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7 Attorneys for Plaintiff
8 AMY CHAMBERLIN

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO**

12
13 AMY CHAMBERLIN, in the public interest,
14 Plaintiff,
15 v.
16 WHOLE FOODS MARKET CALIFORNIA,
17 INC.; and DOES 1 through 500, inclusive,
18 Defendants.

CIVIL ACTION NO. CGC-13-529383
[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER
[Health & Safety Code § 25249.5, et seq.]

1 **1. INTRODUCTION**

2 **1.1** This Action arises out of the alleged violations of California's Safe Drinking Water
3 and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.
4 (also known as and hereinafter referred to as "Proposition 65") regarding the following product
5 (hereinafter collectively the "Covered Product": Whole Foods Glucosamine & Chondroitin
6 Complex, Uniform Product Code number 99482 28259.

7
8 **1.2** Plaintiff AMY CHAMBERLIN ("CHAMBERLIN") is a California resident acting
9 as a private enforcer of Proposition 65. CHAMBERLIN brings this Action in the public interest
10 pursuant to California Health and Safety Code Section 25249. CHAMBERLIN asserts that she is
11 dedicated to, among other causes, helping safeguard the public from health hazards by reducing the
12 use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and
13 employees, and encouraging corporate responsibility.

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15 **1.3** Defendant WHOLE FOODS MARKET CALIFORNIA, INC. a California
16 Corporation, is referred to hereinafter as "WHOLE FOODS."

17 **1.4** WHOLE FOODS distributes and sells the Covered Product.

18 **1.5** CHAMBERLIN and WHOLE FOODS are hereinafter sometimes referred to
19 individually as a "Party" or collectively as the "Parties."

20
21 **1.6** On or about December 26, 2012, pursuant to California Health and Safety Code
22 Section 25249.7(d)(1), CHAMBERLIN served a 60-Day Notice of Violations of Proposition 65
23 ("Notice of Violations") on the California Attorney General, other public enforcers, and WHOLE
24 FOODS. A true and correct copy of the Notice of Violations is attached hereto as Exhibit A.

1 1.7 After more than sixty (60) days passed since service of the Notice of Violations, and
2 no designated governmental agency filed a complaint against WHOLE FOODS with regard to the
3 Covered Product or the alleged violations, CHAMBERLIN filed the Complaint in this Action (the
4 “Complaint”) for injunctive relief and civil penalties. The Complaint is based on the allegations in
5 the Notice of Violations.
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7 1.8 The Complaint and the Notice of Violations each allege that WHOLE FOODS
8 manufactured, distributed, and/or sold in California the Covered Product, which contain lead, a
9 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and exposed
10 consumers at a level requiring a Proposition 65 warning. Further, the Complaint and Notice of
11 Violations allege that use of the Covered Product exposes persons in California to lead without first
12 providing clear and reasonable warnings, in violation of California Health and Safety Code Section
13 25249.6. WHOLE FOODS denies all material and factual allegations of the Notice of Violation
14 and the Complaint, filed an answer asserting various affirmative defenses, and specifically denies
15 that the Covered Product requires a Proposition 65 warning or cause harm to any person. WHOLE
16 FOODS and CHAMBERLIN each reserve all rights to allege additional facts, claims, and
17 affirmative defenses if the Court does not approve this Consent Judgment.
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19 1.9 The Parties enter into this Consent Judgment in order to settle, compromise and
20 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
21 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any of
22 the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent
23 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
24 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
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1 wrongdoing, or liability, including without limitation, any admission concerning any alleged
2 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent Judgment
3 shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
4 any other or future legal proceeding. Provided, however, nothing in this Section shall affect the
5 enforceability of this Consent Judgment.
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7 **1.10** The "Effective Date" of this Consent Judgment shall be the date this Consent
8 Judgment is entered as a Judgment.

9 **2. JURISDICTION AND VENUE**

10 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
11 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that
12 venue is proper in this Court, and that this Court has jurisdiction to enter this Consent Judgment
13 pursuant to the terms set forth herein.
14

15 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING, AND WARNINGS**

16 **3.1** Beginning on the Effective Date, WHOLE FOODS shall be permanently enjoined
17 from offering for sale to a consumer in California, directly selling to a consumer in California, or
18 "Distributing into California" any of the Covered Product for which the daily dose recommended
19 on the label contains more than 0.5 micrograms of lead unless the label of the Covered Product
20 contains a Proposition 65 compliant warning. "Distributing into California" means to ship any of
21 the Covered Product to California for sale or to sell any of the Covered Product to a distributor that
22 WHOLE FOODS knows or has reason to know will sell the Covered Product in California.
23 Provided, however, that WHOLE FOODS may manufacture or package and sell Covered Product
24 for which the maximum daily dose recommended on the label contains more than 0.5 micrograms
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1 of lead as long as such products are only for sale to consumers located outside of California and
2 WHOLE FOODS does not Distribute them into California.

3 **3.2** For a period of five (5) years from the Effective Date, any batch or lot number of the
4 Covered Product offered for sale to any consumer in California shall be tested for lead
5 contamination utilizing inductively coupled plasma-mass spectrometry. All tests shall be
6 conducted the expense of WHOLE FOODS. WHOLE FOODS shall provide the verified results of
7 all tests to counsel for CHAMBERLIN, via regular U.S. Mail, within five (5) days of receipt of
8 such results by WHOLE FOODS. For purposes of this Consent Judgment, daily lead exposure
9 levels shall be measured in micrograms and shall be calculated using the following formula:
10 Micrograms of lead per gram of product, multiplied by grams per serving of the product (using the
11 largest serving size appearing on the product label), multiplied by servings of the product per day
12 (using the largest number of servings in the recommended dosage appearing on the product label),
13 which equals micrograms of lead exposure per day.

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16 **4. SETTLEMENT PAYMENT**

17 **4.1** WHOLE FOODS shall remit a total payment of \$102,500 within thirty days of the
18 Effective Date, which shall be in full and final satisfaction of any and all civil penalties, payment in
19 lieu of civil penalties, and attorney's fees and costs.

20 **4.2** The payment will be in the form of separate checks sent to counsel for
21 CHAMBERLIN, Robert B. Hancock, Pacific Justice Center, 50 California Street, San Francisco,
22 California 94111. The checks shall be payable to the following parties and the payment shall be
23 apportioned as follows:
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1 4.3 \$25,000 (twenty-five thousand dollars) as civil penalties pursuant to California
2 Health and Safety Code Section 25249.7(b)(1). Of this amount, \$18,750.00 (eighteen thousand
3 seven hundred fifty dollars) shall be payable to the Office of Environmental Health Hazard
4 Assessment (“OEHHA”), and \$6,250.00 (six thousand two hundred fifty dollars) shall be payable
5 to CHAMBERLIN. (Cal. Health & Safety Code § 25249.12(c)(1) & (d)). CHAMBERLIN’s
6 counsel will forward the civil penalty to OEHHA.
7

8 4.4 \$77,500.00 (seventy-seven thousand five hundred dollars) payable to Pacific Justice
9 Center as reimbursement of CHAMBERLIN’s attorneys’ fees and costs.

10 4.5 WHOLE FOODS’ failure to remit payment before its due date shall be deemed a
11 material breach of this Agreement.

12 **5. MODIFICATION OF CONSENT JUDGMENT**

13 This Consent Judgment may be modified only by: (i) Written agreement and stipulation of
14 the Parties and upon having such stipulation entered as a modified Consent Judgment by the Court;
15 or (ii) Upon entry of a modified Judgment by the Court pursuant to a motion by one of the Parties
16 after exhausting the meet and confer process set forth as follows. If either Party requests or
17 initiates a modification, then it shall meet and confer with the other Party in good faith before filing
18 a motion with the Court seeking to modify it. CHAMBERLIN is entitled to reimbursement of all
19 reasonable attorneys’ fees and costs regarding the Parties’ meet and confer efforts for any
20 modification requested or initiated by WHOLE FOODS. Similarly, WHOLE FOODS is entitled to
21 reimbursement of all reasonable attorney’s fees and costs regarding the Parties’ meet and confer
22 efforts for any modification requested or initiated by CHAMBERLIN. If, despite their meet and
23 confer efforts, the Parties are unable to reach agreement on any proposed modification the party
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1 seeking the modification may file the appropriate motion and the prevailing party on such motion
2 shall be entitled recover its reasonable fees and costs associated with such motion .

