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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

AS YOU SOW, Plaintiff, v. TRADER JOE'S COMPANY, Defendant.	Case No. *** ~~[PROPOSED]~~ **CONSENT JUDGMENT** Unlimited Civil Case

This Consent Judgment is entered into by and between Plaintiff As You Sow ("AYS" or "Plaintiff") and Defendant Trader Joe's Company ("Trader Joe's" or "Defendant"), to resolve claims raised against Defendant in the Complaint in the above-captioned action, which was filed on ____________, 2018. This Consent Judgment shall be effective upon entry. AYS and Defendant (collectively "the Parties") agree to the terms and conditions set forth below.

1. INTRODUCTION

1.1 AYS is a non-profit corporation dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer rights, environmental education, and corporate accountability. AYS is based in Oakland, California and is incorporated under the laws of the State of California.

1.2 Defendant produces, distributes, and/or sells Trader Joe's Roasted Seaweed Snack (SKU No. 92743) (the "Covered Product").

1.3 AYS alleges in the Complaint that the Covered Product contains cadmium, which is a chemical listed by the State of California as known to cause cancer and birth defects or other reproductive harm pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), California Health and Safety Code § 25249.5 *et seq*.

1.4 On September 17, 2014, AYS sent a 60-day Notice of Violation ("Notice") to Defendant and to public enforcers as required by Health and Safety Code section 25249.7, alleging that Defendant violated Proposition 65 by failing to provide clear and reasonable warnings before exposing persons to cadmium contained in the Covered Product.

1.5 The Parties have agreed to enter into this Consent Judgment to settle Plaintiff's claims with regard to the Covered Product and to avoid prolonged and costly litigation.

1.6 Defendant generally denies all material and factual allegations contained in or arising from Plaintiff's Notice, asserts that it has various affirmative defenses to such potential claims, and specifically denies that the Plaintiff or California consumers have been harmed or damaged by its conduct or products, including the Covered Product.

1.7 By executing and complying with this Consent Judgment, neither Party admits the existence of any other statutory, common law, or equitable claim, requirement or defense relating to or arising from the production, sale, or distribution of the Covered Product in California. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, or defense that AYS and Defendant may have in any other, or in future, legal proceedings unrelated to this action. This Paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Consent Judgment.

1.8 The term "Effective Date" means the date of entry of this Consent Judgment.

1.9 The only product covered by this Consent Judgment is the Covered Product, and the only chemical covered by this Consent Judgment is the chemical cadmium as it relates to the Covered Product only.

2. **JURISDICTION AND VENUE**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations contained in the Complaint and personal jurisdiction over Defendant; venue is proper in Alameda County; the Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all Proposition 65 claims up through and including the Effective Date which were or could have been asserted in this action based on the facts alleged in Plaintiff's Notice and Complaint; and the Court shall retain jurisdiction to enforce this Consent Judgment.

3. **INJUNCTIVE RELIEF**

3.1 Beginning no later than 90 days from the Effective Date of this Consent Judgment ("Compliance Date"), Defendant shall not produce, distribute, and/or sell in California any Covered Product unless its packaging bears the Notice Statement specified in Section 3.2 below.

3.2 Beginning no later than the time period specified above, packaging of the Covered Product produced, distributed, and/or sold by Defendant in the State of California shall comply with the warning requirements set forth in California Code of Regulations, Title 27, Article 6 § 25603(b) and bear the following "Notice Statement":

⚠**WARNING**: Cancer and Reproductive Harm - www.P65Warnings.ca.gov/food.

3.3 Defendant shall prominently affix or print the Notice Statement as required in

Paragraph 3.2 on the Covered Product's packaging, in a form substantially similar to the exemplar in Exhibit A. The Notice Statement (as set forth in Exhibit A) shall be displayed with such conspicuousness, as compared with other words, statements, designs, or devices on the packaging or labeling of the Covered Product, so as to render the Notice Statement likely to be read and understood by an ordinary individual under customary conditions of purchase and use.

3.4 The Parties agree, and by entering this Consent Judgment the Court so finds, that the content and placement of the Notice Statement as shown in Exhibit A hereto meets the requirements of Paragraphs 3.2 – 3.3 of this Consent Judgment. The Parties further agree, and by entering this Consent Judgment the Court so finds, that the alternate placement of the Notice Statement either directly below the distribution information in Exhibit A, or directly above the barcode in Exhibit A, also meets the requirements of Paragraphs 3.2 – 3.3 of this Consent Judgment. Defendant agrees to print the Notice Statement in high resolution such that it will be clearly legible.

3.5 If Defendant sells the Covered Product via an internet site controlled by Defendant to customers located in California, Defendant shall prominently display the Notice Statement set forth in Paragraph 3.2 on the internet site in conjunction with the Covered Product as set forth below. Such a statement shall be displayed in the same type size as the surrounding, non-heading text, either: (a) on the same page, without scrolling, as the description of the Covered Product; (b) on the same page, without scrolling, as the order form for the Covered Product; (c) on the same page, without scrolling, as the price for the Covered Product; or (d) in a dialogue box which appears and is visible when a California address for delivery is provided by the consumer, so long as the dialogue box appears prior to completion of the internet sale and requires the consumer to affirmatively accept receipt of the statement set forth in the dialogue box as a condition precedent to completing the sale. For purposes of option (d), the text of the statement shall be displayed in the same type size as the surrounding, non-heading text on the screen at the time of the appearance of the dialogue box.

3.6 If Defendant sells the Covered Product through the website of any internet retailer, Defendant shall send by first class mail or overnight delivery, prior to the Compliance Date, a letter requesting that the internet retailer provide the Notice Statement in Paragraph 3.2 in the same manner as required under Paragraph 3.5. The letter shall state that failure to provide this statement may result in liability for the internet retailer. In the letter, Defendant shall request that the internet retailer respond with a written acknowledgement that it will comply with Defendant's request.

3.7 If Defendant sells the Covered Product via mail order to customers located in California, Defendant shall prominently display the Notice Statement as required in Paragraph 3.2, in the mail order catalogue in conjunction with the Covered Product. The Notice Statement shall appear either on the same page as the Covered Product is displayed, or on the same page upon which the Covered Product's price is listed, in the same type size as the surrounding, non-heading text. The Notice Statement shall be added in the first print run of the mail order catalogue on or after the Effective Date.

3.8 Any changes to the text, format, or placement of the statements required under Paragraphs 3.2 through 3.7 shall be made only after Court approval and following written notice to Plaintiff and to the Attorney General.

4. SETTLEMENT PAYMENTS

4.1 Civil Penalty: Within thirty days of the Effective Date, Defendant shall pay $25,000 in the form of a check made payable to As You Sow, as a civil penalty pursuant to Health and Safety Code section 25249.7(b). AYS shall remit seventy-five percent (75%) of this amount to the State of California pursuant to Health and Safety Code section 25249.12(b).

4.2 Additional Settlement Payment: Within thirty days of the Effective Date, Defendant shall pay $18,000 in the form of a check made payable to AYS, with this amount to be used by AYS for grants to California 501(c)(3) non-profit organizations and by the AYS Environmental Enforcement Fund. These funds shall be used to educate and/or reduce or remediate consumer exposures to toxic chemicals such as cadmium and to increase consumer, worker, and community awareness of the health hazards posed by toxic chemicals in California. In deciding among grant proposals, the As You Sow Board of Directors ("Board") takes into consideration a number of important factors, including: (1) the nexus between the harm done in the underlying case(s) and the grant program work; (2) the potential for toxics reduction, prevention, remediation, or educational benefits to California citizens from the proposal; (3) the budget requirements of the proposed grantee and the alternate funding sources available to it for its project; and, (4) the Board's assessment of the proposed grantee's ability to perform the funded activities. AYS shall ensure that all funds will be disbursed and used in accordance with this paragraph, as well as AYS' mission statement, articles of incorporation, bylaws, and applicable state and federal laws and regulations. AYS shall obtain and maintain adequate records to document that the funds are spent on the activities described in this paragraph, and shall provide to the Attorney General, within thirty days of any request, copies of all documentation demonstrating how such funds have been spent. No Party to this Consent Judgment or counsel of record, or spouse or dependent child thereof, has an economic interest in any individual or entity, besides itself, that will receive all or part of an Additional Settlement Payment.

4.3 Within thirty days of the Effective Date, Defendant shall pay $57,000 in the form of a check made payable to Altshuler Berzon LLP, as reimbursement for Plaintiff's attorneys' fees, investigation costs, and other reasonable litigation costs and expenses.

5. **MODIFICATION**

5.1 This Consent Judgment may be modified by written agreement and stipulation of the Parties. If either Party seeks to modify the Consent Judgment, then it shall provide written notice to the other Party. The parties shall meet and confer within 30 days of receipt of such meet and confer notice. Neither Party shall unreasonably withhold agreement to any modification requested by the other Party based on an amendment to Proposition 65 or its supporting regulations or a change in the law. If despite their meet-and-confer efforts, the Parties are unable to reach agreement on a stipulated modification, either Party may file a noticed motion for modification with the Court for good cause shown, provided a copy of the motion is also served on the other Party and the Office of the California Attorney General.

5.2 If the parties reach agreement as to modification of the Consent Judgment, such stipulation shall be reported to the Office of the California Attorney General at least 21 days in advance of its submission to the Court for approval.

6. **DISPUTE RESOLUTION AND ENFORCEMENT**

6.1 If Plaintiff alleges that Defendant has failed to meet an obligation set forth in this Consent Judgment, Plaintiff shall inform Defendant in a reasonably prompt manner. As long as Defendant cures any such alleged violations within 30 days of receipt of the written notice, then there shall be deemed no material violation.

6.2 The Parties may, by motion filed in this Court, enforce the terms and conditions of this Consent Judgment. In the event a dispute arises with respect to any of the provisions of this Consent Judgment, and prior to the filing of any such motion, the Parties shall meet and confer within 14 days after either Party receives written notice of an alleged violation of this Consent Judgment or other dispute.

6.3 Either Party to this Consent Judgment is entitled to seek recovery of its reasonable attorneys' fees and costs incurred in any such motion or proceeding pursuant to the provisions of Code of Civil Procedure section 1021.5.

7. **CLAIMS COVERED AND RELEASE**

7.1 This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of itself and in the public interest, as well as Plaintiff's parents, subsidiaries, officers, directors, employees, agents, insurers, representatives, successors and assigns ("AYS Releasees"), and Defendant and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers, distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of the Covered Product, and the predecessors, successors, and assigns of any of them (collectively, "Trader Joe's Releasees"). Plaintiff hereby fully releases and discharges Trader Joe's Releasees from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees (including fees of attorneys, experts, and others), costs, and expenses asserted, or that could have been asserted from the handling, use, or consumption of the Covered Product, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Product regarding cadmium up to and including the Compliance Date. Defendant hereby releases AYS from, and waives any claims against AYS and AYS Releasees for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts and others), costs, expenses, or any other sum incurred or claimed or which could have been claimed for matters related to the Notice of Violation or Complaint.

7.2 Plaintiff agrees not to issue a press release regarding this Consent Judgment.

7.3 Compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65 for the Covered Product.

8. **GOVERNING LAW AND CONSTRUCTION**

This Consent Judgment shall be governed by, and construed in accordance with, the laws of the State of California.

9. **COURT APPROVAL**

9.1 Unless otherwise stipulated by the Parties, the Court shall either approve or disapprove of this Consent Judgment in its entirety, without alteration, deletion or amendment.

9.2 Unless otherwise stipulated by the Parties, if the Court fails to approve and order entry of the Consent Judgment without any alteration, deletion or amendment, this Consent Judgment shall become null and void upon the election of either Party, and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

9.3 Defendant agrees not to oppose Court approval of this Consent Judgment.

10. **ENTIRE AGREEMENT**

The Parties declare and represent that no promise, inducement or other agreement has been made conferring any benefit upon any Party except those contained herein and that this agreement contains the entire agreement pertaining to the subject matter hereof.

11. **DURATION OF CONSENT JUDGMENT**

This Consent Judgment shall terminate five years from the Effective Date unless the term of this Consent Judgment is extended. This Consent Judgment shall be extended only by a stipulation of the Parties that is entered by the Court.

12. **APPLICATION OF CONSENT JUDGMENT**

This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application to Covered Products sold exclusively outside the State of California and not used by California consumers.

13. ATTORNEYS' FEES

Except as specifically provided in this Consent Judgment, each Party shall bear its own attorneys' fees and costs incurred in connection with the 60-day Notice of Violation and Plaintiff's Complaint.

14. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7

14.1 Plaintiff shall comply with the reporting requirements referred to in Health and Safety Code section 25249.7(f) (and established in Title 11 of the California Code of Regulations sections 3000-3008), and shall move for approval of this Consent Judgment pursuant to the terms thereof.

14.2 The Parties shall use their best efforts to support entry of this Consent Judgment. If the California Attorney General objects to any term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible, prior to the hearing on the motion to approve this Consent Judgment.

15. PROVISION OF NOTICE

All correspondence and notices required by this Consent Judgment to the Parties shall be sent to:

<u>Plaintiff As You Sow</u>

As You Sow Foundation
Attn: Danielle Fugere, President and Chief Counsel
1611 Telegraph Street, Suite 1450
Oakland, CA 94612
Tel.: (510) 735-8158

<u>With a copy to:</u>

Barbara Chisholm
Tony LoPresti
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Tel.: (415) 421-7151

Defendant Trader Joe's Company

Kathryn Cahan
Senior Vice President, General Counsel
Trader Joe's Company
800 South Shamrock Avenue
Monrovia, CA 91016

With a copy to:

Dawn Sestito
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, CA 90071

16. **EXECUTION AND COUNTERPARTS**

This Consent Judgment may be executed in one or more counterparts and by means of facsimile or portable document format (.pdf), which taken together shall be deemed to constitute one document.

17. **DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Consent Judgment.

18. **AUTHORIZATION**

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally bind that Party. The undersigned have read, understand, and agree to all of the terms and conditions of this Consent Judgment.

APPROVED AS TO FORM:

Dated: __________, 2018

ALTSHULER BERZON LLP

By ________________________
BARBARA J. CHISHOLM
TONY LOPRESTI
ALTSHULER BERZON LLP

Attorneys for Plaintiff AS YOU SOW

Dated: March 19, 2018

By ________________________
DAWN SESTITO
O'MELVENY & MYERS LLP

Attorneys for Defendant TRADER JOE'S COMPANY

SO AGREED:

Dated: __________, 2018

AS YOU SOW

By: ________________________

Name: ________________________
Title: ________________________

Dated: __________, 2018

TRADER JOE'S COMPANY

By: ________________________

Name: Kathryn Cahan
Title: Senior Vice President, General Counsel

APPROVED AS TO FORM:

Dated: March 19, 2018

ALTSHULER BERZON LLP

By

BARBARA J. CHISHOLM
TONY LOPRESTI
ALTSHULER BERZON LLP

Attorneys for Plaintiff AS YOU SOW

Dated: __________, 2018

By ______________________

DAWN SESTITO
O'MELVENY & MYERS LLP

Attorneys for Defendant TRADER JOE'S COMPANY

SO AGREED:

Dated: __________, 2018

AS YOU SOW

By: ______________________

Name: ______________________
Title: ______________________

Dated: March 19, 2018

TRADER JOE'S COMPANY

By: ______________________

Name: Kathryn Cahan
Title: Senior Vice President, General Counsel

APPROVED AS TO FORM:

Dated: March 19, 2018

ALTSHULER BERZON LLP

By

BARBARA J. CHISHOLM
TONY LOPRESTI
ALTSHULER BERZON LLP

Attorneys for Plaintiff AS YOU SOW

Dated: __________, 2018

By ____________________
DAWN SESTITO
O'MELVENY & MYERS LLP

Attorneys for Defendant TRADER JOE'S COMPANY

SO AGREED:

Dated: 3/22, 2018

AS YOU SOW

By:

Name: Andrew Behar
Title: CEO

Dated: March 19, 2018

TRADER JOE'S COMPANY

By:

Name: Kathryn Cahan
Title: Senior Vice President, General Counsel

[PROPOSED] ORDER

IT IS SO ORDERED AND ADJUDGED:

The Court hereby incorporates the terms of this Consent Judgment into this Order. If a Party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

Dated: 8/9, 2018

HON. ______________________
JUDGE OF THE SUPERIOR COURT
Stephen Pulido

EXHIBIT A

Nutrition Facts
Total Fat 2g 3%
Saturated Fat 0g 0%
Trans Fat 0g
Cholesterol 0mg 0%
Sodium 50mg 2%
Total Carbohydrate 1g 0%
Dietary Fiber 1g 4%
Sugars 0g
Protein 1g
Vitamin C 20%
Iron 2%