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MIGUEL A. CUSTODIO, JR., STATE BAR NO. 248744  
VINEET DUBEY, STATE BAR NO. 243208  
CUSTODIO & DUBEY LLP  
445 S. Figueroa St., Suite 2520  
Los Angeles, CA 90071  
Telephone: (213) 593-9095  
Facsimile: (213) 785-2899

Attorneys for Plaintiff Ecological Alliance, LLC

**FILED**  
Superior Court of California  
County of Los Angeles  
**08/24/2023**

David W. Slayton, Executive Officer / Clerk of Court

By:           A. Robledo           Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES  
(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California  
limited liability company,

Plaintiff,

v.

JOHN B. SANFILIPPO & SONS, INC., a  
Delaware corporation,

Defendant.

Case No.: 22STCV15518

**~~PROPOSED~~ STIPULATED  
CONSENT JUDGMENT**

1  
2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant John B. Sanfilippo &  
3 Sons, Inc. (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent  
4 Judgment”) as follows:

5 WHEREAS: On or about February 21, 2021, Plaintiff, through Plaintiff’s counsel, served  
6 Stater Bros. Markets a 60 Day Notice (the “Original Notice”), to the California Attorney General,  
7 the District Attorneys of every County in the State of California, and the City Attorneys for every  
8 City in the State of California with a population greater than 750,000 (collectively, “Public  
9 Prosecutor(s)”) alleging that Stater Bros. Markets violated California’s Safe Drinking Water and  
10 Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq., and its  
11 implementing regulations (collectively, “Proposition 65”) and that Plaintiff intended to file an  
12 enforcement action in the public interest; and

13 WHEREAS: On or about March 8, 2022, Plaintiff, through Plaintiff’s counsel, served  
14 John B. Sanfilippo & Sons, Inc. a supplemental 60 Day Notice (the “Supplemental Notice”), to  
15 Public Prosecutors alleging that Defendant violated Proposition 65 and that Plaintiff intended to  
16 file an enforcement action in the public interest; and

17 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed sunflower  
18 seeds and kernels containing cadmium, (collectively the “Covered Products”) that were sold or  
19 distributed for sale in California and further alleges that those Covered Products expose  
20 consumers in the State of California to cadmium, which is listed by the State of California  
21 pursuant to California Health and Safety Code § 25249.8; and

22 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed  
23 to cadmium in Covered Products without being provided the Proposition 65 warning set out at  
24 California Health and Safety Code § 25249.6 and its implementing regulations (“Proposition 65  
25 Warning”);

26 WHEREAS: Defendant denies the allegations of the Original Notice and Supplemental  
27 Notice, denies that warnings are required under Proposition 65 for exposures to cadmium in the  
28 Covered Products produced by Defendants, and maintains that it has complied with all applicable

1  
2 federal and state laws, including but not limited to Proposition 65;

3 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and  
4 believes that this objective is achieved by the actions described in this Consent Judgment; and

5 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay  
6 and expense of litigation.

7  
8 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN  
9 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

10 **INTRODUCTION**

11 1.1. On March 8, 2022, Plaintiff served the Supplemental Notice upon John B.  
12 Sanfilippo & Sons, Inc. and on Public Prosecutors. No Public Prosecutors commenced an  
13 enforcement action with respect to the Original Notice or the Supplemental Notice. No  
14 Public Prosecutor having commenced an enforcement action, Plaintiff proceeded to file  
15 its Complaint against Defendant in the present action.

16 1.2. Defendant employs ten (10) or more persons.

17 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the  
18 “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation  
19 contained in the Complaint, and personal jurisdiction over Defendant as to the acts  
20 alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this  
21 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all  
22 claims which were or could have been raised in the Complaint based on the facts alleged  
23 therein with respect to the Covered Products, and of all claims which were or could have  
24 been raised by any person or entity based in whole or in part, directly or indirectly, on the  
25 facts alleged in the Notice, in the present action, or arising therefrom or related thereto,  
26 with respect to Covered Products, including any Proposition 65 claim arising out of an  
27 exposure to Covered Products (collectively, “Proposition 65 Claims”).  
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1.4. By stipulating to the entry of this Consent Judgment and agreeing to provide the relief and remedies specified herein, Defendant does not admit that it has violated, or threatened to violate, Proposition 65 or any other law or legal duty. Defendant denies the material, factual, and legal allegations in the Notice and Complaint, and maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in California, including the Products, have been, and are, in compliance with all laws.

