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9 PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF LOS ANGELES**

12 **PUBLIC HEALTH AND SAFETY**  
13 **ADVOCACY, LLC., a Limited Liability**  
14 **Company, in the public interest,**

15 **Plaintiff,**

16 **vs.**

17 **VIGO IMPORTING COMPANY and**  
18 **DOES 1 through 50, inclusive,**

19 **Defendant(s).**

20 Case No. 22STCV16463

21 **CONSENT JUDGMENT [PROPOSED]**

22 *[[Filed Concurrently with Notice of Motion*  
23 *and Motion, Supporting Declaration of Davar*  
24 *Danialpour, [Proposed] Order, and*  
25 *Memorandum of Points and Authorities in*  
26 *Support to Approve and Enter Consent*  
27 *Judgment*

28 Hon. William A. Crowfoot  
Dept. 27

**Reservation ID: 797246997415**

**Date: 09/15/2022**

**Time: 1:30 PM**

**Dept: 27**

**Complaint filed: May 18, 2022**

29 **1. INTRODUCTION**

30 1.1 This Consent Judgment is entered into by and between Plaintiff **PUBLIC**  
31 **HEALTH AND SAFETY ADVOCACY, LLC** (“Plaintiff” or “PHSA”), acting on behalf of  
32 itself and in the public interest, and Defendants **VIGO IMPORTING COMPANY**  
33 (“Defendants”). Plaintiff and Defendants are collectively referred to as “Parties.”

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**1.2 Defendants and Covered Products**

1.2.1 PHSA alleges that Defendants employ ten or more persons. For purposes of this Consent Judgment only, Defendants are deemed to be persons in the course of doing business in California and subject to the provisions of the *Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.* (“*Proposition 65*”).

1.2.2 PHSA alleges that Defendants manufacture, import, distribute and/or sell certain products in California, including but not limited to Vigo Authentic Paella Valencia Yellow Rice & Seafood Dinner, UPC #0-7107201305-2. As set forth in Section 2.1 below, Vigo Authentic Paella Valencia Yellow Rice & Seafood Dinner products that allegedly contain Lead are collectively referred to herein as “Covered Products.”

**1.3 Listed Chemicals**

1.3.1 Lead and Lead Compounds (“Lead”) have been listed by the State of California as chemicals known to cause cancer and/or birth defects or other reproductive harm. The Maximum Allowable Dose Level (“MADL”) for lead set by the California Office of Environmental Health Hazard Assessment is 0.5 micrograms (µg) per day.

**1.4 Notice of Violation**

1.4.1 On or about December 17, 2021, PHSA served a “60-Day Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986,” AG# 2021-03059, (“Notice”) in which it alleged that the recipients, specifically including Defendants, violated *Health & Safety Code § 25249.6* by failing to warn individuals in California of exposures to Lead contained in Covered Products sold by Defendants in California.

**1.5 Complaint**

1.5.1 On May 18, 2022, PHSA filed a Complaint for civil penalties and injunctive relief (“Complaint”) in Los Angeles County Superior Court, Case No. 22STCV16463, against Defendants. The Complaint alleges, among other things, that Defendants violated Proposition 65 by allegedly failing to give clear and reasonable warnings of alleged exposure to Lead contained in Covered Products that Defendants allegedly placed into the stream of commerce in California.

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**1.6 Consent to Jurisdiction**

1.6.1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations against Defendants contained in the Complaint and the Notice, and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto with respect to Covered Products.

**1.7 No Admission**

1.7.1 This Consent Judgment resolves claims that are denied and disputed. The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Defendants expressly maintain that all of their products, including but not limited to the Product subject to the Notice and the Complaint, comply with all laws including Proposition 65, and are completely safe for their intended use. Nothing in this Consent Judgment shall be construed as an admission by Defendants of any material allegation in the Notice or the Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind, including without limitation, any admission concerning any alleged or actual violation of Proposition 65 or any other statutory, regulatory, common law or equitable doctrine, including but not limited to the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable warning” as used in *Health and Safety Code section 25249.6*. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission by Defendants of any fact, conclusion of law, issue of law or violation of law, or of fault, wrongdoing or liability by Defendants, their officers, directors, employees or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency or forum, except for purposes of res judicata or collateral estoppel. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the parties

1 may have in any other or future legal proceeding, except as expressly provided in this  
2 Consent Judgment.

