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4		FILED
5		Superior Court of California County of Alameda
6		05/24/2022
7		By: Deputy
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9	CUREDIOD COURT OF TH	
10		E STATE OF CALIFORNIA
11	IN AND FOR THE CO	OUNTY OF ALAMEDA
12	ENVIRONMENTAL HEALTH ADVOCATES,	Case No.: 21CV000571
13	INC.,	
14	Plaintiff,	<del>[PROPOSED]</del> ORDER GRANTING   PLAINTIFF'S UNOPPOSED <i>EX PARTE</i>
15	V.	APPLICATION TO MODIFY THE PARTIES' PROPOSITION 65
16	ANDREW LLC dba "Sanluisina", a California limited liability company, DIANA'S	SETTLEMENT AND CONSENT JUDGMENT
17	MEXICAN FOOD PRODUCTS, INC., a California corporation, and DOES 1 through	Case Filed: October 19, 2022
18	100, inclusive,  Defendants.	Trial Date: None set
19	Defendants.	
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1	Having reviewed Plaintiff's Unopposed Ex Parte Application to Modify the Parties'
2	Proposition 65 Settlement and Consent Judgment, the supporting declaration of Jake Schulte, and
3	good cause appearing therefrom, the Court hereby orders:
4	The Parties' Amended Judgment is hereby entered in accordance with the terms of the
5	Amended Consent Judgment attached hereto as <b>Exhibit A</b> .
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7	IT IS SO ORDERED.
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9	Dated: 05/24/2022 By:
10	Too Doorstole / hydro
11	Tara Desautels / Judge
12	JUDGE OF THE SUPERIOR COURT
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1	GLICK LAW GROUP, P.C. Noam Glick (SBN 251582)	
2	225 Broadway, Suite 1900 San Diego, California 92101	
3	Tel: (619) 382-3400 Email: noam@glicklawgroup.com	
4		
5	NICHOLAS & TOMASEVIC, LLP. Craig M. Nicholas (SBN 178444)	
6	Jake Schulte (SBN 293777) 225 Broadway, Suite 1900 San Diago Colifornia 02101	
7	San Diego, California 92101 Tel: (619) 325-0492 Fax: (619) 325-0496	
8	Email: cnicholas@nicholaslaw.org Email: jschulte@nicholaslaw.org	
9	Eman. jschutte@menorasiaw.org	
10	Attorneys for Plaintiff Environmental Health Advocates, Inc.	
11	Environmental fleaten fleavocates, inc.	
12	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
13	IN AND FOR THE COUNTY OF ALAMEDA	
14	ENVIRONMENTAL HEALTH ADVOCATES, INC.,	Case No. 21CIV000571
15	Plaintiff,	[PROPOSED] AMENDED CONSENT JUDGMENT
16	V.	(Health & Safety Code § 25249.6 et seq.
17	ANDREW, LLC, a California Limited	and Code Civ. Proc. § 664.6)
18	Liability Company, DIANA'S MEXICAN FOOD PRODUCTS, INC., a California	
19	corporation, and DOES 1 through 100, inclusive,	
20	Defendants.	
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### 1. INTRODUCTION

#### 1.1 Parties

This Consent Judgment is entered into by and between Environmental Health Advocates, Inc., ("EHA" or "Plaintiff") and: a) Andrew, LLC, dba Festival Foods; and b) Diana's Mexican Food Products, Inc. (each a "Defendant" or collectively "Defendants") with EHA and Defendants each individually referred to as a "Party" and collectively referred to as the "Parties."

### 1.2 Plaintiff

EHA is a corporation organized in the state of California, acting in the interest of the general public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

### 1.3 Defendant

Defendants each employ ten or more individuals and are each a "person in the course of doing business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

### 1.4 General Allegations

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

### 1.5 Notices of Violation

On or around September 24, 2020, EHA served Northgate Gonzalez Markets, Inc., the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 ("Initial Notice"). Initial Notice alleged that Defendants had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to acrylamide contained in Northgate Market Tostadas Caseras.

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

60-Day Notice of Violation of Proposition 65 ("Amended Notice"). Amended Notice corrected the manufacturer to San Luisina Tostadas.

