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18 Environmental Health Advocates, Inc.

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **IN AND FOR THE COUNTY OF ALAMEDA**

21 ENVIRONMENTAL HEALTH
22 ADVOCATES, INC.,

23 Plaintiff,

24 v.

25 CALIFORNIA GOURMET NUTS, a
26 California corporation, and DOES 1 through
27 100, inclusive,

28 Defendants.

Case No. RG21086037

**[PROPOSED] REVISED 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” or “Plaintiff”) and California Gourmet Nuts (“Defendant” or “CGN”) with EHA and CGN
5 each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA alleges it is a corporation organized in the state of California, acting in the interest of the
8 general public. It seeks to promote awareness of exposures to toxic chemicals and to improve human
9 health by reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 CGN 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 CGN manufactures, imports, sells, and distributes for sale Roasted & Salted
16 Almonds that contain acrylamide. EHA further alleges that CGN does so without providing a
17 sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant to
18 Proposition 65, as of the date of this Consent Judgment, acrylamide is listed as a chemical known to
19 cause cancer, birth defects and other reproductive harm.

20 **1.5 Notices of Violation**

21 On or around July 2, 2020, EHA served Shemran, Inc. (“Shemran”) as the owner and operator
22 of Barons Market, the California Attorney General, and all other required public enforcement
23 agencies with a 60-Day Notice of Violation of Proposition 65 (“Initial Notice”). Initial Notice alleged
24 that Shemran had violated Proposition 65 by failing to sufficiently warn consumers in California of
25 the health hazards associated with exposures to acrylamide contained in Roasted & Salted Almonds,
26 including Barons Roasted & Salted Almonds (UPC 239048705510).

27 On or around October 15, 2020, EHA served CGN, Shemran, the California Attorney General,
28 and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition

1 65 (“Amended Notice”). Amended Notice corrected the manufacturer to CGN.

2 On or around April 1, 2021, EHA served CGN, Shemran, American Golden Nuts LLC, the
3 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice
4 of Violation of Proposition 65 (“Second Amended Notice”). Second Amended Notice corrected the
5 distributor to American Golden Nuts LLC.

6 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
7 violations alleged in the Initial Notice, Amended Notice, or Second Amended Notice (hereinafter, the
8 “Notices”).

9 **1.6 Product Description**

10 The products covered by this Consent Judgment are almonds including but not limited to
11 Roasted & Salted Almonds manufactured or processed by CGN that allegedly contain acrylamide and
12 are imported, sold, shipped, delivered, or distributed for sale to consumers in California by Releasees
13 (as defined in section 4.1) (“Covered Products”).

14 **1.7 State of the Pleadings**

15 On or around January 20, 2021, EHA filed a Complaint against CGN and Shemran for the
16 alleged violations of Proposition 65 that are the subject of the Notices (“Complaint”).

17 **1.8 No Admission**

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

26 **1.9 Jurisdiction**

27 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
28 Court has jurisdiction over CGN as to the allegations in the Complaint, that venue is proper in the

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**

4 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
5 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

6 **2. INJUNCTIVE RELIEF**

7 **2.1 Reformulation of Covered Products**

8 Except as otherwise provided herein, any Covered Products that are manufactured by CGN
9 on and after the Effective Date that CGN sells in California or distributes for sale in California shall
10 not exceed 225 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 Covered
13 Products comply with the warning requirements of Section 2.2. As used in this Section 2, “distributed
14 for sale in California” means to directly ship Covered Products into California or to sell Covered
15 Products to a distributor CGN know will sell Covered Products in California. In the event that
16 Proposition 65 is repealed or preempted as to food products, and/or in the event that acrylamide in
17 food products is no longer a covered chemical such that warnings would be required, CGN shall have
18 no further obligations pursuant to this requirement of this Consent Judgment and to the extent that
19 the Covered Products are so affected.

20 **2.2 Clear and Reasonable Warnings**

21 For Covered Products that contain acrylamide in a concentration exceeding the 225-ppb level
22 set forth in section 2.1 above, and which are manufactured and packaged for distribution for
23 authorized sale or use in California on or after the Effective Date, CGN shall provide one of the
24 following warning statements.

