

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (the “Settlement Agreement”) is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and D.F. Stauffer Biscuit Company, Inc. (“Stauffer”), on the other hand, with EHA and Stauffer each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation organized 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. Stauffer 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 Stauffer manufactures, sells, and distributes for sale in California, and which are sold to California consumers by Releasees (as defined in Section 4.1), animal crackers that contain Acrylamide and that Stauffer does so without first providing the health hazard warning required by Proposition 65. Acrylamide is currently 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, organic animal crackers including but not limited to Trader Joe’s Organic Animal Crackers (“Covered Products”), that contain Acrylamide and that are manufactured, sold or distributed for sale in California by Stauffer and Trader Joe’s Company (“T.J.’s”).

1.4 Notice of Violation

On or about August 20, 2021, EHA served T.J.’s, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation of Proposition 65 (the “First Notice”), alleging that T.J.’s and others violated Proposition 65 when they failed to warn T.J.’s customers and consumers in California of the health risks associated with exposures to Acrylamide from the

Covered Products. On or about October 28, 2021, EHA served Stauffer, T.J.'s, the California Attorney General, and all other required public enforcement agencies with an Amended 60-day Notice of Violation (the "Second Notice"), correcting the listed manufacturer of the Covered Products to name Stauffer.

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 First Notice and the Second Notice (collectively "the Notices").

1.5 Litigation

On March 3, 2022, EHA filed a Complaint against T.J.'s for the alleged violations of Proposition 65 that are the subject of the Notices (the "Complaint") in the Superior Court of California for the County of Alameda, Case Number 22CV007907 (the "Action"). The Action was stayed pursuant to a stipulation and order filed June 2, 2022.

1.6 No Admission

Stauffer denies the material, factual, and legal allegations in the Notices and maintains that all of the products it sold and/or distributed for sale in California, including Covered Products, have been, and are, in compliance with all laws including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Stauffer of any fact, finding, conclusion of law, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Stauffer of any fact, finding, conclusion of law, issue of law or violation of law, such being specifically denied by Stauffer. This Section shall not, however, diminish or otherwise affect Stauffer's obligations, responsibilities, and duties under this Settlement Agreement.

1.7 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

Commencing on the Effective Date, and continuing thereafter, Stauffer agrees to manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into for use in California, Covered Products containing acrylamide concentrations of 225 parts per billion ("ppb") or less, using the Average Level. As used in this Section 2.1, "distributed for sale in or into for use in California" means to directly ship Covered Products into California or to sell Covered Products to a distributor Stauffer knows will sell Covered Products in California. As used in this Section 2.1, "Average Level" is the mean acrylamide concentration of the Covered Products determined in accordance with the following procedure: randomly selecting and testing at least one (1) sample each from at least five (5) and up to ten (10) different lots of a particular Covered Product during a testing period of at least 365 days. The mean and standard deviation shall be calculated using the sampling data. Any data points that are more than three standard deviations outside the mean shall be discarded, and the mean and standard deviation recalculated using the remaining data points. All tests undertaken in accordance with this definition shall be performed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry). In the event EHA brings a notice of violation for acrylamide concentration levels for the Covered Products in excess of 225 ppb using the Average Level, Stauffer including Releasees can prove compliance with the terms of this Settlement Agreement by providing testing demonstrating that the Covered Products do not exceed a concentration level of 225 ppb using the ppb Average Level or any other testing method agreed upon by the Parties.

2.2 Changes in Warning Regulations or Statutes

In the event that the California Office of Environmental Health Hazard Assessment ("OEHHA") or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission, in a manner that applies to Covered Products, different than those provided under current law, or legislation is enacted by the California legislature, United States Congress or voters with such requirements or permission, Stauffer shall be

entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Settlement Agreement. In the event OEHHA adopts a regulation or safe use determination, or issues an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition 65; or if acrylamide cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First Amendment rights with respect to acrylamide in Covered Products or products substantially similar to Covered Products, then Stauffer and any Releasees, including T.J.'s, shall be relieved of any obligation to comply with Section 2 herein. If regulations or legislation are enacted providing that warnings as to Acrylamide in Covered Products are no longer required, Stauffer shall be relieved of any obligation to comply with this Section 2.

In the event OEHHA adopts a regulation, or the law otherwise changes with regard to Proposition 65 warnings for Acrylamide, then Stauffer and any Releasees, including T.J.'s, shall be relieved of any express language and warning statements inconsistent with the changes to the Proposition 65 warnings for Acrylamide and/or the Acrylamide concentration levels stated in Section 2.1 herein should the law obviate the need for Proposition 65 warnings for Acrylamide.

2.3 Grace Period for Existing Inventory of Covered Products

The injunctive requirements of Section 2 shall not apply to Covered Products that are already manufactured, distributed, shipped, sold, or otherwise for sale by Releasees on or prior to the Effective Date, even if such Covered Products are sold in California or to California consumers after the Effective Date, which Covered Products are expressly subject to the releases provided in Section 4.1 herein.

