

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 Lily’s Sweets, LLC (“Lily’s”), on the other hand, with EHA and Lily’s each individually referred to as a “Party” and collectively as the “Parties.” EHA alleges that it 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. EHA further alleges that Lily’s 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 Lily’s manufactures, sells, and/or distributes for sale in California gummy bears products that contain lead and that it does so without first providing the warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm. Lily’s denies these allegations.

1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to Lily’s Assorted Fruit Flavored No Sugar Added Gummy Bears (singularly, “Covered Product,” and plural, “Covered Products”), that are manufactured, sold or distributed for sale in California by or on behalf of Lily’s.

1.4 Notice of Violation

On or around September 6, 2023, EHA served Lily’s, the California Attorney General, and certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”) alleging that Lily’s sold Covered Products in California without providing clear and reasonable warnings for exposures to lead.

To the best of the Parties' knowledge, no public enforcer has commenced or is otherwise prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Lily's denies the material, factual, and legal allegations in the Notice and maintains that all of its products sold and/or distributed for sale in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Lily's 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 Lily's of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Lily's. This Section shall not, however, diminish or otherwise affect Lily'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 the date this Settlement Agreement is executed by the Parties.

1.7 Compliance Date

For purposes of this Settlement Agreement, the term "Compliance Date" shall mean one hundred twenty (120) days following the execution of the Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Standard

Beginning on the Compliance Date, Lily's shall be permanently enjoined from manufacturing, distributing, or directly selling in the State of California, any Covered Product that exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead based on a single serving per day, unless such Covered Products comply with the warning requirements of Section 2.2. The "Daily Lead Exposure Level" shall be calculated by multiplying the recommended serving size of the Covered Products by the concentration of lead in Covered Products. As used in this Section 2, "distribute[d] for sale in California" means to directly ship Covered Products into California or to sell Covered Products to a distributor that Lily's knows will sell Covered Products in California.

For purposes of measuring and determining compliance with the Daily Lead Exposure Level, the average lead level of four (4) randomly selected samples of the Covered Product shall be controlling so long as the exposure level in each of the samples is below 150 percent of the Daily Lead Exposure Level. A “sample” for this purpose shall be a composite of one complete sales unit of the Covered Product.

2.2 General Warning Requirements

Commencing on the Compliance Date, Lily’s agrees that any Covered Product sold in California that does not meet the standard in paragraph 2.1 shall contain a Proposition 65 warning.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Products shall consist of a warning affixed to the packaging, label, tag, directly to each Covered Products sold in California by Lily’s, or on a placard, shelf tag, sign or electronic device or automatic process that contains one of the following statements:

1) WARNING: Consuming this product can expose you to chemicals including lead, which are 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/food.

OR

2) WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov/food.

One of the above warning statements shall be prominently displayed on Covered Products that do not meet the standards in paragraph 2.1, on the packing of such Covered 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 Covered Products’ packaging, it must be in a type size no smaller than the largest type size used for other “consumer information,” as that term is defined Cal. Code Regs. tit. 27, § 25600.1, on the product. In no case shall a warning statement displayed on the Covered Products’ packaging appear in a type

size smaller than 6-point type. If the Covered Products' packaging contains consumer information in a foreign language, a warning statement in that language is required. The same warning shall be posted on any websites under the exclusive control of Lily's where Covered Products are sold into California. Such warning shall constitute compliance with Proposition 65 with respect to lead that may be present in the Covered Products for any Covered Products in existing inventory that does not meet the standards in paragraph 2.1 and were distributed and/or sold by Lily's or any of the Releasees after the Compliance Date. There shall be no obligation for Lily's to provide a warning for Covered Products that entered the stream of commerce prior to the Compliance Date, and the Section 4 release applies to all such Covered Products.