25 **Option 1:**

26 **WARNING:** Consuming this product can expose you to chemicals
27 including Acrylamide, which is known to the State of California to
28 cause cancer and birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov/food

1 **Option 2:**

2 **WARNING:** Cancer and Reproductive Harm –
3 www.P65Warnings.ca.gov/food

4 This warning statement shall be prominently displayed on the Covered Products, on the
5 packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is
6 displayed with such conspicuousness, as compared with other words, statements, or designs as to
7 render it likely to be read and understood by an ordinary individual prior to sale. If the warning
8 statement is displayed on the Covered Products' label, it must be set off from other surrounding
9 information. The same warning shall be posted on any websites under the exclusive control of CGN
10 where Covered Products are sold into California. In the event that Proposition 65 is repealed or
11 preempted as to food products, and/or in the event that acrylamide in food products is no longer a
12 covered chemical such that warnings would be required, CGN shall have no further obligations
13 pursuant to this requirement of this Consent Judgment and to the extent that the Covered Products are
14 so affected.

15 For purposes of this Consent Judgment, the term "label" means a display of written, printed
16 or graphic material that is printed on or affixed to a Covered Product or its immediate container or
17 wrapper. A warning may also be included on the container to the degree that there is no
18 other product information listed on the container. For purposes of this Consent Judgment, when
19 CGN is required to provide a warning for the Covered Products pursuant to this section, CGN may
20 satisfy the warning requirement by providing the required information in compliance with 27
21 C.C.R. § 25600.2 (2020) to any business that is subject to Proposition 65 to which it is
22 selling or transferring the Covered Products. Nothing in this section shall prohibit Shemran and
23 CGN from exercising their contractual rights pursuant to 27 C.C.R. § 25600.2 (i)

24 regarding responsibility for warning.

25 **2.3 Sell-Through Period**

26 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
27 manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to this
28 Consent Judgment, without regard to when such Covered Products were, or are in the future,

1 distributed or sold to customers. As a result, the obligation of CGN, or any Releasees (if applicable), do
2 not apply to these Covered Products manufactured on or prior to the Effective Date.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Settlement Amount**

5 CGN shall, subject to the waiver set forth in Section 3.4 below, pay fifty thousand dollars
6 (\$50,000.00) in settlement and total satisfaction of all the claims referred to in the Notices, the
7 Complaint, and this Consent Judgment. This includes civil penalties in the amount of five thousand
8 dollars (\$5,000.00) pursuant to Health and Safety Code section 25249.7(b) and attorneys' fees and
9 costs in the amount of forty-five thousand dollars (\$45,000.00) pursuant to Code of Civil Procedure
10 section 1021.5.

11 **3.2 Civil Penalty**

12 The portion of the settlement attributable to civil penalties shall be allocated according to
13 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
14 penalty three thousand seven hundred and fifty dollars (\$3,750.00) paid to the California Office of
15 Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%)
16 of the penalty one thousand two hundred and fifty dollars (\$1,250.00) paid to EHA individually.
17 These payments will be sent to the below addresses within fourteen (14) days of the Effective Date.

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

19 Environmental Health Advocates
20 225 Broadway, Suite 1900
21 San Diego, CA 92101

22 All payments owed to OEHHA shall be delivered directly to OEHHA (Memo Line "Prop 65
23 Penalties") at the following addresses:

24 For United States Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 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

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

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" (EIN: 68-0284486) 1001 I Street, Sacramento, CA 95814.

3.3 Attorneys' Fees and Costs

Subject to the waiver of second payment set forth in Section 3.4 below, the maximum portion of the settlement attributable to attorneys' fees and costs, forty-five thousand dollars (\$45,000.00), shall be paid to EHA's counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not limited to investigating potential violations, bringing this matter to CGN's attention, as well as litigating and negotiating a settlement in the public interest.