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

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

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

### 1.6 Product Description

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

### 1.7 State of the Pleadings

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

#### 1.8 No Admission

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

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

### 1.9 Jurisdiction

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

### 1.10 Effective Date and Compliance Date

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

### 2. <u>INJUNCTIVE RELIEF</u>

### 2.1 Reformulation of Covered Products

Except as otherwise provided herein, any Covered Products that are manufactured by Defendants on and after the Effective Date that each Defendant sells in California or distributes for sale in California shall not exceed 281 parts per billion ("ppb") for acrylamide resulting from the average of three (3) tests applied to three different lots of Northgate Market Tostadas Caseras 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) or GC-FID (Gas Chromatography with Flame Ionization Detection), unless such Covered Products comply with the warning requirements of Section 2.2. As used in this Section 2, "distributed for sale in California" means to directly ship Covered Products into California or to sell Covered Products to a distributor each Defendant knows will sell Covered Products in California.

### 2.2 Clear and Reasonable Warnings

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

### **Option 1:**

**WARNING:** Consuming 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.

### **Option 2:**

**WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

This warning statement shall be prominently displayed on the Covered Products at issue, on the packing of the 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 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. The same warning shall be posted on any websites under the exclusive control of the respective Defendant at issue where Covered Products are sold into California.

## 2.3 Sell-Through Period

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

### 3. MONETARY SETTLEMENT TERMS

### 3.1 Settlement Amount

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

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 San Diego, CA 92101	
12	All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA	
13	(Memo Line "Prop 65 Penalties") at the following addresses:	
14	For United States Postal Service Delivery:	
15	Mike Gyurics	
16	Fiscal Operations Branch Chief Office of Environmental Health Hazard Assessment	
17	P.O. Box 4010 Sacramento, CA 95812-4010	
18	For Federal Express 2-Day Delivery:	
19	Mike Gyurics Fiscal Operations Branch Chief	
20	Office of Environmental Health Hazard Assessment  1001 I Street	
21	Sacramento, CA 95814	
22	Defendants agree to provide EHA's counsel with a copy of the check payable to OEHHA,	
23	simultaneous with its penalty payments to EHA.	
24	Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required	
25	prior to any settlement payments being made. Relevant information is set out below:	
26	• "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);	
27	• "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section	
28	3.2(a)(i); and	

• "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

### 3.3 Attorneys' Fees and Costs

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

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

The addresses for these two entities are:

Noam Glick Glick Law Group 225 Broadway, 19<sup>th</sup> Floor San Diego, CA 92101

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

# 4. <u>CLAIMS COVERED AND RELEASED</u>

# 4.1 EHA's Public Release of Proposition 65 Claims

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

### 4.2 EHA's Individual Release of Claims

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

### 4.3 Defendants' Release of EHA

Each Defendant on its own behalf, and on behalf of their related Releasees as well as their 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 them, in this matter or with respect to the Covered Products.

### 5. COURT APPROVAL

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

### 6. **SEVERABILITY**

Subsequent to the Court's approval and entry of this Consent Judgment, if any provision 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 Consent Judgment shall be governed by the laws of the state of California as applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable for reasons, including but not limited to changes in the law, then Defendants may provide written notice to EHA of any asserted change, and shall have no further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

In the event the California Office of Health Hazard Assessment 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 Covered Products substantially similar to Covered Products, then Defendants shall be relieved of their obligation to comply with Section 2 herein.

### 8. **ENFORCEMENT** 1 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be 2 entitled to its reasonable attorneys' fees and costs. 3 **NOTICE** 4 Unless otherwise specified herein, all correspondence and notice required by this Consent Judgment 5 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return 6 7 receipt requested; or (iii) a recognized overnight courier to the following addresses: 8 If to EHA: If to Defendants: 9 Todd O. Maiden Noam Glick Reed Smith LLP Glick Law Group, PC 225 Broadway, 19th Floor 10 101 Second Street, Suite 1800 San Francisco, CA 94105 San Diego, CA 92101 11 Any Party may, from time to time, specify in writing to the other, a change of address to which notices, 12 and other communications shall be sent. 13 9. **COUNTERPARTS; DIGITAL SIGNATURES** 14 This Consent Judgment may be executed in counterparts and by facsimile signature, each of 15 which shall be deemed an original, and all of which, when taken together, shall constitute one and the 16 same document. 17 18 19 20 21 22 23 24 25 26 27 28

