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Attorneys for Plaintiff,

ENVIRONMENTAL HEALTH ADVOCATES, INC.

**FILED**  
Superior Court of California  
County of Alameda

06/26/2025

Clad Flake, Executive Officer / Clerk of the Court

By: [Signature] Deputy  
P. Greene

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ALAMEDA**

ENVIRONMENTAL HEALTH ADVOCATES,  
INC.,

Plaintiff,

v.

DAIYA FOODS INC., a British Colombia  
corporation; DAIYA FOODS USA INC., a  
Delaware corporation; INSTACART INC., a  
Delaware corporation; and DOES 1 through 100,  
inclusive,

Defendants.

**Case No.:** 23CV056243

**Reservation ID:** 263753337046

**[PROPOSED] JUDGMENT  
PURSUANT TO TERMS OF  
PROPOSITION 65 SETTLEMENT  
AND CONSENT JUDGMENT AS TO  
DEFENDANT DAIYA FOODS INC.**

**Date:** June 26, 2025

**Time:** 3:00 p.m.

**Dept.:** 25

**Judge:** Hon. Jenna Whitman

**Case Filed:** December 8, 2023

**Trial Date:** None

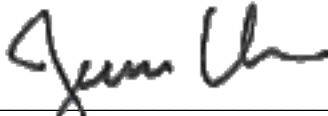
1 Plaintiff Environmental Health Advocates, Inc. and Defendant Daiya Foods Inc.  
2 (collectively, the “Parties”) agreed through their respective counsel to enter judgment pursuant to  
3 the terms of their settlement in the form of a stipulated judgment (“Consent Judgment”). This Court  
4 issued an Order approving the Proposition 65 Settlement and Consent Judgment on  
5 06/26/2025.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and  
7 Safety Code, section 25249.7(f)(4) and Code of Civil Procedure, section 664.6, judgment is hereby  
8 entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**.

9 By stipulation of the Parties, the Court will retain jurisdiction to enforce the settlement under  
10 Code of Civil Procedure, section 664.6.

11  
12 **IT IS SO ORDERED.**

13  
14  
15 Dated: 06/26/2025

  
\_\_\_\_\_  
Hon. Jenna Whitman  
JUDGE OF THE SUPERIOR COURT  
**Jenna Whitman / Judge**

## EXHIBIT A

1 **ENTORNO LAW, LLP**

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13 Attorneys for Plaintiff

14 Environmental Health Advocates, Inc.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

17 ENVIRONMENTAL HEALTH  
18 ADVOCATES, INC.,

19 Plaintiff,

20 v.

21 DAIYA FOODS INC., a British Colombia  
22 corporation; DAIYA FOODS USA INC., a  
23 Delaware corporation; INSTACART INC., a  
24 Delaware corporation; and DOES 1 through  
25 100, inclusive,

26 Defendants.

Case No. 23CV056243

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code Civ. Proc. § 664.6)

27 WHEREAS, on or about December 8, 2023, Environmental Health Advocates, Inc., (“EHA”  
28 or “Plaintiff”) individually and on behalf of the public interest, filed a complaint pursuant to the Safe  
Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.6 et  
seq. (“Proposition 65”), for injunctive relief and civil penalties in Alameda County Superior Court  
in an action entitled *Environmental Health Advocates, Inc. v. Daiya Foods, Inc., et al.*,  
Case No. 23CV056243. The complaint in this case is referred to herein as the “Complaint.” The  
Proposition 65 chemical at issue in the Complaint is lead.

1 WHEREAS, Defendant Daiya Foods, Inc. (hereinafter, “Daiya” or “Settling Defendant”)  
2 manufactures, packages, distributes, markets, and/or sells vegan macaroni and cheese food products  
3 (“M&C Products”) to persons in the State of California.

4 WHEREAS, analysis of these M&C Products, using inductively coupled plasma mass  
5 spectrometry reveals that there can be detectable lead in some production lots of such products, there  
6 can be variations in lead concentrations within a single lot of any particular product, there can be  
7 variation among different lots of the same product and, finally, there can be variation among the  
8 M&C Products made by Settling Defendant.

9 WHEREAS, analysis of the subject M&C Products, also reveals that there can be variations in  
10 lead concentrations from flavor to flavor within a single M&C product line.