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, Stauffer agrees to pay three thousand five hundred dollars (\$3,500.00) 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 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, Stauffer shall issue two separate checks for the initial civil penalty payment to the order of (a) "OEHHA" in the amount of two thousand six hundred and twenty-five dollars (\$2,625) and (b) "Environmental Health Advocates, Inc.," in the amount of eight hundred and seventy-five dollars (\$875.00).

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 payments owed to EHA (EIN: 86-1826351), pursuant to Sections 3.1 and 3.2 herein shall be delivered directly to EHA for distribution with the memo line "Proposition 65 Penalties" or "Proposition 65 Attorneys' fees" at the following address:

For United States Postal Service Delivery or Federal Express 2-Day Delivery:

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

EHA and its counsel will provide completed IRS 1099, W-9, or other tax forms as required for OEHHA or EHA to provide to Stauffer. Relevant information is set out below:

- "Entorno Law, LLP" (EIN: 86-1826351) at the address provided in Section 3.1 herein;
- "Office of Environmental Health Hazard Assessment" at the addresses provided in Section

3.1 herein.

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 fourteen (14) days of the date this Settlement Agreement is executed by the Parties, Stauffer agrees to pay thirty-one thousand five hundred dollars (\$31,500.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Stauffer's and negotiating a settlement. Stauffer shall provide its payment to EHA's counsel in one check payable to "Entorno Law, LLP" in the sum of thirty-one thousand five hundred dollars (\$31,500.00).

3.3 Dismissal

Within five (5) business days of the later of EHA's receipt of Stauffer's payments in accordance with Sections 3.1 and 3.2 herein and OEHHA's receipt of Stauffer's payment in accordance with Section 3.1 herein, EHA shall file a dismissal with prejudice of the Complaint and Action.

3.4 Notices

Within five (5) business days of the later of EHA's receipt of Stauffer's payments in accordance with Sections 3.1 and 3.2 and OEHHA's receipt of Stauffer's payment in accordance with Section 3.1, EHA shall withdraw the Notices as to T.J.'s.

3.5 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Stauffer

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 Stauffer 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, principals , representatives, attorneys, successors, assignees, and affiliates against Stauffer and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Covered Products was purchased by Stauffer and each entity to whom Stauffer directly or indirectly distributes or sells the Covered Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers (including but not limited to T.J.'s), franchisees, cooperative members and licensees (collectively "Releasees"), based on the failure to warn about exposures to Acrylamide required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale to or in California by Releasees 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, principals, 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 Stauffer and Releasees including, without limitation, all actions and causes of action, suits, claims, 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 Covered Products manufactured, distributed, sold or offered for sale by Releasees including Stauffer and T.J.'s, before the Effective Date.

4.2 Stauffer's Release of EHA

Stauffer, on its own behalf and on behalf of its past and current agents, principals, 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 Covered 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 Notices and relating to the Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and Stauffer 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

7.1 General Enforcement Provisions

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs. Any action to enforce alleged violations of Section 2.1 shall be brought exclusively pursuant to this Section 7. If any dispute arises with respect to either Party's compliance with the terms of this Settlement Agreement or Section 7, the Parties shall meet in confer in person, or by telephone, and/or in writing and endeavor to resolve the dispute in an amicable matter. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

7.2 Enforcement of Reformulation Commitment

In the event that EHA purchases a Covered Product in California that was sold or offered for sale by Stauffer or T.J's with a best-by or sell-by (or equivalent) date more than 12 months after the Effective Date, and for which EHA has laboratory test results (including any laboratory reports, quality assurance reports, and quality control reports) showing that the Covered Products exceed 225 ppb using the Average Level, EHA may issue a notice of violation to Stauffer pursuant to this Section. However, in the event Stauffer can demonstrate laboratory test results showing the Covered Products did not exceed 225 ppb using the Average Level, EHA shall withdraw the notice of violation.

If the Notice of Violation is the first, second, third, or fourth notice of violation received by Stauffer under Section 7.2 that was not successfully contested or withdrawn, then Stauffer shall pay \$5,000 for each notice of violation. In no case shall Stauffer be obligated to pay more than \$25,000 for all notices of violation not successfully contested or withdrawn in any calendar year irrespective of the total number of notices of violation issued. Any payments under Section 7.2 shall be made by check payable to the order of "Entorno Law LLP" and shall be paid within thirty (30) days of determination of unsuccessful contest. These payments shall be used for reimbursement of costs and attorney's fees for the notices of violation proceedings.

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 Stauffer:

Robert Parks
Parks & Solar, LLP
501 West Broadway, Suite 1540
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: 07/20/2022

Date: 7/18/2022

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
D.F. STAUFFER BISCUIT COMPANY, INC.