1.5. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect Defendant’s obligations, responsibilities, and duties under this Consent Judgment.

**2. DEFINITIONS**

2.1. “Effective Date” shall mean, with respect to this Consent Judgment, the date the Consent Judgment has been approved and entered by the Court.

2.2. The “Compliance Date” is the date that is twelve (12) months after the Effective Date.

**3. INJUNCTIVE RELIEF**

**3.1. Reformulation of the Product**

Any Products that are manufactured by Defendant on and after the Compliance Date that are thereafter sold in California or distributed for sale in California shall not exceed 410 ppb cadmium on average, as set forth in this Section 2. As used in this Section 2.1, “distributed for sale in California” means to directly ship a Product into California for sale in California or to sell a Product to a distributor that Defendant knows will sell the Product in California.

**3.2. Testing**

(a) Compliance with the Average Level shall be determined using LC-MS/MS

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2 (Liquid Chromatograph-Mass Spectrometry), GC/MS (Gas  
3 Chromatography/Mass Spectrometry), or any other testing method agreed upon  
4 by the Parties. Any testing for purposes of Section 2.1 shall be performed by a  
5 laboratory accredited by the State of California, a federal agency, or a  
6 nationally recognized accrediting organization.

7 (b) The Average Level is determined by randomly selecting and testing, over  
8 no less than a ten-day period, one sample from at least five (5) batches (or from as many  
9 batches as are available, if fewer than five) and a maximum of ten (10) batches of  
10 Products produced at locations that supply such Products to California (“Sampling Data”).  
11 The mean and standard deviation shall be calculated using the Sampling Data. Any data  
12 points that are more than three standard deviations outside the mean shall be discarded  
13 once, and the mean and standard deviation recalculated using the remaining data points.  
14 The arithmetic mean determined in accordance with this procedure shall be deemed the  
15 “Average Level.”

16 (c) Defendant shall arrange for testing under Section 2.2 for three (3)  
17 consecutive years with the first testing occurring prior to the Compliance Date. No  
18 further testing shall be required after the initial three-year compliance period unless  
19 Defendant receives notification that the Average Level (calculated as provided for in  
20 Section 3.2(b)) of cadmium in its tested Product exceeds 410 ppb, in which case  
21 Defendant shall be required to recommence the three-year compliance period.

22 **Sell-Through Period**

23 3.3. Notwithstanding anything else in this Consent Judgment, the Products that were  
24 manufactured prior to the Compliance Date shall be subject to the release of liability  
25 pursuant to this Consent Judgment, without regard to when such Products were, or are in  
26 the future, distributed or sold to customers. As a result, the obligations of Defendant, or  
27 any Releases, do not apply to these Products manufactured prior to the Compliance Date.  
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**4. MONETARY RELIEF**

4.1. Within thirty (30) days of the Effective Date, Defendant shall pay the total sum of \$48,000 which includes \$12,000 in civil penalties and \$36,000 in payment of Plaintiff’s costs and reasonable attorney’s fees. The \$12,000 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$9,000, paid to the State of California’s Office of Environmental Health Hazard Assessment and 25%, or \$3,000, payable to Plaintiff.

4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff’s counsel Custodio & Dubey LLP as set forth below. Plaintiffs’ counsel will remit the portions due to the State of California Office of Environmental Health Hazard Assessment and to Plaintiff.

Bank: Bank of America, N.A.  
Routing Transit No.: 026009593  
Account No.: 3251149324377  
Beneficiary: Custodio & Dubey LLP

**5. CLAIMS COVERED AND RELEASE**

5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of itself, and acting on behalf of the public interest, and Defendant, and all of Defendant’s officers, directors, members, shareholders, employees, representatives, attorneys, agents, parent companies, subsidiaries, divisions, affiliates, entities under common ownership and the predecessors, successors, and assigns of any of them (collectively the “Defendant Releasees”), as well as all other upstream and downstream entities in the to whom Defendant directly or indirectly distributes, ships, or sells the Covered Products, including but not limited to manufacturers, retailers, suppliers, distributors, marketplace hosts, wholesalers, customers, private label customers, franchisees, licensees, licensors, and cooperative members, and all of their officers, directors, members, shareholders, employees, representatives, attorneys, agents, parent

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2 companies, subsidiaries, divisions, affiliates, predecessors, successors, and assigns  
3 (collectively, the “Released Parties”), for any alleged violation of Proposition 65, and its  
4 implementing regulations, for failure to provide Proposition 65 warnings for the Covered  
5 Products with respect to cadmium, and fully resolves all claims that have been brought,  
6 or which could have been brought in this action up to and including the Effective Date.  
7 Plaintiff on behalf of itself, and in the public interest, hereby discharges the Defendant  
8 Releasees and Released Parties from any and all claims, actions, causes of action, suits,  
9 demands, liabilities, damages, penalties, obligations, debts, losses, fees, costs and  
10 expenses asserted with respect to any alleged violation of Proposition 65 arising from the  
11 failure to provide Proposition 65 warnings about exposures to cadmium for any or all of  
12 the Covered Products. Compliance with the terms of this Consent Judgment constitutes  
13 compliance with Proposition 65 by Defendant with respect to any alleged failure to warn  
14 about cadmium in Covered Products sold or distributed by Defendant after the Effective  
15 Date.

16 5.2. Plaintiff, acting in its individual capacity only, and in consideration of the  
17 promises and monetary payments contained herein, hereby releases Defendant Releasees  
18 and Released Parties from any alleged claim of failure to provide Proposition 65  
19 warnings for the Covered Products that Defendant has sold or caused to be sold in  
20 California up to and including the Effective Date. This Consent Judgment is a full, final  
21 and binding resolution of all claims that were or could have been asserted against the  
22 Defendant and/or the Released Parties for failure to provide warnings for alleged  
23 exposures to cadmium contained in the Covered Products.

24 5.3. It is possible that other claims not known to the Parties arising out of the facts  
25 contained in the Notice, or alleged in the Complaint, relating to the Covered Products,  
26 will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on the one  
27 hand, and Defendant, on the other hand, acknowledge that this Consent Judgment is  
28 expressly intended to cover and include all such claims through and including the

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2 Effective Date, including all rights of action thereon. Plaintiff and Defendant  
3 acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown  
4 claims, and nevertheless intend to release such claims, and in doing so waive California  
5 Civil Code § 1542 which reads as follows:  
6

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

13 5.4. Plaintiff understands and acknowledges that the significance and consequence of  
14 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages  
15 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the  
16 Covered Products, including but not limited to any exposure to, or failure to warn with  
17 respect to exposure to, chemicals in or from the Covered Products, Plaintiff will not be  
18 able to make any claim for those damages against any of the Defendant Releasees or the  
19 Released Parties.

20 5.5. Compliance by Defendant with the terms of this Consent Judgment shall constitute  
21 compliance with Proposition 65 with respect to exposure to cadmium in the Covered  
22 Products as set forth in the Notice and/or the Complaint.

23 5.6. If the California Office of Environmental Health Hazard Assessment (OEHHA)  
24 promulgates regulations affecting the warning provisions set forth herein or otherwise  
25 impacting the terms of this Consent Judgment (including but not limited to the published  
26 “no significant risk level” for cadmium set forth at Cal. Code Regs., tit. 27, section  
27 25705, subdivision ©(2) or any “alternative risk level” adopted by regulation or court  
28 decision), or if OEHHA takes some other final regulatory action that determines that



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warnings for cadmium are not required or modifies the standard for warnings for cadmium, then Defendant may comply with those regulations or provisions without being deemed in breach of this Consent Judgment.

5.7. If a court of competent jurisdiction or an agency of the federal government, including, but not limited to, the U.S. Food and Drug Administration, states through any guidance, regulation or legally binding act that federal law has preemptive effect on any of the requirements of this Consent Judgment, then Defendant shall not be obligated to continue any performance that would be in conflict with said federal law.

5.8. If a final decision of a court determines that warnings for cadmium exposures or that enforcement of Proposition 65 claims for cadmium exposures are preempted or otherwise unlawful or unconstitutional, then Defendant shall not be required to continue any performance under this Consent Judgment and may conform to such ruling in order to avoid unfair, inconsistent, or anti-competitive results.

**6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)**

6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**7. PROVISION OF NOTICE**

7.1. When any Party is entitled to receive any notice or writing under this Consent Judgment, the notice or writing shall be sent by first class certified mail with return receipt requested, or by electronic mail, as follows:

To Defendant:  
Steven Siros  
Jenner & Block LLP  
353 N. Clark St.  
Chicago, IL 60654-3456  
[ssiros@jenner.com](mailto:ssiros@jenner.com)

1  
2 To Plaintiff:  
3 Vineet Dubey, Esq.  
4 Custodio & Dubey LLP  
5 445 S. Figueroa St., Ste 2520  
6 Los Angeles, CA 90071  
7 [dubey@cd-lawyers.com](mailto:dubey@cd-lawyers.com)

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10 7.2. Any party may modify the person and address to whom the notice is to be sent by  
11 sending the other Party notice that is transmitted in the manner set forth in section 7.1.

## 12 **8. COURT APPROVAL**

13 Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and  
14 file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that Defendant  
15 shall not oppose. This Consent Judgment shall not become effective until approved and entered by  
16 the Court and shall be null and void if it is not approved and entered by the Court within one year  
17 after it has been fully executed by the Parties, or by such additional time as the Parties may agree  
18 to in writing. If this Consent Judgment is not entered by the Court, it shall be of no force or effect,  
19 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose

## 20 **9. GOVERNING LAW AND CONSTRUCTION**

21 9.1. The terms of this Consent Judgment shall be governed by the laws of the State of  
22 California, and shall apply only to Covered Products sold in California.

## 23 **10. ENTIRE AGREEMENT**

24 10.1. This Consent Judgment contains the sole and entire agreement and understanding  
25 of the Parties with respect to the entire subject matter hereof, and any and all prior  
26 discussions, negotiations, commitments, or understandings related thereto, if any, are  
27 hereby merged herein and therein.

28 10.2. There are no warranties, representations, or other agreements between the Parties  
except as expressly set forth herein. No representations, oral or otherwise, express or  
implied, other than those specifically referred to in this Consent Judgment have been  
made by any Party hereto.

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10.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein.

10.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby, and approved and ordered by the Court.

10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

**11. RETENTION OF JURISDICTION**

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

**12. ENFORCEMENT**

12.1. Prior to bringing any motion or order to show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce the Consent Judgment shall provide the other Party written notice of the alleged violation. The Parties shall meet and confer in an effort to try to reach agreement on an appropriate cure for the alleged violation. Plaintiff shall not bring an enforcement action or institute a judicial proceeding if Defendant demonstrates it has complied with the requirements of Section 3. Defendant is entitled to designate such information as confidential. In the event that meet and confer efforts are unsuccessful, the Party alleging a violation may initiate a judicial proceeding to enforce this Consent Judgment no earlier than 60 days after issuing the written notice specified in this Section. In the event that a Party initiates such a judicial proceeding, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs.

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**13. NO EFFECT ON OTHER SETTLEMENTS**

13.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

**14. EXECUTION IN COUNTERPARTS**

14.1. This Consent Judgment may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute the same document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic means, shall constitute legal and binding execution and delivery. Any photocopy of the executed Consent Judgment shall have the same force and effect as the original.

**15. AUTHORIZATION**

15.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

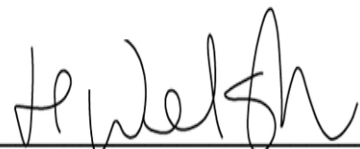
**16. SEVERABILITY**

16.1. If subsequent to Court approval of this Consent Judgment, any part or provision is declared by a Court to be invalid, void, or unenforceable, the remaining portions or provisions shall continue in full force and effect to the extent they implement the Parties' intent.

**AGREED TO:**

**Ecological Alliance LLC**

Date: May 24, 2023

By:   
Harmony Welsh, Managing Member

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**AGREED TO:**

**John B. Sanfilippo & Sons, Inc. Date:**

May 31, 2023

By: *Jina M. Lakatos*

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: 11 28 2023



*Rupert A. Byrdson*

Rupert A. Byrdson / Judge

JUDGE OF THE SUPERIOR COURT