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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

12 ENVIRONMENTAL HEALTH
13 ADVOCATES, INC.,

14 Plaintiff,

15 v.

16 FILTHY FOOD, LLC, a Florida limited
17 liability company, AMAZON.COM, INC., a
18 Delaware corporation, and DOES 1 through
19 100, inclusive,

20 Defendants.

Case No. 22CV006625

[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 Filthy Food, LLC (“Defendant” or “Filthy Food”) with EHA and Filthy
5 Food 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 by
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 EHA alleges that Filthy Food manufactures, imports, sells, and distributes for sale Filthy Food
16 Pepper Stuffed Olives that contain Lead. EHA further alleges that Filthy Food does so without
17 providing a sufficient health hazard warning as required by Proposition 65 and related Regulations.
18 Pursuant to Proposition 65, Lead is listed as a chemical known to cause cancer, birth defects and other
19 reproductive harm. Filthy Food denies these allegations and asserts that its products are safe and in
20 compliance with all applicable laws, rules and regulations.

21 **1.5 Notices of Violation**

22 On or around September 10, 2021, EHA served Defendant Filthy Food, the California Attorney
23 General, and all other required public enforcement agencies with a 60-Day Notice of Violation of
24 Proposition 65 (“Notice”). The Notice alleged that Filthy Food had violated Proposition 65 by failing
25 to sufficiently warn consumers in California of the health hazards associated with exposures to Lead
26 contained in Filthy Food Pepper Stuffed Olives.

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

3 **1.6 Product Description**

4 The products covered by this Consent Judgment are olives, including but not limited to Filthy
5 Food Pepper Stuffed Olives.

6 **1.7 State of the Pleadings**

7 On or around February 07, 2022, EHA filed a Complaint against Filthy Food for the alleged
8 violations of Proposition 65 that are the subject of the Notice (“Complaint”).

9 **1.8 No Admission**

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

18 **1.9 Jurisdiction**

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

23 **1.10 Effective Date**

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

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of the Covered Products**

3 Beginning ninety (90) days after the Effective Date, Filthy Food shall distribute or directly sell
4 in the State of California only Covered Product that is either Reformulated Product (as defined in
5 Section 2.2) or that complies with the warning requirements of Section 2.3. As used in this Section 2,
6 “distribute or directly sell in the State of California” means to ship Covered Products directly into
7 California or to sell Covered Products to a distributor Filthy Food actually knows will sell Covered
8 Products in California.


9 **2.2 Reformulation Standard**

10 Reformulated Product is Covered Product for which the serving size suggested on the nutrition
11 label contains no more than 0.5 micrograms of lead, when analyzed pursuant to AOAC Method 2015.01
12 or any other acceptable methodology used by any state or federal agency for testing lead content in a
13 substance substantially similar to the Covered Products.

14 **2.3 Clear and Reasonable Warnings**

15 For Covered Products that contain Lead in a concentration exceeding the Reformulation
16 Standard set forth in section 2.2 above, and which are distributed or directly sold by Filthy Food in the
17 State of California on or after the Effective Date, Filthy Food shall provide one of the following
18 warning statements.

19 **Option 1:**

20  **WARNING :** Consuming this product can expose you to
21 chemicals including Lead, which is known to the State of California
22 to cause birth defects or other reproductive harm. For more
information go to www.P65warnings.ca.gov/food

23 **Option 2:**

24  **WARNING :** Reproductive Harm –
www.P65Warnings.ca.gov/food

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

1 the Covered Products' packaging, it must be in a type size no smaller than the largest type size used
2 for other consumer information on the product. In no case shall a warning statement displayed on the
3 Covered Products' packaging appear in a type size smaller than 6-point type. The same warning shall
4 be posted on any websites under the exclusive control of Filthy Food where Covered Products are sold
5 into California. Filthy Food shall instruct any third-party website to which it directly sells its Covered
6 Products to include the same warning as a condition of selling the Covered Products in California.

7 **2.4 Sell-Through Period**

8 Notwithstanding anything else in this Consent Judgment, Covered Products that are
9 manufactured, packaged, or put into commerce within ninety (90) days of the Effective Date shall be
10 subject to the release of liability pursuant to this Consent Judgment, without regard to when such
11 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations
12 of Filthy Food, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered
13 Products manufactured, packaged, or put into commerce up to ninety (90) days after the Effective Date.

14 **3. MONETARY SETTLEMENT TERMS**

15 **3.1 Settlement Amount**

16 Filthy Food shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of
17 all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil
18 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
19 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00)
20 pursuant to Code of Civil Procedure section 1021.5.

21 **3.2 Civil Penalty**

22 The portion of the settlement attributable to civil penalties shall be allocated according to Health
23 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
24 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
25 twenty-five percent (25%) of the penalty paid to EHA individually.

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

27 Environmental Health Advocates
28 225 Broadway, Suite 2100
San Diego, CA 92101

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

3 For United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010
8 Sacramento, CA 95812-4010

9 For Federal Express 2-Day Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

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

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

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

21 **3.3 Attorney's Fees and Costs**

22 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's
23 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not
24 limited to investigating potential violations, bringing this matter to Filthy Food's attention, as well as
25 litigating and negotiating a settlement in the public interest.