3 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

4 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
5 Consent Judgment.

6 **6.2** Subject to section 7, any Party may, by motion or application for an order to show
7 cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.
8 The prevailing party in any such motion or application may request that the Court award its
9 reasonable attorneys' fees and costs associated with such motion or application.
10

11 **6.3**

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13 **7. NOTICE AND CURE/MEET AND CONFER**

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15 **7.1** At any time more than 30 days after the Effective Date of this Consent
16 Judgment, CHAMBERLIN may provide WHOLE FOODS with a Notice of Violation, alleging that
17 the Covered Product does not comply with section 3.1 of this Consent Judgment. CHAMBERLIN
18 shall provide with the Notice of Violation sent to WHOLE FOODS copies of documents and
19 laboratory analysis that support the allegations of non-compliance.

20 **7.2** Within 30 days of receiving such a Notice of Violation, WHOLE FOODS
21 shall provide to CHAMBERLIN its Notice of Election to contest or not to contest the Notice of
22 Violation. If WHOLE FOODS elects not to contest the Notice of Violation, it shall, within 30 days
23 after providing its Notice of Election, stop selling the identified Covered Product, and provide
24 CHAMBERLIN with written notice of such discontinuation of sale of the alleged non-compliant
25 product. If WHOLE FOODS elects not to contest and otherwise complies with this paragraph, it
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1 shall be deemed to be in compliance with this Consent Judgment and CHAMBERLIN may take no
2 further action related to the alleged non-compliant product and the Notice of Violation and
3 CHAMBERLIN may not hold WHOLE FOODS liable for any other remedies, including injunctive
4 relief, penalties, sanctions, monetary award, attorney's fees, or costs associated with the
5 investigation and prosecution of the alleged non-compliant products the Notice of Violation for
6 which WHOLE FOODS elected – pursuant to this paragraph – to settle and not to contest.
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8 7.3 In the event WHOLE FOODS elects to contest the allegations contained in
9 any Notice of Violation CHAMBERLIN sends pursuant to this Section, WHOLE FOODS may
10 provide CHAMBERLIN along with its Notice of Election any evidence that, in WHOLE FOODS'
11 judgment, supports its position. In the event CHAMBERLIN agrees with WHOLE FOODS'
12 position, it shall within 30 days of receiving such Notice of Election and evidence notify WHOLE
13 FOODS of its agreement and CHAMBERLIN shall take no further action regarding the alleged
14 non-compliant product subject to the Notice and the evidence that WHOLE FOODS provided. If
15 CHAMBERLIN disagrees with WHOLE FOODS' position, CHAMBERLIN shall, within 30 days,
16 notify WHOLE FOODS of such and shall in writing provide WHOLE FOODS with the reasons for
17 CHAMBERLIN'S disagreement. Thereafter, the Parties shall meet and confer to attempt to resolve
18 their dispute or mutually acceptable terms.
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20 7.4 If within 60 days of receipt of a Notice of Violation either a.) there is no
21 resolution of the meet and confer process required under paragraph 7.3; b.) WHOLE FOODS fails
22 to provide written Notice of Election not to contest the Notice of Violation; or c.) WHOLE
23 FOODS fails to correct any uncontested violations identified in the Notice of Violation within 30
24 days, then CHAMBERLIN may – at its election – seek to enforce the terms and conditions
25 contained in this Consent Judgment in the Superior Court of the State of California, or may initiate
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1 an enforcement action for new violations pursuant to Health & Safety Code § 25249.7(d). In any
2 such proceeding, CHAMBERLIN may seek whatever fines, costs, penalties or remedies as may be
3 provided by law for any violation of Proposition 65 or this Consent Judgment.

4 **8. APPLICATION OF CONSENT JUDGMENT**

5 This Consent Judgment shall apply to and be binding upon the Parties and their respective
6 successors and assigns, and it shall benefit the Parties and their respective officers, directors,
7 shareholders, employees, agents, parent companies, its sister company Mrs. Gooch's Natural Foods
8 Market, Inc. , its subsidiaries, divisions, affiliates, franchisees, licensees, customers (including "Co-
9 Brand" customers; excluding only "Private Labeler" customers), distributors, wholesalers, retailers,
10 predecessors, successors, and assigns. "Private Labelers" excluded from the benefits of this
11 Consent Judgment are companies who rebrand and offer WHOLE FOODS manufactured or
12 distributed products under their own brand, not under the WHOLE FOODS brand. "Co-Brand"
13 customers who shall benefit from this Consent Judgment are companies who offer WHOLE
14 FOODS manufactured or distributed products with their own brand and the WHOLE FOODS
15 brand both displayed on the product packaging.

18 **9. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

19 9.1 This Consent Judgment is a full, final, and binding resolution between
20 CHAMBERLIN, on behalf of herself and in the public interest, and WHOLE FOODS and its sister
21 company Mrs. Gooch's Natural Foods Market, Inc. of all direct and derivative violations of
22 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
23 exposure to lead from the handling, use, or consumption of the Covered Product and fully resolves
24 all claims that have been or could have been asserted in this Action up to and including the
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1 Effective Date for failure to provide Proposition 65 warnings for the Covered Product regarding
2 lead. CHAMBERLIN, on behalf of herself and in the public interest, hereby forever releases and
3 discharges, WHOLE FOODS and its past and present officers, directors, owners, shareholders,
4 employees, agents, attorneys, parent companies, subsidiaries, divisions, affiliates, suppliers,
5 franchisees, licensees, customers (including "Co-Brand" customers; excluding only "Private
6 Labeler" customers), distributors, wholesalers, retailers, and all other upstream and downstream
7 entities and persons in the distribution chain of any Covered Product, and the predecessors,
8 successors and assigns of any of them, including but not limited to Mrs. Gooch's Natural Foods
9 Market, Inc. (collectively, "Released Parties"), from all claims and causes of action and obligations
10 to pay damages, restitution, fines, civil penalties, payment in lieu of civil penalties and expenses
11 (including but not limited to expert analysis fees, expert fees, attorney's fees and costs)
12 (collectively, "Claims") arising under or derived from Proposition 65 up through the Effective Date
13 based on exposure to lead from the Covered Product as set forth in the Notice of Violations and the
14 Complaint.
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17 **9.2** Compliance with the terms of this Consent Judgment shall be deemed to constitute
18 compliance by any Released Party with Proposition 65 regarding alleged exposures to lead from
19 the Covered Product as set forth in the Notice of Violations and the Complaint.
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21 **9.3** CHAMBERLIN, acting on her own behalf and in the public interest releases WHOLE
22 FOODS and its sister company Mrs. Gooch's Natural Foods Market, Inc. from all claims for
23 violations of Proposition 65 up through the Effective Date based on exposure to lead from the
24 Covered Product as set forth in the Notice of Violation. Compliance with the terms of this Consent
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1 Judgment constitutes compliance with Proposition 65 with respect to exposures to lead from the
2 Covered Product as set forth in the Notice of Violations.

3 9.3 It is possible that other Claims not known to CHAMBERLIN arising out of the facts
4 alleged in the Notice of Violations or the Complaint and relating to lead in the Covered Product
5 that were manufactured, sold or Distributed into California before the Effective Date will develop
6 or be discovered. CHAMBERLIN, on behalf of herself only, acknowledges that the Claims
7 released herein include all known and unknown Claims and waives California Civil Code Section
8 1542 as to any such unknown Claims. California Civil Code Section 1542 reads as follows:
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10 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
11 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
12 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
13 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
14 **OR HER SETTLEMENT WITH THE DEBTOR.”**

15 CHAMBERLIN, on behalf of herself only, acknowledges and understands the significance and
16 consequences of this specific waiver of California Civil Code section 1542.