(i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment, or a different lead agency designated in the future by the Governor to oversee or implement Proposition 65, promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Covered Products and the chemical at issue, which are different than those set forth above, Lily's 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 Proposition 65 warnings as to lead in this product are no longer required, or if a court of competent jurisdiction finds that Proposition 65 warnings for exposures to lead in food products are no longer required or that a different standard than the one required by this Agreement applies, a lack of warning by Lily's that is consistent with such revised regulations, legislation, or standard will not thereafter be a breach of this Agreement. Lily's shall instruct any third-party website to which it sells its Covered Products to include the same warning as a condition of selling the Covered Products.

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 in the stream of commerce as of the Compliance Date, which Covered Products are expressly subject to the releases provided in Section 4.1 and Section 4.2. For the avoidance of

doubt, Covered Products in the stream of commerce specifically include, but are not limited to, Covered Products in the process of manufacture.

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, Lily's agrees to pay four thousand dollars (\$4,000.00) 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. Lily's shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" and (b) Environmental Health Advocates, Inc. as follows:

- One payment of \$3,000.00 to OEHHA, due 14 (fourteen) days after the Effective Date or 14 (fourteen) days after the receipt of OEHHA's W-9 form, whichever date is later.
- One payment of \$1,000.00 to EHA, due 14 (fourteen) days after the Effective Date or 14 (fourteen) days after the receipt of EHA's W-9 form, whichever date is later.

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 Non-United States Postal Service 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:

Isaac Fayman
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, Lily's agrees to pay thirty-three thousand five hundred dollars (\$33,500.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Lily's, and negotiating a settlement "Attorney's Fees and Costs"). The thirty-three thousand five hundred dollars (\$33,500.00) in Attorney's Fees and Costs shall be due 14 (fourteen) days after the Effective Date or 14 (fourteen) days after the receipt of Entorno Law's W-9 form, whichever date is later. The Attorney's Fees and Costs shall be payable to Entorno Law, LLP.

All payments required under this Section shall be delivered to:

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

3.3 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Lily's

This Settlement Agreement is a full, final, and binding resolution of all claims between EHA, on its own behalf and not on behalf of the public, and Lily's for all claims that can or could have been asserted by EHA, on its own behalf, on behalf of its past and current officers, directors,

members, employees, agents, representatives, attorneys, successors and assignees, against Lily's and each of its respective parents, subsidiaries, affiliated entities, joint ventures and any entity, including, but not limited to each entity who supplies the Covered Products to Lily's and each entity to whom Lily's directly or indirectly distributes or sells the Covered Products, including, but not limited to, its upstream suppliers, downstream distributors, wholesalers, customers, retailers, including but not limited to Amazon.com, Inc., franchisees, cooperative members and licensees, as well as all of the aforementioned's entities' past, present and future directors, officers, members, employees, agents, representatives, attorneys, insurers, successors and assigns ("Releasees"), based on the failure to warn about alleged exposures to lead required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale in California before the Compliance Date, as alleged in the Notice, or for any other reason.

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 Lily's 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 lead required under Proposition 65 in the Covered Products manufactured, distributed, sold or offered for sale before the Compliance Date.

4.2 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 Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and Lily's 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 Compliance 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.

EHA and Lily's each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5 PUBLIC BENEFIT

It is Lily's understanding that the commitments it has agreed to herein, and actions to be taken by Lily's under this Settlement Agreement 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 Lily's that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Lily's alleged failure to provide a warning concerning actual or alleged exposure to lead the Covered 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 Covered Products addressed in this Settlement Agreement, provided that Lily's is in material compliance with this Settlement Agreement.

6. 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.

7. 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.

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 Lily's:

Trenton H. Norris (trent.norris@hoganlovells.com)
Hogan Lovells US LLP
4 Embarcadero Center, Suite 3500
San Francisco, CA 94111

For EHA:

Noam Glick (noam@glicklawgroup.com)
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, which is signed by both 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: 3/11/24

Date: _____

By:  _____
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: _____
LILY'S SWEETS, LLC

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:

Date: _____

By: _____
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:

Date: 3/12/2024

DocuSigned by:
Angela Wilson
By: 9FECE74530C2413...
Angela Wilson, Assistant Secretary
LILY'S SWEETS, LLC