

## **SETTLEMENT AND RELEASE 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 Garza Food Ventures LLC (“GFV”), on the other hand, with EHA and GFV 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. GFV is a family-operated company that offers popular food products.

#### **1.2 General Allegations**

EHA alleges that GFV offers for sale or distributes for sale in California, Mini Bunuelos products that contain lead and that it does so without first providing the health hazard warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and reproductive harm. GFV denies the allegations.

#### **1.3 Product Description**

The products covered by this Settlement and Release Agreement are defined as, and expressly limited to, various Siete Mini Bunuelos products (“Covered Products”), that are offered for sale or distributed for sale in California by GFV.

#### **1.4 Notice of Violation**

On or around January 19, 2024, EHA served GFV, the California Attorney General, and certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that GFV was in violation of California Health & Safety Code section 25249.6 (Proposition 65) for failing to sufficiently warn consumers that the Covered Products exposed users in California to lead.

To the best of the Parties' knowledge, no public enforcer has commenced or is otherwise prosecuting the allegations set forth in the Notice. GFV denies the allegations in the Notice. EHA and EHA's counsel are not aware of any other alleged violation of Proposition 65 by GFV as of the Effective Date of this Settlement and Release Agreement.

### **1.5 No Admission and Denial of All Allegations by GFV**

The Parties enter into this Settlement and Release Agreement to settle all disputed claims between them as set forth herein and in the Notice concerning GFV's compliance with Proposition 65. GFV denies the material factual and legal allegations in the Notice and maintains that all of the products it has manufactured for sale and distribution in California, including the Covered Products, have been, and are, in compliance with Proposition 65 and all other applicable laws, regulations, common law, and equitable doctrines. Nothing in this Settlement and Release Agreement shall be construed as an admission by GFV of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement and Release Agreement constitute or be construed as an admission by GFV of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by GFV. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Settlement and Release Agreement.

### **1.6 Effective Date**

For purposes of this Settlement and Release Agreement, the term "Effective Date" shall mean the date the original Settlement and Release Agreement was fully executed (fully signed) by the Parties and their respective counsel (as to form only).

### **1.7 Compliance Date**

For purposes of this Settlement and Release Agreement, the term "Compliance Date" means six (6) months after the Effective Date.

## **2. INJUNCTIVE-TYPE RELIEF: COMPLIANCE AND WARNINGS**

### **2.1 Compliance Generally**

As of the Compliance Date, GFV, at its sole discretion, agrees to either (a) cease selling, offering for sale, or distributing the Covered Products in California, (b) offer for sale or distribute in California Covered Products pursuant to Section 2.2 below, or (c) provide a clear and reasonable Proposition 65 warning on the Covered Products pursuant to Section 2.3 below.

### **2.2 Compliance Standard**

The Covered Products shall be deemed to comply with Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if consumption of the Covered Products results in exposures less than 0.5 micrograms of lead per day, as determined by factors including the lead concentration in the product, the serving size in each package, and the reasonably anticipated rate of exposure based on the pattern and duration of exposure (see, e.g., 27 Cal. Code Regs. § 25821). Covered Products that enter the stream of commerce prior to six (6) months after the Compliance Date shall be deemed exempted from the requirements of Section 2 and shall be permitted to be sold or distributed through as previously manufactured, packaged, and labeled.

### **2.3 Warning Option**

Covered Products that do not meet the warning exemption standard set forth in Section 2.2 above shall be accompanied by a warning as described below. This warning option shall only be required as to Covered Products that are offered for sale or distributed to consumers by GFV in the State of California. No Proposition 65 warning shall be required for any Covered Products that enter the stream of commerce prior to six (6) months after the Compliance Date, and all such Covered Products are hereby deemed to be exempt from Proposition 65 enforcement.

Where required to meet the criteria set forth in Section 2.3, GFV shall display one of the following warning statements on the packaging label of the Covered Products that do not meet the

warning exemptions set forth in Sections 2.2 and 2.3:

- 1) **WARNING:** Consuming this product can expose you to chemicals including lead, which [is] 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](http://www.P65Warnings.ca.gov/food).

OR

- 2) **WARNING:** [Cancer and] Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

The warning statement shall be enclosed in a box and set off from other surrounding information, and otherwise comply with 27 Cal. Code Regs. § 25607.1. This warning statement shall be displayed on the Covered Product in a manner that shall conform with California rules, regulations, and law. GFV shall use “cancer and” in the warning if consumption of the Covered Products results in an exposure that exceeds the No Significant Risk Level (“NSRL”) of 15 micrograms per day (or, if this number is revised, the new NSRL). At its sole discretion, GFV may include the names of additional chemicals in the warning if they are present in the Covered Products at a level that GFV reasonably believes would require a Proposition 65 warning. The requirements for warnings set forth above are imposed pursuant to the terms of this Settlement and Release Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. GFV shall be deemed to be in compliance with the warning requirements of this Settlement and Release Agreement by either adhering to this Section or by complying with the Proposition 65 warning requirements adopted by the State of California Office of Environmental Health Hazard Assessment (“OEHHA”) or the Courts, as of or after the Compliance Date.

As set forth in 27 Cal. Code Regs. § 25602(b), to the extent the Covered Products are sold online, a warning that complies with the content requirements of 27 Cal. Code Regs. § 25603(a) must be provided by including either the warning or a clearly marked hyperlink using the word

“WARNING” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. These requirements extend to any websites under the exclusive control of GFV where the Covered Products are sold into California. In addition, GFV shall instruct any third-party website to which it directly sells the Covered Products to include the same online warning, as set forth above, as a condition of selling the Covered Products in California.