### 10. POST EXECUTION ACTIVITIES

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

### 11. MODIFICATION

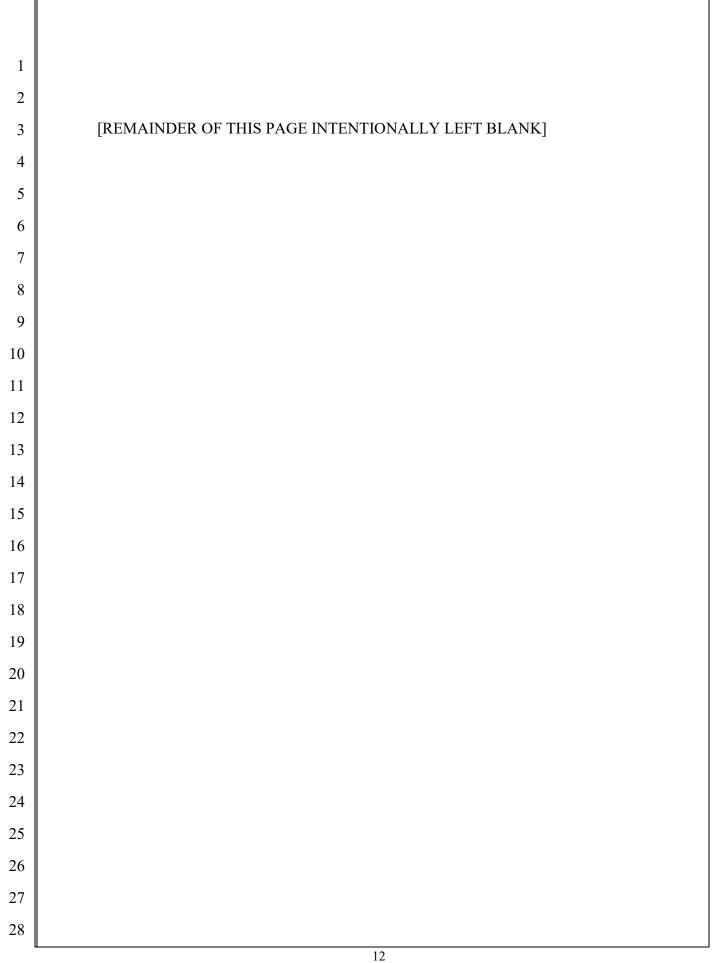
This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any Party, and the entry of a modified consent judgment thereon by the Court.

### 12. <u>AUTHORIZATION</u>

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

### 13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

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



# 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:** 

ANDREWITTE Vin Many					
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15	AGREED TO:				
16					
17	Date:				
18	Ву:				
19	DÍANA'S MEXICAN FOOD PRODUCTS, INC.				
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22	MENG GO ODDUDUD				
23	IT IS SO ORDERED.				
24	Date:				
25					
26	JUDGE OF THE SUPERIOR COURT				
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# 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.

6	other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist	
7	or to bind any Party.	
8		
9	AGREED TO:	
10	Date: October 20, 2021 Date:	
11	V. G. lx	
12	By: ENVIRONMENTAL HEALTH  By: ANDREW, LLC	
13	ADVOCATES, INC.	
14		
15	AGREED TO:	
16	Date: 10 27 2021  By: Amusquise	
17	A	
18	By: MEXICAN FOOD PRODUCTS, INC.	
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22	IT IS SO ORDERED.	
23		
24	Date:	
25	JUDGE OF THE SUPERIOR COURT	
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# SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA

COURTHOUSE ADDRESS:

Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612

PLAINTIFF/PETITIONER:

Environmental Health Advocates, Inc.

DEFENDANT/RESPONDENT:

Andrew, LLC dba Sanluisina, a California limited liability company et al

**FILED** 

Reserved for Clerk's File Stamp

Superior Court of California County of Alameda

06/01/2022

Chad Finks Executive Officer/Clerk of the Court

By: Deputy

CASE NUMBER: 21CV000571

### **CERTIFICATE OF MAILING**

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Eric J. Schmoll Reed Smith LLP Reed Smith LLP 101 2nd Street, Suite 1800 San Francisco, CA 94105

Dated: 06/01/2022

Jake William Schulte Nicholas & Tomasevic, LLP 225 Broadway Ste 1900 San Diego, CA 92101

Chad Finke, Executive Officer / Clerk of the Court

By:

A. Tumonong, Deputy Clerk

The Ligo Thomas