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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

15 ENVIRONMENTAL HEALTH  
16 ADVOCATES, INC., a California corporation,

17 Plaintiff,

18 v.

19 BALMORO S.A. DE C.V., a Mexican  
20 corporation, and DOES 1 through 100,  
21 inclusive,

22 Defendants.

Case No. 22CV009802

**[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,  
4 Inc., (“EHA” or “Plaintiff”) and Balmoro S.A. de C.V. (“Defendant” or “Balmoro”) with EHA and  
5 Balmoro 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 Balmoro 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  
13 Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that Balmoro manufactures, imports, sells, and distributes for sale Balmoro  
16 Spicy Dehydrated Mango that contains Lead. EHA further alleges that Balmoro 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 and birth defects or  
19 other reproductive harm.

20 **1.5 Notices of Violation**

21 On or around October 12, 2021, EHA served Balmoro, Costco Wholesale Corporation, the  
22 California Attorney General, and all other required public enforcement agencies with a 60-Day  
23 Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Balmoro had violated  
24 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards  
25 associated with exposures to Lead contained in Balmoro Spicy Dehydrated Mangos.

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

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1           **1.6     Product Description**

2           The products covered by this Consent Judgment are dried mangoes including but not limited  
3 to Balmoro Spicy Dehydrated Mango manufactured or processed by Balmoro that allegedly contain  
4 Lead and are imported, sold, shipped, delivered, or distributed for sale to consumers in California  
5 by Releasees (as defined in section 4.1) (“Covered Products”).

6           **1.7     State of the Pleadings**

7           On or around April 13, 2022, EHA filed a Complaint against Balmoro for the  
8 alleged violations of Proposition 65 that are the subject of the Notice (“Complaint”).

9           **1.8     No Admission**

10          Balmoro denies the material factual and legal allegations of the Notice and Complaint and  
11 maintains that all of the Covered Products it has manufactured, imported, sold, and/or distributed  
12 for sale in California, including Covered Products, have been, and are, in compliance with all laws.  
13 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,  
14 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  
16 violation of law. This Section shall not, however, diminish or otherwise affect Balmoro’s  
17 obligations, 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 Balmoro 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  
22 this 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  
25 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

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1    **2.    INJUNCTIVE RELIEF**

2           **2.1    Reformulation of the Covered Products**

3           Except as otherwise provided herein, any Covered Products that are manufactured by  
4    Balmoro on and after the Effective Date that Balmoro sells in California or distributes for sale in  
5    California shall not exceed 16 parts per billion (“ppb”) for Lead, using the average of three separate  
6    samples, with all tests to be performed by a laboratory accredited by the State of California, a  
7    federal agency, or a nationally recognized accrediting organization, using ICP-MS (Inductively  
8    Coupled Plasma Mass Spectrometry), unless such Covered Products comply with the warning  
9    requirements of Section 2.2. As used in this Section 2, “distributed for sale in California” means to  
10   directly ship Covered Products into California or to sell Covered Products to a distributor Balmoro  
11   knows will sell Covered Products in California.

12           **2.2    Clear and Reasonable Warnings**

13           For Covered Products that contain Lead in a concentration exceeding the 16 ppb level set  
14   forth in section 2.1 above, and which are manufactured and packaged for distribution for authorized  
15   sale or use in California on or after the Effective Date, Balmoro shall provide one of the following  
16   warning statements.

