

1 **GLICK LAW GROUP, P.C.**

2 Noam Glick (SBN 251582)
3 225 Broadway, Suite 1900
4 San Diego, California 92101
5 Tel: (619) 382-3400
6 Email: noam@glicklawgroup.com

7 **NICHOLAS & TOMASEVIC, LLP.**

8 Craig M. Nicholas (SBN 178444)
9 Jake Schulte (SBN 293777)
10 225 Broadway, Suite 1900
11 San Diego, California 92101
12 Tel: (619) 325-0492
13 Fax: (619) 325-0496
14 Email: cnicholas@nicholaslaw.org
15 Email: jschulte@nicholaslaw.org

16 Attorneys for Plaintiff
17 Environmental Health Advocates, Inc.

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

20 ENVIRONMENTAL HEALTH
21 ADVOCATES, INC.,

22 Plaintiff,

23 v.

24 ANDREW, LLC, a California Limited
25 Liability Company, DIANA'S MEXICAN
26 FOOD PRODUCTS, INC., a California
27 corporation, and DOES 1 through 100,
28 inclusive,

Defendants.

Case No. 21CIV000571

[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”) and: a) Andrew, LLC, dba Festival Foods; and b) Diana’s Mexican Food
5 Products, Inc. (each a “Defendant” or collectively “Defendants”) with EHA and Defendants each
6 individually referred to as a “Party” and collectively referred 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 Defendants each employ ten or more individuals and are each a “person in the course of doing
13 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
14 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 EHA alleges that each Defendant manufactures, imports, sells, and distributes for sale
17 Northgate Market Tostadas Caseras that contain acrylamide. EHA further alleges that Defendants do
18 so without providing a sufficient health hazard warning as required by Proposition 65 and related
19 Regulations. Pursuant to Proposition 65, acrylamide is listed as a chemical known to cause cancer,
20 birth defects and other reproductive harm.

21 **1.5 Notices of Violation**

22 On or around September 24, 2020, EHA served Northgate Gonzalez Markets, Inc., the
23 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice
24 of Violation of Proposition 65 (“Initial Notice”). Initial Notice alleged that Defendants 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 Northgate Market Tostadas Caseras.

27 On or around February 4, 2021, EHA served Northgate Gonzalez Markets, Inc., San Luisina
28 Tostadas, the California Attorney General, and all other required public enforcement agencies with a

1 60-Day Notice of Violation of Proposition 65 (“Amended Notice”). Amended Notice corrected the
2 manufacturer to San Luisina Tostadas.

3 On or around July 2, 2021, EHA served Andrew, LLC, Northgate Gonzalez Markets, Inc., the
4 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice
5 of Violation of Proposition 65 (“Second Amended Notice”). Second Amended Notice corrected the
6 manufacturer to Andrew, LLC.

7 On or around October 12, 2021, EHA served a Third Amended Notice of violation adding in
8 Diana’s Mexican Food Products, Inc. as an additional manufacturer.

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

12 **1.6 Product Description**

13 The products covered by this Consent Judgment are tostadas, including tostada-based products
14 using identical formulations but in a different shape (*e.g.*, tortilla chips, taco shells and taquitos)
15 including but not limited to Northgate Market Tostadas Caseras manufactured or processed by
16 Defendants that allegedly contain acrylamide and are imported, sold, shipped, delivered, or
17 distributed for sale to consumers in California by Releasees (as defined in section 4.1) (“Covered
18 Products”).

19 **1.7 State of the Pleadings**

20 On or around October 20, 2021, EHA filed a Complaint against Defendants for the alleged
21 violations of Proposition 65 that are the subject of the Notices. (“Complaint”).

22 **1.8 No Admission**

23 Defendants each deny the material factual and legal allegations of the Notices and
24 Complaint and maintains that all of the Covered Products each has manufactured, imported,
25 sold, and/or distributed for sale in California, including Covered Products, have been, and are,
26 in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
27 admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
28 compliance with this Consent Judgment be construed as an admission of any fact, finding,

1 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or
2 otherwise affect Defendant’s obligations, responsibilities, and duties under this Consent Judgment.

