

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Stump’s Market, Inc. (“SMI”), on the other hand, with EHA and SMI each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. SMI employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that SMI is a California grocery store retailer that sells tortilla chips, including specifically Chipotle Spiced Corn Tortilla Chips manufactured and distributed by Tortilleria Santa Fe Inc. and/or Area 51 MexProd, Inc. (the “Product”) that was tested and found to contain acrylamide without first providing the health hazard warning required by Proposition 65. Acrylamide is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, Tortilleria Santa Fe Chipotle Spiced Corn Tortilla Chips (“the Product”), was laboratory tested and found to contain an impermissibly high level of acrylamide in a package of tortilla chips sold in California by SMI.

1.4 Notices of Violation

On August 2, 2021, EHA served Tortilleria Santa Fe, Inc., Lee Supermarket, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Tortilleria Santa Fe, Inc. and others violated Proposition 65 when they

failed to warn its customers and consumers in California of the health risks associated with exposures to Acrylamide from the Product. EHA did not serve the August 2, 2021 Notice on SMI which did not receive the Notice.

On August 17, 2021, EHA served SMI, Tortilleria Santa Fe, Inc., Stump's Family Marketplace, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation ("Amended Notice") by certified mail. The Amended Notice corrected the retailer to SMI and provide SMI with notice of EHA's contention there was acrylamide in the Product. Upon receipt of the Amended Notice, SMI removed the Product from its grocery store.

On September 21, 2021, EHA served SMI, Tortilleria Santa Fe, Inc., Stump's Family Marketplace, Area 51 MexProd, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation ("Second Amended Notice"). The Second Amended Notice added the manufacturer Area 51 MexProd, Inc.

To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice, Amended Notice, and Second Amended Notice (hereinafter, the "Notices").

1.5 No Admission

SMI denies the material, factual, and legal allegations in the Notices and maintains that all of the products it sold in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by SMI of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by SMI of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by SMI. This Section shall not, however, diminish or otherwise affect SMI's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean fourteen (14) days following the execution of this Settlement Agreement by the Parties.

2. **INJUNCTIVE RELIEF**

2.1 **Clear and Reasonable Warnings**

As of the Effective Date, and continuing thereafter, SMI will post a clear and reasonable Proposition 65 warning as set forth in this §§ 2.1 and 2.2 and, with respect to the Product should SMI recommence sales of the Product a further complete a warning in accord with § 2.2 below.

2.2 **Warning Requirements**

On or after the Effective Date, should STI recommence sales of the Product, STI shall provide one of the following warning statements:

- 1) **WARNING:** This product can expose you to chemicals including Acrylamide, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.
- 2) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.cs.gov

This warning statement shall be prominently displayed at or near the Product, on the packaging of the Product, or on a placard, shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Products' packaging, it must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall a warning statement displayed on the Products' packaging appear in a type size smaller than 6-point type.

2.3 **Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2 shall not apply to the Product that are already in the stream of commerce as of the Effective Date, which Products are expressly subject to the releases provided in Section 4.1.

3. **MONETARY SETTLEMENT TERMS**

3.1 **Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged

in the Notices or referred to in this Settlement Agreement, SMI agrees to pay three hundred and fifty dollars (\$350.00) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EHA. Within ten (10) days of the date this Settlement Agreement is executed by the Parties, SMI shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of two hundred and sixty-two and 50/100 dollars (\$262.50) and (b) Environmental Health Advocates, Inc., in the amount of eighty-seven and 50/100 dollars (\$87.50).

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

For United States Postal Service Delivery:

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

For Federal Express 2-Day Delivery:

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

All penalty payments owed to EHA shall be sent to:

Samantha Dice
Environmental Health Advocates
225 Broadway, Suite 1900
San Diego, CA 92101

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, SMI

agrees to pay four thousand six hundred and fifty dollars (\$4,650.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of SMI and negotiating a settlement. SMI shall provide their payment to EHA's counsel in two installments as follows:

- The first installment shall be in the amount of three thousand one hundred fifty dollars (\$3,150.00) payable to Entorno Law, LLP, within fourteen (14) days of the Effective Date ("First Installment").
- The second installment shall be in the amount of one thousand five hundred dollars (\$1,500.00) payable to Entorno Law, LLP, within forty (40) days of the Effective Date ("Second Installment"); provided that the Second Installment is due and payable only if STI fails to tender the First Installment within fourteen (14) days after the Effective Date. If the First Installment is timely tendered to EHA's Counsel, EHA's Counsel waives and releases any claim in whole or part to payment of the Second Installment.

3.3 Payment Address

All payments required under this Section shall be delivered to:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.4 Tax Documentation

SMI agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that SMI cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after SMI receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of SMI

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EHA, on its own behalf and not on behalf of the public, and SMI of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against

SMI and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, and attorneys (“Releasees”), based on the failure to warn about exposures to Acrylamide required under Proposition 65 in the Product manufactured, sold or distributed for sale in California by SMI before the Effective Date, as alleged in the Notices. This release does not extend to any upstream manufacturers or distributors of the Product, or to any third-party retailers selling the product on a website who, after receiving instruction from SMI to include a warning as set forth above in section 2.3, do not include such a warning.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public except to the extent of its role as private attorney general and with respect to its members, representatives and attorneys, and on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against SMI and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to Acrylamide required under Proposition 65 in the Product distributed, sold or offered for sale by SMI, before the Effective Date.

4.2 SMI’s Release of EHA

SMI, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other representatives, for any and all actions taken or statements made by EHA and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Product will develop or be discovered. EHA on behalf of itself only, on one hand, and SMI on behalf of itself only, on the other hand, acknowledge that this

Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

6. COOPERATION REGARDING MANUFACTURER/UPSTREAM ENTITIES

As a material condition of this settlement, SMI will take reasonable steps to assist EHA in identifying, locating, and contacting representatives of Tortilleria Santa Fe Inc. and/or Area 51 MexProd, Inc. who have been identified as the potential upstream manufacturers and/or distributors of the Product (“Upstream Entities”), including but not limited to, sharing with counsel for EHA any communications between any representatives of SMI (including counsel) and any representatives of any Upstream Entities.

7. ENFORCEMENT

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys’ fees and costs.

8. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For SMI:

Robert L. Theiring
Burke, Williams & Sorensen, LLP
501 West Broadway, Suite 1600
San Diego, CA 92101

For EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this

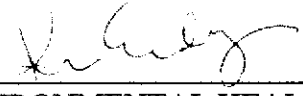
Settlement Agreement.

AGREED TO:

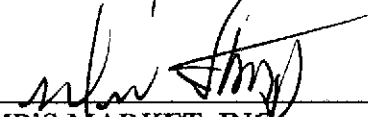
AGREED TO:

Date: 01/26/2022

Date: 1/27/22

By: 

ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 

STUMP'S MARKET, INC.