3 **2. DEFINITIONS**

4 2.1 “Covered Products” means Vigo Authentic Paella Valencia Yellow Rice &  
5 Seafood Dinner, UPC #0-7107201305-2, manufactured, imported, distributed, and/or sold in  
6 California by Defendants.

7 2.2 “Effective Date” means the date that this Consent Judgment is entered by the  
8 Court.

9 2.3 “Lead” means Lead and Lead compounds.

10 2.4 “Listed Chemical” Lead and Lead Compounds.

11 2.6 “Notice” means the December 17, 2021, *Proposition 65* 60-Day Notice, AG #  
12 2021-03059.

13 **3. INJUNCTIVE RELIEF/REFORMULATION**

14 3.1 Defendants shall provide a Proposition 65 warning for all Covered Products  
15 manufactured 30 or more days after the Effective Date that are distributed or offered for sale  
16 in California and contain 0.5 micrograms or more of Lead per serving calculated based on the  
17 package serving size. The Proposition 65 warning may be provided by any one of or  
18 combination of the methods described below.

19 3.2 Any warning provided pursuant to this section may be provided either on the  
20 product itself or by retail warning sign. Any warning on the Covered Product itself shall be  
21 on the product label, or affixed to the packaging of, or directly on, the Covered Product, and  
22 shall be placed with such conspicuousness as compared with other words, statements, designs  
23 or devices as to render it likely to be read and understood by an ordinary individual under  
24 customary conditions before purchase or use. The product warning shall state either:

25 [California Proposition 65] **WARNING:** Consuming this product can expose you to  
26 chemicals including Lead, which are known to the State of California to cause cancer and  
27 birth defects or other reproductive harm. For more information go to

28 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

or

1 [California Proposition 65] **WARNING:** Cancer and  
2 Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

3 Language in brackets is optional.

4 If the warning is provided by retail warning sign, it shall state as follows:

5 [California Proposition 65] **WARNING:** Consuming the Paella Valencia sold on these  
6 shelves can expose you to chemicals including lead, which are known to the State of  
7 California to cause cancer and birth defects or other reproductive harm. For more  
8 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

9 If OEHHA regulations require or permit specific safe harbor warning text and/or  
10 methods of transmission different than those set forth above, Defendants shall be entitled to  
11 use, at their discretion, such other specific safe harbor warning text and/or methods of  
12 transmission without being deemed in breach of this Judgment.

13 3.3 The same warning shall be posted on any website under the exclusive control  
14 of Vigo Importing Company where the Covered Product is sold to consumers located in  
15 California. The warning requirements of this section shall be satisfied if the forgoing warning  
16 appears either: (a) on the same web page on which a Covered Product is displayed and/or  
17 described by providing a clearly marked hyperlink using the word “WARNING”; (b) on the  
18 same page as the price for the Covered Product, or (c) on one or more web pages displayed to  
19 a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting  
20 of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to  
21 or immediately following the display, description, price, or check-out listing of the Covered  
22 Product, if the warning statement appears elsewhere on the same web page in a manner that  
23 clearly associates it with the product to which the warning applies.

24 3.4 Notwithstanding anything else in this Consent Judgement, the Products that are  
25 manufactured, imported, or distributed prior to the Compliance Date shall be subject to  
26 release of liability pursuant to this Consent Judgment, without regard to when such  
27 products were, or are in the future, shipped, delivered, distributed or sold to customers. As  
28 a result, the obligation of Releasees do not apply to the Products manufactured, imported,  
or distributed prior to the Compliance Date.

1     **4.     SETTLEMENT PAYMENT**

2             **4.1     Payment and Due Date:** Within ten (10) days of the Effective Date,  
3 Defendants shall pay a total of \$45,000 in full and complete settlement of any and all claims  
4 for civil penalties, damages, attorney’s fees, expert fees, investigative expenses, or any other  
5 claim for costs, expenses or monetary relief of any kind for claims that were or could have  
6 been asserted in the Notices or Complaint, as follows:

7             **4.1.1   Civil Penalty:** Defendant shall issue two separate checks totaling \$5,000 as  
8 follows for alleged civil penalties pursuant to *Health & Safety Code § 25249.12*:

9             (a) Defendant will issue one check made payable to the State of California’s Office of  
10 Environmental Health Hazard Assessment (“OEHHA”) in the amount of \$3,750 representing  
11 75% of the total civil penalty and Defendant will issue a second check to PHSA in the  
12 amount of \$1,250 representing 25% of the total civil penalty;

13             (b) Separate 1099s shall be issued for each of the above payments: Defendants will  
14 issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the  
15 amount of \$3,750. Defendants will also issue a 1099 to PHSA (EIN: 85-0919197520 in the  
16 amount of \$1,250 and deliver it to PHSA c/o Danialpour & Associates, 357 S. Robertson  
17 Blvd., 2<sup>nd</sup> Floor, Suite 400, Beverly Hills, CA 90211.

18             **4.1.2   Reimbursement of Attorney Fees and Costs:** Defendant shall issue a check  
19 in the amount of \$40,000 payable to “Danialpour & Associates” as complete reimbursement  
20 for any and all reasonable investigation fees and costs, attorneys’ fees, expert fees, and any  
21 and all other costs and expenses incurred as a result of investigating, bringing this matter to  
22 the Defendants’ attention, preparing and serving the Notice, litigating, negotiating a  
23 settlement in the public interest, and seeking and obtaining court approval of this Consent  
24 Judgment.

25             **4.2** Other than the payment to OEHHA described above, all payments referenced in  
26 paragraphs 4.1.1 and 4.1.2 above, shall be delivered to: Davar Danialpour, Danialpour &  
27 Associates, 357 S. Robertson Blvd., 2<sup>nd</sup> Floor, Suite 400, Beverly Hills, CA 90211. The  
28 payment to OEHHA shall be delivered directly to the Office of Environmental Health Hazard  
Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California

1 95812. Defendants shall provide written confirmation to PHSA that the payment to OEHHA  
2 has been made concurrently with the payment it makes to OEHHA.

3 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

4 5.1 This Consent Judgment is a full, final, and binding resolution between PHSA,  
5 on behalf of itself and in the public interest, and Defendants and their owners, officers,  
6 directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries,  
7 partners, affiliates, sister companies, predecessors and their successors and assigns  
8 (“Defendant Releasees”), and all entities to whom Defendants directly or indirectly distribute  
9 or sell Covered Products, including, but not limited to, all suppliers, downstream distributors,  
10 wholesalers, customers, retailers, marketplace hosts, franchisees, cooperative members,  
11 licensees, licensors and the successors and assigns of any of them, who may use, maintain,  
12 distribute or sell Covered Products (“Downstream Defendant Releasees”), of all claims for  
13 alleged or actual violations of Proposition 65 for alleged exposures or failure to warn of  
14 alleged exposures to the Listed Chemical from Covered Products manufactured, imported,  
15 distributed and/or sold by Defendants up through the Effective Date. Defendants and  
16 Defendant Releasees’ compliance with this Consent Judgment shall constitute compliance  
17 with Proposition 65 with respect to alleged exposures to the Listed Chemical from the  
18 Covered Products imported, distributed or sold by Defendants, Defendant Releasees and  
19 Downstream Defendant Releasees after the Effective Date. Nothing in this Section affects  
20 PHSA’s right to commence or prosecute an action under Proposition 65 against any person  
21 other than Defendants, Defendant Releasees or Downstream Defendant Releasees.

22 5.2 PHSA on behalf of itself, its past and current agents, representatives, attorneys,  
23 successors and/or assignees, hereby waives all rights to institute or participate in, directly or  
24 indirectly, any form of legal action and releases all claims, including, without limitation, all  
25 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
26 penalties, damages, costs, fines, losses or expenses (including, but not limited to,  
27 investigation fees, expert fees and attorneys’ fees) of any nature whatsoever, whether known  
28 or unknown, fixed or contingent (collectively “Claims”), against the Defendants, Defendant  
Releasees and Downstream Defendant Releasees arising from any actual or alleged violation

1 of Proposition 65 or any other statutory or common law claim regarding the Covered  
2 Products manufactured, imported, distributed or sold by the Defendants, Defendant Releasees  
3 or Downstream Defendant Releasees through the Effective Date. In furtherance of the  
4 foregoing, PHSA on behalf of itself only, hereby waives any and all rights and benefits which  
5 it now has, or in the future may have, conferred upon it with respect to Claims regarding the  
6 Covered Products manufactured, imported, distributed and/or sold by the Defendants,  
7 Defendant Releasees or Downstream Defendant Releasees through the Effective Date arising  
8 from any actual or alleged violation of Proposition 65 or any other statutory or common law  
9 by virtue of the provisions of *section 1542 of the California Civil Code*, which provides as  
10 follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
12 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT  
13 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
14 RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.

15 PHSA understands and acknowledges that the significance and consequence of this waiver of  
16 *California Civil Code section 1542* is that even if PHSA alleges or suffers future harm arising  
17 out of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising  
18 from any violation of Proposition 65 or any other statutory or common law regarding the  
19 Covered Products manufactured, imported, distributed and/or sold by the Defendants,  
20 Defendant Releasees or Downstream Defendant Releasees through the Effective Date, PHSA  
21 will not be able to make any claim for those damages, penalties or any other relief against  
22 such releasees. Furthermore, PHSA acknowledges that it intends these consequences for any  
23 such Claims arising from any violation of Proposition 65 or any other statutory or common  
24 law Claim that may exist as of the date of this release but which PHSA does not know exists,  
25 and which, if known, would materially affect PHSA's decision to enter into this Consent  
26 Judgment, regardless of whether its lack of knowledge is the result of ignorance, oversight,  
error, negligence or any other cause.

27 **6. ENTRY OF CONSENT JUDGMENT**

28 6.1 PHSA shall file a motion seeking approval of this Consent Judgment pursuant



1 to *California Health & Safety Code § 25249.7(f)*. The Parties agree to act in good faith to  
2 obtain Court approval of the Consent Judgment. Upon entry of the Consent Judgment, PHSA  
3 and Defendants waive their respective rights to a hearing, trial, or appeal on the allegations in  
4 the Notice and/or Complaint.

5 6.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent  
6 Judgment and any and all prior agreements between the Parties merged herein shall terminate  
7 and become null and void, and the actions shall revert to the status that existed prior to the  
8 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
9 thereof, or of the negotiation, documentation or other part or aspect of the Parties' settlement  
10 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any  
11 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and  
12 confer to determine whether to modify the terms of the Consent Judgment and to resubmit it  
13 for approval.

## 14 **7. MODIFICATION OF JUDGMENT**

15 7.1 This Consent Judgment may be modified only upon written agreement of the  
16 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion  
17 of any Party as provided by law and upon entry of a modified Consent Judgment by the  
18 Court.

19 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith  
20 to meet and confer with the other Parties prior to filing a motion to modify the Consent  
21 Judgment.

## 22 **8. ENFORCEMENT**

23 8.1 Any alleged violation of the terms of this Consent Judgment shall be  
24 enforced exclusively hereunder by the Parties hereto. Before PHSA moves to enforce the  
25 terms of this Consent Judgment against Defendants, Defendant Releasees or Downstream  
26 Defendant Releasees related to the alleged Listed Chemical in the Covered Products, PHSA  
27 must provide written notice to Defendants of any alleged violation, and must provide all  
28 evidence supporting the alleged violation including any applicable test results, product  
photographs and purchase receipts, subject to a reasonable confidentiality agreement if

1 requested. The Parties will thereafter meet and confer for a minimum period of 30 days to  
2 allow time for the named entity or entities to present to PHSA any relevant compliance  
3 information and/or corrective action taken related to the alleged violation, including if  
4 applicable, the date of manufacture, import, distribution or sale of the Covered Product at  
5 issue for purpose of determining the applicability of the release hereunder. If the Parties  
6 cannot resolve the alleged violation, any Party may move to enforce the terms of this Consent  
7 Judgment consistent with the terms hereof.

8 **8. RETENTION OF JURISDICTION**

9 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
10 terms of this Consent Judgment under *Code of Civil Procedure section 664.6*.

11 8.2 In any proceeding brought by any Party to enforce this Consent Judgment, the  
12 prevailing party shall be entitled to recover its reasonable attorney’s fees and costs.