11 WHEREAS, Settling Defendant contends that even with use of good manufacturing practices,  
12 M&C Products can still have detectable concentrations of lead.

13 WHEREAS, EHA and Settling Defendant dispute how exposure to the M&C Products is to  
14 be calculated, including the amount of consumption per eating occasion, whether the frequency of  
15 consumption should be considered, and the frequency of consumption by the average users of the  
16 M&C Products.

17 WHEREAS, Settling Defendant contends, and EHA disputes, that under the methodology  
18 approved by the Court of Appeal in *Environmental Law Foundation v. Beech-Nut Nutrition Corp.*  
19 (2015) 253 Cal. App. 4<sup>th</sup> 307, all of the subject M&C Products comply with Proposition 65 as to the  
20 alleged lead exposures.

21 WHEREAS, EHA and Settling Defendant recognize and acknowledge that proving or  
22 disproving how exposure to the M&C Products is to be calculated, including the amount of  
23 consumption per eating occasion, whether the frequency of consumption should be considered, and  
24 the frequency of consumption by the average users of the M&C Products would be extremely  
25 expensive and time-consuming requiring the expenditure of resources out of proportion with any  
26 benefits to be derived from that process.

27 WHEREAS, Settling Defendant maintains it has performed an assessment of its  
28 manufacturing process to ensure that it is not adding lead to its M&C Products. Moreover, Settling

1 Defendant has actively investigated and attempted to obtain the lowest lead content ingredients  
2 commercially feasible. This includes assessing suppliers through detailed questionnaires, reviewing  
3 Proposition 65 compliance statements, and exercising its rights to audits to verify ingredient safety.  
4 These efforts facilitate its sourcing of materials and ingredients with the lowest practicable lead  
5 content. Additionally, Settling Defendant maintains its manufacturing partners are GFSI-certified  
6 and operate in accordance with Good Manufacturing Practices (GMP) to uphold the highest standards  
7 of food safety and quality.

8 WHEREAS, Settling Defendant contends that the lead, if any is detectable, contained in the  
9 M&C Products is “naturally occurring” within the meaning of California Code of Regulations, Title  
10 27, Section 25501.

11 WHEREAS, EHA disputes that contention, contending that the lead contained in the M&C  
12 Products is not naturally occurring for purposes of Proposition 65.

13 WHEREAS, EHA and Settling Defendant recognize and acknowledge that proving or  
14 disproving that any particular quantity of lead that may be contained in the M&C Products is  
15 naturally occurring would be extremely expensive and time-consuming requiring the expenditure of  
16 resources out of proportion with any benefits to be derived from that process.

17 WHEREAS, Settling Defendant contends, and Plaintiff disputes, that a lead content of as high  
18 as 0.09 parts per million in the M&C Products complies with Proposition 65.

19 WHEREAS, determining the precise maximum content level of lead that may be contained in  
20 the M&C Products without requiring a Proposition 65 warning, would be extremely expensive and  
21 time-consuming requiring the expenditure of resources out of proportion with any benefits to be  
22 derived from that process.

23 WHEREAS, in light of the above, and to obviate an extremely expensive and time-consuming  
24 expenditure of resources out of proportion with any benefits to be derived from that process, and to  
25 thereby conserve the Parties’ and judicial resources, the Parties have agreed via an arm’s length  
26 negotiation to settle and resolve this matter with a lead content level not to exceed 0.01 parts per  
27 million (“PPM”), as set forth and defined by the “Reformulation Standard” in Section 2.6.  
28

1           WHEREAS, each party has test data for the M&C Products in excess of the Reformulation  
2 Standard, and, as set forth above, Settling Defendant contends that a lead content of as high as 0.09  
3 parts per million in the M&C Products complies with Proposition 65, the Parties have agreed via an  
4 arm's length negotiation to settle and resolve this matter consistent with the requirements of  
5 Proposition 65 by capping the lead concentration in the M&C Products per the Reformulation  
6 Standard.

7           WHEREAS, in light of the above, and while Settling Defendant contends that the lead,  
8 detected in the M&C Products is naturally occurring for purposes of Proposition 65, and because the  
9 M&C Products' herb ingredients are potentially significant natural lead source candidates, to  
10 facilitate meeting the Reformulation Standard, Settling Defendant reduced significantly the use of  
11 herb ingredients in its M&C Products.

