

1 ALAN M. CAPLAN (SBN 49315)
2 APRIL M. STRAUSS, Of Counsel (SBN 163327)
3 BUSHNELL, CAPLAN & FIELDING, LLP
4 221 Pine Street, Suite 600
5 San Francisco, CA 94104
6 Telephone: (415) 217-3800
7 Facsimile: (415) 217-3820

8
9 Attorneys for Plaintiff ENVIRONMENTAL LAW FOUNDATION
10 *(Additional Attorneys on Signature Page)*

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION

14
15 IN RE VINEGAR LITIGATION

16
17 CASE NO. CGC-03-421108
18 (consolidated with Nos. CGC-04-428945
19 and CGC-04-435440)

20
21 CONSENT JUDGMENT AS TO
22 DEFENDANTS TRADER JOE'S
23 COMPANY, WHOLE FOODS MARKET
24 CALIFORNIA, INC., MRS. GOOCH'S
25 NATURAL FOODS, INC. AND STATER
26 BROS. MARKETS; ORDER
27
28

1 **INTRODUCTION**

2 1.1 On June 5, 2003, the Environmental Law Foundation, individually and on
3 behalf of the general public ("ELF") filed a Complaint for civil penalties, restitution and
4 injunctive relief ("Complaint") in San Francisco County Superior Court ("Action"). Trader
5 Joe's Company and Whole Foods Market, Inc. (erroneously named as "Whole Foods, Inc.")
6 are two of the defendants in the Action. Whole Foods Market, Inc. does not engage in the
7 grocery business in the State of California. Two of its subsidiaries, Whole Foods Market
8 California, Inc. and Mrs. Gooch's Natural Foods, Inc. (hereinafter collectively referred to as
9 "Whole Foods"), are the proper defendants and are hereby deemed substituted for Whole
10 Foods Market, Inc., which is dismissed with prejudice and shall bear its own costs.

11 On October 13, 2004, Environmental Law Foundation filed the same Complaint
12 against other defendants. One of those defendants is Stater Bros. Markets. (The two actions
13 shall be collectively referred to as "Actions.")

14 Defendants Trader Joe's Company, Whole Foods, and Stater Bros. Markets shall
15 hereinafter be referred to as "Settling Defendants."

16 1.2 Settling Defendants are corporations that employ more than ten persons and sell
17 Wine Vinegars to persons in the State of California. For purposes of this Consent Judgment,
18 the term "Wine Vinegar" shall have the meaning set forth in section 6.2.

19 1.3 ELF's Complaint alleges that the Settling Defendants manufactured, distributed
20 and/or sold Wine Vinegar containing lead in an amount that resulted in exposures to
21 consumers in violation of the provisions of the Safe Drinking Water and Toxic Enforcement
22 Act of 1986 and Health & Safety Code §§ 25249.5, *et seq.* (Proposition 65), and Business &
23 Professions Code §§ 17200, *et seq.* ("Unfair Competition Law"), by knowingly and
24 intentionally exposing persons to a chemical known to the State of California to cause
25 reproductive toxicity, namely lead, without first providing a clear and reasonable warning to
26 such individuals.

1 1.4 For purposes of this Consent Judgment only, the parties stipulate that this Court
2 has jurisdiction over allegations of violations contained in the Complaints and personal
3 jurisdiction over the Settling Defendants as to the acts alleged in the Complaints, that venue is
4 proper in the County of San Francisco and that this Court has jurisdiction to enter this
5 Consent Judgment as a resolution of all claims which could have been raised in the
6 Complaints based on the facts alleged therein.

7 1.5 Settling Defendants have generally and specifically denied the allegations in the
8 Complaint.

9 1.6 For the purpose of avoiding prolonged litigation, the parties enter into this
10 Consent Judgment as a full settlement of all claims that were raised in the Complaints based
11 on the facts alleged therein, or which could have been raised in the Complaints arising out of
12 the facts alleged therein. By execution of this Consent Judgment, Settling Defendants do not
13 admit any violations of Proposition 65 or the Unfair Competition Law or any other law and
14 specifically deny that they have committed any such violations and maintain that all Wine
15 Vinegar products they have sold and distributed in California have been and are in
16 compliance with all laws. Nothing in this Consent Judgment shall be construed as an
17 admission by any Settling Defendant of any fact, finding, conclusion, issue of law, or
18 violation of law. Settling Defendants do not admit that 34 parts per billion ("ppb") limit set
19 forth in paragraph 2.1 of this Consent Judgment is the appropriate limit for requiring a
20 warning based on consumption of wine vinegar, and adopt this limit for purposes of this
21 settlement only. This paragraph shall not diminish or affect the responsibilities and duties of
22 the parties under this Consent Judgment.

23 1.7 For the purposes of this Consent Judgment, the term "Effective Date" shall
24 mean the date upon which this Consent Judgment has been approved and entered as a
25 Judgment by the Court and has become final and not further appealable.

1 2. CLEAR AND REASONABLE WARNINGS

2 2.1 Warning Standard. Settling Defendants shall not sell or offer for sale in
3 California Wine Vinegars that contain lead at levels that exceed 34 ppb unless warnings are
4 given in accordance with one or more of the provisions set forth below. Settling Defendants
5 shall have the warnings placed no later than sixty (60) days after the Effective Date.

6 a. Shelf Warning. Settling Defendants may provide warning by placing a
7 notice on the top shelf of or at eye level on any rack of shelves in Settling Defendants' stores
8 where Wine Vinegars are sold. The notice may be either parallel or perpendicular to shelf
9 line. The warning shall state as follows: "CALIFORNIA PROPOSITION 65 WARNING:
10 The Red Wine Vinegars and Balsamic Vinegars on these shelves contain lead, a chemical
11 known to the State of California to cause birth defects and other reproductive harm." Each
12 sign shall be no smaller than 2.25 inches x 5.5 inches, and the form and type shall be
13 substantially similar to that which is attached hereto as Exhibit A.

14 b. Product Labeling. Settling Defendants may provide warning by placing
15 the following language on the packing, labeling or directly onto each bottle of a Red or
16 Balsamic Wine Vinegar product: "WARNING: This product contains lead, a chemical known
17 to the State of California to cause birth defects and other reproductive harm." Product label
18 warnings shall be placed with such conspicuousness as compared with other words,
19 statements, designs and/or devices as to render it likely to be read and understood by an
20 ordinary individual under customary conditions of use or purchase.

21 2.2 Any Wine Vinegar sold by a Settling Defendant may be sold on a shelf that
22 utilizes warnings with the language as described in paragraph 2.1(a) of this Consent
23 Judgment, unless (1) that Settling Defendant has conducted testing in accordance with the
24 testing requirements referenced in paragraph 2.4 demonstrating that a particular Wine
25 Vinegar contains lead in an amount less than 34 ppb, or (2) has received test data from the
26 supplier from testing conducted in accordance with the testing requirements referenced in
27
28

1 paragraph 2.4 demonstrating that a particular Wine Vinegar contains lead in an amount less
2 than 34 ppb.

3 a. In the event that a Settling Defendant has received test data complying with the
4 first sentence of this section and with the testing requirements referenced in paragraph 2.4
5 demonstrating that a particular Wine Vinegar contains lead in an amount less than 34 ppb,
6 and a Settling Defendant intends to offer such vinegar for sale, the Settling Defendant shall
7 utilize the procedures set forth in paragraph 2.4a.

8 b. Within 60 days of the Effective Date, each Settling Defendant shall provide in
9 writing substantially the following notice to each of its suppliers of Wine Vinegar:

10 “ [Settling Defendant] is a party to a Consent Judgment in the Superior
11 Court of the State of California that requires [Settling Defendant] to provide the
12 following warning (the “Proposition 65 Warning”) to purchasers of red wine and
balsamic vinegars:

13 **CALIFORNIA PROPOSITION 65 WARNING:**

14 The Red Wine Vinegars and Balsamic Vinegars on these shelves contain
lead, a chemical known to the State of California to cause birth defects and
other reproductive harm.

15 The Proposition 65 Warning is not required for any vinegar that contains
16 less than 34 parts per billion of lead, as demonstrated by a required test protocol. If
you believe any red wine or balsamic vinegar supplied by you contains less than
17 34 parts per billion of lead and does not require a warning for this reason, and you
wish to exempt any such vinegar from the warning requirement, please contact
18 [Contact person at Settling Defendant] to obtain a description of the test
requirements and procedures that you must follow.”

19 2.3 Any changes to the language or format of the Warning required by this section
20 shall be made only after obtaining ELF’s approval, unless such changes are allowed under
21 paragraphs 2.6, 4.1, 10.1, or 10.2 of this Consent Judgment.

22 2.4 Testing shall be conducted by a testing laboratory with Environmental
23 Laboratory Certification from the State of California, Department of Health Services,
24 Environmental Laboratory Accreditation Program. Any such test must be conducted using
25 inductively coupled plasma mass spectrometry or graphite furnace atomic absorption
26 spectrometry and employ sample preparation and evaluation techniques generally accepted in
27 the scientific community. As used in this Consent Judgment “less than 34 ppb” means that 10
28

1 samples of each individual product have been tested in accordance with the requirements set
2 forth in this Consent Judgment and that the raw results from the ten (10) samples tested have
3 a lead concentration with an arithmetic mean of less than 34 parts per billion lead and no
4 more than one sample exceeding 50 parts per billion lead, regardless of the source of the lead.

5 a. At least 60 days before any proposed discontinuance of any warnings pursuant
6 to this paragraph, Settling Defendant proposing such discontinuance shall provide to ELF the
7 results, the underlying raw data, and a description of the test methodology used. Should ELF
8 dispute for any reason the discontinuance of any warning, the dispute may be submitted by
9 either party to the Court for resolution on motion. Unless and until such motion is resolved
10 favorably to Settling Defendant, the warning in question may not be discontinued. If there is
11 no objection or the objection is resolved favorably to the Settling Defendant, the subject
12 product that tests less than 34 ppb shall not bear a warning label under paragraph 2.1(b) nor
13 placed on shelf referenced by a shelf sign under paragraph 2.1(a).

14 b. Nothing in this Consent Judgment shall require any Settling Defendant or
15 supplier of Wine Vinegar to conduct any testing of any such vinegar.

16 2.5 Provisions of the Warning in paragraphs 2.1 or 2.2 of this Consent Judgment
17 shall fully and completely satisfy Settling Defendants' obligations to provide a warning for
18 all Wine Vinegars with respect to the presence of lead under Proposition 65, the California
19 Business and Professions Code, and all federal, state or local laws, regulations, or ordinances.

20 2.6 If ELF settles this, or any lawsuit regarding the same allegations as in the
21 Complaints, wherein any retailer is permitted to provide a warning regarding lead in Wine
22 Vinegar that is different in content, method or appearance, any Settling Defendant shall, at its
23 sole discretion, have the option to warn in the manner described in section 2.1, or in the
24 manner set forth in the subsequent settlement.

1 **3. MONETARY RELIEF**

2 **3.1 Settling Defendants shall pay to ELF the sum of \$150,000 (“Settlement**
3 **Proceeds”)** in lieu of any claims for attorneys’ fees, costs, or penalties. The Settlement
4 **Proceeds shall be delivered to one of ELF’s counsel, Alan M. Caplan, Bushnell, Caplan &**
5 **Fielding, LLP, 221 Pine Street, Suite 600, San Francisco, California 94104, within five (5)**
6 **business days after the Effective Date. These Settlement Proceeds shall be delivered to**
7 **ELF’s counsel, and ELF shall have the sole and exclusive responsibility of apportioning and**
8 **paying to the State of California any portion of the Settlement Proceeds as required by**
9 **California Health & Safety Code § 25249.12(d), and Settling Defendants shall have no**
10 **liability if payments to the State of California are not made by ELF.**

11 **3.2 This payment shall be the only monetary obligation of the Settling Defendants**
12 **with respect to this Consent Judgment; each party shall bear its own attorneys’ fees and costs.**

13 **3.3 ELF agrees to comply with the reporting requirements referenced in California**
14 **Health & Safety Code § 25249.7(f). Pursuant to the regulations promulgated under that**
15 **section, ELF shall present this Consent Judgment to the California Attorney General’s Office**
16 **within two (2) days after receipt of all necessary signatures. ELF also agrees to serve a copy**
17 **of the Noticed motion to approve and enter the Consent Judgment on the Attorney General’s**
18 **Office at least forty-five (45) days prior to the date set for hearing of the motion in the**
19 **Superior Court of the City and County of San Francisco.**

20 **3.4 The Settling Parties acknowledge that, pursuant to Health & Safety Code §**
21 **25249.7, a noticed motion must be filed to obtain judicial approval of the Consent Judgment.**
22 **Accordingly, the Settling Parties agree to file a joint motion for approval of the settlement,**
23 **which shall be prepared by ELF within a reasonable period of time after the date this**
24 **agreement is signed by all parties.**

25 **4. MODIFICATION OF CONSENT JUDGMENT**

26 **4.1 This Consent Judgment may be modified by written agreement between ELF**
27 **and any Settling Defendant, after noticed motion, and upon entry of a modified Consent**
28

1 Judgment by the Court thereon, or upon motion of ELF or the Settling Defendant as provided
2 by law or upon entry of a modified Consent Judgment by the Court.

3 5. APPLICATION OF CONSENT JUDGMENT

4 5.1 This Consent Judgment shall apply to and be binding upon ELF and the Settling
5 Defendants, their divisions, subdivisions, parent entities or subsidiaries, and successors or
6 assigns of either of them. officers, directors, and shareholders.

7 5.2 The provisions of Paragraph 2 of this Consent Judgment shall apply only to
8 sales of Wine Vinegar within the State of California.

9 5.3 Each signatory to this Consent Judgment certifies that he or she is fully
10 authorized by the party that he or she represents to enter into and execute the Consent
11 Judgment on behalf of the party represented and legally bind that party.

12 6. CLAIMS COVERED

13 6.1 This Consent Judgment is a final and binding resolution between ELF and the
14 Settling Defendants, of any violation of Proposition 65 and Business and Professions Code
15 section 17200, *et seq.*, or any other statutory or common law claim that could have been
16 asserted against the Settling Defendants for failure to provide clear, reasonable and lawful
17 warnings of exposures to lead that result from the ingestion of Wine Vinegar.

18 6.2 For purposes of this Consent Judgment, the term "Wine Vinegar" shall mean
19 any vinegar, including but not limited to balsamic vinegar, that contains wine as a constituent.
20 Nothing in this section shall be construed to affect the liability of any defendant in these
21 Actions other than the Settling Defendants.

22 6.3. Release of Settling Defendant. In further consideration of the promises and
23 agreements herein contained, and for the payments to be made pursuant to Paragraph 3.1,
24 ELF, on behalf of itself, its past and current agents, representatives, attorneys, successors
25 and/or assignees, and in the interest of the general public, hereby waives all rights to institute
26 or participate in, directly or indirectly, any form of legal action and releases all claims,
27 including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities,
28

1 demands, obligations, damages, costs, fines penalties, losses or expenses, including, but not
2 limited to, investigation fees, expert fees and attorneys' fees of any nature whatsoever,
3 whether known or unknown, fixed or contingent against the Settling Defendant and each of
4 its customers, owners, parent companies, corporate affiliates, subsidiaries and its respective
5 officers, directors, attorneys, representatives, shareholders, agents, and employees arising
6 under Proposition 65, Business and & Professions Code § 17200, *et seq.* and Business &
7 Professions Code § 17500, *et seq.*, related to the Settling Defendants' alleged failure to warn
8 about exposures to or identification of lead contained in Wine Vinegars.

9 ELF and the Settling Defendants further agree and acknowledge that this Consent
10 Judgment is a full, final, and binding, resolution of any violations of Proposition 65, Business
11 & Professions Code § 17200, *et seq.* and Business & Professions Code § 17500, *et seq.*, that
12 have been or could have been asserted in the Complaints against the Settling Defendants for
13 their alleged failure to provide clear and reasonable warnings of exposure to or identification
14 of lead contained in Wine Vinegars.

15 In addition, ELF, on behalf of its, itself, attorneys and its agents, waives all rights to
16 institute or participate in, directly or indirectly, any form of legal action and releases all
17 claims against the Settling Defendants arising under Proposition 65, Business & Professions
18 Code § 17200, *et seq.* and Business & Professions Code § 17500, *et seq.*, related to the
19 Settling Defendants' alleged failures to warn about exposures to or identification of lead
20 contained in the Wine Vinegars and for all actions or statements regarding the alleged failures
21 to warn about exposures to or identification of lead contained in the Wine Vinegars made by
22 Settling Defendants or their attorneys or representatives, in the course of responding to those
23 alleged violations of Proposition 65, Business & Professions Code § 17200, or Business &
24 Professions Code § 17500, as alleged in the Complaint.

25 It is specifically understood and agreed that ELF and the Settling Defendants intend
26 that Settling Defendants' compliance with the terms of this Consent Judgment will resolve all
27 issues and liability, now and in the future, concerning the Settling Defendants' alleged
28

1 violation of the requirements of Proposition 65, Business & Professions Code § 17200, *et seq.*
2 and Business & Professions Code § 17500, *et seq.*, as to lead in Wine Vinegars.

3 6.4 Release of ELF. Settling Defendants waive all rights to institute any form of
4 legal action against ELF or its attorneys or representatives, for all actions taken or statements
5 made by ELF and its attorneys or representatives, in the course of seeking enforcement of
6 Proposition 65, Business & Professions Code § 17200, *et seq.* or Business & Professions
7 Code § 17500, *et seq.*, in these Actions.

8 7. RETENTION OF JURISDICTION

9 7.1 This Court shall retain jurisdiction of this matter to implement this Consent
10 Judgment.

11 8. COURT APPROVAL

12 8.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
13 effect and cannot be used in any proceeding for any purpose.

14 9. ENFORCEMENT OF CONSENT JUDGMENT WITH REGARD TO RETAIL
15 STORES IN CALIFORNIA

16 9.1 Before moving to enforce the terms and conditions of this Consent Judgment
17 against any Settling Defendant with respect to an alleged violation occurring at a retail store
18 located in California, ELF must follow the procedures set forth in subsections 9.2 through
19 9.4.

20 9.2 In the event that ELF and/or its attorneys, agents or assigns, identify one or
21 more retail stores in California owned and operated by any Settling Defendant at which Wine
22 Vinegars are sold (hereinafter "retail outlet") for which the warnings required under
23 paragraph 2 of this Consent Judgment are not being given, ELF shall notify, in writing, any
24 Settling Defendant of such alleged failure to warn (the "Notice of Breach"). The Notice of
25 Breach shall be sent in a manner authorized in paragraph 12.1 of this Consent Judgment,
26 with proof of service within sixty (60) days of the date the alleged violation was observed.
27 The Notice of Breach shall identify the date the alleged violation was observed and the retail
28

1 outlet in question, and reasonably describe the nature of the alleged violation with sufficient
2 detail to allow such Settling Defendant to determine the basis of the claim being asserted and
3 the identities of the Wine Vinegars to which those assertions apply.

4 9.3 In the event that ELF identifies a specific retail outlet, other than the specific one
5 identified in subsection 9.2 of this Consent Judgment, not giving warnings for Wine Vinegars
6 as required under paragraph 2, ELF shall serve the Settling Defendant with another Notice of
7 Breach in the manner described in subsection 9.2 and provide the same information as
8 required in subsection 9.2.

9 9.4 ELF shall take no further action against the Settling Defendant unless ELF discovers,
10 at least thirty (30) days after service of the Notices of Breach served pursuant to subsections 9.2 and
11 9.3, that the violation described in the Notice of Breach has not been corrected.

12 10. GOVERNING LAW

13 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
14 of California. In the event that Proposition 65 is repealed or is otherwise rendered
15 inapplicable by reason of law generally, or as to Wine Vinegars specifically, then the Settling
16 Defendants shall have no further obligations pursuant to this Consent Judgment with respect
17 to, and to the extent those Wine Vinegars are so affected.

18 10.2 In the event that either Proposition 65 or the regulations promulgated pursuant
19 to Proposition 65 ("Proposition 65 Regulations") are revised or modified in a way that affects
20 the Settling Defendants' obligations set forth in this Consent Judgment, then the Settling
21 Defendants shall have an option of complying with the revised or modified Proposition 65 or
22 Proposition 65 Regulations in lieu of the terms of this Consent Judgment.

23 11. EXCHANGE IN COUNTERPARTS

24 11.1 Stipulations to this Consent Judgment may be executed in counterparts by
25 and/or facsimile which taken together shall be deemed to constitute one document.

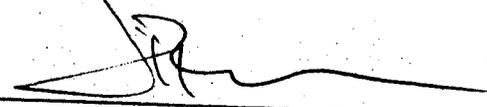
1 12. NOTICES

2 12.1 All correspondence and notices required to be provided pursuant to this Consent
3 Judgment shall be in writing and personally delivered or sent by: (1) first-class, registered,
4 certified mail, return receipt requested, or (2) overnight courier on ELF or Settling Defendant
5 by the others at the addresses listed in Exhibit B. Either ELF or Settling Defendants may
6 specify a change of address to which all notices and other communications shall be sent.

7 IT SO STIPULATED:

8
9 DATED: 7/25/06

ENVIRONMENTAL LAW FOUNDATION

11 By: 
12 JAMES WHEATON

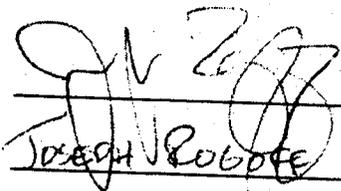
13
14 DATED: _____

TRADER JOE'S COMPANY

16 By: _____
17 _____

18
19 DATED: 7/19/06

WHOLE FOODS MARKET CALIFORNIA, INC.

22 By: 
23 JOSEPH ROBB
24

1 12. NOTICES

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3 Judgment shall be in writing and personally delivered or sent by: (1) first-class, registered,
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5 by the others at the addresses listed in Exhibit B. Either ELF or Settling Defendants may
6 specify a change of address to which all notices and other communications shall be sent.

7 IT SO STIPULATED:

8
9 DATED: _____

ENVIRONMENTAL LAW FOUNDATION

10
11 By: _____

12 JAMES WHEATON

13
14 DATED: JULY 13, 2006

TRADER JOE'S COMPANY

15
16 By: *W. John Young*
17
18 VICE PRESIDENT AND
GENERAL COUNSEL

19
20 DATED: _____

WHOLE FOODS MARKET CALIFORNIA, INC.

21
22 By: _____

23
24 _____

1 12. NOTICES

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3 Judgment shall be in writing and personally delivered or sent by: (1) first-class, registered,
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6 specify a change of address to which all notices and other communications shall be sent.

7 IT SO STIPULATED:

8
9 DATED: _____

ENVIRONMENTAL LAW FOUNDATION

10
11 By: _____
12 JAMES WHEATON

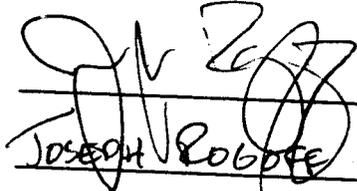
13
14 DATED: _____

TRADER JOE'S COMPANY

15
16 By: _____
17
18 _____

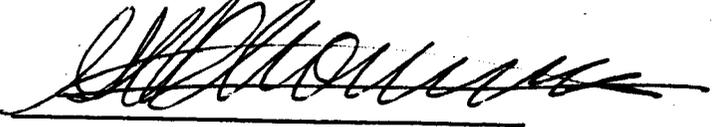
19
20 DATED: 7/19/06

WHOLE FOODS MARKET CALIFORNIA, INC.

21
22 By: 
23 _____
24 JOSEPH ROBOTE RVP

1 DATED: 8/1/06

MRS. GOOCH'S NATURAL FOODS, INC.

2
3 By: 

4 George Khoury, Vice President

6
7 DATED: _____

STATER BROS. MARKETS

8
9 By: _____
10 _____

11
12 IT IS SO ORDERED, ADJUDGED AND DECREED:

13
14 DATED: _____

15 _____
16 JUDGE OF THE SUPERIOR COURT

17 10872937_4.DOC

EXHIBIT A

**CALIFORNIA
PROPOSITION 65
WARNING:**

! The Red Wine Vinegars and
Balsamic Vinegars on these
shelves contain lead, a chemical
known to the State of California
to cause birth defects and other
reproductive harm.

EXHIBIT B

ENVIRONMENTAL LAW FOUNDATION

**Alan M. Caplan
BUSHNELL, CAPLAN & FIELDING, LLP
221 Pine St.
San Francisco, CA 94104**

**WHOLE FOODS MARKET CALIFORNIA, INC.; MRS. GOOCH'S NATURAL FOODS,
INC.; and STATER BROS. MARKETS**

**Charles C. Ivie
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071**

TRADER JOE'S COMPANY

**Jennifer Laser
O'MELVENY & MYERS LLP
1999 Avenue of the Stars
Los Angeles, CA 90067**