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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

11 ENVIRONMENTAL HEALTH
ADVOCATES, INC.,

12 Plaintiff,

13 v.

14 ARNOTT'S BISCUITS LIMITED, an
15 Australian corporation, ARNOTT'S
BISCUITS (USA), INC., a Delaware
16 corporation, WORLD MARKET, LLC, a
California limited liability company, COST
17 PLUS WORLD MARKET, LLC, a Delaware
limited liability company, and DOES 1 through
18 100, inclusive,

19 Defendants.
20

Case No. 22CV005724

[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 Arnott’s Biscuits Limited, (“Defendant” or “ABL”), on
5 the other hand, with EHA and ABL each individually referred to as a “Party” and collectively referred
6 to 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
10 by reducing or eliminating hazardous substances contained in consumer products.

11 **1.3 Defendant**

12 ABL 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 Acrylamide is listed as a chemical known to the State of California to cause cancer and birth
17 defects and other reproductive harm. EHA alleges that ABL manufactures, imports, sells, and
18 distributes for sale in the State of California biscuits, including but not limited to, Arnott’s Tim Tam
19 Irresistible Chocolate Covered Biscuits, that contain acrylamide. EHA further alleges that the
20 Covered Products expose consumers in California to acrylamide without having first provided them
21 a clear and reasonable warning for the exposure as Plaintiff alleges is required by Proposition 65.
22 ABL denies Plaintiff’s allegations that any of its products require Proposition 65 warnings.

23 **1.5 Notice of Violation**

24 On or around September 23, 2021, EHA served Arnott’s Biscuits Limited, World Market,
25 LLC, Cost Plus World Market, LLC, the California Attorney General, and all other required public
26 enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice
27 alleged that ABL had violated Proposition 65 by failing to sufficiently warn consumers in California
28 of the health hazards associated with exposures to acrylamide contained in biscuits including, but not

1 limited to, Arnott's Tim Tam Irresistible Chocolate Covered Biscuits.

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

4 **1.6 Product Description**

5 The products covered by this Consent Judgment are biscuits including but not limited to all
6 Tim Tam Irresistible Chocolate Covered Biscuit variants (expressly including, but not limited to, the
7 Tim Tam Original, Tim Tam Caramel, Tim Tam Chewy Caramel, Tim Tam Classic Dark, Tim Tam
8 Dark, Tim Tam Dark Chocolate, Tim Tam Choc Mint, Tim Tam Dark Mint, Tim Tam Double Coat,
9 Tim Tam Mint and Tim Tam White) manufactured or processed by ABL or Defendant Entities and
10 that are imported, sold, shipped, delivered, or distributed for sale to consumers in California by ABL,
11 Defendant Entities or Releasees (as defined in Section 4.1) ("Covered Products"). The Covered
12 Products include Covered Products sold in ABL's own brand names and Covered Products sold under
13 private label arrangements entered into with retailers or others, if any.

14 **1.7 Status of the Pleadings**

15 On or around January 20, 2022, EHA filed a Complaint against ABL, for the alleged violations
16 of Proposition 65 that are the subject of the Notice ("Complaint").

17 **1.8 No Admission**

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

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
28 Court has jurisdiction over ABL 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 Consent
2 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

3 **1.10 Effective and Compliance Dates**

4 For purposes of this Consent Judgment, the term “Effective Date” shall be the date on which
5 EHA serves notice on ABL that the Court has approved and entered this Consent Judgment, as discussed
6 in Section 5. Since the reformulation described below must ensure compliance with applicable
7 regulatory requirements, the “Compliance Date”, for purposes of this Consent Judgment, means the date
8 six (6) months after the Effective Date.

9 **2. INJUNCTIVE RELIEF**

10 **2.1 Reformulation of Covered Products**

11 Commencing on the “Compliance Date”, and continuing thereafter, ABL shall only
12 manufacture, supply or distribute, or cause to manufacture, supply or distribute, for sale or use in
13 California, Covered Products, regardless of type, form, or branding, that, as packaged, contain
14 acrylamide concentrations of 281 parts per billion (“ppb”) or less as an average of at least three (3)
15 samples. Such compliance may be demonstrated by ABL using at least three (3) covered samples of
16 the same Covered Products (however branded). Samples shall be measured by means of a test
17 performed by a laboratory accredited by the State of California, a federal agency, or a nationally
18 recognized accrediting organization, using either LC-MS/MS (Liquid Chromatograph-Mass
19 Spectrometry), GC/MS (Gas Chromatograph\Mass Spectrometry), or any other testing method
20 recognized as reliable by the State of California and agreed upon by the Parties, including the National
21 Measurement Institute, Australia. As used in this Section 2, to “manufacture”, “supply” or “distribute”
22 for sale or use in California means to directly ship Covered Products into California or to sell Covered
23 Products to a distributor ABL has authorized to sell Covered Products in California.

24 ABL will also have the option of filing a motion to modify this Consent Judgment and seek a
25 reformulation level greater than 281 ppb by demonstrating that it has utilized quality control measures
26 that reduce the concentration of acrylamide to the “lowest level currently feasible,” as that term is used
27 by the California Office of Environmental Health Hazard Assessment (“OEHHA”). However, Arnott’s
28

1 is permitted to establish the “lowest level currently feasible” without being bound by
2 reformulation levels agreed upon in prior court approved consent judgments.

3 **2.2 Clear and Reasonable Warnings**

4 For Covered Products that contain acrylamide in a concentration exceeding the ppb level set
5 forth in Section 2.1 above, and which are manufactured, supplied and distributed for sale or use in
6 California on or after the Compliance Date by ABL, ABL shall provide one of the following
7 Proposition 65 warning statements:

8 **Option 1:**

9 **CA Prop 65 Warning:** Consuming this product can expose you to
10 chemicals, including acrylamide, which are known to the State of
11 California to cause cancer. For more information go to
12 www.P65Warnings.ca.gov/food.

12 **Option 2:**

13 **WARNING: Cancer – www.P65Warnings.ca.gov/food**

14 When required, the above warning statements shall be placed on the product’s package in at least six
15 (6) point font and either set within a box or separated from other warning text by at least one line so
16 as to be able to be read and understood by an ordinary individual prior to purchase or use. In the
17 event that OEHHA promulgates alternative warning language than identified above for acrylamide,
18 ABL may use the warning language consistent with the alternative warning language.

19 **2.3 Court-Approved Modification**

20 In the event Plaintiff enters into an agreement or consent judgment with any other person
21 supplying products substantially similar to Covered Products addressing alleged violations of
22 Proposition 65 with respect to exposures to acrylamide that provides for less stringent standards than
23 that set forth in Section 2.1 above; or if a judgment is entered in any Proposition 65 case with respect
24 to exposures to acrylamide from products substantially similar to Covered Products that provides for
25 less stringent requirements than that set forth in Section 2.1 above; or if the California Office of Health
26 Hazard Assessment adopts a regulation or safe use determination, or issues an interpretive guideline
27 with respect to exposures to acrylamide from Covered Products or products substantially similar to
28 Covered Products that provides for less stringent standards than that set forth in Section 2.1 above; then

1 ABL may seek a Court-approved modification of this Consent Judgment, without the objection of the
2 Plaintiff, to conform or eliminate the terms of this Section 2, accordingly. Any such modification shall
3 have no effect on the financial obligations set forth herein.

4 **2.4 Sell-Through Period**

5 Notwithstanding any other provision and requirement of this Consent Judgment, the Covered
6 Products that are manufactured on or prior to the Compliance Date shall be subject to the release of
7 liability pursuant to this Consent Judgment, without regard to when such Covered Products were, or
8 are in the future, distributed or sold to customers. As a result, the obligations of ABL, or any Releasee
9 (if applicable), pursuant to this Consent Judgment do not apply to Covered Products manufactured on
10 or prior to the Compliance Date.

