acting for the general public and in the public interest, releases Settling Defendant, of any and  
11 all liability. This includes Settling Defendant’s owners, parents, partners, joint ventures, Subsidiaries,  
12 Licensor, licensors, licensees, affiliated entities under common ownerships, its directors, officers,  
13 members, agents, employees, attorneys, and each entity to whom Settling Defendant and its  
14 Subsidiaries directly or indirectly distribute, sell or offer for sale Covered Products, including but not  
15 limited to downstream distributors, wholesales, customers, retailers (including but not limited to  
16 Walmart Inc.), franchisees, cooperative members and licensees, (collectively, the “Defendant  
17 Releasees”). In addition to the foregoing, Defendant Releasees include Settling Defendant, its parent,  
18 and all Subsidiaries and affiliates thereof and their respective owners, members, parents, partners, joint  
19 ventures, licensors, licensees, employees, agents, and assigns. Compliance with the terms of this  
20 Consent Judgment constitutes compliances with Proposition 65 with respect to the alleged or actual  
21 failure to warn about exposures to acrylamide from Covered Products manufactured, distributed,  
22 imported, offered for sale, sold, or distributed by Defendant Releasees after the Effective Date. This  
23 Consent Judgment is a full, final and binding resolution of all claims that were or could have been  
24 asserted against Settling Defendant, its Subsidiaries and Defendant Releasees for failure to provide  
25 warnings for alleged exposure to acrylamide contained in Covered Products.  
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1 **8. 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 Settling  
5 Defendant may provide written notice to EHA of any asserted change, and shall have no further  
6 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
7 Covered Products are so affected.

8 **9. NOTICE**

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

12 If to Settling Defendant

13  
14 Richard Fama  
15 Cozen O'Connor  
16 3 WTC  
17 175 Greenwich Street, 55<sup>th</sup> Floor  
New York, NY 10007

If to EHA:

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

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

20 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

24 **11. POST EXECUTION ACTIVITIES**

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

7 **12. MODIFICATION**

8 **12.1 Modification.** This Consent Judgment may be modified by: (i) a written agreement of  
9 the Parties and entry of a modified consent judgment thereon by the Court; or (ii) a successful motion  
10 or application of any Party, and the entry of a modified consent judgment thereon by the Court.

11 **12.2 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall  
12 attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the  
13 Consent Judgment.

14 **12.3 Change in Proposition 65.** If Proposition 65 or its implementing regulations (including  
15 but not limited to the published “no significant risk level” for acrylamide set forth at Cal. Code Regs.,  
16 tit 27, section 25705, subdivision (c)(2) or any “alternative risk level” adopted by regulation or court  
17 decision) are changed from their terms as they exist on the date of entry of this Consent Judgment, or  
18 if OEHHA takes some other final regulatory action that determines that warnings for acrylamide are  
19 not required or modifies the standard for warnings for acrylamide, then Settling Defendant may seek  
20 to modify this Consent Judgment.

21 **12.4 Other Court Decisions.** If a final decision of a court determines that warnings for  
22 acrylamide exposures or that enforcement of Proposition 65 claims for acrylamide exposures are  
23 preempted or otherwise unlawful or unconstitutional, then Settling Defendant or its Subsidiaries may  
24 move to modify this Consent Judgment to conform to such ruling in order to avoid unfair, inconsistent,  
25 or anti-competitive results.

1           **12.5 Federal Agency Action and Preemption.** If a court of competent jurisdiction or an  
2 agency of the federal government, including, but not limited to, the U.S. Food and Drug  
3 Administration, states through any guidance, regulation or legally binding act that federal law has  
4 preemptive effect on any of the requirements of this Consent Judgment, then this Consent Judgment  
5 may be modified in accordance with the procedure for noticed motions set forth herein to bring it into  
6 compliance with or avoid conflict with federal law.

7           **12.6 Scientific Studies.** If an agency of the federal government, including, but not limited to  
8 the U.S. Food and Drug Administration, states through any guidance, regulation, or other legally  
9 binding act, following a review of scientific studies and following public notice and comment, a cancer  
10 potency estimate for acrylamide that equates to a no significant risk level higher than 0.2 micrograms  
11 per day, then Settling Defendant and its Subsidiaries shall be entitled to seek a modification of this  
12 Consent Judgment.

13           **12.7** Before filing any motion to modify the Consent Judgment, Settling Defendant shall  
14 provide written notice to EHA to initiate the meet and confer procedure in Section 12.2. If the Parties  
15 do not agree on the proposed modification during informal meet and confer efforts, Settling Defendant  
16 may file a motion to modify the Consent Judgment within sixty (60) days of the date of the written  
17 notice that Settling Defendant provides to EHA under this Section 12.

18           **12.8** Any modification to this Consent Judgment pursuant to this Section 12 shall have no  
19 effect on Settling Defendant's financial obligations under this Agreement.

20           **13. RETENTION OF JURISDICTION**

21           This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.  
22 Notwithstanding the provisions of Section 12, nothing in this Consent Judgment limits or affects the  
23 Court's authority to modify this Consent Judgment as provided by law.  
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1 **14. AUTHORIZATION**

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

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

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

9 **16. ENTIRE AGREEMENT**

10 This Consent Judgment contains the sole and entire agreement and understanding of the Parties  
11 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,  
12 commitments, and understandings related hereto. No representations, oral or otherwise, express or  
13 implied, other than those contained herein have been made by any Party. No other agreements, oral or  
14 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.  
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17 **AGREED TO:**

**AGREED TO:**

18  
19 Date: March 17, 2021.

Date: *Dylan Lissette*

20  
21 By: *[Signature]*  
22 ENVIRONMENTAL HEALTH  
23 ADVOCATES, INC.

By: Dylan Lissette  
Utz Quality Foods, LLC

24  
25 **IT IS SO ORDERED.**

26  
27 Date: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT