

1 **ENTORNO LAW, LLP**

Craig M. Nicholas (SBN 178444)

2 Noam Glick (SBN 251582)

Jake W. Schulte (SBN 293777)

3 Janani Natarajan (SBN 346770)

225 Broadway, Suite 1900

4 San Diego, California 92101

Tel: (619) 629-0527

5 Email: craig@entornolaw.com

Email: noam@entornolaw.com

6 Email: jake@entornolaw.com

Email: janani@entornolaw.com

7 Attorneys for Plaintiff

8 Environmental Health Advocates, Inc.

9 John A. Conkle (SB# 117849)

10 *j.conkle@conklelaw.com*

Kim S. Sandell (SB# 252321)

11 *k.sandell@conklelaw.com*

Jacob P. Wilson (SB# 331448)

12 *j.wilson@conklelaw.com*

13 **CONKLE, KREMER & ENGEL**

Professional Law Corporation

3130 Wilshire Boulevard, Suite 500

14 Santa Monica, California 90403-2351

15 Phone: (310) 998-9100 • Fax: (310) 998-9109

16 Attorneys for Defendant

Harmony House Foods, Inc.

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

19 ENVIRONMENTAL HEALTH
20 ADVOCATES, INC.,

21 Plaintiff,

22 v.

23 HARMONY HOUSE FOODS, INC., a North
24 Carolina corporation; AMAZON.COM, INC.,
a Delaware corporation; and DOES 1 through
25 100, inclusive,

26 Defendants.

Case No. 23CV028565

[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 Harmony House Foods, Inc. (“Defendant” or “HHF”) with EHA and HHF
5 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 by
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 HHF is a corporation organized in the state of North Carolina, and regularly conducts business
12 in California as it distributes or sells its products to California consumers.

13 **1.4 General Allegations**

14 EHA alleges that HHF manufactures, imports, sells, and/or distributes for sale Harmony House
15 Dehydrated Mushrooms that contain mercury. EHA further alleges that HHF does so without providing
16 a sufficient health hazard warning as required by Proposition 65 and related Regulations. HHF denies
17 these allegations and asserts that its products are safe and in compliance with all applicable laws, rules
18 and regulations.

19 **1.5 Notice of Violation**

20 On or around November 11, 2022, EHA served Defendant HHF, Amazon.com Inc.
21 (“Amazon”), the California Attorney General, and all other required public enforcement agencies with
22 a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that HHF had violated
23 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated
24 with exposures to Mercury contained in dried mushrooms products, including but not limited to
25 Harmony House Dehydrated Mushrooms manufactured or processed by HHF that allegedly contain
26 Mercury and are imported, sold, shipped, delivered, or distributed for sale to consumers in California
27 by Releasees (as defined in section 4.1).

28 No public enforcer has commenced or is otherwise prosecuting an action to enforce the

1 violations alleged in the Notice.

2 **1.6 Product Description**

3 The products covered by this Consent Judgment are dried mushrooms products, including but
4 not limited to Harmony House Dehydrated Mushrooms manufactured or processed by HHF that
5 allegedly contain Mercury and are imported, sold, shipped, delivered, or distributed for sale to
6 consumers in California by Releasees (as defined in section 4.1) (“Covered Products”).

7 **1.7 State of the Pleadings**

8 On or around March 1, 2023, EHA filed a Complaint against HHF for the alleged violations of
9 Proposition 65 that are the subject of the Notice (“Complaint”).

10 **1.8 No Admission**

11 HHF 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 applicable laws,
14 rules and regulations. Nothing in this Consent Judgment shall be construed as an admission of any fact,
15 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
16 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
17 of law. This Section shall not, however, diminish or otherwise affect HHF’s obligations,
18 responsibilities, and duties under this 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 HHF 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 this
26 Consent Judgment is approved and entered as a judgment of the Court, as discussed in Section 5.

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of the Covered Products**

3 Beginning thirty (30) days after the Effective Date, HHF shall be permanently enjoined from
4 manufacturing, distributing, or directly selling in the State of California, any Covered Product that
5 exposes a person to a “Mercury Reproductive Limit” of more than 0.3 micrograms of Mercury based
6 on a single serving per day (“Reformulation Standard”) unless such Covered Products comply with the
7 warning requirements of Section 2.2. The “Mercury Reproductive Limit” shall be calculated by
8 multiplying the recommended serving size in Covered Product by the concentration of Mercury in
9 Covered Products. As used in this Section 2, “distributed for sale in CA” means to directly ship Covered
10 Products into California or to sell Covered Products to a distributor that Defendants knows will sell
11 Covered Products in California.

12 In the event OEHHA at any time adopts a safe harbor level for Mercury in Covered Products
13 that is higher than the Reformulation Standard, HHF is permitted to use the established safe harbor
14 level without further notice to EHA. Subject to Section 2.3 below, if EHA alleges that any Covered
15 Product fails to qualify as a reformulated Covered Product (for which EHA alleges that no warning has
16 been provided), then EHA shall inform HHF in writing in a reasonably prompt manner of its test results,
17 including information sufficient to permit HHF to identify the Covered Product(s) at issue.

18 **2.2 Clear and Reasonable Warnings**

19 For Covered Products that contain Mercury in a concentration exceeding the Reformulation
20 Standard set forth in section 2.1 above, and which are distributed or directly sold by HHF in the State
21 of California on or after the Effective Date, HHF shall provide one of the following warning statements.

22 **Option 1:**

23 **WARNING:** Consuming this product can expose you to [chemicals
24 including] Mercury, which is/are known to the State of California to
25 cause birth defects or other reproductive harm. For more information,
 go to www.P65Warnings.ca.gov/food.

26 **Option 2:**

27 **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov.

1 This warning statement shall be prominently displayed on the Covered Products, on the packing
2 of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with
3 such conspicuousness, as compared with other words, statements, or designs as to render it likely to be
4 read and understood by an ordinary individual prior to sale. If the warning statement is displayed on
5 the Covered Products' packaging, it must be in a type size no smaller than the largest type size used
6 for other consumer information (warnings, directions for use, ingredient lists, and nutritional
7 information) on the product. In no case shall a warning statement displayed on the Covered Products'
8 packaging appear in a type size smaller than 6-point type. If the Covered Products' packaging contains
9 consumer information in a foreign language, a warning statement in that language is required. The
10 same warning shall be posted on any websites under the exclusive control of HHF where Covered
11 Products are sold into California. HHF shall instruct any third-party website to which it directly sells
12 its Covered Products to include the same warning as a condition of selling the Covered Products in
13 California.

14 **2.3 Sell-Through Period**

15 Notwithstanding anything else in this Consent Judgment, Covered Products that are
16 manufactured, packaged, or put into commerce on or after the Effective Date, shall be subject to the
17 release of liability pursuant to this Consent Judgment, without regard to when such Covered Products
18 were, or are in the future, distributed or sold to customers. As a result, the obligations of HHF, or any
19 Releasees (if applicable), stated in this Section 2 do not apply to Covered Products manufactured,
20 packaged, or put into commerce on or before the Effective Date.

21 **3. MONETARY SETTLEMENT TERMS**

22 **3.1 Settlement Amount**

23 HHF shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all the
24 claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil
25 penalties in the amount of three thousand dollars (\$3,000.00) pursuant to Health and Safety Code
26
27
28

1 section 25249.7(b) and attorneys' fees and costs in the amount of forty seven thousand dollars
2 (\$47,000.00) pursuant to Code of Civil Procedure section 1021.5.

3 **3.2 Civil Penalty**

4 The portion of the settlement attributable to civil penalties shall be allocated according to Health
5 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
6 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
7 twenty-five percent (25%) of the penalty paid to EHA individually. The three thousand dollars
8 (\$3,000.00) in civil penalties shall be paid as follows:

- 9
- 10 • One payment of \$2,250.00 to OEHHA, due 30 (thirty) days after Plaintiff provides
11 Notice of Entry of the Consent Judgment to HHA.
 - 12 • One payment of \$750.00 to EHA, due 30 (thirty) days after Plaintiff provides Notice of
13 Entry of the Consent Judgment to HHA.

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

15 Isaac Fayman
16 Environmental Health Advocates
225 Broadway, Suite 2100
San Diego, CA 92101

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

19 For United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
P.O. Box 4010
23 Sacramento, CA 95812-4010

24 For Federal Express 2-Day Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
27 1001 I Street
Sacramento, CA 95814

1 HHF agrees to provide EHA’s counsel with a copy of the check payable to OEHHA,
2 simultaneous with its penalty payment to EHA.

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

- 5 • “Environmental Health Advocates, Inc.” (EIN: 84-2322975) at the address provided above.
- 6 • “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA
7 95814.

8 All payments referenced in this section shall be paid within fourteen (14) days after Plaintiff
9 provides Notice of Entry of the Consent Judgment to HHA.

10 **3.3 Attorney’s Fees and Costs**

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

15 HHF shall provide its payment for civil penalty and for attorneys’ fees and costs to EHA’s
16 counsel by physical check or by electronic means, including wire transfers, at HHF's discretion, as
17 follows: forty seven thousand dollars (\$47,000.00) in Attorney’s Fees and Costs shall be paid as
18 follows:

- 19 • One payment of \$2,250.00, due thirty (30) days after Plaintiff provides Notice of Entry of the
20 Consent Judgment.
- 21 • One payment of \$2,250.00, due sixty (60) days after Plaintiff provides Notice of Entry of the
22 Consent Judgment.
- 23 • One payment of \$2,250.00, due ninety (90) days after Plaintiff provides Notice of Entry of the
24 Consent Judgment.
- 25 • One payment of \$2,250.00, due one hundred twenty (120) days after Plaintiff provides Notice
26 of Entry of the Consent Judgment.
- 27 • One payment of \$2,250.00, due one hundred fifty (150) days after Plaintiff provides Notice of
28 Entry of the Consent Judgment.

- 1 • One payment of \$2,250.00, due one hundred eighty (180) days after Plaintiff provides Notice
2 of Entry of the Consent Judgment.
- 3 • One payment of \$2,250.00, due two hundred ten (210) days after Plaintiff provides Notice of
4 Entry of the Consent Judgment.
- 5 • One payment of \$2,250.00, due two hundred forty (240) days after Plaintiff provides Notice
6 of Entry of the Consent Judgment.
- 7 • One payment of \$2,250.00, due two hundred seventy (270) days after Plaintiff provides Notice
8 of Entry of the Consent Judgment.
- 9 • One payment of \$2,250.00, due three hundred (300) days after Plaintiff provides Notice of
10 Entry of the Consent Judgment.
- 11 • One payment of \$2,250.00, due three hundred thirty (330) days after Plaintiff provides Notice
12 of Entry of the Consent Judgment.
- 13 • One payment of \$2,250.00, due three hundred sixty (360) days after Plaintiff provides Notice
14 of Entry of the Consent Judgment.
- 15 • One payment of \$20,000.00, due three hundred ninety (390) days after Plaintiff provides Notice
16 of Entry of the Consent Judgment. EHA agrees to waive to this payment if all other payments
17 are timely made.

18 The attorney fee payments shall be made payable to Entorno Law, LLP. The address for this
19 entity is:

20 Noam Glick
21 Entorno Law, LLP
22 225 Broadway, Suite 1900
23 San Diego, CA 92101

24 **4. CLAIMS COVERED AND RELEASE**

25 **4.1 EHA's Public Release of Proposition 65 Claims**

26 Plaintiff, acting on its own behalf and in the public interest, releases HHF and Amazon, and
27 each of their parents, subsidiaries, affiliated entities under common ownership or control, its directors,
28 officers, shareholders, managers, investors, principals, agents, employees, attorneys, insurers,
accountants, predecessors, successors, and assigns ("Defendant Entities"), each entity to or from whom

1 Defendant Entities directly or indirectly distribute, provide, receive, ship, sell, or supply the Covered
2 Products, including but not limited to upstream suppliers or downstream distributors, wholesalers,
3 customers, retailers and marketplaces, franchisees, franchisors, cooperative members, suppliers,
4 licensees, and licensors, and all of the foregoing entities' owners, directors, shareholders, managers,
5 members, officers, agents, principals, employees, attorneys, insurers, accountants, representatives,
6 predecessors, successors, and assigns (collectively with "Defendant Entities," referred to as the
7 "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on
8 exposure to Mercury from Covered Products as set forth in the Notice and/or Complaint. Compliance
9 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
10 exposures to Mercury from Covered Products as set forth in the Notice and/or Complaint. This Consent
11 Judgment is a full, final, and binding resolution of all claims under Proposition 65 that were or could
12 have been asserted against HHF and/or Releasees for failure to comply with Proposition 65 for alleged
13 exposure to Mercury from Covered Products. This release does not extend to any third-party retailers
14 selling the product on a website who, after receiving instruction from HHF to include a warning as set
15 forth above in section 2.2, do not include such a warning.

16 **4.2 EHA's Individual Release of Claims**

17 EHA, in its individual capacity, also provides a release to HHF, Amazon, and/or Releasees,
18 which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
19 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every
20 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
21 alleged or actual exposures to any chemical regulated by Proposition 65 in Covered Products
22 manufactured, imported, sold, or distributed by HHF before the Effective Date.

23 **4.3 HHF's Release of EHA**

24 HHF on its own behalf, and on behalf of Releasees as well as its past and current agents,
25 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
26 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
27 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
28 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

1 **4.4 Mutual Release of Known and Unknown Claims**

2 The Parties, in their individual capacities, certify that they have read the following provisions of
3 California Civil Code Section 1542:

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

9 The Parties, in their individual capacities, expressly waive and relinquish all rights and benefits
10 which they may have under California Civil Code Section 1542 to the fullest extent such provisions may
11 lawfully be waived. The Parties acknowledge that this Section 4.4 applies only as between the Parties and
12 does not extend to the general public (but does extend to and include any claim against the Releasees).

13 **No Other Known Claims or Violations**

14 EHA and EHA’s counsel affirm that they are not presently aware of any actual or alleged
15 violations of Proposition 65 by HHF or for which HHF bears legal responsibility other than those that
16 are fully resolved by this Consent Judgment.

17 **4.5 Public Benefit**

18 It is HHF’s understanding that the commitments it has agreed to herein, and actions to be
19 taken by HHF under this Consent Judgment confer a significant benefit to the general public, as set
20 forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the
21 intent of HHF that to the extent any other private party serves a notice and/or initiates an action
22 alleging a violation of Proposition 65 with respect to HHF’s alleged failure to provide a warning
23 concerning actual or alleged exposure to Mercury from the Covered Products it has distributed, sold,
24 or offered for sale in California, or will distribute, sell, or offer for sale in California, such private
25 party action would not confer a significant benefit on the general public as to those Covered Products
26 addressed in this Consent Judgment, provided that HHF is in material compliance with this Consent
27 Judgment.
28

1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

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

8 **7. GOVERNING LAW**

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

15 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
16 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
17 requirements of Proposition 65; or if Mercury cases are permanently enjoined by a court of competent
18 jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First
19 Amendment rights with respect to Mercury in Covered Products or Covered Products substantially
20 similar to Covered Products, then HHF shall be relieved of its obligation to comply with Section 2
21 herein.

22 **8. ENFORCEMENT**

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

25 **9. NOTICE**

26 Unless otherwise specified herein, all correspondence and notice required by this Consent
27 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
28

1 mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to
2 the following addresses:

3 If to HHF:

4 Jacob P. Wilson
5 Conkle, Kremer & Engel, PLC
6 3130 Wilshire Boulevard, Suite 500
7 Santa Monica, CA
8 j.wilson@conklelaw.com

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101
noam@entornolaw.com

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

11 **10. COUNTERPARTS; DIGITAL SIGNATURES**

12 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
13 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
14 same document.

15 **11. POST EXECUTION ACTIVITIES**

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

25 **12. MODIFICATION**

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

1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
3 have read, understand, and agree to all of the terms and conditions contained herein.

4 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

5 If a dispute arises with respect to either Party's compliance with the terms of this Consent
6 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
7 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
8 in the absence of such a good faith attempt to resolve the dispute beforehand. HHF shall, within thirty
9 (30) days following such notice, provide EHA with one or more testing results of the Product from an
10 accredited independent third-party laboratory in the United States, demonstrating compliance with
11 Section 2.1. EHA shall then retest its own sample(s), using an accredited independent third-party
12 laboratory in the United States. In the event that both HHF's and EHA's tests do not demonstrate
13 compliance with Section 2.1, the parties shall first attempt to resolve the matter prior to EHA taking
14 any further legal action.

15 **15. ENTIRE AGREEMENT**

16 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
17 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: 1/24/24

Date: 1-23-24

24
25 By: 
26 ENVIRONMENTAL HEALTH
27 ADVOCATES, INC.

By: 
HARMONY HOUSE FOODS, INC.

IT IS SO ORDERED.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Date: _____

JUDGE OF THE SUPERIOR COURT