

1 **ENTORNO LAW, LLP**  
2 Noam Glick (SBN 251582)  
3 Jake W. Schulte (SBN 293777)  
4 Craig M. Nicholas (SBN 178444)  
5 Janani Natarajan (SBN 346770)  
6 225 Broadway, Suite 1900  
7 San Diego, California 92101  
8 Tel: (619) 629-0527  
9 Email: noam@entornolaw.com  
10 Email: jake@entornolaw.com  
11 Email: craig@entornolaw.com  
12 Email: janani@entornolaw.com

13 Attorneys for Plaintiff  
14 Environmental Health Advocates, Inc.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **IN AND FOR THE COUNTY OF ALAMEDA**

17 ENVIRONMENTAL HEALTH ADVOCATES,  
18 INC.,

19 Plaintiff,

20 vs.

21 ARMANINO FOODS OF DISTINCTION, INC.,  
22 a Colorado corporation; RESTAURANT DEPOT,  
23 LLC, a Delaware limited liability company;  
24 INSTACART, a Delaware corporation; and DOES  
25 1-100, inclusive,

26 Defendants.

Case No. 23CV027276

**[PROPOSED] CONSENT JUDGMENT**

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

Dept: 22  
Judge: Honorable Brad Seligman  
Complaint filed: February 3, 2023  
Trial Date: August 19, 2024

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment and Release (“Consent Judgment”) is entered into by and between  
4 Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Armanino Foods of  
5 Distinction, Inc. (“Armanino”), on the other hand, with EHA and Armanino each individually referred  
6 to as a “Party” and collectively as the “Parties.”  
7

8 **1.2 Plaintiff**

9 EHA is a corporation organized in the State of California, acting in the interest of the general  
10 public. It seeks to promote awareness of exposures to toxic chemical and to improve human health  
11 by reducing or eliminating hazardous substances contained in consumer products.  
12

13 **1.3 Defendant**

14 Armanino employs ten or more individuals and is a “person in the course of doing business”  
15 for purposes of this Consent Judgment and the Safe Drinking Water and Toxic Enforcement Act of  
16 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).  
17

18 **1.4 General Allegations**

19 EHA alleges Releasees (as defined in Section 4.1) manufacture, import, sell, or distribute for  
20 sale in California pesto products including but not limited to “Armanino Basil Pesto,” that contain  
21 lead. EHA further alleges that Releasees do so without first providing sufficient health hazard warning  
22 required by Proposition 65 and related Regulations. Lead is listed pursuant to Proposition 65 as a  
23 chemical known to cause cancer and birth defects or other reproductive harm.  
24

25 **1.5 Product Description**

26 The products covered by this Consent Judgment are Armanino’s pesto products, including,  
27 but not limited to, “Armanino Basil Pesto,” that EHA alleges contain lead and that are manufactured,  
28 imported, sold, or distributed in California by Releasees (“Covered Products”).

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**1.6 Notice of Violation and Complaint**

On or around October 27, 2022, EHA served Armanino, Restaurant Depot, LLC (“Restaurant Depot”), Instacart, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleged that Armanino and others violated Proposition 65 by failing to sufficiently warn consumers of the health hazards associated with exposure to lead contained in the Armanino Basil Pesto.

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

**1.7 State of the Pleadings**

On or around February 3, 2023, EHA filed a Complaint against Armanino, Restaurant Depot, and Instacart for the alleged violation of Proposition 65 that is the subject of the Notice (“Complaint”).

**1.8 No Admission**

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

**1.9 Jurisdiction**

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

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**1.10 Effective Date**

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

**1.11 Compliance Date**

For purposes of this Consent Judgment, the term “Compliance Date” is the date that is six (6) months after the Effective Date, provided that the Compliance Date may be extended up to an additional four (4) months by Armanino by notifying EHA at least thirty (30) days before the Compliance Date that good cause exists for such extension. If EHA believes in good faith that such extension is without basis, EHA shall notify Armanino of such determination and the parties shall meet and confer to resolve the dispute.

**2. INJUNCTIVE RELIEF**


**2.1 Reformulation of Covered Products**

Except as otherwise provided herein, any Covered Products that are manufactured, distributed, or directly sold in California by Armanino on or after the Compliance Date shall not expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead based on average daily consumption data from the National Health and Nutrition Examination Survey (“NHANES”) unless such Covered Products comply with the warning requirements of Section 2.2. The “Daily Lead Exposure Level” shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the average daily consumption rate for pesto calculated from the NHANES database), multiplied by servings of the product per day (also calculated from the NHANES database). The “Daily Lead Exposure Level” shall be calculated by using tests performed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization, and using an appropriate

1 Inductively Coupled Plasma/Mass Spectroscopy (ICP-MS) analytical method with a limit of  
2 quantitation (LOQ) of at least 0.01 parts per million (ppm). As used in this Section 2, “distributed for  
3 sale in CA” means to directly ship Covered Products into California or to sell Covered Products to a  
4 distributor Armanino knows will sell Covered Products in California.

## 5 **2.2 Clear and Reasonable Warnings**

6  
7 As of the Compliance Date, and continuing thereafter, if and only if the Daily Lead Exposure  
8 Level for Covered Products that are manufactured and packaged for distribution for authorized sale  
9 or use in California exceeds 0.5 micrograms of lead pursuant to the formula set forth in Section 2.1  
10 above, Armanino shall provide one of the following warning statements:

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

16 This warning statement shall be prominently displayed on the Covered Products, on the  
17 packaging of the Covered Products, or on a placard, shelf tag, or sign, provided that the statement is  
18 displayed with such conspicuousness, as compared with other words, statements, or designs as to  
19 render it likely to be read and understood by an ordinary individual prior to sale. If the warning  
20 statement is displayed on the Covered Product’s label, it must be set off from other surrounding  
21 information. The same warning shall be posted on any websites under the exclusive control of  
22 Armanino where Covered Products are sold into California.

## 23 **2.3 Sell-Through Period**

24  
25 Notwithstanding anything else in this Consent Judgment, the Covered Products that are  
26 manufactured on or prior to the Compliance Date shall be subject to release of liability pursuant to  
27 this Consent Judgment, without regard to when such Covered Products were, or are in the future,  
28

1 distributed or sold to customers. As a result, the obligation of Armanino, or any Releasees (if  
2 applicable), do not apply to these Covered Products manufactured on or prior to the Compliance Date.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Settlement Amount**

5 Armanino shall pay one hundred and five thousand dollars (\$105,000.00) in settlement and  
6 total satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment.  
7 This includes civil penalties in the amount of \$10,500.00 pursuant to Health and Safety Code section  
8 25249.7(b) and attorneys' fees and costs in the amount of \$94,500.00 pursuant to Code of Civil  
9 Procedure section 1021.5.  
10

11 **3.2 Civil Penalty**

12 The portion of the settlement attributable to civil penalties shall be allocated according to  
13 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the  
14 penalty, \$7,875.00, paid to the California Office of Environmental Health Hazard Assessment  
15 ("OEHHA"), and the remaining twenty-five percent (25%) of the penalty, \$2,625.00, paid to EHA  
16 individually. The ten thousand five hundred dollars (\$10,500.00) in civil penalties shall be paid as  
17 follows:  
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- 19 • One payment of \$7,875.00 to OEHHA, due fourteen (14) days after the Effective Date.
- 20 • One payment of \$2,625.00 to EHA, due fourteen (14) days after the Effective Date.

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

23 Isaac Fayman  
24 Environmental Health Advocates  
25 225 Broadway, Suite 1900  
San Diego, CA 92101

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

28 For United States Postal Service Delivery:

1  
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 Armanino 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 required.

16 Relevant information is set out below:

- 17
- 18 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided
  - 19 above.
  - 20 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA
  - 21 95814.

22 All payments referenced in this section shall be paid within 14 (fourteen) days of the Effective  
23 Date.

### 24 **3.3 Attorneys' Fees and Costs**

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

1 Armanino shall provide its payment for civil penalty as outlined above in Section 3.2.  
2 Armanino shall provide its payment for attorneys' fees and costs to EHA's counsel by physical check  
3 or by electronic means, including wire transfers, at Armanino's discretion, as follows:

- 4 • One payment of \$94,500.00 due within sixty (60) days of the Effective Date. If the  
5 deadline is on a Sunday or holiday, it will be extended until the next court day.
- 6 • The attorney fee payments shall be made payable to Entorno Law, LLP. The address for  
7 this entity is:  
8

9  
10 Noam Glick  
11 Entorno Law, LLP  
12 225 Broadway, Suite 1900  
13 San Diego, CA 92101

### 14 **3.4 Tax Documentation**

15 Armanino agrees to provide a completed IRS 1099 for its payments to, and EHA agrees to  
16 provide IRS W-9 forms for, each of the payees under this Consent Judgment. The Parties  
17 acknowledge that Armanino cannot issue any settlement payments pursuant to Section 3.2 and 3.3  
18 above until after Armanino receives the requisite W-9 forms from EHA's counsel.

## 19 **4. CLAIMS COVERED AND RELEASED**

### 20 **4.1 EHA's Public Release of Proposition 65 Claims**

21 For any claim or violation arising under Proposition 65 alleging a failure to warn about  
22 exposures to lead from Covered Products prior to the Compliance Date, EHA, acting for the general  
23 public, releases Armanino and each of its respective parents, subsidiaries, affiliated entities under  
24 common ownership, directors, officers, members, employees, contractors, attorneys, each upstream  
25 entity from whom the Product was purchased by Armanino, and each entity to whom Armanino  
26 directly or indirectly distributes or sells the Product including, but not limited to, its downstream  
27 distributors, wholesalers, customers, retailers (including, but not limited to: Restaurant Depot and  
28 Instacart, and each of their respective parents, subsidiaries, affiliated entities under common



1 ownership, directors, officers, members, employees, and contractors), franchisees, cooperative  
2 members and licensees (“Releasees”) of any and all liability arising under Proposition 65. Releasees  
3 include all named defendants in the above-captioned action, their parents, and all subsidiaries and  
4 affiliates thereof and their respective employees, agents, and assigns that sell Armanino’s Covered  
5 Products. Compliance with the terms of this Consent Judgment constitutes compliance with  
6 Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead from  
7 Covered Products manufactured, imported, sold, or distributed by Armanino on or after the  
8 Compliance Date. This Consent Judgment is a full, final, and binding resolution of all claims under  
9 Proposition 65 that were or could have been asserted against Armanino and/or Releasees for failure  
10 to provide warnings required under Proposition 65 for alleged exposure to lead contained in Covered  
11 Products.  
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13  
14 **4.2 EHA’s Individual Release of Claims**

15 EHA, in its individual capacity, also provides a release to Armanino and/or Releasees, which  
16 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,  
17 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every  
18 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out  
19 of alleged or actual exposures to lead in Covered Products manufactured, imported, sold, or  
20 distributed by Armanino prior to the Compliance Date.  
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22 **4.3 Armanino’s Release of EHA**

23 Armanino, on its own behalf and on behalf of its past and current agents, representatives,  
24 attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys  
25 and other representatives, for any and all actions taken or statements made by EHA and its attorneys  
26 and other representatives, whether in the course of investigating claims, otherwise seeking to enforce  
27 Proposition 65 against it in this matter, or with respect to the Product.  
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3 **4.4 California Civil Code Section 1542**

4 Each of the Parties acknowledges that it is familiar with California Civil Code section 1542,  
5 which provides as follows:  
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7 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**  
8 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**  
9 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**  
10 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
11 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**  
12 **DEBTOR OR RELEASED PARTY.**

13 Each of the Parties waives and relinquishes any right or benefit it has or may have under  
14 Section 1542 of California Civil Code or any similar provision under the statutory or nonstatutory  
15 law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits.  
16 The Parties acknowledge that each may subsequently discover facts in addition to, or different from,  
17 those that it believes to be true with respect to the claims released herein. The Parties agree that this  
18 Consent Judgment and the releases contained herein shall be and remain effective in all respects  
19 notwithstanding the discovery of such additional or different facts.

20 **4.5 Court Approval**

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

24 **5. SEVERABILITY**

25 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is  
26 held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely  
27 affected.  
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1 **6. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of  
3 California as applied within the state of California. In the event that Proposition 65 is repealed, or is  
4 otherwise rendered inapplicable for reasons, including but not limited to changes in the law, then  
5 Armanino may provide written notice to EHA of any asserted change, and shall have no further  
6 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
7 Covered Products are so affected.  
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9 In the event the California Office of Health Hazard Assessment adopts a regulation or  
10 safe use determination, or issues an interpretive guideline that exempts Covered Products from  
11 meeting the requirements of Proposition 65; or if Proposition 65 is determined to be preempted by  
12 federal law or a burden on First Amendment rights with respect to lead in Covered Products or  
13 Covered Products substantially similar to Covered Products, Armanino shall be relieved of its  
14 obligations to comply with Section 2 herein.  
15

16 **7. ENFORCEMENT**

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

19 **8. NOTICE**

20 Unless specified herein, all correspondence and notice required to be provided pursuant to this  
21 Consent Judgment shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or  
22 certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other  
23 at the following addresses:  
24

25 For Armanino:

26 Daniel Herling  
27 Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.  
44 Montgomery Street, 36th Floor  
28 San Francisco, CA 94104

1 For EHA:

2 Noam Glick  
3 Entorno Law, LLP  
4 225 Broadway, Suite 1900  
5 San Diego, CA 92101

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

8 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

9 This Consent Judgment may be executed in counterparts and by facsimile or portable  
10 document format (PDF) signature, each of which shall be deemed an original, and all of which, when  
11 taken together, shall constitute one and the same document.

12 **10. POST EXECUTION ACTIVITIES**

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

22 **11. MODIFICATION**

23 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry  
24 of a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any  
25 Party, and the entry of a modified consent judgment thereon by the Court.  
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27  
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1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their respective  
3 Party and have read, understood, and agree to all of the terms and conditions of this Consent  
4 Judgment.

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

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

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

19 **AGREED TO:**

20 Date: 7/16/2024

21 By:   
22 ENVIRONMENTAL HEALTH  
23 ADVOCATES, INC.

**AGREED TO:**

Date: 7/2/2024

By:   
ARMANINO FOODS OF  
DISTINCTION INC.

24 **IT IS SO ORDERED.**

25 Date: \_\_\_\_\_, 2024

\_\_\_\_\_  
THE HONORABLE BRAD SELIGMAN  
JUDGE OF THE SUPERIOR COURT