26 Filthy Food shall provide its payment for civil penalty and for attorneys' fees and costs to
27 EHA's counsel in installments as follows. Payment may be by physical check or by electronic means,
28 including wire transfers, at Filthy Food's discretion.

- The First Installment shall be in the amount of ten thousand dollars (\$10,000.00), payable in
three checks as follows: three thousand seven hundred fifty dollars (\$3,750.00) payable to
OEHHHA as a civil penalty; one thousand two hundred fifty dollars (\$1,250) payable to EHA

pursuant to Health and Safety Code section 25249.12(d), and five thousand dollars (\$5,000.00) payable to Entorno Law, LLP, within thirty (30) days of the Effective Date.

- The Second Installment shall be in the amount of ten thousand dollars (\$10,000.00), payable to Entorno Law, LLP, within sixty (60) days of the Effective Date.
- The Third Installment shall be in the amount of ten thousand dollars (\$10,000.00), payable to Entorno Law, LLP, within ninety (90) days of the Effective Date.
- The Fourth Installment shall be in the amount of ten thousand dollars (\$10,000.00), payable to Entorno Law, LLP, within one-hundred and twenty (120) days of the Effective Date.
- The Fifth Installment shall be in the amount of five thousand dollars (\$5,000.00), payable to Entorno Law, LLP, within one-hundred and fifty (150) days of the Effective Date.
- The Sixth Installment shall be in the amount of five thousand dollars (\$5,000.00), payable to Entorno Law, LLP, within one-hundred and eighty (180) days of the Effective Date, but if the First, Second, Third, Fourth, and Fifth Installments are timely made by or on behalf of Filthy Food, then EHA and its counsel agreed to waive the Sixth Installment.

The attorney fee installments shall be made payable to Entorno Law, LLP. The addresses for this entity is:

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

4. CLAIMS COVERED AND RELEASE

4.1 EHA's Public Release of Proposition 65 Claims

Plaintiff, acting on its own behalf and in the public interest, releases Filthy Food, and its parents, subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant Entities"), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered Products, including but not limited to downstream distributors, wholesalers, customers, retailers, and marketplaces (including but not limited to Amazon.com), 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,

1 successors, and assigns (collectively referred to as the "Releasees") from all claims for violations of
2 Proposition 65 up through the Effective Date based on exposure to Lead from Covered Products as set
3 forth in the Notice(s). Compliance with the terms of this Consent Judgment constitutes compliance with
4 Proposition 65 with respect to exposures to Lead from Covered Products as set forth in the Notice(s).
5 This Consent Judgment is a full, final, and binding resolution of all claims under Proposition 65 that
6 were or could have been asserted against Filthy Food and/or Releasees for failure to comply with
7 Proposition 65 for alleged exposure to Lead from Covered Products. This release does not extend to
8 any third-party retailers selling the product on a website who, after receiving instruction from Filthy
9 Food to include a warning as set forth above in section 2.2, do not include such a warning.

10 **4.2 EHA's Individual Release of Claims**

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

17 **4.3 Filthy Food's Release of EHA**

18 Filthy Food on its own behalf, and on behalf of Releasees as well as its past and current agents,
19 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
20 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
21 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
22 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

23 **4.4 No Other Known Claims or Violations**

24 EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged
25 violations of Proposition 65 by Filthy Food or for which Filthy Food bears legal responsibility other
26 than those that are fully resolved by this Consent Judgment.

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1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

6 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
7 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely 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, or is otherwise
11 rendered inapplicable for reasons, including but not limited to changes in the law, then Filthy Food
12 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 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
16 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
17 requirements of Proposition 65; or if Lead cases are permanently enjoined by a court of competent
18 jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First
19 Amendment rights with respect to Lead in Covered Products or Covered Products substantially similar
20 to Covered Products, then Filthy Food shall be relieved of its obligation to comply with Section 2
21 herein.

22 **8. ENFORCEMENT**

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

25 **9. NOTICE**

26 Unless otherwise specified herein, all correspondence and notice required by this Consent
27 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified

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mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to the following addresses:

If to Filthy Food:

Paul S. Rosenlund
Duane Morris LLP
One Market Plaza, Suite 2200
San Francisco, CA 94105
psrosenlund@duanemorris.com

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101
noam@enteronolaw.com

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

10. COUNTERPARTS; DIGITAL SIGNATURES

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

11. 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 reasonable 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.

12. 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.

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1 **13. AUTHORIZATION**

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

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

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

9 **15. ENTIRE AGREEMENT**

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

15 **AGREED TO:**

AGREED TO:

16
17 Date: 08/11/2022

Date: 8/16/22

18 By: 
19 ENVIRONMENTAL HEALTH
20 ADVOCATES, INC.

By: 
FILTHY FOOD, LLC

21
22 **IT IS SO ORDERED.**

23
24 Date: _____

JUDGE OF THE SUPERIOR COURT