CGN shall provide their payment to EHA's counsel in seven payments. The first payment shall be in the amount of five thousand dollars (\$5,000.00), payable to Glick Law Group, PC and five thousand dollars (\$5,000.00), payable to Nicholas & Tomasevic, LLP, respectively. The following five payments shall be monthly installments in the amount of two thousand five hundred dollars (\$2,500.00), payable to Glick Law Group, PC and two thousand five hundred dollars (\$2,500.00), payable to Nicholas & Tomasevic, LLP, respectively. Unless waived in accordance with Section 3.4 below, the seventh and final payment shall be in the amount of five thousand dollars (\$5,000.00), payable to Glick Law Group, PC and five thousand dollars (\$5,000.00), payable to Nicholas & Tomasevic, LLP, respectively. The addresses for these two entities are:

1 Noam Glick
2 Glick Law Group
3 225 Broadway, 19th Floor
4 San Diego, CA 92101

5 Craig Nicholas
6 Nicholas & Tomasevic, LLP
7 225 Broadway, 19th Floor
8 San Diego, CA 92101

9 **3.4 Timing**

10 The first installment of the above-mentioned payments will be sent within fourteen (14) days
11 of the Effective Date; and the following five installments will be sent monthly, with the first being
12 sent within thirty (30) days of the Effective Date. However, if the first six payments are paid on time,
13 totaling thirty-five thousand dollars (\$35,000.00), and notwithstanding anything to the contrary in
14 Section 3.3 above, then the seventh and final installment of ten thousand dollars (\$10,000.00) will be
15 waived by EHA and EHA’s counsel. If the deadline is on Sunday or holiday, it will be extended until
16 the next day that is not a holiday.

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 EHA’s Public Release of Proposition 65 Claims**

19 Plaintiff acting on its own behalf and in the public interest releases CGN and its parents,
20 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,
21 employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant
22 Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
23 Products including but not limited to downstream distributors, wholesalers, customers, and retailers
24 (including but not limited to Shemran), franchisees, franchisors, cooperative members, suppliers,
25 licensees, and licensors, and all of the foregoing entities’ owners, directors, officers, agents,
26 principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and
27 assigns (collectively referred to as the “Releasees”) from all claims for violations of Proposition 65
28 up through the Effective Date based on exposure to acrylamide from Covered Products as set forth in
the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with

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1 Proposition 65 with respect to exposures to acrylamide from Covered Products as set forth in the
2 Notices.

3 **4.2 EHA's Individual Release of Claims**

4 EHA, in its individual capacity, also provides a release to CGN and/or Releasees, which shall
5 be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
6 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of
7 every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising
8 out of alleged or actual exposures to acrylamide in Covered Products manufactured, imported,
9 sold, or distributed by CGN before the Effective Date.

10 **4.3 CGN's Release of EHA**

11 CGN on its own behalf, and on behalf of Releasees as well as its past and current agents,
12 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
13 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
14 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
15 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

16 **5. COURT APPROVAL**

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

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of California
26 as applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
27 rendered inapplicable for reasons, including but not limited to changes in the law, then CGN may
28 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations

1 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so
2 affected.

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

10 **8. NOTICE**

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

14 If to CGN:

15 Jonathan C. Sandler
16 Brownstein Hyatt Farber Schreck
17 2049 Century Park East
Los Angeles, CA 90067-3217

If to EHA:

Noam Glick
Glick Law Group, PC
225 Broadway, 19th Floor
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 **9. 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 **10. 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
28 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to

1 mutually employ their best efforts, including those of their counsel, to support the entry of this
2 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
3 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for
4 approval, responding to any objection that any third-party may make, and appearing at the hearing
5 before the Court if so requested.

6 **11. MODIFICATION**

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

10 **12. AUTHORIZATION**

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

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

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

18 **14. DISMISSAL OF CLAIMS**

19 Within ten (10) calendar days of receiving the first installment payment required by Section
20 3, EHA shall file a dismissal with prejudice of all claims in this action against Shemran, which
21 shall waive all costs in this action.


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1 **15. ENTIRE AGREEMENT**

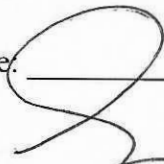
2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
4 commitments, and understandings related hereto. No representations, oral or otherwise, express, or
5 implied,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


7
8 **AGREED TO:**

9 Date: October 1, 2021

10
11 By: 
12 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:

13 Date:  10/7/2021

14 By: 
15 CALIFORNIA GOURMET NUTS

16 **IT IS SO ORDERED.**

17 Date: _____

18 _____

19 JUDGE OF THE SUPERIOR COURT