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10 Environmental Health Advocates, Inc.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF ALAMEDA**

13 ENVIRONMENTAL HEALTH  
14 ADVOCATES, INC.,

15 Plaintiff,

16 v.

17 SILAO TORTILLERIA, INC., a California  
corporation, CHAVEZ SUPERMARKET  
18 HOLDING CORP., a California corporation,  
and DOES 1 through 100, inclusive,

19 Defendants.  
20

Case No.

**[PROPOSED] CONSENT JUDGMENT**

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

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22 **1.**  
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1    **2.    INTRODUCTION**

2            **2.1       Parties**

3            This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,  
4    ("Plaintiff" or EHA"), on the one hand, and Silao Tortilleria, Inc. ("Defendant" or "Silao") on the  
5    other hand, with EHA and Silao each individually referred to as a "Party" and collectively referred to  
6    as the "Parties."

7            **2.2       Plaintiff**

8            EHA is an organization residing in California, acting in the interest of the general public. It  
9    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           **2.3       Defendant**

12           EHA contends that Silao employs ten or more individuals and is a "person in the course of  
13   doing business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health  
14   and Safety Code section 25249.6 *et seq.* ("Proposition 65").

15           **2.4       General Allegations**

16           EHA alleges that Silao manufactures, imports, sells, and distributes for sale tostadas that  
17   contain acrylamide. EHA further alleges that Silao does so without providing a sufficient health  
18   hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65,  
19   acrylamide is listed as a chemical known to cause cancer and reproductive harm. Silao denies that  
20   warnings are required under Proposition 65 for any exposures to acrylamide in Covered Products, and  
21   Silao maintains that it has complied with all applicable federal and state laws, including but not  
22   limited to Proposition 65.

23           **2.5       Notices of Violation**

24           On October 20, 2020, EHA served Silao, Chavez Supermarket Holding Corp., the California  
25   Attorney General, and all other required public enforcement agencies with a 60-Day Notice of  
26   Violation of Proposition 65. The Notice alleged that Silao violated Proposition 65 by failing to  
27   sufficiently warn consumers in California of the health hazards associated with exposures to  
28   acrylamide contained in its "Silao Tostadas Caseras."

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

### 3 **2.6 "Covered Products" Description**

4 The products covered by this Consent Judgment are tostadas including, but not limited to,  
5 "Silao Tostadas Caseras," manufactured or processed by Silao that allegedly contain acrylamide and  
6 are imported, sold, shipped, delivered or distributed for sale to consumers in California by Releasees  
7 (as defined in section 4.1) ("Covered Products"), whether sold under the brand name Silao, or any  
8 other brand or private label at all grocery, retail, and other locations and sales channels, including on  
9 the Internet.

### 10 **2.7 Complaint**

11 On 2/25/2021, EHA filed a Complaint against Silao for the alleged violations of  
12 Proposition 65 that are the subject of the Notice ("Complaint").

### 13 **2.8 No Admission**

14 Silao denies the material factual and legal allegations of the Notice and Complaint and  
15 maintains that all the products it has manufactured, imported, sold, and/or distributed for sale in  
16 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing  
17 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,  
18 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
19 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall  
20 not, however, diminish or otherwise affect Silao's obligations, responsibilities, and duties under this  
21 Consent Judgment.

### 22 **2.9 Jurisdiction**

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

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### 28 **2.10 Effective 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. INJUNCTIVE RELIEF

### 2.1 Clear and Reasonable Warnings

For Covered Products that are manufactured and packaged for distribution for authorized sale or use in California on or after the Effective Date, Silao shall provide one of the following Proposition 65 warnings:

- 1) **WARNING:** This product can expose you to chemicals including Acrylamide, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).
- 2) **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

The word "**WARNING**" shall be displayed in all capital letters and bold print. This warning statement shall be prominently displayed on the packaging 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' label, it must be set off from other surrounding information. The same warning shall be posted on any websites under the exclusive control by Silao where Covered Products are sold into California.

### 2.2 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 Silao, or any Releasees (if applicable), do not apply to these Covered Products manufactured on or prior to the Effective Date.

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## 3. MONETARY SETTLEMENT TERMS

1           **3.1     Settlement Amount**

2           Silao shall pay fifty-five thousand dollars (\$55,000.000) in settlement and total satisfaction of  
3 all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil  
4 penalties in the amount of five thousand and five hundred dollars (\$5,500.00) pursuant to Health and  
5 Safety Code section 25249.7(b) and attorney's fees and costs in the amount of forty-nine thousand  
6 and five hundred dollars (\$49,500.00) pursuant to Code of Civil Procedure section 1021.5.

7           **3.2     Civil Penalty**

8           The civil penalty payments shall be issued within 10 days after the Effective Date. The  
9 portion of the settlement attributable to civil penalties shall be allocated according to Health and  
10 Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to  
11 the California Office of Environmental Health Hazard Assessment ("OEHHHA"), and the remaining  
12 twenty-five percent (25%) of the penalty paid to EHA individually.

