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12 Environmental Health Advocates, Inc.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

15 ENVIRONMENTAL HEALTH
16 ADVOCATES, INC.,

17 Plaintiff,

18 v.

19 TRADER JOE'S COMPANY, a California
20 corporation, R. W. GARCIA CO., INC., a
21 Nevada corporation, and DOES 1 through 100,
22 inclusive,

23 Defendants.

Case No. 21CV002974

[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”), on the one hand, and R. W. Garcia Co., Inc. (“Defendant” or “RWG”), on the
5 other hand, with EHA and RWG each individually referred to as a “Party” and collectively referred to
6 as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 EHA alleges that RWG manufactures, imports, sells, and distributes for sale Trader Joe’s 3 Seed
17 Beet Crackers and R.W. Garcia’s 3 Seed Beet Crackers that contain acrylamide. EHA further alleges
18 that RWG does so without providing a sufficient health hazard warning as required by Proposition 65
19 and related regulations pursuant to Proposition 65, acrylamide is listed as a chemical known to cause
20 cancer, birth defects and other reproductive harm.

21 **1.5 Notice of Violation**

22 On or around June 4, 2021, EHA served Trader Joe’s Company, the California Attorney
23 General, and all other required public enforcement agencies with a 60-Day Notice of Violation of
24 Proposition 65 (“Original Notice”). The Original Notice alleged that Trader Joe’s Company had violated
25 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated
26 with exposures to acrylamide contained in Trader Joe’s 3 Seed Beet Crackers.

27 On or around September 2, 2021, EHA served RWG, Trader Joe’s Company, the California
28 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation

1 of Proposition 65 (“Amended Notice”). The Amended Notice corrected the manufacturer to R. W. Garcia
2 Co., Inc.

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

5 **1.6 Product Description**

6 The products covered by this Consent Judgment are Trader Joe’s 3 Seed Beet Crackers and
7 R.W. Garcia’s 3 Seed Beet Crackers manufactured or processed by RWG that allegedly contain
8 acrylamide and are imported, sold, shipped, delivered, or distributed for sale to consumers in California
9 by Releasees (as defined in section 4.1) (collectively “Covered Products”).

10 **1.7 State of the Pleadings**

11 On or around November 22, 2021, EHA filed a Complaint against RWG for the alleged
12 violations of Proposition 65 that are the subject of the Notices (“Complaint”).

13 **1.8 No Admission**

14 RWG denies the material factual and legal allegations of the Notice and Complaint and
15 maintains that all of the Covered Products it has manufactured, imported, sold, and/or distributed for sale
16 in California, including Covered Products, have been, and are, in compliance with all laws. Nothing in
17 this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue
18 of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an admission
19 of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,
20 diminish or otherwise affect RWG’s obligations, responsibilities, and duties under this Consent
21 Judgment. This Consent Judgment is the product of negotiation and compromise and is accepted by the
22 Parties solely for purposes of settling, compromising, and resolving issues disputed in this action in an
23 efficient and economic manner.

24 **1.9 Jurisdiction**

25 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
26 Court has jurisdiction over RWG as to the allegations in the Complaint, that venue is proper in the County
27 of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
28 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6 as a full and final

1 resolution of all claims which were or could have been raised in the Complaint based on the facts
2 alleged therein and in the Notice with respect to the Covered Products manufactured, distributed, and/or
3 sold by RWG.

4 **1.10 Effective Date and Compliance Date**

5 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
6 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. The
7 Compliance Date is the date that is sixty (60) days after the Effective Date.

8 **2. INJUNCTIVE RELIEF**

9 **2.1 Reformulation of Covered Products**

10 Except as otherwise provided herein, any Covered Products that are manufactured by RWG on
11 and after the Compliance Date that RWG sells in California or distributes for sale in California shall not
12 exceed 350 parts per billion (“ppb”) for acrylamide by weight, using tests performed by a laboratory
13 accredited by the State of California, a federal agency, or a nationally recognized accrediting
14 organization, using either GC/MS (Gas Chromatograph/Mass Spectrometry) or LC-MS/MS (Liquid
15 Chromatograph-Mass Spectrometry), unless such Covered Products comply with the warning
16 requirements of Section 2.2. As used in this Section 2, “distributed for sale in California” means to
17 directly ship Covered Products into California or to sell Covered Products to a distributor RWG knows
18 will sell Covered Products in California.