If Proposition 65 warnings for lead should no longer be required, the Parties may amend this Settlement and Release Agreement such that GFV shall have no further obligations pursuant to this Settlement and Release Agreement.

In the event that the OEHHA 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, GFV 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 and Release Agreement. If regulations or legislation are enacted, or a court of competent jurisdiction enters a decision, providing that Proposition 65 warnings as to lead in this product are no longer required, a lack of warning by GFV will not thereafter be a breach of this Settlement and Release Agreement. If a substantial portion of Covered Products’ packaging (e.g., nutritional facts and claims) is in a foreign language, a warning statement in that language is required.

The injunctive-type requirements of Section 2 shall not apply to Covered Products that are already in the stream of commerce prior to six (6) months after the Compliance Date, and such Covered Products shall be deemed exempted from the requirements of Section 2 and shall be permitted to be sold through as previously manufactured, packaged, and labeled. 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 and Release Agreement, GFV agrees to pay (through their counsel, Nelson Mullins Riley & Scarborough LLP (“Nelson Mullins”)), two thousand dollars (\$2,000.00) 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 (\$1,500.00) paid to OEHHA and the remaining 25% of the penalty amount (\$500.00) retained by EHA. GFV shall issue (through Nelson Mullins) two separate checks for the initial civil penalty payment to (a) “OEHHA” and (b) Environmental Health Advocates, Inc. as follows:

- One payment of \$1,500.00 to OEHHA, due fourteen (14) days after the Effective Date and EHA’s counsel provides IRS W-9 forms for each of the payees under this Settlement and Release Agreement.
- One payment of \$500.00 to EHA, due fourteen (14) days after the Effective Date and EHA’s counsel provides IRS W-9 forms for each of the payees under this Settlement and Release Agreement.

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, GFV agrees to pay (through Nelson Mullins) twenty-three thousand dollars (\$23,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of GFV, and negotiating a settlement. This payment shall be payable to Entorno Law, LLP as one payment of \$23,000.00, due fourteen (14) days after the Effective Date and EHA's counsel provides IRS W-9 forms for each of the payees under this Settlement and Release Agreement.

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**

GFV agrees to provide a completed IRS 1099 for its payments to, and EHA's counsel agrees to provide IRS W-9 forms for, each of the payees under this Settlement and Release Agreement. The Parties acknowledge that GFV cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after GFV receives the requisite W-9 forms from EHA's counsel.

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

##### **4.1 EHA's Release of GFV**

This Settlement and Release 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 GFV for all claims that can 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 GFV and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and any entity, including, but not limited to each entity to whom GFV 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 Amazon.com, Inc.), franchisees, cooperative members and licensees ("Releasees"), based on the alleged failure to warn about exposures to lead required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale in California by GFV 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 GFV 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 by GFV, before the Compliance Date.



## **4.2 GFV's Release of EHA**

GFV, 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 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 Notice and relating to the Covered Products will develop or be discovered. EHA on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, on one hand, and GFV on behalf of itself only, on the other hand, acknowledge that this Settlement and Release 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 GFV each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542 and expressly acknowledge having consulted with their attorneys regarding this specific waiver.

## **5 PUBLIC BENEFIT**

To the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to GFV's alleged failure to provide a warning concerning the

Covered Products it has distributed, sold, or offered for sale in California, or will distribute, sell, or offer for sale in California, it is the Parties' intent that such private party action would not confer a significant benefit on the general public as to the Covered Products addressed in this Settlement and Release Agreement, provided that GFV is in material compliance with this Settlement and Release Agreement.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement and Release Agreement, any provision of this Settlement and Release 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 and Release Agreement shall be governed by the laws of the State of California and apply within the State of California.

**8. ENFORCEMENT**

In any action to enforce the monetary settlement terms of this Settlement and Release Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs if determined to be appropriate by a court or arbitrator.

**9. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement and Release 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 GFV:

Jae Lee  
Nelson Mullins Riley & Scarborough LLP  
750 B Street, Suite 2200  
San Diego, CA 92101  
jae.lee@nelsonmullins.com

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.

**10. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement and Release 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.

**11. 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).

**12. ENTIRE AGREEMENT AND MODIFICATION**

This Settlement and Release Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties. This Settlement and Release Agreement may be modified only by written agreement of the Parties.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement and Release Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement and Release Agreement.

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: Nov 19, 2024

By: \_\_\_\_\_

ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

By: Miguel Garza  
Miguel Garza (Nov 19, 2024 11:47 CST)

GARZA FOOD VENTURES, LLC

**AGREED AS TO FORM:**

**AGREED AS TO FORM:**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

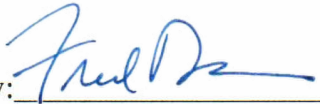
ENTORNO LAW, LLP

By: \_\_\_\_\_

NELSON MULLINS RILEY &  
SCARBOROUGH LLP

**AGREED TO:**

Date: 11/19/2024

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

**AGREED TO:**

Date: Nov 19, 2024

By: Miguel Garza  
Miguel Garza (Nov 19, 2024 11:47 CST)  
GARZA FOOD VENTURES, LLC

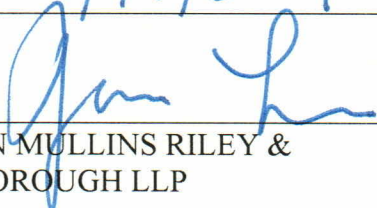
**AGREED AS TO FORM:**

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ENTORNO LAW, LLP

**AGREED AS TO FORM:**

Date: 11/19/2024

By:   
NELSON MULLINS RILEY &  
SCARBOROUGH LLP