3 **1.9 Jurisdiction**

4 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
5 Court has jurisdiction over Defendants as to the allegations in the Complaint, that venue is proper in
6 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
7 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

8 **1.10 Effective Date and Compliance Date**

9 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
10 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

11 **2. INJUNCTIVE RELIEF**

12 **2.1 Reformulation of Covered Products**

13 Except as otherwise provided herein, any Covered Products that are manufactured by
14 Defendants on and after the Effective Date that each Defendant sells in California or distributes for
15 sale in California shall not exceed 281 parts per billion (“ppb”) for acrylamide resulting from the
16 average of three (3) tests applied to three different lots of Northgate Market Tostadas Caseras
17 performed by a laboratory accredited by the State of California, a federal agency, or a nationally
18 recognized accrediting organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry)
19 or GC-FID (Gas Chromatography with Flame Ionization Detection), unless such Covered Products
20 comply with the warning requirements of Section 2.2. As used in this Section 2, “distributed for sale
21 in California” means to directly ship Covered Products into California or to sell Covered Products to
22 a distributor each Defendant knows will sell Covered Products in California.

23 **2.2 Clear and Reasonable Warnings**

24 For Covered Products that contain acrylamide in a concentration exceeding the 281-ppb level
25 set forth in section 2.1 above, and which are manufactured and packaged for distribution for
26 authorized sale or use in California on or after the Effective Date, the Defendant whose Covered
27 Product is at issue shall provide one of the following warning statements.

1 **Option 1:**

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

6 **Option 2:**

7 **WARNING:** Cancer and Reproductive Harm –
8 www.P65Warnings.cs.gov

9 This warning statement shall be prominently displayed on the Covered Products at issue, on
10 the 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 the respective
17 Defendant at issue where Covered Products are sold into California.

18 **2.3 Sell-Through Period**

19 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
20 manufactured on or prior to the Effective Date shall be subject to release of liability pursuant to this
21 Consent Judgment, without regard to when such Covered Products were, or are in the future,
22 distributed or sold to customers. As a result, the obligation of each Defendant, or any Releasees (if
23 applicable), do not apply to these Covered Products manufactured on or prior to the Effective Date.

24 **3. MONETARY SETTLEMENT TERMS**

25 **3.1 Settlement Amount**

26 Each Defendant shall pay twenty-five thousand dollars (\$25,000.00) – for a total of fifty
27 thousand dollars (\$50,000.00) in settlement and total satisfaction of all the claims referred to in the
28 Notices, the Complaint, and this Consent Judgment. This includes civil penalties in the amount of
29 five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section 25249.7(b) and

30 ///

1 attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00) pursuant to Code
2 of Civil Procedure section 1021.5.

3 **3.2 Civil Penalty**

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

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

10 Environmental Health Advocates
11 225 Broadway, Suite 1900
12 San Diego, CA 92101

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

14 For United States Postal Service Delivery:

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

20 For Federal Express 2-Day Delivery:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 1001 I Street
25 Sacramento, CA 95814

26 Defendants agree to provide EHA's counsel with a copy of the check payable to OEHHA,
27 simultaneous with its penalty payments to EHA.

28 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required
prior to any settlement payments being made. Relevant information is set out below:

- "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i); and

1 • “Office of Environmental Health Hazard Assessment” 1001 I Street,
2 Sacramento, CA 95814.

3 **3.3 Attorneys’ Fees and Costs**

4 The portion of the settlement attributable to attorneys’ fees and costs, forty-five
5 thousand dollars (\$45,000.00), shall be paid to EHA’s counsel, who are entitled to attorneys’
6 fees and costs incurred by it in this action, including but not limited to investigating potential
7 violations, bringing this matter to Defendants’ attention, as well as litigating and negotiating
8 a settlement in the public interest.

9 Each Defendant shall provide its payment to EHA’s Counsel in two installments: a) the first
10 installment shall be made within fourteen (14) days after the Effective Date; b) the second installment
11 shall be made within forty four (44) days after the Effective Date. The First Installment shall be in
12 the total amount of twenty-two thousand five hundred dollars (\$22,500.00) – shared equally by each
13 Defendant, with eleven thousand two hundred and fifty dollars (\$11,250.00) payable to Glick Law
14 Group, PC and eleven thousand two hundred and fifty dollars (\$11,250.00) payable to Nicholas &
15 Tomasevic, LLP, within fourteen (14) days of the Effective Date (“First Installment”). The Second
16 Installment shall be in the amount of twenty-two thousand five hundred dollars (\$22,500.00) – shared
17 equally by each Defendant, with eleven thousand two hundred and fifty dollars (\$11,250.00) payable
18 to Glick Law Group, PC and eleven thousand two hundred and fifty dollars (\$11,250.00) payable to
19 Nicholas & Tomasevic, LLP, within forty-four (44) days of the Effective Date (“Second
20 Installment”).

21 The addresses for these two entities are:

22 Noam Glick
23 Glick Law Group
24 225 Broadway, 19th Floor
25 San Diego, CA 92101

26 Craig Nicholas
27 Nicholas & Tomasevic, LLP
28 225 Broadway, 19th Floor
 San Diego, CA 92101

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 EHA’s Public Release of Proposition 65 Claims**

3 Plaintiff acting on its own behalf and in the public interest releases each Defendant and their
4 respective parents, subsidiaries, affiliated entities under common ownership, directors, officers,
5 principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns
6 (“Defendant Entities”), each entity to whom each Defendant directly or indirectly distributes, ships, or
7 sells the Covered Products including but not limited to downstream distributors, wholesalers,
8 customers, and retailers (including but not limited to Northgate Gonzalez Markets, Inc. and Northgate
9 Gonzalez, LLC), franchisees, franchisors, cooperative members, suppliers, licensees, and licensors,
10 and all of the foregoing entities’ owners, directors, officers, agents, principals, employees, attorneys,
11 insurers, accountants, representatives, predecessors, successors, and assigns (collectively referred to as
12 the “Releasees”) from all claims for violations of Proposition 65 up through the Effective Date based
13 on exposure to acrylamide from Covered Products as set forth in the Notices. Compliance with the
14 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures
15 to acrylamide from Covered Products as set forth in the Notices.

16 **4.2 EHA’s Individual Release of Claims**

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

23 **4.3 Defendants’ Release of EHA**

24 Each Defendant on its own behalf, and on behalf of their related Releasees as well as their
25 past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all
26 claims against EHA and its attorneys and other representatives, for any and all actions taken or
27 statements made by EHA and its attorneys and other representatives, whether in the course of

28 ///

1 investigating claims, otherwise seeking to enforce Proposition 65 against them, in this matter or with
2 respect to the Covered Products.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved by the Court and shall be null
5 and void if it is not approved by the Court within one year after it has been fully executed by the
6 Parties, or by such additional time as the Parties may agree to in writing.

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the state of
13 California as applied within the state of California. In the event that Proposition 65 is repealed,
14 or is otherwise rendered inapplicable for reasons, including but not limited to changes in the
15 law, then Defendants may provide written notice to EHA of any asserted change, and shall have
16 no further injunctive obligations pursuant to this Consent Judgment with respect to, and to the
17 extent that, the Covered Products are so affected.

18 In the event the California Office of Health Hazard Assessment adopts a regulation or safe
19 use determination, or issues an interpretive guideline that exempts Covered Products from meeting
20 the requirements of Proposition 65; or if acrylamide cases are permanently enjoined by a court of
21 competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden
22 on First Amendment rights with respect to acrylamide in Covered Products or Covered Products
23 substantially similar to Covered Products, then Defendants shall be relieved of their obligation to
24 comply with Section 2 herein.

1 **8. ENFORCEMENT**

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

4 **8. NOTICE**

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

8 If to Defendants:

9 Todd O. Maiden
10 Reed Smith LLP
11 101 Second Street, Suite 1800
12 San Francisco, CA 94105

If to EHA:

 Noam Glick
 Glick Law Group, PC
 225 Broadway, 19th Floor
 San Diego, CA 92101

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

15 **9. COUNTERPARTS; DIGITAL SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
17 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
18 same document.
19
20
21
22
23
24
25
26
27
28

1 **10. POST EXECUTION ACTIVITIES**

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

11 **11. MODIFICATION**

12 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of a
13 modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
14 Party, and the entry of a modified consent judgment thereon by the Court.

15 **12. AUTHORIZATION**

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

18 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

19 If a dispute arises with respect to either Party’s compliance with the terms of this
20 Consent Judgment entered by the Court, the Parties shall meet and confer in person, or by
21 telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No
22 action or motion may be filed in the absence of such a good faith attempt to resolve the dispute
23 beforehand.
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. 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: October 20, 2021

Date: _____

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: _____
ANDREW, LLC

AGREED TO:

Date: 10/27/2021

By: 
DIANA'S MEXICAN FOOD PRODUCTS, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT