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Environmental Health Advocates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH
ADVOCATES, INC.,

Plaintiff,

v.

GOYA FOODS OF CALIFORNIA, INC., a
California corporation; NORTH PARK
PRODUCE, INC., a California corporation;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 25CV106776

[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 Goya Foods of California, Inc. ("Defendant" or "Goya") with EHA and
5 Goya each individually referred to as a "Party" and collectively referred to as the "Parties."

6 **1.2 General Allegations**

7 EHA alleges that Goya manufactures, imports, sells, and distributes for sale Goya - Frozen
8 Chopped Spinach that contains lead and cadmium. EHA further alleges that Goya does so without
9 providing a sufficient health hazard warning as required by Proposition 65 and related Regulations.
10 Goya denies these allegations and asserts that its products are safe and in compliance with all applicable
11 laws, rules and regulations.

12 **1.3 Notice of Violation**

13 On or around June 21, 2024, EHA served Defendant Goya, North Park Produce, Inc., the
14 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice
15 of Violation of Proposition 65 ("Notice"). The Notice alleged that Goya had violated Proposition 65
16 by failing to sufficiently warn consumers in California about their exposures to lead in the Covered
17 Products (as defined in section 1.4). This Notice was subsequently amended on August 9, 2024 to
18 properly serve the Chief Executive Officers of the notices parties and add cadmium as a violating
19 chemical.

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

22 **1.4 Product Description**

23 The products covered by this Consent Judgment are frozen spinach products, including but not
24 limited to Goya - Frozen Chopped Spinach manufactured or processed by Goya that allegedly contain
25 lead and cadmium and are imported, sold, shipped, delivered, or distributed for sale to consumers in
26 California by Releasees (as defined in section 4.1) ("Covered Products").

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1 **1.5 State of the Pleadings**

2 On or around January 14, 2025, EHA filed a Complaint against Goya for the alleged violations
3 of Proposition 65 that are the subject of the Notice (“Complaint”).

4 **1.6 No Admission**

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

13 **1.7 Jurisdiction**

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

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this
20 Consent Judgment is approved by the Court, as discussed in Section 5.

21 **1.11 Compliance Date**

22 For purposes of this Consent Judgment, the term “Compliance Date” means 30 days from the
23 date on which this Consent Judgment is approved and entered as a judgment of the Court, as discussed
24 in Section 5.

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1 **SHORT**
2 **FORM**

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

4
5 **OR**

6 **SHORT**
7 **FORM**

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

9
10 **SHORT FORM ON**
11 **A PRODUCT**
12 **MANUFACTURED**
13 **/LABELED PRIOR**
14 **TO 1/1/28,**
15 **REGARDLESS OF**
16 **DATE OF SALE**

OR

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

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

25 As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold
26 online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603 must
27 be provided via of the following methods: (1) A warning on the product display page; (2) A clearly
28 marked hyperlink using the word **“WARNING”** or the words **“CA WARNING”** or **“CALIFORNIA**
WARNING” on the product display page that links to the warning; or (3) An otherwise prominently
displayed warning provided to the purchaser prior to completing the purchase. If a warning is provided
using the short-form label content pursuant to Section 25602(a)(4), the warning provided on the website

1 may use the same content. For purposes of this section, a warning is not prominently displayed if the
2 purchaser must search for it in the general content of the website. For internet purchases made prior to
3 1/1/28, a retail seller is not responsible under Section 25600.2(e)(4) for conspicuously posting or
4 displaying the new warning online until 60 calendar days after the retailer receives a warning or a written
5 notice under Section 25600.2(b) and (c) which updates a short-form warning compliant with Section
6 25603(c) with content compliant with Section 25603(b). These requirements extend to any websites
7 under the exclusive control of Goya where Covered Products are sold into California. In addition, Goya
8 shall instruct any third-party website to which it directly sells its Covered Products to include the same
9 online warning, as set forth above, as a condition of selling the Covered Products in California.

10 **2.3 Sell-Through Period**

11 Notwithstanding anything else in this Consent Judgment, Covered Products that are
12 manufactured, packaged, or put into commerce on or before the Effective Date shall be subject to the
13 release of liability pursuant to this Consent Judgment, without regard to when such Covered Products
14 were, or are in the future, distributed or sold to customers. As a result, the obligations of Goya, or any
15 Releasees (if applicable), stated in this Section 2 do not apply to Covered Products manufactured,
16 packaged, or put into commerce between the date this Agreement is executed and the Effective Date.

17 **3. MONETARY SETTLEMENT TERMS**

18 **3.1 Settlement Amount**

19 Goya shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all the
20 claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil
21 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
22 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00)
23 pursuant to Code of Civil Procedure section 1021.5.

24 **3.2 Civil Penalty**

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

1 (\$5,000.00) in civil penalties shall be paid as follows:

- 2 • One payment of \$3,750.00 to OEHHHA, due fourteen (14) days after the Effective Date.
- 3 • One payment of \$1,250.00 to EHA, due fourteen (14) days after the Effective date.

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

5
6 Environmental Health Advocates
225 Broadway, Suite 2100
7 San Diego, CA 92101

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

9 For United States Postal Service Delivery:

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

14 For Federal Express 2-Day Delivery:

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

17 Goya agrees to provide EHA's counsel with a copy of the check payable to OEHHHA,
18 simultaneous with its penalty payment 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 above.
- 22 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

23 All payments referenced in this section shall be paid within fourteen (14) days of the date the Court
24 approves EHA's motion to approve this Consent Judgment.

25 **3.3 Attorney's Fees and Costs**

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

1 and negotiating a settlement in the public interest.

2 Goya shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's
3 counsel by physical check or by electronic means, including wire transfers, at Goya's discretion, as
4 follows: forty-five thousand dollars (\$45,000.00) in Attorney's Fees and Costs shall be paid as one
5 payment of \$45,000.00, due fourteen (14) days after the Effective Date.

6 The attorney fee payments shall be made payable to Entorno Law, LLP and delivered to:

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

10 **4. CLAIMS COVERED AND RELEASE**

11 **4.1 EHA's Public Release of Proposition 65 Claims**

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

2.2, do not include such a warning.

4.2 EHA's Individual Release of Claims

EHA, in its individual capacity, also provides a release to Goya and/or Releasees, which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages (including civil penalties), losses, claims, liabilities, and demands of every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to lead and cadmium in Covered Products manufactured, imported, sold, or distributed by Goya before the Effective Date.

4.3 Goya's Release of EHA

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

4.4 No Other Known Claims or Violations

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

5. COURT APPROVAL

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

6. SEVERABILITY

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

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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California as
3 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
4 rendered inapplicable for reasons, including but not limited to changes in the law; or in the event the
5 California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues
6 an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition
7 65; or if lead and cadmium cases are permanently enjoined by a court of competent jurisdiction; or if
8 Proposition 65 is determined to be preempted by federal law or a burden on First Amendment rights
9 with respect to lead and cadmium in Covered Products or products substantially similar to Covered
10 Products, then Goya may seek relief from the injunctive obligations imposed by this Consent Judgment
11 to the extent any Covered Products are so affected by modifying the agreement via the mechanisms set
12 forth in Section 12.

13 **8. ENFORCEMENT**

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

16 **9. NOTICE**

17 Unless otherwise specified herein, all correspondence and notice required by this Consent
18 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
19 mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to
20 the following addresses:

21 If to Goya:

22 Thomas V. Wynsma
23 Shook, Hardy & Bacon L.L.P.
24 5 Park Plaza, Suite 1600
 Irvine, CA 92614
 twynsma@shb.com

21 If to EHA:

22 Noam Glick
23 Entorno Law, LLP
24 225 Broadway, Suite 2100
 San Diego, CA 92101
 noam@entornolaw.com

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

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1 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

5 **11. POST EXECUTION ACTIVITIES**

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

15 **12. MODIFICATION**

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

19 **13. AUTHORIZATION**

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

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

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

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15. ENTIRE AGREEMENT

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

AGREED TO:

AGREED TO:

Date: May 5, 2025

Date: May 13, 2025

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: 
GOYA FOODS OF CALIFORNIA, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT