

**FILED**  
ALAMEDA COUNTY

SEP 29 2020

CLERK OF THE SUPERIOR COURT  
By [Signature] Deputy

RICHARD T. DRURY (CBN 163559)  
REBECCA L. DAVIS (CBN 271662)  
LOZEAU | DRURY LLP  
1939 Harrison St., Suite 150  
Oakland, CA 94612  
Ph: 510-836-4200;  
Fax: 510-836-4205  
Email: richard@lozeaudrury.com  
rebecca@lozeaudrury.com

*Attorneys for Plaintiff*  
**COMMUNITY SCIENCE INSTITUTE**

## SUPERIOR COURT OF THE STATE OF CALIFORNIA

## COUNTY OF ALAMEDA

COMMUNITY SCIENCE INSTITUTE, a  
non-profit association,

Plaintiff,

vs.

THE HAIN CELESTIAL GROUP, INC., a  
Delaware corporation, ELLA'S KITCHEN,  
INC., a Delaware corporation,

Defendants.

Case No. RG18904436

ASSIGNED FOR ALL PURPOSES TO  
HON. WINIFRED SMITH, DEPT. 21**STIPULATED AMENDED CONSENT  
JUDGMENT**Case Filed: May 10, 2018  
Trial Date: None Set**1. DEFINITIONS**

1.1. The "Complaint" means the operative complaint in the above-captioned matter.

1.2. "Covered Products" means the following products: (1) Ella's Kitchen 2 Chick-  
Chick Chicken Casserole with Vegetables + Rice; (2) Ella's Kitchen Toddler Veggie Cracker Bites;  
(3) Earth's Best Gluten Free Chicken Nuggets; (4) Earth's Best Crunchin' Crackers Cheddar;  
(5) Earth's Best Chicken Nuggets for Kids; (6) Earth's Best Organic French Toast Sticks;  
(7) Earth's Best Organic Mini Pancakes Blueberry; (8) Earth's Best Organic Mini Waffles  
Blueberry; and (9) Earth's Best Organic Sunny Days Snack Bars Apple.

1.3. The "Effective Date" of this Stipulated Consent Judgment ("Consent Judgment") is the date the Court approves and enters this Consent Judgment.

1.4. The "Compliance Date" is the date that is four (4) months after the Effective Date.

## 2. INTRODUCTION

2.1. The Parties to this Consent Judgment are Plaintiff Community Science Institute ("CSI") and Defendants Ella's Kitchen, Inc. and The Hain Celestial Group, Inc. (collectively, "Hain"). CSI and Hain (collectively, the "Parties" and individually, a "Party") enter into this Consent Judgment to settle certain claims asserted by CSI against Hain as set forth in the Complaint.

2.2. CSI is an unincorporated association whose mission is to unite consumers and industrial neighbors to reform government and industry practices for a toxic free future.

2.3. Hain manufactures, distributes, and/or sells the Covered Products.

2.4. On December 22, 2017, CSI served two 60-day Notices of Violation of Proposition 65 on the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Hain, variously alleging that Hain violated Proposition 65 by exposing persons in California to acrylamide contained in Covered Products without first providing a clear and reasonable Proposition 65 warning (the "Notices"). True and correct copies of the Notices are attached hereto as Exhibit A.

2.5. Based on information exchanged between the Parties, CSI agrees not to dispute that the following Covered Products do not require warnings under Proposition 65: (1) Ella's Kitchen 2 Chick-Chick Chicken Casserole with Vegetables + Rice; (2) Earth's Best Gluten Free Chicken Nuggets; (3) Earth's Best Chicken Nuggets for Kids; (4) Earth's Best Organic French Toast Sticks; (5) Earth's Best Organic Mini Pancakes Blueberry; (6) Earth's Best Organic Mini Waffles Blueberry; and (7) Earth's Best Organic Sunny Days Snack Bars Apple

2.6. More than 60 days have passed since the Notices were served on the Attorney General, public enforcers, and Hain and no designated governmental entity has filed a complaint against Hain with regard to the Covered Products or the alleged violations.

2.7. For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Hain as to the acts alleged in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein and in the Notices with respect to Covered Products manufactured, distributed, and/or sold by or on behalf of Hain.

2.8. Hain denies the allegations in the Notices and Complaint, and nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other pending or future legal proceedings. This Consent Judgment is the product of negotiation and compromise and is accepted by the Parties solely for purposes of settling, compromising, and resolving issues disputed in this action.

### 3. HAIN'S DUTIES

3.1. Beginning on the Compliance Date, Hain shall not manufacture, or purchase from another manufacturer, for "Distribution in California" the following products: Ella's Kitchen Toddler Veggie Cracker Bites; and Earth's Best Crunchin' Crackers Cheddar (the "Discontinued Products").

3.2. As used in this Consent Judgment, the term "Distribution in California" shall mean to directly ship a Discontinued Product into California for sale in California or to sell a Discontinued Product to a distributor that Hain knows or has reason to know will sell the Discontinued Product in California.

### 4. SETTLEMENT PAYMENT

4.1. **Total Settlement Amount.** In full satisfaction of all potential civil penalties, additional settlement payments, attorney's fees and costs (including, but not limited to, fees and costs incurred by attorneys, experts, and investigators), Hain shall make a total payment of

1 \$50,000.00 ("Total Settlement Amount") to CSI within twenty one (21) calendar days of the  
2 Effective Date ("Due Date"). Hain shall make this payment by a check made payable to Lozeau  
3 Drury LLP and delivered to Lozeau Drury LLP, 1939 Harrison Street, Suite 150, Oakland,  
4 California 94612. The Total Settlement Amount shall be apportioned as follows:

5 **4.2. Allocation of Payments.** The Total Settlement Amount shall be allocated as  
6 follows:

7 **4.2.1. Civil Penalty.** \$11,428.57 shall be considered a civil penalty pursuant to  
8 California Health and Safety Code section 25249.7(b)(1). CSI shall remit 75% (\$8,571.43) of the  
9 civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHHA") for deposit in  
10 the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and  
11 Safety Code section 25249.12(c). CSI will retain the remaining 25% (\$2,857.14) of the civil  
12 penalty.

13 **4.2.2. Additional Settlement Payment.** \$8,571.43 shall be considered an  
14 Additional Settlement Payment ("ASP") pursuant to Health & Safety Code § 25249.7(b), and  
15 California Code of Regulations, Title 11, § 3204. These funds shall be distributed as follows:

16 **4.2.2.1. Clean Label Project.** \$6,285.72 of the ASP funds shall be  
17 distributed to the Clean Label Project ("CLP"), a nonprofit focused on health and transparency in  
18 consumer product labeling. CLP will utilize the ASP for activities that address the same public  
19 harm as allegedly caused by Defendant in this matter. These activities are detailed below and  
20 support CLP's overarching goal of health and transparency in consumer product labeling and its  
21 vision is to reduce contamination across all consumer products. CLP will restrict use of the ASP  
22 received from this Consent Judgment to the following purposes:

23 **4.2.2.2.** ASP funds will be used by CLP for research and educational  
24 purposes associated with reducing or remediating exposures to acrylamide and other toxic  
25 chemicals contained in consumer products sold in California and/or to increase consumer awareness  
26 of the health hazards posed by acrylamide and other toxic chemicals in consumer products sold in  
27 California and how such hazards may be mitigated. Specifically, CLP will use the ASP funds to  
28 support its activities that educate the public about the potential harms of acrylamide and other toxic

1 chemicals in food and ways to reduce those harms. As part of these educational efforts, CLP will  
2 create infographics that explain in an easy to understand manner the hazards of acrylamide and  
3 other toxic chemicals, and ways to reduce those hazards. In addition, CLP will also present this  
4 information through webinars for California residents. In addition, CLP will use the ASP funds to  
5 test additional products and create a California-specific webpage analyzing toxic chemical levels of  
6 products sold in California.

7 4.2.2.3. CLP's activities will have a direct and primary effect within  
8 the State of California because the funds will be used to educate California consumers about the  
9 harms of acrylamide and other toxic contaminants contained in foods, and ways to reduce those  
10 hazards. CLP's activities will also have a direct and primary effect within the State of California  
11 because CLP will create a web page that specifically analyzes Proposition 65 toxic contaminants in  
12 foods and other products that are sold in California.

13 4.2.2.4. CLP shall be fully accountable in that it will maintain  
14 adequate records to document and will be able to demonstrate how the ASP funds will be spent and  
15 can assure that the funds are being spent only for the proper, designated purposes described in this  
16 Consent Judgment. CLP shall provide the Attorney General, within thirty days of any request,  
17 copies of documentation demonstrating how such funds have been spent.

18 4.2.2.5. **Greenaction for Health and Environmental Justice.**  
19 \$2,285.71 of the ASP funds shall be distributed to Greenaction for Healthy and Environmental  
20 Justice ("Greenaction"), a nonprofit corporation that works to change government and corporate  
21 policies and practices to protect health and to promote environmental, social and economic justice.  
22 Greenaction will restrict use of the ASP received from this Consent Judgment to the purposes  
23 described below.

24 4.2.2.6. Greenaction will use the funds to conduct community  
25 educational outreach and civic engagement activities that protect the public health from Proposition  
26 65 listed chemicals. Greenaction further proposes to use the funds to provide community outreach  
27 to inform residents of Bayview Hunters Point in San Francisco of how to identify potential  
28 Proposition 65 exposure issues, file pollution complaints on [www.bvhp-ivan.org](http://www.bvhp-ivan.org), and how to

1 engage with local, regional, and state agency officials on pollution issues including exposure to  
2 Proposition 65 contaminants at monthly meetings of the multi-stakeholder Bayview Hungers Point  
3 Environmental Justice Response Task Force.

4 4.2.2.7. Greenaction's use of the ASP funds will have a direct and  
5 primary effect within the State of California because it will go towards education, outreach, and  
6 engagement of Californians on contamination and exposure to Proposition 65 listed chemicals  
7 occurring in California.

8 4.2.2.8. Greenaction shall be held fully accountable in that it will  
9 maintain adequate records to document and will be able to demonstrate how the ASP funds will be  
10 spent and can assure that the funds are being spent only for the proper, designated purposes  
11 described in this Consent Judgment. CSI shall require, as a prerequisite to the transfer of any funds  
12 pursuant to this Consent Judgment, that Greenaction agree to provide the California Attorney  
13 General's office, within thirty days of any request, copies of documentation demonstrating how  
14 such funds have been spent.

15 4.2.3. **Attorneys' Fees.** \$30,000.00 shall be distributed to Lozeau Drury LLP as  
16 reimbursement of CSI's attorney's fees and reasonable costs incurred in bringing this action.  
17 Except as explicitly provided herein, each Party shall bear its own fees and costs.

## 18 **5. ENFORCEMENT**

19 5.1. In the event that Hain fails to remit the Total Settlement Amount owed under Section  
20 4 of this Consent Judgment on or before the Due Date, Hain shall be deemed to be in material  
21 breach of its obligations under this Consent Judgment. CSI shall provide written notice of the  
22 delinquency to Hain via electronic mail. If Hain fails to deliver the Total Settlement Amount within  
23 five (5) days from the written notice, the Total Settlement Amount shall accrue interest at the  
24 statutory judgment interest rate provided in the California Code of Civil Procedure section 685.010.

25 5.2. The Parties agree that any legal action to enforce this Consent Judgment shall be  
26 brought in Alameda County Superior Court. The Parties agree that Alameda County Superior Court  
27 has subject matter jurisdiction over the enforcement of this Consent Judgment and personal  
28 jurisdiction over Hain, and that venue is proper in Alameda County.

1           5.3. If CSI purchases a Discontinued Product in California that has a best-by or sell-by  
2 (or equivalent) date or other code that reflects that the Discontinued Product was manufactured by  
3 or for Hain on or after the Compliance Date, or if the manufacture date is not apparent from the  
4 label, CSI shall inform Hain in a reasonably prompt manner, including information sufficient to  
5 permit Hain to identify the alleged violation of this Consent Judgment. Hain shall, within thirty (30)  
6 days following such notice, provide CSI with documentation that the Discontinued Products are in  
7 fact being discontinued in the State of California or other information to demonstrate that Hain is in  
8 compliance with the terms of this Consent Judgment. The Parties shall first attempt to resolve the  
9 matter prior to CSI taking any further legal action. In the event that CSI proves a violation of  
10 Section 3 in a judicial proceeding, the Court in its discretion may order that Hain cease selling any  
11 Discontinued Products in California without a clear and reasonable warning pursuant to Proposition  
12 65. In any enforcement proceeding regarding this Consent Judgment, Hain may assert any and all  
13 defenses that are available

14           5.4. Any Party that fails to meet and confer or otherwise attempt in good faith to resolve  
15 any dispute arising under this Consent Judgment prior to seeking judicial enforcement, shall forfeit  
16 any attorney's fees and cost to which that Party may otherwise be entitled.

## 17 **6. APPLICATION**

18           6.1 This Consent Judgment may apply to, be binding upon, and benefit the Parties and  
19 their respective officers, directors, attorneys, shareholders, employees, agents, parent companies,  
20 subsidiaries, divisions, franchisees, licensees, customers (excluding private labelers), distributors,  
21 wholesalers, retailers, predecessors, successors, and assigns. This Agreement shall have no  
22 application to any Covered Product which is distributed or sold outside the State of California.

## 23 **7. BINDING EFFECT; CLAIMS COVERED AND RELEASED**

24           7.1. This Consent Judgment is a full, final, and binding resolution between CSI, on behalf  
25 of itself and in the public interest, and Hain and its officers, directors, shareholders, employees,  
26 agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers,  
27 manufacturers, distributors, wholesalers, retailers, and all other upstream and downstream entities in  
28 the distribution chain, and the predecessors, successors, and assigns of any of them (collectively,

1 "Released Parties"). CSI, on behalf of itself and in the public interest, hereby fully releases and  
2 discharges the Released Parties from any and all claims, actions, causes of action, suits, demands,  
3 liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted  
4 from the handling, use, or consumption of the Discontinued Products, as to any alleged violation of  
5 Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65  
6 warnings on for acrylamide for Discontinued Products manufactured, distributed, or sold prior to  
7 the Compliance Date. Compliance with the terms of this Consent Judgment shall be deemed to  
8 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures to  
9 acrylamide in the Discontinued Products after the Compliance Date. The release in this Section 7.1  
10 is limited to the Discontinued Products.

11 7.2. CSI, on behalf of itself only, and not on behalf of the public interest, hereby fully  
12 releases and discharges the Released Parties from any and all claims, actions, causes of action, suits,  
13 demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been  
14 asserted from the handling, use, or consumption of the Covered Products, as to any alleged violation  
15 of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65  
16 warnings on the Covered Products regarding acrylamide for Covered Products.

17 7.3. CSI, on behalf of itself only (and not on behalf of the public interest), and Hain each  
18 waive and release any and all claims they may have against each other for all actions or statements  
19 made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in  
20 connection with the claims in the Notices and Complaint with respect to Covered Products  
21 manufactured, distributed, or sold prior to the Compliance Date, provided, however, that nothing in  
22 Section 7 shall affect or limit any Party's right to seek to enforce the terms of this Consent  
23 Judgment.

24 7.4. It is possible that other claims not known to the Parties, arising out of the facts  
25 alleged in the Notices or Complaint, and relating to the Covered Products, will develop or be  
26 discovered. CSI, on behalf of itself only (and not on behalf of the public interest), and Hain, on  
27 behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover and  
28 include all such claims up through and including the Effective Date, including all rights of action



1 therefore. CSI and Hain acknowledge that the claims released in Sections 7.2 and 7.3 above may  
2 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
3 unknown claims. California Civil Code section 1542 reads as follows:

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

8 CSI on behalf of itself only, and Hain on behalf of itself only, acknowledge and understand the  
9 significance and consequences of this specific waiver of California Civil Code section 1542.

10 7.5. Nothing in this Consent Judgment is intended to apply to any occupational or  
11 environmental exposures arising under Proposition 65, nor shall it apply to any of Hain's products  
12 other than the Covered Products.

#### 13 **8. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

14 8.1 In the event that any of the provisions of this Agreement are held by a court to be  
15 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

#### 16 **9. GOVERNING LAW**

17 9.1 The terms and conditions of this Consent Judgment shall be governed by and  
18 construed in accordance with the laws of the State of California.

#### 19 **10. MODIFICATION**

20 10.1. This Consent Judgment after its entry by the Court may be modified by stipulation of  
21 the Parties with the approval of the Court or by an order of this Court on noticed motion by a Party  
22 in accordance with law. Any Party seeking to modify this Consent Judgment must notify the other  
23 Party in writing, and the Parties shall thereafter attempt in good faith to meet and confer with the  
24 other Party prior to filing a motion to modify the Consent Judgment. If the Parties are unable to  
25 resolve their dispute informally within sixty (60) days after the date of the written notification, the  
26 Party that issued the written notification to seek the modification may bring a motion or proceeding  
27 to seek judicial relief as to the requested modification.  
28

10.2. In any stipulated modification to the Consent Judgment, the Party requesting the modification shall prepare the draft motion or application to modify the Consent Judgment.

### 11. PROVISION OF NOTICE

11.1. All notices required to be given to either Party to this Consent Judgment by the other shall be in writing and sent to the following agents listed below via email and first-class mail.

**For Community Science Institute:**

Rebecca L. Davis  
LOZEAU | DRURY LLP  
1939 Harrison St., Suite 150  
Oakland, CA 94612  
Ph: 510-836-4200  
Fax: 510-836-4205  
Email: rebecca@lozeaudrury.com

**For Hain:**

Sarah Esmaili  
ARNOLD & PORTER  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111  
Telephone: (415) 471-3283  
Facsimile: (415) 471-3400  
Email: sarah.esmaili@arnoldporter.com

### 12. EXECUTION AND COUNTERPARTS

12.1. This Consent Judgment may be executed in counterparts, which taken together shall be deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid as the original signature.

### 13. DRAFTING

13.1. 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

1 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
2 equally in the preparation and drafting of this Consent Judgment.

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

4 14.1. If a dispute arises with respect to either Party's compliance with the terms of this  
5 Consent Judgment, the Parties shall meet and confer in person, by telephone, and/or in writing and  
6 endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the  
7 absence of such a good faith attempt to resolve the dispute beforehand.

8 **15. ENTIRE AGREEMENT, AUTHORIZATION**

9 15.1. This Consent Judgment contains the sole and entire agreement and understanding of  
10 the Parties with respect to the entire subject matter herein, and any and all prior discussions,  
11 negotiations, commitments, and understandings related hereto. No representations, oral or  
12 otherwise, express or implied, other than those contained herein have been made by any Party. No  
13 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist  
14 or to bind any Party.

15 15.2. Each signatory to this Consent Judgment certifies that he or she is fully authorized  
16 by the Party he or she represents to stipulate to this Consent Judgment.

17 **16. COURT APPROVAL**

18 16.1. If this Consent Judgment is not entered by the Court, it shall be of no force or effect.  
19 In that event, CSI and Hain agree that this Consent Judgment and any related negotiations are not  
20 relevant to any Party's claims or defenses and may not be used as evidence in any action.

21 **17. DISMISSAL**

22 17.1 Within ten days of the Effective Date, CSI shall dismiss without prejudice the claims  
23 in the Complaint as to the Covered Products listed in Section 2.5, above.

24 **18. RETENTION OF JURISDICTION**

25 18.1. This Court shall retain jurisdiction of this matter to implement or modify the Consent  
26 Judgment.

27 **IT IS SO STIPULATED:**

28

1 Dated: 2020

THE HAIN CELESTIAL GROUP, INC. and  
ELLA'S KITCHEN, INC

Signature

Printed Name

Title

10 Dated: 9/24, 2020

COMMUNITY SCIENCE INSTITUTE

Signature

Printed Name

Title

18 APPROVED AS TO FORM:

19 Dated: 9/24, 2020

LOZEAU DRURY LLP

By:

Rebecca L. Davis  
Attorneys for Plaintiff Community  
Science Institute

23 Dated: \_\_\_\_\_, 2020

ARNOLD & PORTER

By:

Sarah Esmaili  
Attorneys for The Hain Celestial Group,  
Inc. and Ella's Kitchen, Inc.

1 Dated: September 25, 2020

2 THE HAIN CELESTIAL GROUP, INC. and  
3 ELLA'S KITCHEN, INC

4 *Kristy Meringolo*

5 Signature

6 Kristy Meringolo

7 Printed Name

8 SVP, General Counsel, Chief Compliance Officer,  
9 and Corporate Secretary

10 Title

11 Dated: \_\_\_\_\_, 2020

12 COMMUNITY SCIENCE INSTITUTE

13 Signature

14 Printed Name

15 Title

16 APPROVED AS TO FORM:

17 Dated: \_\_\_\_\_, 2020

18 LOZEAU | DRURY LLP

19 By: \_\_\_\_\_

20 Rebecca L. Davis  
21 Attorneys for Plaintiff Community  
22 Science Institute

23 Dated: September 25, 2020

24 ARNOLD & PORTER

25 By: *Sarah Esmaili*

26 Sarah Esmaili  
27 Attorneys for The Hain Celestial Group,  
28 Inc. and Ella's Kitchen, Inc.

Judge of the Superior Court

*Winifred J. Smith*  
Judge of the Superior Court