

## 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 Gourmet International, Inc. (“Gourmet International”), on the other hand, with EHA and Gourmet International 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. Gourmet International 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 Gourmet International manufactures, sells and distributes for sale in California, wafers 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, Maestro Massimo Wafer Cubetti in all flavors, including Yogurt Raspberry, Lemon, Vanilla and Hazelnut Cream (“the Product”), that contains acrylamide and that is sold or distributed for sale in California by Gourmet International.

#### **1.4 Notices of Violation**

On or around September 23, 2021, EHA served Cost Plus World Market, LLC, Officine Dolce Vita S.R.L., World Market, LLC, the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Initial Notice”). The Initial Notice alleged that Officine Dolce Vita S.R.L. had violated Proposition 65 by failing to

sufficiently warn consumers in California of the health hazards associated with exposures to acrylamide contained in Maestro Massimo Wafer Cubetti with Hazelnut Cream.

On or around October 6, 2021, EHA served Gourmet International, Cost Plus World Market, LLC, Officine Dolce Vita S.R.L., World Market, LLC, the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Amended Notice”). The Amended Notice alleged that Gourmet International had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to acrylamide contained in Maestro Massimo Wafer Cubetti with Hazelnut Cream.

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

#### **1.5 No Admission**

Gourmet International denies the material, factual, and legal allegations in the Notices and maintains that all of the Product it sold and/or distributed for sale in California, including have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Gourmet International 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 Gourmet International of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Gourmet International. This Section shall not, however, diminish or otherwise affect Gourmet International’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 Reformulation or Clear and Reasonable Warnings**

Commencing on the Effective Date, and continuing thereafter, Gourmet International agrees

to purchase for sale, import for sale, or distribute for sale in or into California, Product containing acrylamide concentrations of 115 parts per billion ("ppb") or less. As used in this Section 2.1, "distributed for sale in California" means to directly ship Product into California or to sell Product to a distributor Gourmet International knows will sell Product in California. For Product that contain acrylamide in a concentration exceeding 115 ppb, and which are supplied and distributed for sale or use in California, Gourmet International shall provide one of the following Proposition 65 warnings as provided for in Section 2.2.

## **2.2 General Warning Requirements**

Gourmet International agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California by Gourmet International that contains the following 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](http://www.P65Warnings.ca.gov).
- 2) **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.cs.gov](http://www.P65Warnings.cs.gov)

This warning statement shall be prominently displayed on the Product, on the packing 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 Product' 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 Product's 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 Gourmet International where Product is sold into California.

(i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress or voters with such requirements or permission, Gourmet International shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted providing that warnings as to acrylamide in this product are no longer required, a lack of warning by Gourmet International will not thereafter be a breach of this Agreement.

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

The injunctive requirements of Section 2 shall not apply to Product that is already in the stream of commerce as of the Effective Date., and such which Product is 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, Gourmet International agrees to pay two thousand five hundred dollars (\$2,500.00) 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 twenty-one (21) days of the date

this Settlement Agreement is executed by the Parties, Gourmet International shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of one thousand eight hundred and seventy-five dollars (\$1,875.00) and (b) Environmental Health Advocates, Inc., in the amount of six hundred and twenty-five dollars (\$625.00).

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, within twenty-one (21) days of the date this Settlement Agreement is executed by the Parties, Gourmet International agrees to pay twenty-two thousand five hundred dollars (\$22,500.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Gourmet International's negotiating a settlement. The \$22,500.00 in Attorney's Fees and Costs shall be paid in payments as follows:

Gourmet International shall provide their payment to EHA's counsel in one check, payable to Entorno Law, LLP (\$22,500.00).

### **3.3 Payment Address**

All payments required under this Section shall be delivered to:

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

Craig Nicholas  
Nicholas & Tomasevic, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

### **3.4 Tax Documentation**

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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 EHA's Release of Gourmet International**

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 Gourmet International 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 Gourmet International and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by Gourmet International, and each entity to whom Gourmet International directly or indirectly distributes or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative

members and licensees ("Releasees"), based on the failure to warn about exposures to acrylamide required under Proposition 65 in the Product sold or distributed for sale in California by Gourmet International before the Effective Date, as alleged in the Notices.

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 Gourmet International 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 Gourmet International, before the Effective Date.

#### **4.2 Gourmet International's Release of EHA**

Gourmet International, 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 Gourmet International 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.

**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 Gourmet International:

Dennis Raglin  
Steptoe & Johnson LLP  
633 West Fifth Street  
Los Angeles, CA 90071

For EHA:

Noam Glick  
Glick Law Group  
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: 12-21-2021

Date: 12-21-2021

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By:   
GOURMET INTERNATIONAL, INC.