13 **9. SERVICE ON THE ATTORNEY GENERAL**

14 9.1 PHSA shall serve a copy of this Consent Judgment, signed by all Parties, on  
15 the California Attorney General so that the Attorney General may review this Consent  
16 Judgment prior to its submittal to the Court for approval. No sooner than forty-five (45) days  
17 after the Attorney General has received the aforementioned copy of this Consent Judgment,  
18 PHSA may then submit it to the Court for approval.

19 **10. ENTIRE AGREEMENT**

20 10.1 This Consent Judgment contains the sole and entire agreement and understanding  
21 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,  
22 negotiations, commitments and understandings related hereto. No representations, oral or  
23 otherwise, express or implied, other than those contained herein, have been made by any party  
24 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
25 deemed to exist or to bind any of the Parties.

26 **11. ATTORNEY FEES**

27 11.1 Except as specifically provided in Section 4.1.2, Defendants and PHSA shall  
28 bear their own attorneys’ fees and costs in connection with the claims alleged in the Notice  
and Complaint, and resolved in this Consent Judgment.

1     **12.   GOVERNING LAW**

2           12.1   The validity, construction, terms and performance of this Consent Judgment  
3 shall be governed by the laws of the State of California, without reference to any conflicts of  
4 law provisions of California law.

5           12.2   In the event that Proposition 65 is repealed, preempted or is otherwise rendered  
6 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment  
7 are rendered inapplicable or are no longer required as a result of any such repeal or  
8 preemption, or rendered inapplicable by reason of law generally as to the Covered Products,  
9 then Defendants may provide written notice to PHSA of any asserted change in the law, and  
10 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
11 extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall be  
12 interpreted to relieve Defendants from any obligation to comply with any other pertinent state  
13 or federal law or regulation.

14           12.3   The Parties, including their counsel, have participated in the preparation of this  
15 Consent Judgment, and this Consent Judgment is the result of the joint efforts of the Parties.  
16 This Consent Judgment was subject to revision and modification by the Parties and has been  
17 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
18 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against  
19 any Party as a result of the manner of the preparation of this Consent Judgment. Each Party  
20 to this Consent Judgment agrees that any statute or rule of construction providing that  
21 ambiguities are to be resolved against the drafting party should not be employed in the  
22 interpretation of this Consent Judgment and, in this regard, the Parties hereby waive  
23 California Civil Code section 1654.

24     **13.   EXECUTION AND COUNTERPARTS**

25           13.1   This Consent Judgment may be executed in counterparts and by means of  
26 facsimile or portable document format (pdf), which taken together shall be deemed to  
27 constitute one document and have the same force and effect as original signatures.

28     **14.   NOTICES**

          14.1   Any notices under this Consent Judgment shall be by delivery of First-Class

1 Mail.

2 If to Plaintiff PUBLIC HEALTH AND SAFETY ADVOCACY, LLC:

3 Davar Danialpour, Esq.  
4 DANIALPOUR & ASSOCIATES  
5 357 S. Robertson Blvd., 2<sup>nd</sup> Floor, Suite 400  
6 Beverly Hills, CA 90211

7 If to Defendants VIGO IMPORTING COMPANY:

8 Vigo Importing Co.  
9 Attn: Alessandra Alessi Cole  
10 P.O. Box 15584  
11 Tampa, Florida 33684

12 With a copy to:

13 Jeff Parker, Esq.  
14 Sheppard Mullin  
15 333 South Hope Street, 43<sup>rd</sup> Floor  
16 Los Angeles, CA 90071

17 **15. AUTHORITY TO STIPULATE**

18 15.1 Each signatory to this Consent Judgment certifies that he or she is fully  
19 authorized by the Party or Parties he or she represents to enter into this Consent Judgment and  
20 to execute it on behalf of the Party or Parties represented and legally to bind that Party or  
21 Parties.

22 AGREED TO:  
23 Date: September 1, 2022

24 AGREED TO:  
25 Date: September 1, 2022

26 By:   
27 PUBLIC HEALTH & SAFETY  
28 ADVOCACY, LLC

By: *Alessandra Alessi Cole*  
VIGO IMPORTING COMPANY

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT