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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

17 ENVIRONMENTAL HEALTH ADVOCATES,
18 INC.,

19 Case No. 23CV027276

20 Plaintiff,

21 **[PROPOSED] CONSENT JUDGMENT**

22 vs.
23 ARMANINO FOODS OF DISTINCTION, INC.,
24 a Colorado corporation; RESTAURANT DEPOT,
25 LLC, a Delaware limited liability company;
26 INSTACART, a Delaware corporation; and DOES
27 1-100, inclusive,

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

29 Defendants.

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.
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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,
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1 imported, sold, or distributed in California by Releasees (as defined in section 4.1) ("Covered
2 Products").

3 **1.6 Notice of Violation and Complaint**

4 On or around October 27, 2022, EHA served Armanino, Restaurant Depot, LLC ("Restaurant
5 Depot"), Instacart, the California Attorney General and other requisite public enforcers with a 60-
6 Day Notice of Violation ("Notice"). The Notice alleged that Armanino and others violated
7 Proposition 65 by failing to sufficiently warn consumers of the health hazards associated with
8 exposure to lead contained in the Armanino Basil Pesto manufactured or processed by Armanino that
9 allegedly contain lead and are imported, sold, or shipped, delivered, or distributed for sale to
10 consumers in California by Releases (as defined in section 4.1).

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

13 **1.7 State of the Pleadings**

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

16 **1.8 No Admission**

17 Armanino denies the material factual and legal allegations of the Notice and Complaint and
18 maintains that all of the Covered Products it has manufactured, imported, sold, and/or distributed for
19 sale in California have been, and are, in compliance with all laws. As used in this Consent Judgment,
20 "distributed for sale in California" means to directly ship Covered Products into California or to sell
21 Covered Products to a distributor Armanino knows will sell Covered Products in California. Nothing
22 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
23 issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
24 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
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1 not, however, diminish or otherwise affect Armanino's obligations, responsibilities, and duties under
2 this Consent Judgment.

3 **1.9 Jurisdiction**

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

8 **1.10 Effective Date**

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

12 **1.11 Compliance Date**

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

19 **2. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

20 **2.1 Daily Lead Exposure Level**

21 Beginning on or before the Compliance Date, Armanino shall be permanently enjoined from
22 manufacturing, distributing, or directly selling in the State of California, any Covered Product that
23 exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead based on a
24 single serving per day (defined as 57 grams) unless such Covered Product complies with the warning
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1 requirements of Section 2.2. The “Daily Lead Exposure Level” shall be calculated by multiplying the
2 recommended serving size of the Covered Product by the concentration of lead in the Covered
3 Product. As used in this Section 2, “distributed for sale in CA” means to directly ship the Covered
4 Product into California or to sell the Covered Product to a distributor Defendants knows will sell the
5 Covered Product in California.

7 **2.2 Clear and Reasonable Warnings**

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

12 1) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA**
13 **WARNING:”**: Consuming this product can expose you to lead, which is
14 known to the State of California to cause cancer and birth defects or other
15 reproductive harm. For more information go to
www.P65Warnings.ca.gov/food.

16 **OR**

17 2) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA**
18 **WARNING:”** Risk of cancer and reproductive harm from exposure to
19 lead. See www.P65Warnings.ca.gov/food.

20 **OR**

21 3) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA**
22 **WARNING:”** Can expose you to lead, a carcinogen and reproductive
23 toxicant. See www.P65Warnings.ca.gov/food.

24 **OR**

25 **SHORT FORM ON**
26 **A PRODUCT**
27 **MANUFACTURED**
28 **/LABELED PRIOR**
29 **TO 1/1/28,**
30 **REGARDLESS OF**
31 **DATE OF SALE**

32 4) **WARNING: Cancer and Reproductive**
33 **Harm – www.P65Warnings.ca.gov/food.**

1 Pursuant to Section 25607.1, where the warning is provided on the food product label, it must
2 be set off from other surrounding information and enclosed in a box. Where a specific food product
3 sign, label, placard, or shelf tag is used to provide a warning, it must be displayed with such
4 conspicuously, as compared with other words, statements, or designs as to render it likely to be
5 read and understood by an ordinary individual prior to sale. In no case shall a warning statement
6 appear in a type size smaller than 6-point type. Where a sign, labeling, or label as defined in Section
7 25600.1 is used to provide a warning that includes consumer information about a product in a
8 language other than English, the warning must also be provided in that language in addition to
9 English.

10 As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold
11 online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603 must
12 be provided via of the following methods: (1) A warning on the product display page; (2) A clearly
13 marked hyperlink using the word “**WARNING**” or the words “**CA WARNING**” or “**CALIFORNIA**
14 **WARNING**” on the product display page that links to the warning; or (3) An otherwise prominently
15 displayed warning provided to the purchaser prior to completing the purchase. If a warning is provided
16 using the short-form label content pursuant to Section 25602(a)(4), the warning provided on the
17 website may use the same content. For purposes of this section, a warning is not prominently displayed
18 if the purchaser must search for it in the general content of the website. For internet purchases made
19 prior to 1/1/28, a retail seller is not responsible under Section 25600.2(e)(4) for conspicuously posting
20 or displaying the new warning online until 60 calendar days after the retailer receives a warning or a
21 written notice under Section 25600.2(b) and (c) which updates a short-form warning compliant with
22 Section 25603(c) with content compliant with Section 25603(b). These requirements extend to any
23 websites under the exclusive control of Armanino where Covered Products are sold into California. In
24 addition, Armanino shall instruct any third-party website to which it directly sells its Covered Products
25 to include the same online warning, as set forth above, as a condition of selling the Covered Products
26 in California.

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2 **2.3 Sell-Through Period**

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

9

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Settlement Amount**

12 Armanino shall pay one hundred and five thousand dollars (\$105,000.00) in settlement and
13 total satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment.
14 This includes civil penalties in the amount of \$10,500.00 pursuant to Health and Safety Code section
15 25249.7(b) and attorneys' fees and costs in the amount of \$94,500.00 pursuant to Code of Civil
16 Procedure section 1021.5.

17

18 **3.2 Civil Penalty**

19 The portion of the settlement attributable to civil penalties shall be allocated according to
20 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
21 penalty, \$7,875.00, paid to the California Office of Environmental Health Hazard Assessment
22 ("OEHHA"), and the remaining twenty-five percent (25%) of the penalty, \$2,625.00, paid to EHA
23 individually. The ten thousand five hundred dollars (\$10,500.00) in civil penalties shall be paid as
24 follows:

25

- 26 • One payment of \$7,875.00 to OEHHA, due fourteen (14) days after the Effective Date.
- 27 • One payment of \$2,625.00 to EHA, due fourteen (14) days after the Effective Date.

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

2 Isaac Fayman
3 Environmental Health Advocates
4 225 Broadway, Suite 1900
 San Diego, CA 92101

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

7 For United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 P.O. Box 4010
 Sacramento, CA 95812-4010

12 For Federal Express 2-Day Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
 Sacramento, CA 95814

17 Armanino agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
18 simultaneous with its penalty payments to EHA.

19 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.

20 Relevant information is set out below:

21 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided
22 above.

23 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA
24 95814.

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

3.3 Attorneys' Fees and Costs

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

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

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

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

3.4 Tax Documentation

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

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Public Release of Proposition 65 Claims

For any claim or violation arising under Proposition 65 alleging a failure to warn about exposures to lead from Covered Products prior to the Compliance Date, EHA, acting for the general public, releases Armanino and each of its respective parents, subsidiaries, affiliated entities under

1 common ownership, directors, officers, members, employees, contractors, attorneys, each upstream
2 entity from whom the Product was purchased by Armanino, and each entity to whom Armanino
3 directly or indirectly distributes or sells the Product including, but not limited to, its downstream
4 distributors, wholesalers, customers, retailers (including, but not limited to: Restaurant Depot and
5 Instacart, and each of their respective parents, subsidiaries, affiliated entities under common
6 ownership, directors, officers, members, employees, and contractors), franchisees, cooperative
7 members and licensees (“Releasees”) of any and all liability arising under Proposition 65 in
8 connection with the failure to warn about exposure to lead from Covered Products prior to the
9 Compliance Date. Releasees include all named defendants in the above-captioned action, their
10 parents, and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns
11 that sell Armanino’s Covered Products. Compliance with the terms of this Consent Judgment
12 constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about
13 exposures to lead from Covered Products manufactured, imported, sold, or distributed by Armanino
14 on or after the Compliance Date. This Consent Judgment is a full, final, and binding resolution of all
15 claims under Proposition 65 that were or could have been asserted against Armanino and/or Releasees
16 for failure to provide warnings required under Proposition 65 for alleged exposure to lead contained
17 in Covered Products. This release does not extend to any third-party retailers selling the product on a
18 website who, after receiving instruction from Armanino to include a warning as set forth above in
19 section 2.2, do not include such a warning.

20

21 **4.2 EHA’s Individual Release of Claims**

22

23 EHA, in its individual capacity, also provides a release to Armanino and/or Releasees, which
24 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
25 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every
26 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out
27

1 of alleged or actual exposures to lead in Covered Products manufactured, imported, sold, or
2 distributed by Armanino prior to the Compliance Date.

3 **4.3 Armanino's Release of EHA**

4 Armanino, on its own behalf and on behalf of its past and current agents, representatives,
5 attorneys, successors, and assignees, hereby waives any and all claims against EHA and its attorneys
6 and other representatives, for any and all actions taken or statements made by EHA and its attorneys
7 and other representatives, whether in the course of investigating claims, otherwise seeking to enforce
8 Proposition 65 against it in this matter, or with respect to the Product.

9 **4.4 California Civil Code Section 1542**

10 Each of the Parties acknowledges that it is familiar with California Civil Code section 1542,
11 which provides as follows:

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

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

1 **4.5 Court Approval**

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

5 **5. SEVERABILITY**

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

9 **6. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the state of California
11 as applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
12 rendered inapplicable for reasons, including but not limited to changes in the law; or in the event the
13 California Office of Health Hazard Assessment adopts a regulation or safe use determination, or
14 issues an interpretive guideline that exempts Covered Products from meeting the requirements of
15 Proposition 65; or if lead cases are permanently enjoined by a court of competent jurisdiction; or if
16 Proposition 65 is determined to be preempted by federal law or a burden on First Amendment rights
17 with respect to lead in Covered Products or Covered Products substantially similar to Covered
18 Products, then Armanino may seek relief from the injunctive obligations imposed by this Consent
19 Judgment to the extent any Covered Products are so affected by modifying the agreement via the
20 mechanisms set forth in Section 12.

21 **7. ENFORCEMENT**

22 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be
23 entitled to its reasonable attorneys' fees and costs. The injunctive terms of this Consent Judgment
24 may be enforced by public agency prosecutors pursuant to California Health and Safety Code section
25 25249.7(c), and/or by private party prosecutors acting "in the public interest" under California Health
26 and Safety Code section 25249.7(d).

8. NOTICE

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

For Armanino:

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

For EHA:

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

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. POST EXECUTION ACTIVITIES

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 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 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

1 manner. For purposes of this Section, "best efforts" shall include, at a minimum, supporting the
2 motion for approval, responding to any objection that any third-party may make, and appearing at the
3 hearing before the Court if so requested.

4 **11. MODIFICATION**

5 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry
6 of a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
7 Party, and the entry of a modified consent judgment thereon by the Court.

8 **12. AUTHORIZATION**

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

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

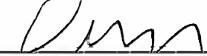
13 If a dispute arises with respect to either Party's compliance with the terms of this Consent
14 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or
15 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
16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

17 **14. ENTIRE AGREEMENT**

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

1 **AGREED TO:**

2 Date: December 12, 2025

3 By: 
4 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

5 **IT IS SO ORDERED.**

6 Date: _____, 2024

1 **AGREED TO:**

2 Date: 12/11/25

3 By: 
4 ARMANINO FOODS OF
DISTINCTION INC.

5

THE HONORABLE BRAD SELIGMAN
6 JUDGE OF THE SUPERIOR COURT