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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 STAR SNAX, LLC, a Delaware Limited
26 Liability Company, and DOES 1 through 100,
27 inclusive,

28 Defendants.

Case No. RG21104523

[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” or “Plaintiff”) and Star Snax, LLC (“Defendant” or “Star Snax”) with EHA and Star Snax
5 each individually referred 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
9 by reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Star Snax employs ten or more individuals and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that Star Snax manufactures, imports, sells, and distributes for sale Trader Joe’s
16 Sweet Potato Tortilla Chips that contain acrylamide. EHA further alleges that Star Snax does so
17 without providing a sufficient health hazard warning as required by Proposition 65 and related
18 Regulations. Pursuant to Proposition 65, acrylamide is listed as a chemical known to cause cancer,
19 birth defects and other reproductive harm.

20 **1.5 Notices of Violation**

21 On or around March 25, 2021, EHA served Star Snax, Trader Joe’s Company (“Trader
22 Joe’s”), the California Attorney General, and all other required public enforcement agencies with a
23 60-Day Notice of Violation of Proposition 65 (“Initial Notice”). The Notice alleged that Star Snax
24 had violated Proposition 65 by failing to sufficiently warn consumers in California of the health
25 hazards associated with exposures to acrylamide contained in Trader Joe’s Sweet Potato Tortilla
26 Chips.

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1 On or around June 16, 2021, EHA served Star Snax, Trader Joe’s, the California Attorney
2 General, and all other required public enforcement agencies with a 60-Day Notice of Violation of
3 Proposition 65 (“Amended Notice”). The Notice alleged that Star Snax had violated Proposition
4 65 by failing to sufficiently warn consumers in California of the health hazards associated with
5 exposures to acrylamide contained in Trader Joe’s Sweet Potato Tortilla Chips.

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

8 **1.6 Product Description**

9 The products covered by this Consent Judgment are tortilla chips including but not limited
10 to Trader Joe’s Sweet Potato Tortilla Chips, manufactured or processed by Star Snax that allegedly
11 contain acrylamide and are imported, sold, shipped, delivered, or distributed for sale to consumers
12 in California by Releasees (as defined in section 4.1) (tortilla chips collectively the “Covered
13 Products”).

14 **1.7 State of the Pleadings**

15 On or around July 7, 2021, EHA filed a Complaint against Star Snax and Trader Joe’s for
16 the alleged violations of Proposition 65 that are the subject of the Notices (“Complaint”).

17 **1.8 No Admission**

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

26 **1.9 Jurisdiction**

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

1 proper in the County of Alameda, and that the Court has jurisdiction to enter and enforce the
2 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section
3 664.6.

4 **1.10 Effective Date and Compliance Date**

5 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
6 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. The
7 “Compliance Date” is the date that is six (6) months after the Effective Date, provided that the
8 Compliance Date may be extended up to an additional three (3) months by Star Snax notifying EHA
9 at least thirty (30) days before the Compliance Date that good cause exists for such extension. If EHA
10 believes in good faith that such extension is without basis, EHA shall notify Star Snax of such
11 determination and the parties shall meet and confer to resolve the dispute.

12 **2. INJUNCTIVE RELIEF**

13 **2.1 Reformulation of Covered Products**

14 Except as otherwise provided herein, any Covered Products that are manufactured by Star
15 Snax on and after the Compliance Date that Star Snax sells in California or distributes for sale in
16 California shall not exceed 281.6 parts per billion (“ppb”) for acrylamide, calculated in accordance
17 with the Compliance Protocol set forth below in Section 2.3 (the “Compliance Standard”),, unless
18 such Covered Products comply with the warning requirements of Section 2.2. As used in this Section
19 2, “distributed for sale in California” means to directly ship Covered Products into California or to
20 sell Covered Products to a distributor Star Snax knows will sell Covered Products in California.

21 **2.2 Clear and Reasonable Warnings**

22 For Covered Products that contain acrylamide in a concentration exceeding the Compliance
23 Standard set forth in section 2.1 above, and which are manufactured and packaged for distribution for
24 authorized sale or use in California on or after the Compliance Date, Star Snax shall provide one of
25 the following warning statements.

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1 **Option 1:**

2 **WARNING:** This product can expose you to chemicals including
3 Acrylamide, which is known to the State of California to cause cancer,
4 birth defects or other reproductive harm. For more information go to
5 www.P65Warnings.ca.gov.

