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Environmental Health Advocates, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ALAMEDA**

ENVIRONMENTAL HEALTH  
ADVOCATES, INC.,

Plaintiff,

v.

G. L. MEZZETTA, INC., a California  
corporation, AMAZON.COM, INC., a  
Delaware corporation, and DOES 1 through  
100, inclusive,

Defendants.

Case No. RG21104560

**[PROPOSED] CONSENT JUDGMENT**

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

1       **1. INTRODUCTION**

2               **1.1 Parties**

3               This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,  
4 (“EHA” or “Plaintiff”) and G. L. Mezzetta, Inc. (“Defendant” or “Mezzetta”) with EHA and Mezzetta  
5 each individually referred to as a “Party” and collectively referred to as the “Parties.”

6               **1.2 Plaintiff**

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

10              **1.3 Defendant**

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

14              **1.4 General Allegations**

15              EHA alleges that Mezzetta manufactures, imports, sells, and distributes for sale Mezzetta  
16 Family Co. Roasted Red Bell Peppers California Fresh Pack Mild that contain acrylamide. EHA  
17 further alleges that Mezzetta does so without providing a sufficient health hazard warning as required  
18 by Proposition 65 and related Regulations. Pursuant to Proposition 65, acrylamide is listed as a  
19 chemical known to cause cancer, birth defects and other reproductive harm.

20              **1.5 Notices of Violation**

21              On or around March 2, 2021, EHA served Mezzetta, Amazon.com Services, LLC, the  
22 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice  
23 of Violation of Proposition 65 (“Initial Notice”). The Initial Notice alleged that Mezzetta had violated  
24 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated  
25 with exposures to acrylamide contained in Mezzetta Family Co. Roasted Red Bell Peppers California  
26 Fresh Pack Mild.

27              On or around June 16, 2021, EHA served Mezzetta, Amazon.com, Inc., the California  
28 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of

1 Violation of Proposition 65 (“Amended Notice”). The Amended Notice corrected the retailer to  
2 Amazon.com, Inc.

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

5 **1.6 Product Description**

6 The products covered by this Consent Judgment are roasted red bell peppers including but not  
7 limited to Mezzetta Family Co. Roasted Red Bell Peppers California Fresh Pack Mild and products  
8 with the SKU numbers 10106104, 10106144, 11106744, 10100528 manufactured or processed by  
9 Mezzetta that allegedly contain acrylamide and are imported, sold, shipped, delivered, or distributed  
10 for sale to consumers in California by Releasees (as defined in section 4.1) (“Covered Products”).

11 **1.7 State of the Pleadings**

12 On or around July 7, 2021, EHA filed a Complaint against Mezzetta for the alleged violations  
13 of Proposition 65 that are the subject of the Notices (“Complaint”).

14 **1.8 No Admission**

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

23 **1.9 Jurisdiction**

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

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1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” means either (1) November  
3 4, 2021 or (2) the date on which the Court grants the motion for approval of this Consent Judgment,  
4 as discussed in Section 5, whichever is later.

5           **2. INJUNCTIVE RELIEF**

6           **2.1 Clear and Reasonable Warnings**

7           For Covered Products that are manufactured and packaged for distribution for authorized sale  
8 or use in California on or after the Effective Date, Mezzetta shall provide one of the following warning  
9 statements.

10          **Option 1:**

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

14          **Option 2:**

15                   **WARNING:** Cancer and Reproductive Harm –  
16 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

17           This warning statement shall be prominently displayed on the Covered Products, on the  
18 packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is  
19 displayed with such conspicuousness, as compared with other words, statements, or designs as to  
20 render it likely to be read and understood by an ordinary individual prior to sale.

21           If Option 2 is used the warning must be in a type no smaller than the largest type size used for  
22 other consumer information on the product. In no case shall a short form warning statement appear  
23 in a type size smaller than 6-point type. The warning in Option 2 may only be used if the warning  
24 appears on the product container or labeling. The word “**WARNING**” shall be displayed in all capital  
25 letters and bold print.

26           The same warning shall be posted on any websites under the exclusive control of Mezzetta  
27 where Covered Products are sold into California.

28           **2.2 Sell-Through Period**

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

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Settlement Amount**

8 Mezzetta shall pay sixty-two thousand five hundred dollars (\$62,500.00) in settlement and  
9 total satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment.  
10 This includes civil penalties in the amount of six thousand five hundred dollars (\$6,500.00) pursuant  
11 to Health and Safety Code section 25249.7(b) and attorneys’ fees and costs in the amount of fifty-six  
12 thousand dollars (\$56,000.00) pursuant to Code of Civil Procedure section 1021.5.