1 NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

2 **1. INTRODUCTION**

3 **1.1 Parties**

4 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,  
5 and Daiya Foods Inc. (“Settling Defendant” or “Daiya”) with EHA and Daiya each individually  
6 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 by  
10 reducing or eliminating hazardous substances contained in consumer products.

11 **1.3 Defendant**

12 Daiya employs ten or more individuals and for purposes of this Consent Judgment only, is a  
13 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic  
14 Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

15 **1.4 General Allegations**

16 EHA alleges that Daiya manufactures, imports, sells, and distributes for sale Deluxe Four  
17 Cheese Style with Herbs Cheezy Mac that contains Lead. EHA further alleges that Daiya does so  
18 without providing a sufficient warning as required by Proposition 65 and related Regulations. Daiya  
19 denies these allegations and asserts that its products are safe and in compliance with all applicable laws,  
20 rules and regulations.

21 **1.5 Notice of Violation**

22 On or around August 17, 2023, EHA served Settling Defendant Daiya, Daiya Foods USA Inc.,  
23 Instacart Inc., the California Attorney General, and all other required public enforcement agencies with  
24 the Notice. The Notice alleged that Daiya had violated Proposition 65 by failing to provide Proposition  
25 65 warnings to consumers in California regarding alleged exposures to Lead allegedly contained in  
26 Daiya’s vegan M&C products, including but not limited to Deluxe Four Cheese Style with Herbs  
27 Cheezy Mac, manufactured or processed by Daiya that allegedly contain Lead and are imported, sold,  
28 shipped, delivered, or distributed for sale to consumers in California by Releasees (as defined in section



4.1).

No public enforcer has commenced or is otherwise prosecuting an action to enforce the violations alleged in the Notice.

#### **1.6 Product Description**

The products covered by this Consent Judgment are Daiya's vegan M&C Products, which include, but are not limited to, Deluxe Four Cheese Style with Herbs Cheezy Mac , Four Cheeze Style with Herbs Deluxe Mac & Cheeze, Cheddar Style Cheezy Mac, Cheddar Style Deluxe Mac & Cheeze, Dairy-free Deluxe Cheddar Mac & Cheese, Alfredo Style Cheezy Mac, Alfredo Style Deluxe Mac & Cheeze, Dairy-free Deluxe Alfredo Mac & Cheese, Meatless Bacon with Cheddar Style Cheezy Mac, Meatless Bac'n & Cheddar Style Deluxe Mac & Cheeze, Four Cheeze Style Cheezy Mac, White Cheddar Style Ceezy Mac, White Cheddar Style Deluxe Mac & Cheeze, Dairy-free Deluxe White Cheddar Mac & Cheese, and Cheddar Jalapeno Style Cheezy Mac, Cheddar Jalapeno Style Deluxe Mac & Cheeze manufactured or processed by or for Daiya that allegedly contain Lead and are imported, sold, shipped, delivered, or distributed for sale to consumers in California by Daiya or any other of the Releasees (as defined in section 4.1) ("Covered Products").

#### **1.7 State of the Pleadings**

On or around December 8, 2023, EHA filed a Complaint against Daiya for the alleged violations of Proposition 65 that are the subject of the Notice ("Complaint").

#### **1.8 No Admission**

Daiya denies the material factual and legal allegations of the Notice and Complaint and maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in California, including Covered Products, have been, and are, in compliance with all applicable laws, rules and regulations. 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 Daiya's obligations, responsibilities, and duties under this Consent Judgment.

1           **1.9     Jurisdiction**

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

6           **1.10    Effective Date**

7           For purposes of this Consent Judgment, the term “Effective Date” means the date on which this  
8 Consent Judgment is approved and entered as a judgment of the Court, as discussed in Section 5.

9           **1.11    Compliance Date**

10          For purposes of this Consent Judgment, the term “Compliance Date” means 30 days from the  
11 date on which this Consent Judgment is approved and entered as a judgment of the Court, as discussed  
12 in Section 5.

13   **2.     INJUNCTIVE RELIEF, REFORMULATION, TESTING, AND WARNINGS**

14          **2.1     Reformulation of the Covered Products**

15          Beginning on the Compliance Date, Daiya shall be permanently enjoined from manufacturing  
16 or distributing for sale, or directly selling, in the State of California, any Covered Product that has a  
17 lead concentration in excess of 0. 01 parts per million (“PPM”) based on the uncooked Covered Product  
18 (the “Reformulation Standard”), as determined pursuant to the product testing provisions set forth in  
19 Setion 2.3 and its subsections, unless such Covered Product complies with the warning requirements  
20 of Section 2.2. As used in this Section 2, “distributed for sale in CA” means to directly ship Covered  
21 Products into California or to sell Covered Products to a distributor Daiya knows will sell Covered  
22 Products in California.

23          **2.2     Clear and Reasonable Warnings**

24          For Covered Products that contain Lead in a concentration exceeding the Reformulation  
25 Standard set forth in section 2.1 above, and which are distributed or directly sold by Daiya in the State  
26 of California on or after the Compliance Date, Daiya shall provide one of the following warning  
27 statements:  
28

1  
2  
3 **1) WARNING: [or CA WARNING: or CALIFORNIA WARNING]:**  
4 Consuming this product can expose you to chemicals, including lead,  
5 which are known to the State of California to cause [cancer and] birth  
6 defects or other reproductive harm. For more information go to  
7 [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

8 **OR**

9  
10 **SHORT FORM** 2) **WARNING: [or CA WARNING: [or] “CALIFORNIA WARNING:]**  
11 Risk of [cancer and] reproductive harm from exposure to lead. See  
12 [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

13 **OR**

14  
15 **SHORT FORM** 3) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA**  
16 **WARNING:”** Can expose you to lead, a [carcinogen and] reproductive  
17 toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

18 **OR**

19  
20 **SHORT FORM ON**  
21 **A PRODUCT**  
22 **MANUFACTURED**  
23 **/LABELED PRIOR**  
24 **TO 1/1/28,**  
25 **REGARDLESS OF**  
26 **DATE OF SALE**

27 **4) WARNING: [Cancer and] Reproductive Harm**  
28 [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

21 The text contained in the brackets in the warning statements set out above is optional per  
22 Daiya’s sole discretion. The text for cancer shall be included if the daily lead exposure exceeds 15  
23 mcg per day or if there is another chemical present that requires a cancer warning. Product warnings  
24 shall be placed with such conspicuousness as compared with other words, statements, designs and/or  
25 devices on the labeling or packaging as to render it likely to be read and understood by an ordinary  
26 individual under customary conditions of use or purchase. If the product warning is displayed on the  
27 product container or labeling, the warning shall be at least the same size as the largest of any other  
28 health or safety warnings on the container or labeling, and the word “warning” shall be in all capital

1 letters and in bold print. If printed on the labeling itself, the product warning shall be enclosed in a  
2 box and contained in the same section of the labeling that states other safety warnings concerning the  
3 use of the Covered Product. If the Covered Product’s packaging contains consumer information in a  
4 foreign language, a warning statement in that language is required.

5 The same warning shall be provided for catalogs under the exclusive control of Daiya where  
6 Covered Products are sold into California. Warnings for catalog sales must be provided in a manner  
7 that clearly associates the warning with the item being purchased. Daiya shall instruct any third-party  
8 catalog seller to which it directly sells its Covered Products to include the same warning as a condition  
9 of selling the Covered Products in California.

10 To the extent Covered Products are sold online, a warning that complies with the content  
11 requirements of Cal. Code Regs Tit. 27, § 25607.2 must be provided via one or more of the following  
12 methods: (1) a warning on the product display page; or (2) a clearly marked hyperlink using the word  
13 “**WARNING**” or the words “**CA WARNING**” or “**CALIFORNIA WARNING**” on the product  
14 display page that links to the warning; or (3) an otherwise prominently displayed warning provided to  
15 the purchaser prior to completing the purchase. If a warning is provided using the short-form label  
16 content pursuant to Section 25607(b), the warning provided on the website may use the same content.  
17 An online warning is not prominently displayed if the purchaser must search for it in the general  
18 content of the website. These requirements extend to any websites under the exclusive control of Daiya  
19 where Covered Products are sold into California. In addition, Daiya shall instruct any third-party  
20 website to which it directly sells its Covered Products to include the same online warning, as set forth  
21 above, as a condition of selling the Covered Products in California.

### 22 **2.3 Conforming Covered Products**

23 Conforming Covered Products shall be deemed to comply with this Consent Judgment and  
24 with Proposition 65 without being required to provide a Warning pursuant to Proposition 65. A  
25 Covered Product shall be deemed a Conforming Covered Product unless such product fails to meet  
26 the Reformulation Standard as determined by the testing requirements set forth in this section and  
27 its subsections.  
28

1                   **2.3.1   Testing**

2                   (a) Beginning within one year after the Effective Date, Daiya shall arrange for lead  
3 testing of the Covered Products at least once a year for a minimum of two consecutive years (the  
4 “Two-Year Testing Period”) by arranging for testing of five to fifteen randomly selected individual  
5 samples, or one test per product using composite samples of at least five randomly selected products  
6 of each of the Covered Products, in the form intended for sale to, or consumption by, the end-user,  
7 which Daiya intends to sell or is manufacturing for sale in California, directly selling to a consumer  
8 in California or “Distributing into the State of California.” If any Covered Product is not  
9 manufactured yearly, testing for such product shall occur for the two next occurring years of such a  
10 product’s manufacture, and those two years shall constitute the Two-Year Testing Period for that  
11 Covered Product. If tests conducted pursuant to this Section 2.3.1 (a) demonstrate that no Warning  
12 is required for a Covered Product during each of two consecutive years, then the testing  
13 requirements of this Section 2.3.1(a) will no longer be required as to that Covered Product.

14                   (b) If during or after the Two-Year Testing Period set forth in Section 2.3.1(a), there  
15 is a change in the Covered Product’s formula, manufacturing process, ingredients, suggested use or  
16 recommended serving size, that is reasonably likely to affect the lead levels in a Covered Product  
17 sufficiently to alter that Covered Product’s compliance status under this Consent Judgment, Daiya  
18 shall conduct additional testing (the “Additional Testing”) of that Covered Product pursuant to the  
19 testing and quality control methodology set forth in Section 2.3.1, within ninety (90) days after such  
20 change. (i) If the Additional Testing does not alter that Covered Product’s compliance status under  
21 the Consent Judgment, then the testing requirements of this Section 2.3.1(b) shall no longer be  
22 required as to that Covered Product unless and until a subsequent change occurs which meets the  
23 criteria set forth in this Section 2.3.1(b) for requiring Additional Testing. (ii) If, however, the  
24 Additional Testing alters that Covered Product’s compliance status, then, except as set forth in  
25 Section 2.3.1(c), Daiya shall test the Covered Product annually for at least two (2) consecutive years  
26 after such change is made. If tests conducted pursuant to this Section 2.3.1(b)(ii) demonstrate that  
27 no Warning is required for a Covered Product during each of two consecutive years, then, except as  
28 set forth in Section 2.3.1(c), the testing requirements of this Section 2.3.1(b) will no longer be

1 required as to that Covered Product.

2 (c) In no event shall the total period for testing as required by this Section 2.3.1 be  
3 for less than the original Two Year Testing Period. Additionally, the testing requirements of this  
4 Section 2.3.1 shall cease after the fifth anniversary of the Effective Date.

5 **2.3.2** For purposes of measuring the whether a Covered Product shall be deemed a  
6 Conforming Covered Product, the geometric mean of the lead testing analytical results for the five  
7 to fifteen randomly selected representative samples of the Covered Products will be controlling and  
8 shall be used for calculating whether Covered Products meet the Reformulation Standard as set  
9 forth in Section 2.1. To establish representativeness, no fewer than five samples shall be tested.  
10 The geometric mean of the lead concentration of the five to fifteen randomly selected representative  
11 samples of the Covered Products shall not exceed 0.01 parts per million lead, and no single sample  
12 shall exceed 0.013 parts per million lead. The measurement of the lead in the Covered Products set  
13 forth in this Section 2.3.2 shall be controlling and shall be used for calculating whether Covered  
14 Product meet the Reformulation Standard.

15 **2.3.3** All testing pursuant to this Consent Judgment shall be performed using a  
16 laboratory method that complies with the performance and quality control factors appropriate for  
17 the method used, including limit of detection, qualification, accuracy, and precision that meets the  
18 following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”) achieving a limit of  
19 quantification of less than or equal to 0.010 mg/kg, or any other testing method agreed upon in  
20 writing by the Parties.

21 **2.3.4** All testing pursuant to this Consent Judgment shall be performed by an  
22 independent third party laboratory certified by the State of California or accredited by the State of  
23 California, a United States federal agency, the National Environmental Laboratory Accreditation  
24 Program, or an independent third-party laboratory that is registered with the United States Food &  
25 Drug Administration.

26 **2.3.5** Nothing in this Consent Judgment shall limit Daiya’s ability to conduct, or  
27 require that others conduct, additional testing of the Covered Products, including the raw materials  
28

1 used in their manufacture. Daiya shall retain all test results and documentation required by this  
2 Consent Judgment for a period of not fewer than three years from the date of each test.

### 3 **2.4 Sell-Through Period**

4 Notwithstanding anything else in this Consent Judgment, Covered Products that are  
5 manufactured, packaged, or put into commerce on or after the date this Agreement is executed shall be  
6 subject to the release of liability pursuant to this Consent Judgment, without regard to when such  
7 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations  
8 of Daiya, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products  
9 manufactured, packaged, or put into commerce between the date this Agreement is executed and the  
10 Effective Date.

## 11 **3. MONETARY SETTLEMENT TERMS**

### 12 **3.1 Settlement Amount**

13 Daiya shall pay ninety-five thousand dollars (\$95,000.00) in settlement and total satisfaction of  
14 all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes  
15 civil penalties in the amount of nine thousand dollars (\$9,000.00) pursuant to Health and Safety Code  
16 section 25249.7(b) and attorneys' fees and costs in the amount of eighty-six thousand dollars  
17 (\$86,000.00) pursuant to Code of Civil Procedure section 1021.5.

### 18 **3.2 Civil Penalty**

19 The portion of the settlement attributable to civil penalties shall be allocated according to Health  
20 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid  
21 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining  
22 twenty-five percent (25%) of the penalty paid to EHA individually. The nine thousand dollars  
23 (\$9,000.00) in civil penalties shall be paid as follows:

- 24 • One payment of \$6,750.00 to OEHHA, due 14 (fourteen) days after the Effective Date.
- 25 • One payment of \$2,250.00 to EHA, due 14 (fourteen) days after the Effective date.

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

27 Isaac Fayman  
28 Environmental Health Advocates  
225 Broadway, Suite 2100

San Diego, CA 92101

All payments owed to OEHHHA (EIN: 68-0284486) shall be delivered directly to OEHHHA (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

Daiya agrees to provide EHA's counsel with a copy of the check payable to OEHHHA, simultaneous with its penalty payment to EHA.

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

- Environmental Health Advocates, Inc.” (EIN: 84-2322975) at the address provided above.
- “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

All payments referenced in this section shall be paid within fourteen (14) days of the date the Court approves EHA's motion to approve this Consent Judgment.

### **3.3 Attorney's Fees and Costs**

The portion of the settlement attributable to attorneys' fees and costs 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 Daiya's attention, as well as litigating and negotiating a settlement in the public interest.

Daiya shall provide its payment for attorneys' fees and costs to EHA's counsel by physical check or by electronic means, including wire transfers, at Daiya's discretion, as follows: eighty-six



1 thousand dollars (\$86,000.00) in Attorney's Fees and Costs, One payment of \$86,000.00, due fourteen  
2 (14) days after the Effective Date.

3 The attorney fee payments shall be made payable to Entorno Law, LLP. The address for this  
4 entity is:

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

1     **4. CLAIMS COVERED AND RELEASE**

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

3             Plaintiff, acting on its own behalf and in the public interest, releases Daiya, Daiya Foods USA,  
4     Inc, and their parents, subsidiaries, affiliated entities under common ownership or control, their  
5     directors, officers, principals, agents, employees, attorneys, insurers, accountants, predecessors,  
6     successors, and assigns (“Defendant Entities”), each entity to whom Defendant directly or indirectly  
7     distributes, ships, or sells the Covered Products, including but not limited to downstream distributors,  
8     wholesalers, customers, retailers (including but not limited to Instacart Inc.), and marketplaces  
9     franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of the  
10    foregoing entities’ owners, directors, officers, agents, principals, employees, attorneys, insurers,  
11    accountants, representatives, predecessors, successors, and assigns (collectively referred to as the  
12    “Releasees”) from all claims for violations of Proposition 65 up through the Effective Date based on  
13    exposure to Lead from Covered Products as set forth in the Notice(s). Compliance with the terms of  
14    this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to Lead  
15    from Covered Products as set forth in the Notice(s). This Consent Judgment is a full, final, and binding  
16    resolution of all claims under Proposition 65 that were or could have been asserted against Daiya and/or  
17    Releasees for failure to comply with Proposition 65 for alleged exposure to Lead from Covered  
18    Products. This release does not extend to any third-party retailers selling the product on a website who,  
19    after receiving instruction from Daiya to include a warning as set forth above in section 2.2, do not  
20    include such a warning.