17 9.4 CHAMBERLIN, on one hand, and WHOLE FOODS, on the other hand, each
18 release and waive all Claims they may have against each other for any statements or actions made
19 or undertaken by them in connection with the Notice of Violations or the Complaint. However,
20 this shall not affect or limit any Party’s right to seek to enforce the terms of this Consent
21 Judgment.

22 10. CONSTRUCTION AND SEVERABILITY

23 10.1 The terms and conditions of this Consent Judgment have been reviewed by the
24 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully
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1 discuss the terms and conditions with its counsel. In any subsequent interpretation or construction
2 of this Consent Judgment, the terms and conditions shall not be construed against any Party.

3 **10.2** In the event that any of the provisions of this Consent Judgment is held by a court to
4 be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
5 affected.

6 **10.3** The terms and conditions of this Consent Judgment shall be governed by and
7 construed in accordance with the laws of the State of California.
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9 **11. PROVISION OF NOTICE**

10 All notices required to be given to either Party to this Consent Judgment by the other shall
11 be in writing and sent to the following agents listed below by: (a) first-class, registered, (b) certified
12 mail, (b) overnight courier, or (c) personal delivery to the following:
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14 **For Pacific Justice Center:**

15 Melvin B. Pearlston
16 Robert B. Hancock
17 PACIFIC JUSTICE CENTER
50 California Street, Suite 1500
San Francisco, California 94111

18 **For Whole Foods Market California, Inc.:**

19 J.T. Wells Blaxter
Blaxter Law, A Professional Corporation
20 One Bush St., Ste. 650
San Francisco, CA 94104
wblaxter@blaxterlaw.com
21 Phone: (415) 500-7700
22 Fax: (415) 766-4255

23 John H. Hempfling
Global Litigation Counsel
24 Whole Foods Market
550 Bowie Street
25 Austin, TX 78703
26

1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, CHAMBERLIN shall
3 notice a Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment, the
6 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
7 the hearing on the motion.
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9 **12.3** If the Court, despite the Parties' best efforts, does not approve this Stipulated
10 Consent Judgment, it shall be null and void and have no force or effect.

11 **13. EXECUTION AND COUNTERPARTS**

12 This Stipulated Consent Judgment may be executed in counterparts, which taken together
13 shall be deemed one document. A facsimile or .pdf signature shall be construed as valid and as the
14 original signature.
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16 **14. ENTIRE AGREEMENT, AUTHORIZATION**

17 **14.1** This Consent Judgment contains the sole and entire agreement and understanding of
18 the Parties with respect to the entire subject matter herein, and any and all prior discussions,
19 negotiations, commitments and understandings related hereto. No representations, oral or
20 otherwise, express or implied, other than those contained herein have been made by any Party. No
21 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
22 or to bind any Party.
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1 14.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized
2 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
3 provided herein, each Party shall bear its own fees and costs.

4 **15. REQUEST FOR FINDINGS AND FOR APPROVAL**

5 15.1 This Consent Judgment has come before the Court upon the request of the Parties.
6 The parties request the Court to fully review this Consent Judgment and, being fully informed
7 regarding the matters which are the subject of this action, to:
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9 (a) Find that the terms and provisions of this Consent Judgment represent a good
10 faith settlement of all matters raised by the allegations of the Complaint; that the matter has been
11 diligently prosecuted, and that the public interest is served by such settlement; and

12 (b) Make the findings pursuant to California Health and Safety Code Section
13 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.
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15 **IT IS SO STIPULATED.**

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17 Dated: 1/6, ~~2014~~

PACIFIC JUSTICE CENTER

18
19 By: 

20 Robert B. Hancock
21 Attorneys for Plaintiff
22 AMY CHAMBERLIN

23
24 Dated: Jan 5, ~~2014~~ 2015

WHOLE FOODS MARKET CALIFORNIA, INC.

25
26 By: 

Roberta Lang
Vice President
WHOLE FOODS MARKET
CALIFORNIA, INC.

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ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2014.

Judge of the Superior Court