13 **3.2 Civil Penalty**

14 The portion of the settlement attributable to civil penalties shall be allocated according to  
15 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the  
16 penalty, four thousand eight hundred and seventy-five dollars (\$4,875.00), paid to the California  
17 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five  
18 percent (25%) of the penalty, one thousand six hundred and twenty-five dollars (\$1,625.00), paid to  
19 EHA individually. These payments will be sent to the below addresses within fourteen (14) days from  
20 the Effective Date.

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

22 Environmental Health Advocates  
23 225 Broadway, Suite 1900  
24 San Diego, CA 92101

25 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA  
(Memo Line “Prop 65 Penalties”) at the following addresses:

26 For United States Postal Service Delivery:

27 Mike Gyurics  
28 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

Mezzetta agrees to provide EHA's counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payments 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:

- "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 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, fifty-six thousand dollars (\$56,000.00), 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 Mezzetta's attention, as well as litigating and negotiating a settlement in the public interest.

Mezzetta shall provide their payment to EHA's counsel in two checks: (1) one check for twenty-eight thousand dollars (\$28,000.00) payable to Glick Law Group, PC; and (2) one check for twenty-eight thousand dollars (\$28,000.00) payable to Nicholas & Tomasevic, LLP. 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, 19<sup>th</sup> Floor  
San Diego, CA 92101

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3       **3.4     Timing**

4           The above-mentioned checks will be issued within fourteen (14) days from the Effective  
5 Date. If the deadline is on a Saturday, Sunday or holiday, it will be extended until the next day that  
6 is not a weekend or a holiday.

7       **4.     CLAIMS COVERED AND RELEASED**

8           **4.1     EHA’s Public Release of Proposition 65 Claims**

9           Plaintiff acting on its own behalf and in the public interest releases Mezzetta and its parents,  
10 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,  
11 employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant  
12 Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered  
13 Products including but not limited to downstream distributors, wholesalers, customers, and retailers  
14 (including but not limited to Amazon.com, Inc.), franchisees, franchisors, cooperative members,  
15 suppliers, licensees, and licensors, and all of the foregoing entities’ owners, directors, officers, agents,  
16 principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and  
17 assigns (collectively referred to as the “Releasees”) from all claims for violations of Proposition 65  
18 up through the Effective Date based on exposure to acrylamide from Covered Products as set forth in  
19 the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with  
20 Proposition 65 with respect to exposures to acrylamide from Covered Products as set forth in the  
21 Notices.

22           **4.2     EHA’s Individual Release of Claims**

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

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**4.3 Mezzetta’s Release of EHA**

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Mezzetta 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 them, in this matter or with respect to the Covered Products.

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**5. COURT APPROVAL**

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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.

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**6. SEVERABILITY**

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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.

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**7. GOVERNING LAW**

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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 Mezzetta 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.

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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 the Ninth Circuit Court of Appeals upholds the District Court decision to grant a preliminary injunction in *California Chamber of Commerce v. Becerra*, No. 2:19-cv-01019-KJM-JDP (E.D. Cal.); or if Proposition 65 is determined to be preempted by federal law or

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1 a burden on First Amendment rights with respect to acrylamide in Covered Products or  
2 Covered Products substantially similar to Covered Products, then Mezzetta shall be relieved  
3 of its obligation to comply with Section 2 herein.

4 **8. NOTICE**

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

9 If to Mezzetta:

10 Kristine Forderer  
11 Cooley LLP  
12 3 Embarcadero Center, 20<sup>th</sup> Floor  
San Francisco, CA 94111

If to EHA:

Noam Glick  
Glick Law Group, PC  
225 Broadway, 19th Floor  
San Diego, CA 92101

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

15 **9. COUNTERPARTS; DIGITAL SIGNATURES**

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

19 **10. POST EXECUTION ACTIVITIES**

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

1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

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


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

13 **14. ENTIRE AGREEMENT**

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

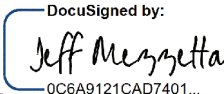
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20 **AGREED TO:**

21 Date: 10/29/2021  
22 \_\_\_\_\_

23 By:   
24 ENVIRONMENTAL HEALTH  
25 ADVOCATES, INC.

20 **AGREED TO:**

21 10/25/2021  
22 Date: \_\_\_\_\_

23 By:   
24 G. L. MEZZETTA, INC.

**IT IS SO ORDERED.**

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

JUDGE OF THE SUPERIOR COURT

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