6 **Option 2:**

7 **WARNING:** Cancer and Reproductive Harm –
8 www.P65Warnings.cs.gov

9 This warning statement shall be prominently displayed on the Covered Products, on the
10 packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is
11 displayed with such conspicuousness, as compared with other words, statements, or designs as to
12 render it likely to be read and understood by an ordinary individual prior to sale. If the warning
13 statement is displayed on the Covered Products’ label, it must be set off from other surrounding
14 information. The same warning shall be posted on any websites under the exclusive control of Star
15 Snax where Covered Products are sold into California.

16 **2.3 Compliance Protocol**

17 (a) Testing for acrylamide shall be performed by a laboratory accredited by the
18 State of California, a federal agency, or nationally recognized accrediting organization, using either
19 GC/MS (Gas Chromatography/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass
20 Spectrometry/Mass Spectrometry), or any other generally accepted testing method agreed upon by
21 the Parties to this Consent Judgment.

22 (b) Star Snax shall collect, over no less than a 10-day period, a random sample of
23 the Covered Products from at least three (3) production lots. The production lots shall be drawn from
24 each unique Stock Keeping Unit (“SKU”) that are within the Covered Product category and are
25 shipped for sale in California, provided that at least one sample of each such SKU is included in the
26 sample.

27 (c) To demonstrate that the Compliance Standard has been achieved, testing
28 conducted in accordance with the protocol set forth in Section 2.3(b) must establish that the sales-
29 weighted arithmetic mean of acrylamide levels for the Covered Product (“Sales-Weighted Arithmetic
30 Mean Concentration”) is at or below 281.6 parts per billion. The Sales-Weighted Arithmetic Mean

1 Concentration is to be calculated using the following formula: Multiply the acrylamide concentration
2 of each SKU sample (or the arithmetic average of multiple samples of a specific SKU) by the fraction
3 of total sales volume for all Covered Products shipped for sale in California, and thereafter sum all
4 such adjusted concentrations. For purposes of illustration only, if there are two SKUs of the Covered
5 Product (Tortilla Chips) shipped for sale in California, and SKU #1, with an average concentration of
6 240 ppb, represents 60% of all such sales, and SKU #2, with an average concentration of 280 ppb,
7 represents 40% of all such sales, the Sales-Weighted Arithmetic Mean Concentration would be $((240$
8 $\times 0.6) + (280 \times 0.4)) \rightarrow (144 + 112) \rightarrow 256$ ppb.

9 **2.4 Sell-Through Period**

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

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Settlement Amount**

17 Star Snax shall, subject to the waiver set forth in Section 3.4 below, pay fifty thousand dollars
18 (\$50,000.00) in settlement and total satisfaction of all the claims referred to in the Notices, the
19 Complaint, and this Consent Judgment. This includes civil penalties in the amount of five thousand
20 dollars (\$5,000.00) pursuant to Health and Safety Code section 25249.7(b) and attorneys' fees and
21 costs in the amount of forty-five thousand dollars (\$45,000.00) pursuant to Code of Civil Procedure
22 section 1021.5.

23 **3.2 Civil Penalty**

24 The portion of the settlement attributable to civil penalties shall be allocated according to Health
25 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty three
26 thousand seven hundred and fifty dollars (\$3,750.00) paid to the California Office of Environmental
27 Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) of the penalty
28

1 one thousand two hundred and fifty dollars (\$1,250.00) paid to EHA individually. These payments will
2 be sent to the below addresses within five (5) days of the Effective Date.

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

4 Environmental Health Advocates
5 225 Broadway, Suite 1900
6 San Diego, CA 92101

7 All payments owed to OEHHA shall be delivered directly to OEHHA (Memo Line "Prop
8 65 Penalties") at the following addresses:

9 For United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010
14 Sacramento, CA 95812-4010

15 For Federal Express 2-Day Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

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

23 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as
24 required. Relevant information is set out below:

- 25 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 26 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
- 27 and
- 28 • "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) 1001 I Street,
Sacramento, CA 95814.

29 **3.3 Attorneys' Fees and Costs**

30 Subject to the waiver of second payment set forth in Section 3.4 below, the maximum
31 portion of the settlement attributable to attorneys' fees and costs, forty-five thousand dollars
32 (\$45,000.00), shall be paid to EHA's counsel, who are entitled to attorneys' fees and costs

1 incurred by it in this action, including but not limited to investigating potential violations, bringing
2 this matter to Star Snax's attention, as well as litigating and negotiating a settlement in the public
3 interest.

4 Star Snax shall provide their payment to EHA's counsel in two payments. The first payment
5 shall be in the amount of seventeen thousand five hundred dollars (\$17,500.00), payable to Glick
6 Law Group, PC and seventeen thousand five hundred dollars (\$17,500.00), payable to Nicholas &
7 Tomasevic, LLP, respectively. Unless waived in accordance with Section 3.4 below, the second
8 payment shall be in the amount of five thousand dollars (\$5,000.00), payable to Glick Law Group,
9 PC and five thousand dollars (\$5,000.00), payable to Nicholas & Tomasevic, LLP, respectively. The
10 addresses for these two entities are:

11 Noam Glick
12 Glick Law Group
13 225 Broadway, 19th Floor
14 San Diego, CA 92101

15 Craig Nicholas
16 Nicholas & Tomasevic, LLP
17 225 Broadway, 19th Floor
18 San Diego, CA 92101

19 **3.4 Timing**

20 The first installment of the above-mentioned payments will be sent within five (5) days of the
21 Effective Date; and the second installment will be sent within thirty (30) days of the Effective Date.
22 However, if the first payment of thirty-five thousand dollars (\$35,000.00) is paid on time, and
23 notwithstanding anything to the contrary in Section 3.3 above, then the second installment of ten
24 thousand dollars (\$10,000.00) will be waived by EHA and EHA's counsel. If the deadline is on
25 Sunday or holiday, it will be extended until the next day that is not a holiday.

26 **4. CLAIMS COVERED AND RELEASED**

27 **4.1 EHA's Public Release of Proposition 65 Claims**

28 For any claim or violation arising under Proposition 65 alleging a failure to warn about
exposures to acrylamide from Covered Products manufactured, imported, sold, or distributed by Star
Snax prior to the Effective Date, EHA, acting for the general public, releases Star Snax of any and all
liability arising under Proposition 65. This includes Star Snax's owners, parents, subsidiaries,

1 affiliated entities under common ownerships, its directors, officers, agents, employees, attorneys,
2 each in their official and individual capacities, and each entity to whom Star Snax directly or
3 indirectly distributes or sells Covered Products, including but not limited to downstream
4 distributors, wholesales, customers, retailers (including Trader Joe's), franchisees, cooperative
5 members and licensees, (collectively, the "Releasees"). Releasees include Star Snax, its parents,
6 and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns that
7 sell Star Snax's Covered Products. This Consent Judgment is a full, final, and binding resolution
8 of all claims under Proposition 65 that were or could have been asserted against Star Snax and/or
9 Releasees for failure to provide warnings required under Proposition 65 for alleged exposure to
10 acrylamide contained in Covered Products.

11 **4.2 EHA's Individual Release of Claims**

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

18 **4.3 Star Snax's Release of EHA**

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

25 **4.4 Effect of Compliance**

26 Material compliance with the terms of this Consent Judgment constitutes compliance with
27 Proposition 65 with respect to the alleged or actual failure to warn about exposures to acrylamide

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1 from Covered Products manufactured, imported, sold, or distributed by Star Snax on or after the
2 Effective Date.

3 **5. COURT APPROVAL**

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

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the state of California as
13 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
14 rendered inapplicable for reasons, including but not limited to changes in the law, then Star Snax may
15 provide written notice to EHA of any asserted change, and shall have no further injunctive
16 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
17 Products are so affected.

18 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
19 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
20 requirements of Proposition 65; or if the Ninth Circuit Court of Appeals upholds the District Court
21 decision to grant a preliminary injunction in *California Chamber of Commerce v. Becerra*, No. 2:19-
22 cv-01019-KJM-JDP (E.D. Cal.); or if Proposition 65 is determined to be preempted by federal law or
23 a burden on First Amendment rights with respect to acrylamide in Covered Products or Covered
24 Products substantially similar to Covered Products, then Star Snax shall be relieved of its obligation
25 to comply with Section 2 herein.

26 **8. NOTICE**

27 Unless otherwise specified herein, all correspondence and notice required by this Consent
28 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified

1 mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

2 If to Star Snax:

3 Joshua Bloom
4 Environmental General Counsel LLP
5 2120 University Ave
6 Berkeley, CA 94704

If to EHA:

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

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

8 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

12 **10. POST EXECUTION ACTIVITIES**

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

22 The Parties further agree to mutually employ their best efforts, including those of their
23 counsel, to support the defense of any private party lawsuit filed against Star Snax that alleges
24 violations of Proposition 65 with respect to the subject matter of this Consent Judgment.

25 **11. MODIFICATION**

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