21             **4.2 EHA’s Individual Release of Claims**

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

1           **4.3     Daiya's Release of EHA**

2           Daiya on its own behalf, and on behalf of Releasees as well as its past and current agents,  
3 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA  
4 and its attorneys and other representatives, for any and all actions taken or statements made by EHA  
5 and its attorneys and other representatives, whether in the course of investigating claims, otherwise  
6 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

7           **4.4     No Other Known Claims or Violations**

8           EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged  
9 violations of Proposition 65 by Daiya or for which Daiya bears legal responsibility other than those  
10 that are fully resolved by this Consent Judgment.

11       **5.     COURT APPROVAL**

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

15       **6.     SEVERABILITY**

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

18       **7.     GOVERNING LAW**

19           The terms of this Consent Judgment shall be governed by the laws of the state of California as  
20 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
21 rendered inapplicable for reasons, including but not limited to changes in the law, then Daiya may  
22 provide written notice to EHA of any asserted change, and may move for modification of this Consent  
23 Judgment with respect to, and to the extent that, the Covered Products are so affected.

24           In the event the California Office of Health Hazard Assessment adopts a regulation or safe use  
25 determination, or issues an interpretive guideline that exempts Covered Products from meeting the  
26 requirements of Proposition 65; or if Lead cases are permanently enjoined by a court of competent  
27 jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First  
28 Amendment rights with respect to Lead in Covered Products or Covered Products substantially similar

1 to Covered Products, then Daiya may move for modification of this Consent Judgment with respect to,  
2 and to the extent that, the Covered Products are so affected .

3 **8. ENFORCEMENT**

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

6 **9. NOTICE**

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

11 If to Daiya:

12 Steven Tekosky  
13 Tatro Tekosky Sadwick LLP  
14 6600 W. Sunset Blvd, Suite 304  
Los Angeles, CA 90028  
stekosky@ttsmlaw.com

If to EHA:

Noam Glick  
Entorno Law, LLP  
225 Broadway, Suite 2100  
San Diego, CA 92101  
[noam@entornolaw.com](mailto:noam@entornolaw.com)

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

17 **10. COUNTERPARTS; DIGITAL SIGNATURES**

18 This Consent Judgment may be executed in counterparts and by facsimile signature, each of  
19 which shall be deemed an original, and all of which, when taken together, shall constitute one and the  
20 same document.

21 **11. POST EXECUTION ACTIVITIES**

22 EHA agrees to comply with the reporting form requirements referenced in Health and Safety  
23 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
24 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which  
25 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually  
26 employ their reasonable best efforts, including those of their counsel, to support the entry of this  
27 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For  
28 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for approval,

1 responding to any objection that any third-party may make, and appearing at the hearing before the  
2 Court if so requested.

3 **12. MODIFICATION**

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

7 **13. AUTHORIZATION**

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

10 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

15 **15. ENTIRE AGREEMENT**

16 This Consent Judgment contains the sole and entire agreement and understanding of the Parties  
17 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,  
18 commitments, and understandings related hereto. No representations, oral or otherwise, express or  
19 implied, other than those contained herein have been made by any Party. No other agreements, oral or  
20 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

21 **AGREED TO:**

**AGREED TO:**

22  
23 Date: 06/04/2025

Date: 06/06/2025

24 By:   
25 ENVIRONMENTAL HEALTH  
26 ADVOCATES, INC.

By:   
DAIYA FOODS INC.

1 **IT IS SO ORDERED.**

2  
3 Date: \_\_\_\_\_

\_\_\_\_\_  
4 JUDGE OF THE SUPERIOR COURT