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

14                               Samantha Dice  
15                               Environmental Health Advocates  
16                               225 Broadway, Suite 2100  
                                  San Diego, CA 92101

17          All payments owed to OEHHHA (EIN: 68-0284486) shall be delivered directly to OEHHHA  
18 (Memo Line "Prop 65 Penalties") at the following addresses:

19                               For United States Postal Service Delivery:

20                                       Mike Gyurics  
21                               Fiscal Operations Branch Chief  
22                               Office of Environmental Health Hazard Assessment  
                                  P.O. Box 4010  
                                  Sacramento, CA 95812-4010

23                               For Non-United States Postal Service Delivery:

24                                       Mike Gyurics  
25                               Fiscal Operations Branch Chief  
26                               Office of Environmental Health Hazard Assessment  
                                  1001 I Street  
                                  Sacramento, CA 95814

27          Silao agrees to provide EHA's counsel with a copy of the check payable to OEHHHA,  
28 simultaneous with its penalty payments to EHA.

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

- 3 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.3;
- 4 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.3;
- 5 and
- 6 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA  
7 95814.

### 8 **3.3 Attorney's Fees and Costs**

9 The portion of the settlement attributable to attorney's fees and costs (\$49,500.00) shall be  
10 paid to EHA's counsel, who are entitled to attorney's fees and costs incurred by it in this action,  
11 including but not limited to investigating potential violations, bringing this matter to Silao's attention,  
12 as well as litigating and negotiating a settlement in the public interest.

13 Attorney's fees and costs shall be paid in two payments as follows:

- 14 • The first payment of twenty-four thousand seven hundred and fifty dollars  
15 (\$24,750.00) shall be paid within ten (10) days of the Effective Date.
- 16 • Second payment of twenty-four thousand seven hundred and fifty dollars (\$24,750.00)  
17 shall be paid within forty (40) days of the Effective Date.

18 Each payment shall be divided equally between EHA's counsel in two checks – i.e., twelve  
19 thousand three hundred and seventy-five dollars (\$12,375.00) payable to Glick Law Group, PC and  
20 Nicholas & Tomasevic LLP, respectively. The checks shall be mailed to EHA's counsel at the  
21 following addresses:

22 Noam Glick  
23 Glick Law Group  
24 225 Broadway, 19<sup>th</sup> Floor  
San Diego, CA 92101

25 Craig Nicholas  
26 Nicholas & Tomasevic, LLP  
27 225 Broadway, 19<sup>th</sup> Floor  
San Diego, CA 92101

4. **CLAIMS COVERED AND RELEASED**

4.1 **EHA's Public Release of Proposition 65 Claims**

For any claim or violation arising under Proposition 65 alleging a failure to warn about exposures to acrylamide from Covered Products manufactured, imported, sold, or distributed by Silao prior to the Effective Date, EHA, acting for the general public, releases Silao of any and all liability. This includes Silao's owners, parents, subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees, attorneys, and each entity to whom Silao directly or indirectly distributes or sells Covered Products, including but not limited to downstream distributors, wholesales, customers, retailers, franchisees, cooperative members and licensees, (collectively, the "Releasees"). Releasees include Defendant, its parent, and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns that sell Covered Products. Compliance with the terms of this Consent Judgment constitutes compliances with Proposition 65 with respect to the alleged or actual failure to warn about exposures to acrylamide from Covered Products manufactured, imported, sold, or distributed by Silao after the Effective Date. This Consent Judgment is a full, final and binding resolution of all claims that were or could have been asserted against Silao and/or Releasees for failure to provide warnings for alleged exposure to acrylamide contained in Covered Products.

4.2 **EHA's Individual Release of Claims**

EHA, in its individual capacity, also hereby provides a release to Silao and all 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, attorney's 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 Silao before the Effective Date.

4.3 **Silao's Release of EHA**

Silao, on its own behalf, and on behalf of Releasees as well as 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 Covered Products.

5. **COURT APPROVAL**

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

4 **6. SEVERABILITY**

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

8 **7. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the state of California as  
10 applied within the state of California. In the event that Proposition 65 is repealed, amended, modified,  
11 or is otherwise rendered inapplicable for reasons including but not limited to changes in the law, then  
12 Silao may provide written notice to EHA of any asserted change, and shall have no further injunctive  
13 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered  
14 Products are so affected.

15 **8. NOTICE**

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

19 If to Silao Tortilleria, Inc.

20 Michael Gleason  
21 Hahn Loeser & Parks LLP  
22 One America Plaza, 600 West Broadway,  
Suite 1500  
San Diego, CA 92101

If to EHA:

Jake Schulte  
Nicholas & Tomasevic LLP  
225 Broadway, 19<sup>th</sup> Floor  
San Diego, CA 92101

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

26 **9. COUNTERPARTS; DIGITAL SIGNATURES**

27 This Consent Judgment may be executed in counterparts and by facsimile signature, each of  
28 which shall be deemed an original, and all of which, when taken together, shall constitute one and the



1 same document.

2 **10. POST EXECUTION ACTIVITIES**

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

12 **11. MODIFICATION**

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

16 **12. AUTHORIZATION**

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

19 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

24 **14. ENTIRE AGREEMENT**

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

3 **AGREED TO:**

**AGREED TO:**

4  
5 Date: 2/26/2021

Date: 02-25-2021

6 *Li Auley*  
7 By: \_\_\_\_\_  
8 ENVIRONMENTAL HEALTH  
9 ADVOCATES, INC.

By: *Mania Chapela Espinoza*  
SILAO TORTILLERIA, INC.

10  
11 **IT IS SO ORDERED.**

12  
13 Date: \_\_\_\_\_

14 \_\_\_\_\_  
15 JUDGE OF THE SUPERIOR COURT  
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