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12 Environmental Health Advocates, Inc.

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

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

15 ENVIRONMENTAL HEALTH
16 ADVOCATES, INC.,

17 Plaintiff,

18 v.

19 SALUD NATURAL ENTREPRENEUR, INC.,
20 a Illinois corporation, AMAZON.COM, INC., a
21 Delaware corporation, and DOES 1 through
22 100, inclusive,

23 Defendants.

Case No. 22CV006595

[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 Salud Natural Entrepreneur, Inc. (“Defendant” or “Salud”) with EHA and
5 Salud 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 At various times during the pertinent statute of limitations Salud has employed ten or more
12 individuals and thus, was a “person in the course of doing business” for purposes of the Safe
13 Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq.
14 (“Proposition 65”).

15 **1.4 General Allegations**

16 EHA alleges that Salud manufactures, imports, sells, and distributes for sale Nopalina
17 Formula 16oz that contains lead. EHA further alleges that Salud does so without providing a
18 sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant to
19 Proposition 65, lead is listed as a chemical known to cause cancer, birth defects and other
20 reproductive harm.

21 **1.5 Notices of Violation**

22 On or around October 29, 2021, EHA served Defendant Salud, Amazon.com, Inc., the
23 California Attorney General, and all other required public enforcement agencies with a 60-Day
24 Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Salud had violated
25 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards
26 associated with exposures to lead contained in Nopalina Formula 16oz.

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

1 **1.6 Product Description**

2 The products covered by this Consent Judgment are flax seed products including but not
3 limited to Nopalina Formula 16oz manufactured or processed by Salud that allegedly contain lead
4 and are imported, sold, shipped, delivered, or distributed for sale to consumers in California by
5 Releasees (as defined in section 4.1) (“Covered Products”).

6 **1.7 State of the Pleadings**

7 On or around February 7, 2022, EHA filed a Complaint against Salud for the alleged
8 violations of Proposition 65 that are the subject of the Notice (“Complaint”). On or about April 7,
9 2022, Salud filed its Answer to the Complaint.

10 **1.8 No Admission**

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

19 **1.9 Jurisdiction**

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

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
26 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.
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28

1 **2. INJUNCTIVE RELIEF**


2 **2.1 Reformulation of the Covered Products**

3 Beginning thirty (30) days after the Effective Date, Salud shall be permanently enjoined from
4 manufacturing, distributing, or directly selling in the State of California, any Covered Product that
5 expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day
6 unless such Covered Products comply with the warning requirements of Section 2.2. As used in this
7 Section 2, “distributed for sale in California” means to directly ship Covered Products into California
8 or to sell Covered Products to a distributor Salud knows will sell Covered Products in California.


9 **2.2 Clear and Reasonable Warnings**

10 For Covered Products that contain lead in a concentration exceeding the “Daily Exposure
11 Level” of .5 micrograms set forth in section 2.1 above, and which are manufactured and packaged for
12 distribution for authorized sale or use in California on or after the Effective Date, Salud shall provide
13 one of the following warning statements.

14 **Option 1:**

15  **WARNING** : Consuming this product can expose you to chemicals
16 including lead, which is known to the State of California to cause
17 cancer and birth defects or other reproductive harm. For more
information go to www.P65warnings.ca.gov/food

18 **Option 2:**

19  **WARNING** : Cancer and Reproductive Harm –
www.P65Warnings.ca.gov/food

20 This warning statement shall be prominently displayed on the Covered Products, on the
21 packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is
22 displayed with such conspicuousness, as compared with other words, statements, or designs as to
23 render it likely to be read and understood by an ordinary individual prior to sale. A compliant
24 warning shall also be posted on any websites under the exclusive control of Salud where Covered
25 Products are sold into California. Salud shall instruct any third-party website to which it sells its
26 Covered Products to include the same warning as a condition of selling the Covered Products.

27 The warning shall be provided to California consumers in a manner that complies with 27
28 C.C.R. § 25602(b). Specifically, for internet purchases, a warning must also be provided by including

1 either the warning or a clearly marked hyperlink using the word "**WARNING**" on the product
2 display page, or by otherwise prominently displaying the warning to the purchaser prior to
3 completing the purchase.

4 **2.3 Sell-Through Period**

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

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Settlement Amount**

12 Salud shall pay fifty thousand dollars (\$50,000) in settlement and total satisfaction of all the
13 claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil
14 penalties in the amount of five thousand dollars (\$5,000) pursuant to Health and Safety Code section
15 25249.7(b) and attorneys' fees and costs in the amount forty-five thousand dollars (\$45,000) pursuant
16 to Code of Civil Procedure section 1021.5.

17 **3.2 Civil Penalty**

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

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

23 Environmental Health Advocates
24 225 Broadway, Suite 2100
25 San Diego, CA 92101

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

27 For United States Postal Service Delivery:

28 Mike Gyurics

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

5 For Federal Express 2-Day Delivery:

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

11 Salud agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
12 simultaneous with its penalty payments to EHA.

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

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

17 **3.3 Attorney's Fees and Costs**

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

22 Salud shall provide their payment to EHA's Counsel in three installments as follows.
23 Payment may be by physical check or by electronic means, including wire transfers, at Salud's
24 discretion:

- 25 • The First Installment shall be in the amount of twenty-five thousand dollars (\$25,000.00),
26 payable to Entorno Law, LLP, within thirty (30) days of the Effective Date.
- 27 • The Second Installment shall be in the amount of ten thousand dollars (\$10,000.00), payable
28 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 seventy (70) days of the Effective Date. If the First and Second
Installments are timely made by Salud or its counsel, then EHA's and its counsel agree to
waive the Third Installment.

1 Installments may be sent to the following address:

2 Noam Glick
3 Entorno Law, LLP
4 225 Broadway, Suite 2100
5 San Diego, CA 92101

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 EHA's Public Release of Proposition 65 Claims**

8 Plaintiff acting on its own behalf and in the public interest releases Salud, and its parents,
9 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,
10 employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant
11 Entities"), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
12 Products including but not limited to downstream distributors, wholesalers, customers, and retailers
13 (including but not limited to Amazon.com, franchisees, franchisors, cooperative members, suppliers,
14 licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents,
15 principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and
16 assigns (collectively referred to as the "Releasees") from all claims for violations of Proposition 65
17 up through the Effective Date based on exposure to lead from Covered Products as set forth in the
18 Notice(s). Compliance with the terms of this Consent Judgment constitutes compliance with
19 Proposition 65 with respect to exposures to lead from Covered Products as set forth in the Notice(s).
20 This Consent Judgment is a full, final, and binding resolution of all claims under Proposition 65 that
21 were or could have been asserted against Salud and/or Releasees for failure to provide warnings
22 required under Proposition 65 for alleged exposure to lead through reasonably foreseeable use of the
23 Covered Products. This release does not extend to any third-party retailers selling the product on a
24 website who, after receiving instruction from Salud to include a warning as set forth above in section
25 2.2, do not include such a warning.

26 **4.2 EHA's Individual Release of Claims**

27 EHA, in its individual capacity, also provides a release to Salud and/or Releasees, which shall
28 be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of

1 every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out
2 of alleged or actual exposures to lead in Covered Products manufactured, imported, sold, or
3 distributed by Salud before the Effective Date.

4 **4.3 Salud's Release of EHA**

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

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,
14 or 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
17 held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely
18 affected.

19 **7. GOVERNING LAW**

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

26 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
27 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
28 requirements of Proposition 65; or if lead cases are permanently enjoined by a court of competent

1 jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First
2 Amendment rights with respect to lead in Covered Products or Covered Products substantially similar
3 to Covered Products, then Salud shall be relieved of its obligation to comply with Section 2 herein.

4 **8. ENFORCEMENT**

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

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 Salud:

12 Matthew Orr
13 Amin Talati Wasserman
14 515 South Flower St., 18th Floor
Los Angeles, CA 90071

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 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
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 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
17 Parties 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: 06/27/2022

Date: 07/13/2022

24 By: 
25 ENVIRONMENTAL HEALTH
26 ADVOCATES, INC.

By: 
SALUD NATURAL ENTREPRENEUR,
INC.

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IT IS SO ORDERED.

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Date: _____

JUDGE OF THE SUPERIOR COURT