17           **Option 1:**

18                   **WARNING:** Consuming this product can expose you to chemicals  
19                   including Lead, which is known to the State of California to cause  
20                   cancer and birth defects or other reproductive harm. For more  
                    information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

21           **Option 2:**

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

23           This warning statement shall be prominently displayed on the Covered Products, on the  
24   packaging of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is  
25   displayed with such conspicuousness, as compared with other words, statements, or designs as to  
26   render it likely to be read and understood by an ordinary individual prior to sale. If the warning  
27   statement is displayed on the Covered Products’ packaging, it must be in a type size no smaller than  
28   the largest type size used for other consumer information on the product and must be set off from

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

### 6 **2.3 Sell-Through Period**

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

## 12 **3. MONETARY SETTLEMENT TERMS**

### 13 **3.1 Settlement Amount**

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

### 19 **3.2 Civil Penalty**

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

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

25 Environmental Health Advocates  
26 225 Broadway, Suite 2100  
27 San Diego, CA 92101

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

1 For United States Postal Service Delivery:

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

7 For Federal Express 2-Day Delivery:

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

13 Balmoro agrees to provide EHA's counsel with a copy of the check payable to OEHHA,  
14 simultaneous with its penalty payments to EHA.

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

- 17 • "Entorno Law, LLP" (EIN:68-0284486) at address provided in section 3.2(a)(i); and
- 18 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

19 **3.3 Attorney's Fees and Costs**

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

24 Balmoro shall provide their payment to EHA's counsel in one check in the amount of forty-  
25 five thousand dollars payable to Entorno Law, LLP (\$45,000.00). The address for this payment is:

26 Noam Glick  
27 Entorno Law, LLP  
28 225 Broadway, Suite 1900  
San Diego, CA 92101

1           **3.4     Timing**

2           The above-mentioned checks will be issued within fourteen (14) days of the Effective Date.

3           **4.     CLAIMS COVERED AND RELEASED**

4           **4.1     EHA’s Public Release of Proposition 65 Claims**

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

20          **4.2     EHA’s Individual Release of Claims**

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

27          **4.3     Balmoro’s Release of EHA**

28          Balmoro on its own behalf, and on behalf of its past and current agents, representatives,

1 attorneys, successors, and assignees, hereby waives any and all claims against EHA and its  
2 attorneys and other representatives, for any and all actions taken or statements made by EHA and its  
3 attorneys and other representatives, whether in the course of investigating claims, otherwise seeking  
4 to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

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7 **5. COURT APPROVAL**

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

11 **6. SEVERABILITY**

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

15 **7. GOVERNING LAW**

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

22 In the event the California Office of Health Hazard Assessment adopts a regulation or safe  
23 use determination, or issues an interpretive guideline that exempts Covered Products from meeting  
24 the requirements of Proposition 65; or if Lead cases are permanently enjoined by a court of  
25 competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a  
26 burden on First Amendment rights with respect to Lead in Covered Products or Covered Products  
27 substantially similar to Covered Products, then Balmoro shall be relieved of its obligation to comply  
28 with Section 2 herein.



1 **8. ENFORCEMENT**

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

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7 **9. NOTICE**

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

11 If to Balmoro:

12 Letitia D. Moore  
13 Holland & Knight LLP  
14 50 California Street, Suite 2800  
San Francisco, CA 94111

If to EHA:

Noam Glick  
Entorno Law, LLP  
225 Broadway, Suite 2100  
San Diego, CA 92101

15 Any Party may, from time to time, specify in writing to the other, a change of address to  
16 which 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  
20 the 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  
26 mutually employ their 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

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

3 **12. MODIFICATION**

4 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry  
5 of a modified consent judgment thereon by the Court; or (ii) a successful motion or application of  
6 any 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  
9 they 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  
13 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be  
14 filed 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  
17 Parties with respect to the entire subject matter herein, and any and all prior discussions,  
18 negotiations, commitments, and understandings related hereto. No representations, oral or  
19 otherwise, express or implied, other than those contained herein have been made by any Party. No  
20 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist  
21 or to bind any Party.

22 **AGREED TO:**

**AGREED TO:**

23 Date: 03/29/2022

Date: 04/11/2022

24 By:  \_\_\_\_\_  
25 ENVIRONMENTAL HEALTH  
26 ADVOCATES, INC.

By:  \_\_\_\_\_  
BALMORO S.A. DE C.V.

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**IT IS SO ORDERED.**

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

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JUDGE OF THE SUPERIOR COURT