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Settlement Amount**

13 ABL shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all
14 the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil
15 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code
16 section 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars
17 (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5.

18 **3.2 Civil Penalty**

19 The portion of the settlement attributable to civil penalties shall be allocated according to
20 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
21 penalty (three-thousand, seven-hundred fifty (\$3,750.00)), paid to the California Office of
22 Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%)
23 of the penalty (one-thousand, two-hundred fifty (\$1,250.00)), paid to EHA individually.

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

25 Environmental Health Advocates
26 225 Broadway, Suite 1900
27 San Diego, CA 92101

28 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA

1 (Memo Line “Prop 65 Penalties”) at the following addresses:

2 For United States Postal Service Delivery:

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

8 For Federal Express 2-Day Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 1001 I Street
13 Sacramento, CA 95814

14 ABL agrees to provide EHA’s counsel with a copy of the check payable to OEHHA,
15 simultaneous with its penalty payments to EHA.

16 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.

17 Relevant information is set out below:

- 18 • “Entorno Law LLP” (EIN: 68-0284486) at the address provided in Section 3.2(a)(i);
- 19 and
- 20 • “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA
- 21 95814.

22 **3.3 Reimbursement of Attorneys’ Fees and Costs**

23 The portion of the settlement attributable to attorneys’ fees and costs shall be paid to EHA’s
24 counsel, who are entitled to attorneys’ fees and costs incurred by it in this action, including but not
25 limited to investigating potential violations, bringing this matter to ABL’s attention, as well as litigating
26 and negotiating a settlement in the public interest.

27 ABL shall provide their payment to EHA’s counsel in one check, or wire transfer, payable to
28 Entorno Law, LLP. The payment shall be delivered to:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101

1 **3.4 Timing**

2 The above-mentioned payments will be issued within twenty-one (21) days of the Effective
3 Date.

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 EHA’s Public Release of Proposition 65 Claims**

6 Plaintiff, acting on its own behalf and in the public interest, releases ABL and its parents,
7 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,
8 employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant
9 Entities”), and all entities to which Defendant Entities directly or indirectly distribute, ship, or sell the
10 Covered Products including but not limited to downstream distributors, wholesalers, customers, and
11 retailers (including but not limited to: World Market, LLC and Cost Plus World Market, LLC)
12 franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of the
13 foregoing entities’ owners, directors, officers, agents, principals, employees, attorneys, insurers,
14 accountants, representatives, predecessors, successors, and assigns (collectively referred to as the
15 “Releasees”) from all claims for violations of Proposition 65 based on exposure to acrylamide from
16 Covered Products that are or have been marketed, manufactured, supplied or distributed (including by
17 ABL, Defendant Entities or Releasees) prior to the Compliance Date. This Consent Judgment is a full,
18 final and binding resolution of all claims that were or could have been asserted against ABL, Defendant
19 Entities and Releasees, or any of them, for failure to provide warnings for alleged exposures to
20 acrylamide in Covered Products. Compliance with the terms of this Consent Judgment constitutes
21 compliance with Proposition 65 with respect to exposures to acrylamide from Covered Products.

22 **4.2 EHA’s Individual Release of Claims**

23 EHA, in its individual capacity only, and on behalf of itself and its successors, heirs, assigns,
24 agents, and attorneys, also provides a release herein to ABL, Defendant Entities and Releasees from
25 all claims as to all chemicals currently listed under Proposition 65 in all the Covered Products. In
26 addition, EHA, in its individual capacity only, and on behalf of itself and its successors, heirs, assigns,
27 agents, and attorneys, also provides a release herein to ABL, Defendant Entities and Releasees which
28 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,

1 obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities and demands of any
2 nature, character, or kind, whether known or unknown, suspected or unsuspected, with respect to any
3 other issue concerning the Covered Products. In this regard, EHA has had the benefit of counsel, and
4 has been advised of, understands, and knowingly and specifically waives its rights under California
5 Civil Code Section 1542 which provides as follows:

6
7 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR**
8 **OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
9 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF**
10 **KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR**
11 **HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

12
13 **4.3 ABL's Release of EHA**

14 ABL on its own behalf, and on behalf of Releasees as well as its past and current agents,
15 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
16 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
17 and its attorneys and other representatives, in the course of investigating claims or otherwise seeking
18 to enforce Proposition 65 against them in this matter.