19 2.1.1 The average acrylamide concentration shall not exceed 350 ppb by weight. The Average
20 Level is determined by randomly selecting and testing at least 1 sample each from 5 different lots of a
21 particular type of Covered Product (or the maximum number of lots available for testing if less than 5)
22 during a testing period of at least 60 days. The mean and standard deviation shall be calculated using
23 the sampling data. Any data points that are more than one standard deviation above mean shall be
24 discarded once, and the mean and standard deviation recalculated using the remaining data points. The
25 mean determined in accordance with this procedure shall be deemed the “Average Level.”

26 **2.2 Clear and Reasonable Warnings**

27 For Covered Products that that contain acrylamide in a concentration exceeding the 350-ppb
28 level set forth in section 2.1 above, and which are manufactured and packaged for distribution for

1 authorized sale or use in California on or after the Effective Date, RWG shall provide one of the
2 following warning statements.

3 **Option 1:**

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

7 **Option 2:**

8 **WARNING:** Cancer and Reproductive Harm –
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' packaging, it must be in a type size no smaller than
14 the largest type size used for other consumer information on the product. In no case shall a warning
15 statement displayed on the Covered Products' packaging appear in a type size smaller than 6-point
16 type. The same warning shall be posted on any websites under the exclusive control of RWG where
17 Covered Products are sold into California. Alternatively, RWG may provide a Proposition 65 warning
18 in any other manner or method approved by statute.

19 **2.3 Discontinuation of Covered Products**

20 RWG reserves the express right to discontinue sale of the Covered Products in California at any
21 time and without notice.

22 **2.4 Sell-Through Period**

23 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
24 manufactured on or prior to the Compliance Date shall be subject to release of liability pursuant to this
25 Consent Judgment, without regard to when such Covered Products were, or are in the future, distributed
26 or sold to customers. As a result, the obligation of RWG, or any Releasees (if applicable), do not apply
27 to these Covered Products manufactured on or prior to the Compliance Date.

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Settlement Amount**

3 RWG shall pay sixty-five thousand dollars (\$65,000.00) in settlement and total satisfaction of all
4 the claims referred to in the Notices, the Complaint, and this Consent Judgment. This includes civil
5 penalties in the amount of seven thousand dollars (\$7,000.00) pursuant to Health and Safety Code section
6 25249.7(b) and attorneys' fees and costs in the amount of fifty-eight thousand dollars (\$58,000.00)
7 pursuant to Code of Civil Procedure section 1021.5.

8 **3.2 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, five
11 thousand two hundred and fifty dollars (\$5,250.00), paid to the California Office of Environmental
12 Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) of the penalty,
13 one thousand seven hundred and fifty dollars (\$1,750.00), paid to EHA individually. These payments
14 will be sent to the below addresses within twenty (20) days of the Effective Date.

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

16 Environmental Health Advocates
17 225 Broadway, Suite 1900
18 San Diego, CA 92101

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

21 For United States Postal Service Delivery:

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

27 For Federal Express 2-Day Delivery:

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

 RWG agrees to provide EHA's counsel with a copy of the check payable to OEHHA,

1 simultaneous with its penalty payments to EHA.

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

- 4 • “Entorno Law, LLP” (EIN: 68-0284486) at the address provided in Section 3.2(a)(i); and
- 5 • “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814

6 **3.3 Attorneys’ Fees and Costs**

7 The portion of the settlement attributable to attorneys’ fees and costs, fifty-eight thousand
8 dollars (\$58,000.00), shall be paid to Entorno Law, LLP (“EHA’s Counsel”), who is entitled to
9 attorneys’ fees and costs incurred by it in this action, including but not limited to investigating potential
10 violations, bringing this matter to RWG’s attention, as well as litigating and negotiating a settlement in
11 the public interest.

