

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 Grupo Papilio S.L.U. (“GPSLU”), on the other hand, with EHA and GPSLU 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. GPSLU 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 GPSLU sells in California, potato crisps that contain acrylamide and that it does so 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, El Tio Papilio Potato Crisps Extra Crunchy (“the Products”) that have been imported, distributed, offered for sale and/or sold in California by GPSLU.

1.4 Notice of Violation

On or around September 23, 2021, EHA served GPSLU, HomeGoods, Inc., the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that GPSLU had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to acrylamide contained in the Products.

No public enforcer has commenced or is otherwise prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

GPSLU denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by GPSLU 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 GPSLU of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by GPSLU. This Section shall not, however, diminish or otherwise affect GPSLU's obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding EHA's allegations, GPSLU maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

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, a clear and reasonable Proposition 65 warning as set forth in this Sections 2.1 and 2.2 must be provided for all Products that GPSLU sells in California.

2.2 Warning Requirements

On or after the Effective Date, for all Products, GPSLU 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 on the Products, on the packing of the Products, 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. The same warning shall be posted on any websites under the exclusive control of GPSLU where the Products are sold into California.

2.3 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to Products 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.

2.4 Compliance with Warning Regulations

The Parties agree that GPSLU shall be deemed to be in compliance with this Settlement Agreement by either adhering to Sections 2.1 and 2.2 of this Settlement Agreement, or by complying with warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

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 Notice or referred to in this Settlement Agreement, GPSLU agrees to pay two thousand dollars (\$2,000.00) 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 fourteen (14) days of the date this Settlement Agreement is executed by the Parties, GPSLU shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA”, in the amount of one thousand five hundred dollars (\$1,500.00) and (b) Environmental Health Advocates, Inc., in the amount of five hundred dollars (\$500.00).

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, GPSLU agrees to pay sixteen thousand dollars (\$16,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of GPSLU’s negotiating a settlement. GPSLU shall provide their payment to EHA’s counsel in one check for the amount of sixteen thousand dollars (\$16,000.00) payable to “Entorno Law, LLP”, within fourteen (14) days of

the date this Settlement Agreement is executed by the Parties. Other than this payment, each Party is to bear its own attorneys' fees and costs.

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

GPSLU 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 GPSLU cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after GPSLU receives the requisite W-9 forms from EHA's counsel.

3.5 Alternative Wire Payment

As an alternative to sending checks to EHA and its counsel as set forth in Sections 3.1 through 3.3 in this Settlement Agreement, GPSLU may elect to make a total payment of \$18,000 for the civil penalties and attorneys' fees by wire transfer to EHA's counsel, which shall provide wire instructions upon request. If GPSLU elects to make payment via wire transfer pursuant to this Section 3.5, the wire transfer shall be made within fourteen (14) days of the date this Settlement Agreement is executed by the Parties, provided EHA's counsel has provided wire instructions. .

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of GPSLU

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 GPSLU 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 GPSLU and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Products was purchased by GPSLU, including, but not limited to, its upstream suppliers, manufacturers,

distributors, and each entity to whom GPSLU directly or indirectly sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, including but not limited to HomeGoods, Inc., The TJX Companies, Inc., and their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), based on the failure to warn about exposures to acrylamide required under Proposition 65 in the Products sold in California by GPSLU before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, 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 GPSLU 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 Products sold by GPSLU, before the Effective Date.

4.2 GPSLU’s Release of EHA

GPSLU, 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 Products.

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 Notice and relating to the Products will develop or be discovered. EHA on behalf of itself only, on one hand, and GPSLU 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.

4.4 Deemed Compliance with Proposition 65

The Parties agree that compliance by GPSLU with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to acrylamide from use of the Products.

4.5 Public Benefit

It is GPSLU's understanding that the commitments it has agreed to herein, and actions to be taken by GPSLU under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of GPSLU that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to GPSLU's failure to provide a warning concerning exposure to acrylamide in connection with the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that GPSLU is in material compliance with this Settlement Agreement.

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.

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 GPSLU:

Pedro Sanchez
Grupo Papilio S.L.U.
Avda. Luxemburgo Parcela G9
Nave 18. Polígono Cabezo Beaza
Cartagena, Murcia 30353
Spain

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 South Flower Street, Forty-First Floor
Los Angeles, California 90071

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. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. 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: 01/13/2022

Date: 17/01/2022

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
GP GRUPO PAPILO®
GRUPO PAPILO S.L.U. / C.I.F. B30685119
GRUPO PAPILO S.L.U.