19 **5. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and shall
21 be null and void if, for any reason, it is not approved and entered by the Court within one year after
22 it has been fully executed by the Parties unless the Parties mutually agree to extend that time period
23 due to what they mutually agree are reasonably unforeseen circumstances.

24 **6. SEVERABILITY**

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

28 ///

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California as
3 applied within the State of California. In the event that Proposition 65 is repealed, or is otherwise
4 rendered inapplicable for reasons, including but not limited to changes in the law, or if the State of
5 California’s No Significant Risk Level (pursuant to California Health & Safety Code section 25703)
6 for acrylamide is increased by the Office of Environmental Health Hazard Assessment or through other
7 legal process to a level greater than or equal to 1.0 micrograms/day, then ABL may provide written
8 notice to EHA of any asserted change, and shall have no further obligation to comply with Sections 2.1
9 and 2.2 herein with respect to, and to the extent that, the Covered Products are so affected.

10 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
11 determination, or issues an interpretive guideline that exempts Covered Products or products
12 substantially similar to Covered Products from meeting the requirements of Proposition 65; or if
13 acrylamide cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65 is
14 determined to be preempted by federal law or a burden on First Amendment rights with respect to
15 acrylamide in Covered Products or products substantially similar to Covered Products, then ABL shall
16 be relieved of its obligation to comply with Sections 2.1 and 2.2 herein.

17 **8. ENFORCEMENT**

18 In any action to enforce Section 3 of this Consent Judgment, the prevailing party shall be
19 entitled to its reasonable attorneys’ fees and costs.

20 **9. NOTICE**

21 Unless otherwise specified herein, all correspondence and notice required by this Consent
22 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
23 mail, return receipt requested; or (iii) a recognized overnight or two-day courier on any Party by the
24 other Party to the following addresses:

25 If to ABL:

26 Arnott’s Biscuits Limited
27 Attn: Legal Department
28 24 George Street
 North Strathfield, NSW 2137
 Australia

25 If to EHA:

26 Noam Glick
27 Entorno Law LLP
28 225 Broadway, 19th Floor
 San Diego, CA 92101

1 With a copy to:

2 Rohit A. Sabnis
3 Keller & Heckman LLP
4 Three Embarcadero Center, STE 1420
5 San Francisco, CA 94111

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 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

12 **11. POST EXECUTION ACTIVITIES**

13 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
14 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
15 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
16 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to
17 mutually employ their best efforts, including those of their counsel, to support the entry of this
18 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
19 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for
20 approval, responding to any objection that any third-party may make, and appearing at the hearing
21 before the Court if so requested. If this Consent Judgment is not entered by the Court, it shall be of
22 no force or effect and shall not be introduced into evidence or otherwise used in any proceeding for
23 any purpose.

24 In addition, EHA agrees to execute and file with the Court dismissals with prejudice of
25 Arnott’s Biscuits (USA), Inc., World Market, LLC and Cost Plus World Market, LLC within
26 five (5) business days of receipt and clearance of the payments set forth above in Section 3.

27 **12. MODIFICATION**

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

any Party, and the entry of a modified consent judgment thereon by the Court.

13. AUTHORIZATION

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

14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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

15. ENTIRE AGREEMENT

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

AGREED TO:

AGREED TO:

Date: 02/03/2022

Date: 7 February 2022

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
ARNOTT'S BISCUITS LIMITED

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT