

ENDORSED
FILED
San Francisco County Superior Court

OCT 21 2015

CLERK OF THE COURT
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Deputy Clerk

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20 GARDEN OF LIFE, LLC

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF SAN FRANCISCO

23 AS YOU SOW,

24 Plaintiff,

25 v.

26 GARDEN OF LIFE, LLC,

27 Defendant.

CASE NO. CGC-14-540621

~~[PROPOSED]~~ STIPULATED MODIFIED
CONSENT JUDGMENT; ~~[PROPOSED]~~
ORDER

ACTION FILED: June 18, 2014

28 **1. INTRODUCTION**

1.1 On July 18, 2014, As You Sow ("AYS" or "Plaintiff") filed a complaint in this action alleging that Garden of Life, LLC ("GOL" or "Defendant") failed to warn of exposures to lead and cadmium under Cal. Health & Safety Code §§ 25249.5 et seq. ("Proposition 65") with respect to certain dietary supplements. AYS and GOL are referred to collectively as the "Parties" and individually as a "Party."

1 **1.2** On June 26, 2015, following a noticed motion for approval, the Court approved and
2 entered a Stipulated Consent Judgment (“Original Consent Judgment”), which incorporated the
3 terms of a settlement between the Parties. A copy of the Original Consent Judgment is attached
4 hereto as Exhibit 1. The effective date of the Original Consent Judgment is June 26, 2015
5 (“Effective Date”).

6 **1.3** The Original Consent Judgment may be modified upon stipulation of the Parties
7 followed by entry of a modified consent judgment. Original Consent Judgment, § 6.1.

8 **1.4** The Original Consent Judgment sets out lead and cadmium thresholds for Protein
9 Supplement Products (as defined in Section 1.5) covered in the Original Consent Judgment. *See*
10 Original Consent Judgment, § 3.1. Furthermore, the Original Consent Judgment specifies the
11 “Compliance Date” (Original Consent Judgment, § 1.12) by which GOL must meet those
12 thresholds, or, alternatively, provide Proposition 65 warnings, for Protein Supplement Products that
13 it manufactures for sale in California, distributes for sale in California, or sells in California. *Id.*

14 **1.5** The “Compliance Date” for cadmium is twelve months after the Effective Date of
15 the Original Consent Judgment. Original Consent Judgment, § 1.12. The “Compliance Date” for
16 lead is six months after the Effective Date of the Original Consent Judgment. *Id.*

17 **1.6** The threshold for lead specified in the Original Consent Judgment is materially
18 identical to the threshold adopted in a 2014 consent judgment involving other parties and which this
19 Court approved and entered in *Environmental Law Foundation v. Abbott Laboratories et al.*, San
20 Francisco Superior Court, Case No. CGC-10-503002 (“*Abbott Labs*”) (consent judgment entered
21 February 18, 2014). In contrast to the six-month Compliance Date for lead in the Original Consent
22 Judgment, the *Abbott Labs* consent judgment specified a one-year compliance deadline for lead in
23 products that the settling defendants manufactured, distributed, or sold in California.

24 **1.7** AYS represents that GOL’s agreement in the Original Consent Judgment to a
25 Compliance Date for lead that is more expedited than that for cadmium, and that is more expedited
26 than the compliance deadline in the *Abbott Labs* consent judgment, was a material factor to AYS in
27 negotiating the settlement payment for the Original Consent Judgment.

1 **1.8** GOL hereby seeks an extension of the Compliance Date for lead so that it is twelve
2 months after the Effective Date, which is consistent with the Compliance Date for cadmium.

3 **1.9** GOL represents that it has been involved in an extensive effort to ensure that all of
4 its Protein Supplement Products will meet the lead and cadmium thresholds specified in the
5 Original Consent Judgment. GOL further represents that its Protein Supplement Products meet the
6 organic standards of the United States Department of Agriculture and that those products are
7 marketed as organic, vegan, and free of Genetically Modified Organisms. GOL additionally
8 represents that it has had to identify and test new sources of certain plant-based ingredients for
9 various Protein Supplement Products in a way that will allow GOL both to meet the lead (and
10 cadmium) thresholds for its various Protein Supplement Products and to maintain GOL's other
11 quality standards for the products, such as those specified above. In light of these quality standards,
12 GOL maintains that this reformulation effort requires additional time. The Parties agree that a six-
13 month extension of the Compliance Date for lead is appropriate.

14 **2. MODIFICATION**

15 **2.1** The term "Compliance Date" with respect to lead in Section 1.12 of the Original
16 Consent Judgment shall be defined as twelve months after the June 26, 2015 Effective Date of the
17 Original Consent Judgment.

18 **2.2** All references in the Original Consent Judgment to the Compliance Date shall mean
19 the modified deadline set out in this Proposed Stipulated Modified Consent Judgment and Proposed
20 Order ("Modified Consent Judgment").

21 **2.3** Notwithstanding the modified Compliance Date, GOL shall use commercially
22 reasonable and good faith efforts to attempt to meet the lead threshold in Section 3.1 of the Consent
23 Judgment for all Protein Supplement Products by the date that is six months following the June 26,
24 2015 Effective Date of the Original Consent Judgment.

25 **2.4** On or before the date that is six months following the Effective Date of the Original
26 Consent Judgment, GOL shall notify AYS as to its progress in meeting the threshold for lead for
27 Protein Supplement Products.
28

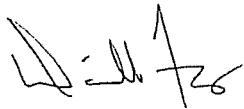
1 2.5 Within 15 days of entry of this Modified Consent Judgment, GOL shall pay \$5,000
2 in the form of a check made payable to the Shute, Mihaly & Weinberger trust account as
3 reimbursement for AYS's attorneys' fees, investigative costs, and other reasonable litigation costs
4 and expenses. Within 15 days of entry of this Modified Consent Judgment, GOL shall pay \$15,000
5 in the form of a check made payable to As You Sow as a civil penalty pursuant to Health and Safety
6 Code section 25249.7(b). AYS shall remit 75% of this amount to the State of California pursuant to
7 Health and Safety Code section 25249.12(b). GOL shall have no liability if payments to the State
8 of California are not made by AYS. Additionally, within 15 days of entry of this Modified Consent
9 Judgment, GOL shall pay \$15,000 in the form of a check made payable to As You Sow as a
10 payment in lieu of additional civil penalties, with this amount being used by AYS in the same
11 manner as specified in the Original Consent Judgment, Section 4.3.

12 2.6 Except as specified herein, each Party agrees to bear its own attorneys' fees and costs
13 incurred in negotiating and obtaining court approval of this Modified Consent Judgment.

14 2.7 Except as modified herein, the Original Consent Judgment shall remain in effect
15 pursuant to its original terms.

16 **IT IS SO STIPULATED:**

AS YOU SOW



17
18
19 Dated: _____, 2015

Danielle Fugere
President

GARDEN OF LIFE, LLC

20
21
22
23 Dated: _____, 2015

Jeffrey Brent Brams
GC & VP

24
25 **APPROVED AS TO FORM:**

26 Dated: _____, 2015

Arnold & Porter LLP
Sarah Esmaili
Attorney for Garden of Life, LLC

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Dated: September 28, 2015

Shute, Mihaly & Weinberger LLP
Ellison Folk
Attorney for As You Sow

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: 10/21/15

JUDGE OF THE SUPERIOR COURT
Richard B. Ulmer, Jr.

710931.1

EXHIBIT 1

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F I L E D
Superior Court of California
County of San Francisco

JUN 26 2015

CLERK OF THE COURT

BY: *Trent Norris*
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

AS YOU SOW,

Plaintiff,

v.

GARDEN OF LIFE, LLC,

Defendant.

Case No.: CGC-14-540621

~~[PROPOSED]~~ CONSENT JUDGMENT

~~[PROPOSED]~~ CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 1.1 On April 17, 2014, As You Sow, Inc. ("AYS") issued a 60-day notice of violation
3 ("Original Notice") under Cal. Health & Safety Code §§ 25249.5 *et seq.* ("Proposition 65") that was
4 served on Defendant Garden of Life, LLC ("GOL") and all required California public enforcers. In
5 the Original Notice, AYS alleges that four supplement products manufactured, distributed, or sold
6 by GOL cause exposures to lead and cadmium and that such products require warnings under
7 Proposition 65.

8 1.2 On July 18, 2014, AYS individually and on behalf of the public interest, initiated this
9 action ("Action") against GOL. The Complaint ("Complaint") asserted a cause of action under
10 Proposition 65 on the basis of the allegations contained in the Original Notice.

11 1.3 On July 15, 2014, AYS issued a second 60-day notice of violation ("Second Notice")
12 under Proposition 65 that was served on GOL and all required California public enforcers. In the
13 Second Notice, AYS alleges that two additional supplement products manufactured, distributed, or
14 sold by GOL cause exposures to lead and cadmium and that such products require warnings under
15 Proposition 65.

16 1.4 On February 20, 2015, AYS issued a third 60-day notice of violation under
17 Proposition 65 ("Third Notice") that was served on GOL and all required California public
18 enforcers. In the Third Notice, AYS alleges that various protein supplement powders and shakes
19 containing rice protein cause exposures to lead and cadmium and that such products require
20 warnings under Proposition 65.

21 1.5 The Original Notice, Second Notice, and Third Notice are referred to herein
22 collectively as the "Notices." The products identified in the Notices and in this Consent Judgment,
23 identified in Exhibit A, are referred to herein collectively as the "Protein Supplement Products."
24 Upon entry of this Consent Judgment, the Complaint shall be deemed to be amended to include
25 allegations as to all of the Protein Supplement Products.

26 1.6 GOL denies AYS's claims that the Protein Supplement Products require warnings
27 under Proposition 65.

28

1 1.7 AYS and GOL (referred to herein collectively as the "Parties" and individually as a
2 "Party") also dispute how exposure levels to lead and cadmium are calculated under Proposition 65.

3 1.8 Court-approved consent judgments in *Environmental Law Foundation v. Abbott*
4 *Laboratories et al.*, San Francisco Superior Court Lead Case No. CGC-10-503002 (filed February
5 18, 2014) ("*Abbott Labs*") as to fourteen defendants set the following warning thresholds for lead:
6 4.0 micrograms of lead per day (for chocolate and gainer protein supplement products) and 3.0
7 micrograms of lead per day (for all other protein supplement products). Protein Supplement
8 Products are similar to the types of products covered in the *Abbott Labs* consent judgments and
9 certain of those products covered in the *Abbott Labs* consent judgments are competitor products.

10 1.9 GOL contends that its Protein Supplement Products should be subject to the same
11 lead standards as in the *Abbott Labs* consent judgments and that the same warning thresholds under
12 Proposition 65 should apply to businesses within the same competitive marketplace.

13 1.10 For the purpose of avoiding prolonged and costly litigation concerning the claims
14 and defenses in this Action, the Parties enter into this Consent Judgment as a full settlement of all
15 claims that were raised in the Complaint based on the facts alleged therein, or which could have
16 been raised in the Complaint arising out of the facts alleged therein. By execution of this Consent
17 Judgment, GOL does not admit any violation of Proposition 65 or any other law. Nothing in this
18 Consent Judgment shall be construed as an admission by GOL of any fact, finding, conclusion,
19 issue of law, or violation of law. However, this paragraph shall not diminish or affect the
20 responsibilities and duties of the Parties under this Consent Judgment.

21 1.11 The "Effective Date" of this Consent Judgment is the date on which it is entered by
22 the Court.

23 1.12 The "Compliance Date" means the date that is six months after the Effective Date
24 with respect to the warning threshold for lead set in Section 3.1 and twelve months after the
25 Effective Date with respect to the warning threshold for cadmium set in Section 3.1.

26 **2. MONITORING**

27 2.1 At least sixty (60) days prior to the applicable Compliance Date, GOL will test or
28 arrange for the testing for lead and cadmium of each of its Protein Supplement Products that it

1 intends to distribute or sell in California. In establishing an initial data set for purposes of this
2 Consent Judgment, GOL may rely on testing conducted prior to entry of this Consent Judgment if
3 such testing documents lead and cadmium levels in Protein Supplement Products either already in
4 the stream of commerce or which are ready for distribution or sale.

5 **2.1.1** GOL may use a testing laboratory certified by EPA, FDA, or the State of
6 California. Notwithstanding the foregoing, the laboratories listed in Exhibit B are deemed to be
7 approved laboratories for purposes of performing testing under Section 2. The lead and cadmium
8 concentrations must be measured using inductively coupled plasma mass spectrometry ("ICP-MS")
9 utilizing scientifically appropriate adherence to the protocols set forth in EPA Methods 6020,
10 6020a. The laboratory must digest at least 0.5 grams of each sample with a level of detection of at
11 least 4 parts per billion. The sample preparation method must use a microwave- or heat-assisted
12 acid digestion method.

13 **2.2** To fulfill its monitoring obligation under Section 2 and using a testing method
14 described therein, GOL must test or cause to be tested three (3) samples of the final product for each
15 Protein Supplement Product, with samples randomly selected from three (3) different lots (or from
16 the maximum number of lots that are available for testing if there are fewer than three (3) lots
17 available). The testing required under this Section 2.2 will be repeated annually following the
18 compilation of the initial data set described in Section 2.1. All laboratory test data and certifications
19 must be retained by GOL for a period of three years from the date of testing. The requirements of
20 Sections 2.1 and 2.2 do not apply to any Protein Supplement Products for which GOL has provided
21 a warning that complies with Section 3.4.

22 **2.2.1** GOL shall send to AYS a full copy of all test results obtained pursuant to
23 section 2.2 within twenty-one (21) days after GOL receives the results. This submission may be
24 provided to AYS simultaneously with the annual reports required under Section 2.3.

25 **2.2.2** Any single test result which exceeds 5.0 micrograms of lead, or 6.25
26 micrograms of cadmium, in a Daily Serving, as calculated under this Section 2 shall be deemed an
27 "Outlier."
28

1 2.2.3 At GOL's option, any single Outlier test result may be subject to validation
2 before it is deemed a final Outlier result for purposes of this Consent Judgment. The validation
3 process shall consist of two steps.

4 (a) First, GOL shall check its equipment, test processes, validation
5 procedures, laboratory contamination, operator error and any other factors which could have
6 produced an erroneous result. If the result is determined erroneous due to testing error or failure to
7 satisfy quality assurance or quality control procedures, the result shall be discarded and not used for
8 any purpose under this Consent Judgment. The Protein Supplement Product shall then be re-tested
9 as if such test were the first test.

10 (b) Second, if a single Outlier test result is obtained and the steps in
11 Section 2.2.2(a) have not invalidated the result, then GOL may collect up to three (3) more samples
12 from the same lot or batch and have those samples tested in accordance with this Section 2. The
13 arithmetic mean of the test results of all samples tested from the single lot or batch (including the
14 original Outlier test result) shall then be determined. That mean test result shall be deemed the final
15 result and shall constitute the applicable test result for purposes of this Consent Judgment. If this
16 validated test result is an Outlier as defined in Section 2.2.2, then the terms of Section 3.3 shall
17 apply to that Outlier test result.

18 2.3 If there is an allegation that a Protein Supplement Product is in violation of Section
19 3.4, AYS may make a written request to GOL, delivered to the addresses of GOL and GOL's
20 counsel as set forth in Section 15 below, for data generated in compliance with Sections 2.1 and 2.2.
21 In response to such a request, GOL will provide to AYS the date the analysis was performed, the
22 name of the laboratory conducting the test, the test method used by the laboratory, the detection
23 limit used by the laboratory, the lot numbers of the samples tested, and the analytical results within
24 twenty-one (21) days of AYS's written request. AYS shall keep all such information and data
25 confidential. GOL shall provide to AYS within 45 days of completing the initial testing of its
26 Protein Supplement Products under Section 2.1, and annually thereafter during the testing period set
27 forth in Section 2.2, a list of all such products for which the test results obtained pursuant to this
28 Section 2 indicate a Proposition 65 warning is required pursuant to Section 3 herein.

1 **2.4. Good Faith Commitment to Pursue Further Lead and Cadmium Reduction**

2 **2.4.1** During the term of this Consent Judgment, GOL shall continue to take good
3 faith and commercially reasonable efforts to further reduce any lead and cadmium in the Protein
4 Supplement Products. These efforts shall include, at a minimum, efforts to secure ingredients with
5 lower lead and cadmium content, obligating suppliers to use the highest quality materials (with
6 respect to lead or cadmium content) that are feasible in the manufacturing process, contacting
7 suppliers of product ingredients in an effort to reduce lead or cadmium in the ingredients through
8 means such as review of supplier manufacturing process, alternative formulation, product sourcing,
9 reformulation(s) of the Protein Supplement Products to reduce lead and cadmium, and use of
10 processes or methods to extract metals from product ingredients. The requirements of Section 2.4.1
11 do not apply to any Protein Supplement Product that contains less than 0.5 micrograms of lead in a
12 Daily Serving or 4.1 micrograms of cadmium in a Daily Serving.

13 **3. CLEAR AND REASONABLE WARNINGS**

14 **3.1** Pursuant to this Consent Judgment, warnings are required under Proposition 65 only
15 with respect to Protein Supplement Products that GOL sells to California consumers that expose
16 users to more than 3 micrograms of lead, or to more than 4.1 micrograms of cadmium, in a Daily
17 Serving, unless the Protein Supplement Product is a Gainer Product or a Chocolate Product.
18 Warnings are required for Gainer Products and Chocolate Products that GOL sells to California
19 consumers that expose users to more than 4 micrograms of lead, or to more than 4.1 micrograms of
20 cadmium, in a Daily Serving. "Gainer Products" are Protein Supplement Products that are high
21 protein content formulas containing at least 20 grams of protein per serving. "Chocolate Products"
22 are Protein Supplement Products that are marketed in the labeling as "chocolate," "cocoa" or
23 "cacao" flavored products and that contain any variety or form of the ingredient generally referred
24 to as chocolate, including without limitation, the ingredients chocolate, chocolate liquor, cocoa,
25 cocoa mass, cocoa butter, cocoa powder, cacao, fudge, or any variation of, or substitute for, any of
26 those ingredients.

27 **3.2** A "Daily Serving" (for purposes of determining Proposition 65 compliance for
28 chemicals present in the Protein Supplement Products) shall be defined as one of the following, as

1 applicable: (a) if the Protein Supplement Product label includes a recommended number of
2 servings, then the recommended serving size; (b) if the Protein Supplement Product label includes
3 no recommended number of servings, then the serving size set forth on the "Nutritional Facts" or
4 "Supplement Facts" portion of the label; or (c) if the Protein Supplement Product label recommends
5 a range of servings in one day, then the amount which is the higher recommended serving size.

6 **3.3** When calculating whether a Protein Supplement Product exceeds the warning
7 threshold set forth in 3.1: (1) GOL must compare the warning threshold value to the arithmetic
8 mean of at least three (3) samples tested in accordance with Section 2. However, GOL may, at its
9 option, calculate the arithmetic mean using three (3) samples and (2) GOL must base its calculation
10 on the Daily Serving amount as defined in Section 3.2. Notwithstanding the foregoing, GOL may
11 not include an Outlier test result (as defined in Section 2.2.2) in calculating the arithmetic mean, and
12 if GOL elects to sell a Protein Supplement Product to California consumers for which an Outlier
13 test result is obtained and validated as provided for in Section 2.2.3, then that specific product lot or
14 batch from which the Outlier result was derived shall be subject to the warning obligations of this
15 Section 3. GOL shall have thirty (30) days from the date the relevant test result mean is calculated
16 to satisfy the applicable obligations of this Section 3 for Protein Supplement Products
17 manufactured, distributed or sold after that date.

18 **3.4** Warning Standard. On and after the Compliance Date, GOL shall not manufacture
19 for sale in the State of California, distribute into the State of California, or sell in the State of
20 California any Protein Supplement Product the ingestion of which results in an exposure greater
21 than the applicable warning threshold set forth in Section 3.1, as calculated in accordance with
22 Section 3.3, unless a warning is placed or affixed on the packaging, labeling, or directly to or on the
23 Protein Supplement Product that states:

24 **WARNING (California Proposition 65):**
25 This product contains chemicals known [to the State of
26 California] to cause [cancer,] birth defects[,] or other
27 reproductive harm."

28 (hereinafter "Product Warning"). The text contained in the brackets is only required if the product
exceeds the NSRL of 15 micrograms per day for lead. Product Warnings shall be placed with such

1 conspicuousness as compared with other words, statements, designs and/or devices on the labeling
2 or packaging as to render it likely to be read and understood by an ordinary individual under
3 customary conditions of use or purchase. In addition, if the Product Warning is displayed on the
4 product container or labeling, the warning shall be at least the same size as the largest of any other
5 health or safety warnings on the container or labeling, and the word "warning" shall be in all capital
6 letters and in bold print. If printed on the labeling itself, the Product Warning shall be contained in
7 the same section of the labeling that states other safety warnings concerning the use of the Protein
8 Supplement Product.

9 **3.4.1 Internet Sales**

10 (a) For internet sales by GOL to a California consumer of Protein
11 Supplement Products subject to the warning requirements of Section 3.4, the warning language
12 required under this Consent Judgment shall be displayed in the same type size as the surrounding,
13 non-heading text, either: (a) on the same page as the order form for the Protein Supplement Product;
14 (b) on the same page as the price for the Protein Supplement Product is displayed; or (c) in a
15 dialogue box which appears and is visible when a California address for delivery is provided by the
16 consumer, so long as the dialogue box appears prior to the completion of the internet sale and
17 requires the consumer to affirmatively accept receipt of the warning set forth in the dialogue box
18 (the warning language in the dialogue box shall be displayed in the same type size as the
19 surrounding, non-heading text on the screen at the time of the appearance of the dialogue box), as a
20 condition precedent to completing the sale. If necessary, the Product Warning shall be added within
21 one month of the date that testing identifies the need for a Product Warning.

22 (b) For sales of Protein Supplement Products to California consumers
23 through the website of an e-tailer customer of GOL, prior to the Compliance Date, GOL shall send
24 by first class mail or overnight delivery a letter instructing the customer to provide warning in the
25 same manner as required under subsection 3.4.1(a). The letter shall state that failure to provide
26 these warnings may result in liability for the retailer. In the letter, GOL shall request that the
27 e-tailer customer respond with a written acknowledgement that it will comply with GOL's
28 instructions. If GOL complies with the requirements of this subsection (b), GOL shall not be found

1 to have violated this Consent Judgment where an e-tailer customer fails to provide the warnings
2 required under this subsection (b).

3 **3.4.2 Mail Order Sales.** For any mail order sales by GOL to a consumer in
4 California, the warning language required under this Consent Judgment shall also be included in the
5 mail order catalogue, either on the same page as any order form, or on the same page upon which
6 the Protein Supplement Product's price is listed, in the same type size as the surrounding, non-
7 heading text. If a warning is necessary pursuant to paragraph 3.4 above, the Product Warning shall
8 be added in the first print run of the mail order catalogue which occurs following testing that
9 establishes the need for a product warning, or within 3 months, whichever occurs first.

10 **3.5** Any changes to the language or format of the warnings required under Section 3.4
11 shall be made only after Court approval and following written notice to Plaintiff and to the Attorney
12 General.

13 **3.6** GOL may sell or distribute in California or ship to California a Protein Supplement
14 Product without any of the warnings required under Section 3.4 on or after December 31, 2014 only
15 if GOL has conducted testing in accordance with the requirements referenced in Section 2
16 demonstrating that the Protein Supplement Product does not expose users to more lead or cadmium
17 in a Daily Serving than allowed under Section 3.4 without a warning, as determined using the
18 calculation set forth in Section 3.3.

19 **3.7** At least sixty (60) days before any discontinuance of any warnings that GOL has
20 issued pursuant to this Consent Judgment, GOL shall conduct the testing required to demonstrate
21 that the Protein Supplement Products conform to Sections 3.1, using the analytical methods set forth
22 in Section 2. If GOL intends to discontinue a warning, it shall promptly notify AYS no later than
23 21 days after discontinuing the warning. This Section 3.7 shall not apply to a Protein Supplement
24 Product which is discontinued.

25 **4. MONETARY RELIEF**

26 **4.1** Within 15 days of the Effective Date, GOL shall pay \$85,000 in the form of a check
27 made payable to the Shute, Mihaly & Weinberger trust account as reimbursement for AYS's
28 attorneys' fees, investigative costs, and other reasonable litigation costs and expenses.

1 4.2 Within 15 days of the Effective Date, GOL shall pay \$45,000 in the form of a check
2 made payable to As You Sow as a civil penalty pursuant to Health and Safety Code section
3 25249.7(b). AYS shall remit 75% of this amount to the State of California pursuant to Health and
4 Safety Code section 25249.12(b). GOL shall have no liability if payments to the State of California
5 are not made by AYS.

6 4.3 Additional In. Lieu Payments: Additionally, within 15 days of the Effective Date,
7 GOL shall pay \$45,000 in the form of a check made payable to As You Sow as a payment in lieu of
8 additional civil penalties, with this amount to be used by AYS for grants to California non-profit
9 organizations and by the AYS Environmental Enforcement Fund. These funds shall be used to
10 reduce or remediate exposures to toxic chemicals and to increase consumer, worker, and community
11 awareness of the health hazards posed by toxic chemicals in California via AYS's program work.
12 In deciding among grantee proposals, the AYS Board of Directors ("Board") takes into
13 consideration a number of important factors, including: (1) the nexus between the harm done in the
14 underlying case(s) and the grant program work; (2) the potential for toxics reduction, prevention,
15 remediation, or education benefits to California citizens from the proposal; (3) the budget
16 requirements of the proposed grantee and the alternate funding sources available to it for its project;
17 and (4) the Board's assessment of the grantee's chances for success in its program work. AYS shall
18 ensure that all funds will be disbursed and used in accordance with AYS's mission statement,
19 articles of incorporation, and bylaws and applicable state and federal laws and regulations.

20 4.4 GOL shall make these payments with a check made payable to Shute, Mihaly &
21 Weinberger LLP and delivered to Ellison Folk, Shute, Mihaly & Weinberger LLP, 396 Hayes
22 Street, San Francisco, CA 94102.

23 4.5 Except as provided in Section 12.1, the payment made pursuant to Section 4 shall be
24 the only monetary obligation of GOL with respect to this Consent Judgment, including as to any
25 fees, costs, or expenses AYS has incurred in relation to this Action.

26 **5. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

27 AYS agrees to comply with the reporting requirements referenced in California Health &
28 Safety Code § 25249.7(f). Pursuant to the regulations promulgated under that section, AYS shall

1 present this Consent Judgment to the California Attorney General's Office within two (2) days after
2 receipt of all necessary signatures. The Parties acknowledge that, pursuant to Health & Safety Code
3 § 25249.7, a noticed motion must be filed to obtain judicial approval of the Consent Judgment.
4 Accordingly, a motion for approval of the Consent Judgment shall be prepared and filed by AYS
5 within a reasonable period of time after the date this Consent Judgment is signed by all Parties.

6 **6. MODIFICATION OF SETTLEMENT**

7 **6.1** This Consent Judgment may be modified by: (1) written agreement among the
8 Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of AYS
9 or GOL as provided by law and upon entry of a modified Consent Judgment by the Court thereon.
10 All Parties and the California Attorney General's Office shall be served with notice of any proposed
11 modification to this Consent Judgment at least fifteen (15) days in advance of its consideration by
12 the Court.

13 **6.2** If, after January 1, 2015, a court approves a settlement, or otherwise finally
14 adjudicates, a Proposition 65 claim concerning any company's protein supplement product(s) such
15 that the settlement or adjudication requires that company to meet a less stringent warning threshold
16 for cadmium ("Alternative Cadmium Threshold") than that specified in this Consent Judgment, then
17 at GOL's sole option, GOL may notify AYS of the Alternative Cadmium Threshold and request a
18 modification of this Consent Judgment. Within 14 days of such request, the Parties agree to meet in
19 good faith to discuss whether the Alternative Cadmium Threshold shall apply in place of the
20 cadmium warning threshold specified in this Consent Judgment. As part of those meet and confer
21 efforts, the Parties shall consider whether any of the other company's protein supplement products
22 at issue in the Alternative Cadmium Threshold are competitor products of any of the Protein
23 Supplement Products in this Consent Judgment. Factors that are considered relevant to determining
24 whether the other company's protein supplement products are competitor products include, but are
25 not limited to, the following: (i) the competitor products contain plant-based protein as one or more
26 of the top five ingredients and/or are marketed as vegan or vegetarian supplements; and (ii) the
27 competitor products are sold in similar retail channels in California as GOL's Protein Supplement
28 Products.

1 **6.3** If the Parties agree that such Alternative Cadmium Threshold is appropriate, the
2 Parties shall seek a court approved modification of this Consent Judgment so that the Alternative
3 Cadmium Threshold applies to any Protein Supplement Products that GOL manufactures for sale in
4 the State of California, distributes into the State of California, or sells in the State of California after
5 the Compliance Date. If the Parties cannot agree that such Alternative Cadmium Threshold is
6 appropriate, GOL may seek a court approved modification of this Consent Judgment so that the
7 Alternative Cadmium Threshold applies to any Protein Supplement Products that GOL
8 manufactures for sale in the State of California, distributes into the State of California, or sells in the
9 State of California after the Compliance Date, provided that such level does not exceed 8
10 micrograms per serving. AYS may oppose this motion. GOL shall provide 14 days notice to AYS
11 prior to filing any such motion.

12 **7. APPLICATION OF CONSENT JUDGMENT**

13 **7.1** This Consent Judgment shall apply to and be binding upon AYS and GOL, their
14 respective officers, directors, and shareholders and the predecessors, successors or assigns of each
15 of them.

16 **8. RELEASES**

17 **8.1** This Consent Judgment is a full, final, and binding resolution between AYS, on
18 behalf of itself and in the public interest, and GOL, of any alleged violation of Proposition 65 for
19 failure to provide Proposition 65 warnings of exposure to lead and cadmium in the Protein
20 Supplement Products. AYS, on behalf of itself, its agents, officers, representatives, attorneys,
21 successors and/or assignees, and on behalf of the general public in the public interest, hereby waives
22 all rights to institute or participate in (directly or indirectly) any form of legal action and releases
23 and discharges: (a) GOL and its parent companies, subsidiaries, affiliates, and divisions; (b) each of
24 their respective joint venturers, partners, vendors, manufacturers, packagers, and contractors; (c)
25 each of the distributors, wholesalers, retailers, users, packagers of the persons and entities described
26 in (a) and (b); and (d) each of the respective officers, directors, shareholders, employees, and agents
27 of the persons and entities described in (a) through (c) (the persons and entities identified in (a), (b),
28 (c), and (d), including the predecessors, successors and assigns of any of them, are collectively

1 referred to as the "Released Parties") from any and all claims, actions, causes of action, suits,
2 demands, liabilities, damages, penalties, fees (including but not limited to investigation fees,
3 attorneys' fees, and expert fees), costs, and expenses (collectively, "Claims") as to any alleged
4 violation of Proposition 65 arising from the failure to provide Proposition 65 warnings regarding
5 alleged exposures to lead and cadmium in the Protein Supplement Products manufactured,
6 distributed or sold before the Compliance Date.

7 **8.2 Defendant's Waiver and Release of Plaintiff:** Defendant hereby releases Plaintiff
8 from and waives any claims against Plaintiff for injunctive relief or damages, penalties, fines,
9 sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any
10 other sum incurred or claimed or which could have been claimed for matters related to the Notices
11 or Complaint.

12 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute
13 compliance by any Released Party with Proposition 65 regarding alleged exposures to lead and
14 cadmium in the Protein Supplement Products.

15 **8.4** Nothing in this Section 8 shall affect or limit any Party's right to seek to enforce the
16 terms of this Consent Judgment.

17 **9. RETENTION OF JURISDICTION**

18 This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

19 **10. COURT APPROVAL**

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

22 **11. DURATION OF CONSENT JUDGMENT**

23 **11.1** This Consent Judgment shall terminate within five years of the Effective Date unless
24 the term of this Consent Judgment is extended. This Consent Judgment shall be extended only by
25 (i) a stipulation of the Parties that is entered by the Court, or (ii) an order of the Court following the
26 process set out in Sections 11.2 and 11.3.

27 **11.2** If either Party seeks to extend the term of this Consent Judgment, no later than 180
28 days after the fourth anniversary of the Effective Date, such Party may provide notice to the other

1 Party that it believes the term of the Consent Judgment should be extended. The Parties agree to
2 meet and confer in good faith regarding an extension of the Consent Judgment. Factors that may be
3 considered relevant to the decision whether to extend the Consent Judgment include: (i) that
4 competitor products covered in any of the *Abbott Labs* consent judgments continue to be sold
5 without a Proposition 65 warning and that it would harm GOL in the marketplace if GOL were
6 subject to lead standards that differ from those set in Section 3; or (ii) that, despite GOL's good
7 faith efforts to reduce lead and cadmium pursuant to Section 2.4, one or more Protein Supplement
8 Products contain more than 0.5 micrograms of lead in Daily Serving and/or 4.1 micrograms of
9 cadmium in a Daily Serving; (iii) that competitor products do not result in a lead exposure
10 exceeding 0.5 micrograms lead in a Daily Serving or exceeding 4.1 micrograms cadmium in a Daily
11 Serving; (iv) that competitor products are being sold subject to a consent judgment, filed after the
12 Effective Date, setting cadmium or lead limits more stringent than those in this Consent Judgment;
13 (v) that OEHHA has decreased the levels at which lead or cadmium exposures require a warning;
14 (vi) that methods have become available to remove or reduce lead or cadmium in a manner that is
15 applicable to the Protein Supplement Products; (vii) other similar information that supports ending
16 or extending the Consent Judgment to reflect changing circumstances. Nothing in this provision
17 shall obligate either Party to agree to an extension of the term of this Consent Judgment and either
18 Party may oppose, and the court shall consider such factors, in any motion to extend the term of this
19 Consent Judgment.

20 11.3 The Parties shall attempt through good faith efforts to resolve any dispute concerning
21 any requested extension of the term of the Consent Judgment. As part of their discussion, if the
22 Parties are unable to resolve any dispute concerning a requested extension of the term of the
23 Consent Judgment, they shall also meet and confer in good faith to consider whether a modification
24 of this Consent Judgment is appropriate. If the Parties are unable to resolve their dispute informally
25 within sixty (60) days after GOL provides AYS the grounds for GOL's requested extension of the
26 term of the Consent Judgment, GOL may bring a motion or proceeding to seek judicial relief as to
27 the termination clause. The prevailing Party in such a motion or proceeding is entitled to seek
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1 recovery of its reasonable attorneys' fees and costs incurred in any such motion or proceeding
2 pursuant to the provisions of Code of Civil Procedure section 1021.5.

3 11.4 The meet and confer deadlines specified under this Section 11 may be modified in
4 writing by the Parties.

5 **12. ENFORCEMENT**

6 12.1 In the event that a dispute arises with respect to any provisions of this Consent
7 Judgment, the Parties shall meet and confer within thirty (30) days of receiving written notice of the
8 alleged violation from another party. In the event that the Parties are unable to resolve their dispute
9 through the meet and confer process, this Consent Judgment may be enforced using any available
10 provision of law. If AYS is the prevailing Party in any dispute regarding compliance with the terms
11 of this Consent Judgment, it may seek any fines, costs, penalties, or remedies provided by law for
12 failure to comply with California Health and Safety Code sections 25249.5 *et seq.* A prevailing
13 Party in such a dispute regarding compliance with the terms of this Consent Judgment is entitled to
14 seek recovery of its reasonable attorneys' fees and costs incurred in any such motion or proceeding
15 pursuant to the provisions of Code of Civil Procedure section 1021.5. Notwithstanding any
16 language to the contrary in Sections 2.3, 3.7 or otherwise herein, AYS may disclose GOL's test
17 results in a court filing in support of any motion to enforce this Consent Judgment provided that
18 AYS first provides GOL an opportunity to make a motion for leave to seal such data pursuant to a
19 protective order.

20 12.2 In the event that GOL misses any deadline required under this Consent Judgment for
21 the submission of reports, testing, or of any other notifications to AYS required under the Consent
22 Judgment, GOL shall nonetheless be deemed to be in compliance with such a deadline if it submits
23 the required information or notification to AYS within fourteen (14) days of discovering the missed
24 deadline.

25 **13. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California.
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1 **14. EXCHANGE IN COUNTERPARTS**

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

5 **15. NOTICES**

6 All correspondence and notices required to be provided pursuant to this Consent Judgment
7 shall be in writing and personally delivered or sent by: (a) first-class, registered, certified return
8 receipt requested, or (b) by overnight courier on AYS or GOL by the other at the addresses set forth
9 below. Either AYS or GOL may specify in writing to the other Party a change of address to which
10 all notices and other communications shall be sent.

11 Whenever notice or a document is required to be sent to AYS, it shall be sent to:

12 Danielle Fugere
13 President
14 As You Sow
15 1611 Telegraph Ave, Suite 1450
16 Oakland, CA 94612

17 and

18 Ellison Folk
19 Shute, Mihaley & Weinberger LLP
20 396 Hayes Street
21 San Francisco, CA 94102

22 Whenever notice or a document is required to be sent to GOL, it shall be sent to:

23 Jeff Brams
24 Vice President and General Counsel
25 Garden of Life LLC
26 5500 Village Boulevard, Suite 202
27 West Palm Beach, FL 33407

28 and

Trenton H. Norris
Sarah Esmaili
Arnold & Porter LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111

1 **16. SEVERABILITY**

2 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
3 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
4 remaining shall not be adversely affected.

5 **17. ENTIRE AGREEMENT**

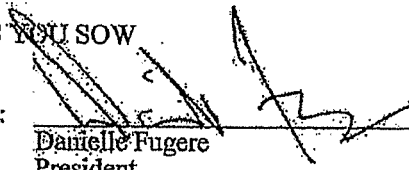
6 This Consent Judgment contains the sole and entire agreement and understanding of the
7 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments, and understandings related hereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made by any Party
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
11 to exist or to bind any of the Parties.

12 **18. ENTIRE AGREEMENT**

13 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
14 Party that he or she represents to enter into and execute the Consent Judgment on behalf of the Party
15 represented and legally bind that Party.

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17 Dated: 3/9/15

AS YOU SOW

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19 By: 
Danielle Fugere
President

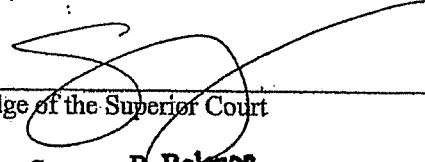
20
21 Dated: _____

GARDEN OF LIFE, LLC

22
23 By: _____
[Name]
[Title]

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25 **APPROVED AND ORDERED:**

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27 Dated: 6/26/15



Judge of the Superior Court
Suzanne R. Belanos

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16. SEVERABILITY

If, subsequent to court approval of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

17. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, 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 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

18. ENTIRE AGREEMENT

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


Dated: _____

AS YOU SOW

By: _____
Danielle Fugere
President

Dated: March 18, 2015

GARDEN OF LIFE, LLC

By: 
[Name] Jeffrey Brent Brams
[Title] GC & VP

APPROVED AND ORDERED:

Dated: _____

Judge of the Superior Court

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EXHIBIT A

GOL's Protein Supplement Products

Any protein supplement powders and shakes containing protein that are, at any time, manufactured, distributed, or sold by GOL.

Without limiting the generality of the foregoing, the Protein Supplement Products include the following:

RAW Organic Protein Powder (all flavors and varieties)
RAW Organic Fit Protein Powder (all flavors and varieties)
RAW Organic Meal Protein Powder (all flavors and varieties)
Whole Foods Exclusive RAW Organic Protein Powder (all flavors and varieties)
Whole Foods Exclusive RAW Organic Meal Protein Powder (all flavors and varieties)
Perfect Food RAW Organic Powder (all flavors and varieties)
Perfect Food Powder (all flavors and varieties)
Organic Plant Protein (all flavors and varieties)

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EXHIBIT B

List of Laboratories Deemed Approved

Eurofins
Exova, Inc.
K Prime, Inc.
National Food Laboratory, Inc.