12 RWG shall provide their payment to EHA’s counsel in one check for fifty-eight thousand
13 dollars (\$58,000.00) payable to Entorno Law, LLP. The payment shall be delivered to the
14 following address:

15
16 Noam Glick
17 Entorno Law, LLP
225 Broadway, 19th Floor
San Diego, CA 92101

18 **3.4 Timing**

19 The above-mentioned checks will be issued within twenty (20) days of the Effective Date. If
20 the deadline is on a Saturday, Sunday, or holiday, it will be extended until the following Monday or
21 the next day that is not a holiday, whichever is sooner.

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 EHA’s Public Release of Proposition 65 Claims**

24 For any claim or violation arising under Proposition 65 alleging a failure to warn about
25 exposures to acrylamide from Covered Products manufactured, imported, sold, or distributed by RWG
26 prior to the Compliance Date, EHA, acting for the general public, releases RWG of any and all liability
27 arising under Proposition 65. This includes RWG’s owners, parents, subsidiaries, affiliated entities
28 under common ownerships, its directors, officers, agents, insurers, shareholders, successors, assigns,

1 employees, attorneys, and all entities to whom RWG directly or indirectly distributes or sells Covered
2 Products, including but not limited to downstream distributors, wholesalers, customers, retailers
3 (including but not limited to Trader Joe's Company), franchisees, cooperative members, licensors, and
4 licensees, (collectively, the "Releasees"). Releasees include, but are not limited to, defendants, their
5 parents, and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns
6 that sell the Covered Products. Compliance with the terms of this Consent Judgment constitutes
7 compliances with Proposition 65 with respect to the alleged or actual failure to warn about exposures to
8 acrylamide from Covered Products manufactured, imported, sold, or distributed by RWG after the
9 Compliance Date. This Consent Judgment is a full, final, and binding resolution of all claims under
10 Proposition 65 that were or could have been asserted against RWG and/or Releasees for failure to
11 provide warnings required under Proposition 65 for alleged exposure to acrylamide contained in
12 Covered Products.

13 **4.2 EHA's Individual Release of Claims**

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

20 **4.2.1** Compliance with Section 2 of this Consent Judgment shall constitute compliance with
21 Proposition 65 by RWG and Releasees with respect to any alleged failure to warn about acrylamide in
22 Covered Products manufactured, distributed, or sold by RWG after the Compliance Date.

23 **4.3 Waiver of Civil Code Section 1542**

24 With respect to the foregoing waivers and releases in this Settlement Agreement, EHA hereby
25 knowingly and specifically waives any and all rights and benefits which it now has, or in the future
26 may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
27 provides as follows:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
2 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
3 THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,
4 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
5 OR RELEASED PARTY.

6 EHA expressly waives and relinquishes and any and all rights and benefits that it may have
7 under, or that may be conferred upon it by, the provisions of Civil Code section 1542 as well as under
8 any other state or federal statute or common law principle of similar effect, to the fullest extent that it
9 may lawfully waive such rights or benefits pertaining to the released matters.

10 **4.4 RWG's Release of EHA**

11 RWG 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 as
26 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 RWG 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 RWG shall be relieved of its obligation to comply with Section 2
9 herein.

10 **8. ENFORCEMENT**

11 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
12 to its reasonable attorneys' fees and costs.

13 **9. NOTICE**

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

17 If to RWG:

18 Allonn E. Levy
19 Arthur E. Rothrock
20 Hopkins & Carley
70 South First Street
San Jose, CA 95113

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, 19th Floor
San Diego, CA 92101

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

23 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

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1 **11. POST EXECUTION ACTIVITIES**

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

11 **12. MODIFICATION**

12 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
13 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any Party,
14 and the entry of a modified consent judgment thereon by the Court. Any Party seeking to modify this
15 Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing any
16 motion to modify the Consent Judgment.

17 **13. AUTHORIZATION**

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

20 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

25 **15. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
27 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
28 commitments, and understandings related hereto. No representations, oral or otherwise, express or

1 implied, other than those contained herein have been made by any Party. No other agreements, oral or
2 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

3
4 **AGREED TO:**

5 Date: 01/05/2022

6
7 By: 
8 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

9
10 **AGREED TO:**

11 Date: 1/5/22

12 By: 
13 R. W. GARCIA CO., INC.

14
15 **IT IS SO ORDERED.**

16 Date: _____

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18 JUDGE OF THE SUPERIOR COURT
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