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6 Attorneys for Plaintiff
Consumer Advocacy Group, Inc.

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

10 CONSUMER ADVOCACY GROUP, INC. in
11 the public interest,

12 Plaintiff,

13 vs.

14 SPROUTS FARMERS MARKET, INC., a
Delaware Corporation; NISHIMOTO
15 TRADING CO., LTD., a California
Corporation; NISHIMOTO CO., LTD., a
16 business entity from unknown; NICO-NICO
NORI, INC., a business entity from unknown;
17 GIMME HEALTH FOODS, LLC, a California
Limited Liability Corporation; and DOES 1-
18 20,

19 Defendants.
20

Case No. CIV 1600796

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

21 **1. INTRODUCTION**

22 **1.1** This Consent Judgment is entered into by and between Plaintiff, CONSUMER
23 ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) acting on behalf of itself and in the interest of
24 the public, and Defendant GIMME HEALTH FOODS, INC. (formerly known as GIMME
25 HEALTH FOODS, LLC) (“GIMME” or “Defendant”), with each a “Party” to the action and
26 collectively referred to as the “Parties.”
27
28

1 **1.2 Defendant and Products**

2 **1.2.1** CAG alleges that GIMME is a California corporation which employs ten or
3 more persons. For purposes of this Consent Judgment only, GIMME is deemed a person in the
4 course of doing business in California and subject to the provisions of the Safe Drinking Water
5 and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
6 (“Proposition 65”).

7 **1.2.2** CAG alleges that GIMME manufactures, causes to be manufactured, sells,
8 and/or distributes certain seaweed products in California.

9 **1.2.3** The term “Products” in this Consent Judgment means sushi nori products,
10 seaweed thins snacks, roasted seaweed snacks, and all other seaweed or roasted seaweed products,
11 which are manufactured, distributed or sold by Gimme Health Foods, Inc. or Gimme Health
12 Foods, LLC.

13 **1.3 Listed Chemicals**

14 Cadmium and cadmium compounds (“Cadmium”) are listed by the State of California as
15 chemicals known to cause cancer and/or birth defects or other reproductive harm.

16 **1.4 Notices of Violation and Products**

17 **1.4.1** On or about February 10, 2017, CAG claims it served Defendant and
18 various public enforcement agencies with a document titled “60-Day Notice of Intent to Sue for
19 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“Original Notice”)
20 that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6
21 for failing to warn individuals in California of exposures to Cadmium in “Seaweed Products” sold
22 by GIMME in California. The Original Notice specifically named a non-exclusive exemplar
23 product, gimMe™ Sushi Nori Wrap n’ Roll (“Exemplar Product”). No public enforcer has
24 commenced or diligently prosecuted the allegations set forth in the Original Notice. The
25 Exemplar Product and any other Products that contain the term “Sushi Nori” in the product name
26 on the product packaging are referred to herein as the “Covered Products.”

27 **1.4.2** On or about November 30, 2018, CAG issued a second “60-Day Notice of
28 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”

1 (“Second Notice”) alleging violations of Health & Safety Code § 25249.6 by Gimme Health
2 Foods, Inc., Gimme Health Foods, LLC, and a retailer for failing to warn individuals in California
3 of exposures to Cadmium in “Seaweed Products” sold by GIMME in California. The Second
4 Notice specifically named a non-exclusive exemplar product, gimMe™ Sushi Nori Roasted
5 Seaweed. No public enforcer has commenced or diligently prosecuted the allegations set forth in
6 the Second Notice.

7 **1.4.3** On or about December 12, 2018, CAG issued a third “60-Day Notice of
8 Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986”
9 (“Third Notice”) alleging violations of Health & Safety Code § 25249.6 by Gimme Health Foods,
10 Inc., Gimme Health Foods, LLC, and a retailer for failing to warn individuals in California of
11 exposures to Cadmium in “Seaweed Products” sold by GIMME in California. The Third Notice
12 specifically named a non-exclusive exemplar product, gimMe™ Sriracha Almond seaweed thins.
13 No public enforcer has commenced or diligently prosecuted the allegations set forth in the Third
14 Notice.

15 **1.4.4** On or about August 21, 2015, CAG issued a “60-Day Notice of Intent to
16 Sue for Violation of the Safe Drinking Water and Toxic Enforcement Action of 1986” alleging
17 violations of Health & Safety Code § 25249.6 by Gimme Health Foods, LLC, Gimme Health
18 Foods, Inc. and certain retailers for failing to warn individuals in California of exposure to lead
19 and lead compounds in certain seaweed products sold in California. This notice specifically
20 named a non-exclusive exemplar product, gimMe™ organic Roasted Seaweed Snacks - Sesame.
21 No public enforcer commenced or diligently prosecuted the allegations set forth in the notice.

22 **1.4.5** On or about November 6, 2015, CAG issued a “60-Day Notice of Intent to
23 Sue for Violation of the Safe Drinking Water and Toxic Enforcement Action of 1986” alleging
24 violations of Health & Safety Code § 25249.6 by Gimme Health Foods, LLC, Gimme Health
25 Foods, Inc. and certain retailers for failing to warn individuals in California of exposure to lead
26 and lead compounds in certain seaweed products sold in California. This notice specifically
27 named a non-exclusive exemplar product, gimMe™ organic Roasted Seaweed Snacks - Teriyaki.
28 No public enforcer commenced or diligently prosecuted the allegations set forth in the notice.

1 **1.4.6** The notice letters described in this Section 1.4 are referred to collectively as
2 the “Notices.”

3 **1.5 Operative Complaint**

4 On October 19, 2017, CAG filed its Second Amended Complaint (“Complaint”) to add
5 Gimme Health Foods, LLC as a defendant in the above-captioned action and alleging claims in the
6 Fourth Cause of Action as to seaweed products that are “Sushi Nori Roasted Seaweed.” Upon
7 entry of this Consent Judgment, the Complaint shall be deemed amended *nunc pro tunc* to name
8 Gimme Health Foods, Inc. (formerly known as Gimme Health Foods, LLC) as a defendant to the
9 Fourth Cause of Action in the Complaint.

10 **1.6 Consent to Jurisdiction**

11 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
12 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
13 over GIMME as to the acts alleged in the Complaint, that venue is proper in the County of Marin,
14 and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and
15 resolution of the allegations against GIMME contained in the Complaint and the Notices, and of
16 all claims which were or could have been raised by any person or entity based in whole or in part,
17 directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

18 **1.7 No Admission**

19 This Consent Judgment resolves claims that GIMME denies and disputes and defenses that
20 CAG denies and disputes. The Parties enter into this Consent Judgment pursuant to a full and
21 final settlement of any and all claims between the Parties for the purpose of avoiding prolonged
22 litigation. Nothing in this Consent Judgment shall be construed as an admission by the Parties of
23 any material allegation in the Notices or the Complaint, or of any fact, conclusion of law, issue of
24 law, or violation of law of any kind, including without limitation, any admission concerning any
25 alleged or actual violation of Proposition 65 or any other statutory, regulatory, common law, or
26 equitable doctrine. Nothing in this Consent Judgment, nor compliance with its terms, shall
27 constitute or be construed as an admission by the Parties, or give rise to any inference, of any fact,
28 conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by

1 GIMME, its officers, directors, employees, or parent, subsidiary, or affiliated corporations, or be
2 offered or admitted as evidence in any administrative or judicial proceeding or litigation in any
3 court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or
4 impair any right, remedy, argument, or defense the Parties may have in any other or future legal
5 proceeding, except as expressly provided in this Consent Judgment.

6 **1.8** “Effective Date” means the date that this Consent Judgment is approved and
7 entered by the Court. The “Compliance Date” means the date that is three (3) months after the
8 Effective Date.

9 **2. INJUNCTIVE REQUIREMENTS**

10 **2.1** Any Covered Products that are manufactured on and after the Compliance Date that
11 GIMME thereafter distributes for sale in California or sells in the State of California shall either (i)
12 contain no more than 95 parts per billion (“ppb”) cadmium and contain no more than 15 ppb
13 inorganic arsenic or (ii) comply with the warning requirements of Section 2.3.

14 **2.2** As used in this Agreement, the term “distribute for sale in California” shall mean:
15 GIMME directly ships any Covered Product into California for sale in California or sells the
16 Covered Product to a distributor or retailer that GIMME knows or has reason to know will sell the
17 Covered Product in California.


18 **2.3** For any Covered Products subject to the warning requirement under Section 2.1,
19 GIMME shall provide a Proposition 65-compliant warning for the Covered Products using one of
20 the following options:

21 Option 1:

22 **WARNING:** Consuming this product can expose you to chemicals
23 including cadmium, which is known to the State of California to
24 cause cancer and birth defects or other reproductive harm. For more
information, go to www.P65Warnings.ca.gov/food.

25 If the warning is printed on the label, the warning shall be set off from other surrounding
26 information in the label and enclosed in a box.

27 Option 2:

28  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

1 The pictogram specified in Option 2 shall be in yellow with a black exclamation mark; provided
2 however, the pictogram may be in white instead of yellow if the Covered Product label does not
3 contain the color yellow.

4 **2.3.1** The warning requirements set forth herein are imposed pursuant to the
5 terms of this Consent Judgment and are recognized by the Parties as not being the exclusive
6 manner of providing a warning for the Covered Products. Warnings may be provided as specified
7 in the Proposition 65 regulations for food in effect as of the Effective Date (Title 27, California
8 Code of Regulations, section 25601, *et seq.*) or as such regulations may be amended in the future.

9 **2.4** GIMME may move to modify this Consent Judgment to incorporate any naturally
10 occurring allowance for cadmium, inorganic arsenic, or lead that CAG agrees to in a future
11 consent judgment involving seaweed products or that the California’s Office of Environmental
12 Health Hazard Assessment adopts by regulation that applies to seaweed products. CAG agrees not
13 to oppose any such motion except for good cause shown.

14 **3. SETTLEMENT PAYMENT**

15 **3.1 Payment and Due Date:** Within 30 days of the Effective Date, GIMME shall pay a
16 total of two hundred and sixty-eight thousand dollars (\$268,000.00) in full and complete
17 settlement of any and all claims for civil penalties, damages, attorney’s fees, expert fees or any
18 other claim for costs, expenses or monetary relief of any kind for claims that were or could have
19 been asserted in the Notices or Complaint, as set forth below.

20 **3.1.1 Civil Penalty:** GIMME shall issue two separate checks totaling twenty-
21 eight thousand five hundred and eighty dollars (\$28,580.00) as follows for alleged civil penalties
22 pursuant to Health & Safety Code § 25249.12:

23 (a) GIMME will issue one check made payable to the State of
24 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of
25 twenty-one thousand four hundred and thirty-five dollars (\$21,435.00) representing 75% of the
26 total civil penalty and GIMME will issue a second check to CAG in the amount of seven thousand
27 one hundred and forty-five dollars (\$7,145.00) representing 25% of the total civil penalty;
28

1 (b) Separate 1099s shall be issued for each of the above payments:
2 GIMME will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486)
3 in the amount of \$21,435.00. GIMME will also issue a 1099 to CAG in the amount of \$7,145.00
4 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W,
5 Beverly Hills, California 90212.

6 **3.1.2 Additional Settlement Payment:** GIMME shall pay twenty-one thousand
7 four hundred and twenty dollars (\$21,420.00) as an additional settlement payment to “Consumer
8 Advocacy Group, Inc.” pursuant to Health & Safety Code § 25249.7(b) and California Code of
9 Regulations, Title 11 § 3203(d). CAG will use this payment as follows, eighty five percent (85%)
10 for fees of investigation, purchasing and testing for Proposition 65 Listed Chemicals in various
11 products, and for expert fees for evaluating exposures through various mediums, including but not
12 limited to consumer product, occupational, and environmental exposures to Proposition 65 Listed
13 Chemicals, and the cost of hiring consulting and retaining experts who assist with the extensive
14 scientific analysis necessary for those files in litigation and to offset the costs of future litigation
15 enforcing Proposition 65 but excluding attorney fees; fifteen percent (15%) for administrative
16 costs incurred during investigation and litigation to reduce the public’s exposure to Proposition 65
17 Listed Chemicals by notifying those persons and/or entities believed to be responsible for such
18 exposures and attempting to persuade those persons and/or entities to reformulate their products or
19 the source of exposure to completely eliminate or lower the level of Proposition 65 Listed
20 Chemicals including but not limited to costs of documentation and tracking of products
21 investigated, storage of products, website enhancement and maintenance, computer and software
22 maintenance, investigative equipment, CAG’s member’s time for work done on investigations,
23 office supplies, mailing supplies and postage. Within 30 days of a request from the Attorney
24 General, CAG shall provide to the Attorney General copies of documentation demonstrating how
25 the above funds have been spent. CAG shall be solely responsible for ensuring the proper
26 expenditure of such additional settlement payment.

27 **3.1.3 Reimbursement of Attorney Fees and Costs:** GIMME shall pay two
28 hundred and eighteen thousand dollars (\$218,000.00) payable to “Yeroushalmi & Yeroushalmi” as

1 complete reimbursement for any and all reasonable investigation fees and costs, attorneys' fees,
2 expert fees, and any and all other costs and expenses incurred as a result of investigating, bringing
3 this matter to the GIMME's attention, litigating, negotiating a settlement in the public interest, and
4 seeking and obtaining court approval of this Consent Judgment.

5 **3.1.4** Other than the payment to OEHHA described above, all payments
6 referenced in paragraphs 3.1.1, 3.1.2, and 3.1.3 above, shall be delivered to: Reuben Yeroushalmi,
7 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
8 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,
9 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently
10 with payment to OEHHA, Defendant shall provide CAG with written confirmation that the
11 payment to OEHHA was delivered.

12 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

13 **4.1** This Consent Judgment is a full, final, and binding resolution between, on the one
14 hand, CAG, on behalf of itself and its owners, principals, shareholders, officers, directors,
15 employees, agents, parents, subsidiaries, successors, assigns, investigators, and attorneys
16 (collectively referred to as "CAG Releasers"), and on behalf of the public interest, and, on the
17 other hand, Gimme Health Foods, Inc. and Gimme Health Foods, LLC and their officers,
18 directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries,
19 partners, affiliates, agents, sister companies, and their predecessors, successors, and assigns
20 ("Defendant Releasees"), and each entity to whom GIMME and any other Defendant Releasees
21 directly or indirectly distribute or sell, or distributed or sold, the Covered Products, including but
22 not limited to distributors, wholesalers, customers, retailers (including but not limited to Sprouts
23 Farmers Market, Inc., Whole Foods Market, and Whole Foods Market California, Inc.)
24 franchisees, cooperative members, licensees, and the successors and assigns of each of them
25 ("Downstream Defendant Releasees"), of all claims that have been or could have been asserted for
26 alleged or actual violations of Proposition 65 or its implementing regulations for alleged exposures
27 to Cadmium from the Covered Products manufactured, distributed or sold by GIMME or any other
28 Defendant Releasees before the Compliance Date. GIMME, Defendant Releasees, and

1 Downstream Defendant Releasees are hereafter collectively referred to as the “Released Parties”.
2 Nothing in this Section affects CAG’s right to commence or prosecute an action under Proposition
3 65 against any person other than GIMME, Defendant Releasees, or Downstream Defendant
4 Releasees.

5 **4.2** CAG, on behalf of itself and the CAG Releasors, and on behalf of the public
6 interest, waives all rights to institute or participate in, directly or indirectly, any form of legal
7 action, and discharges and releases all claims, actions, causes of action (in law or in equity), suits,
8 liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, and fees
9 (including, but not limited to, investigation fees, expert fees, and attorney’s fees), and expenses
10 (collectively, “Claims”) as to all Released Parties, for violations of Proposition 65 from the
11 alleged failure to provide warnings for alleged exposures to Cadmium, or for causing alleged
12 exposures to Cadmium, in Covered Products manufactured, distributed, or sold before the
13 Compliance Date. Compliance by GIMME with Sections 2.1-2.3 of this Consent Judgment shall
14 be deemed to constitute compliance with Proposition 65 with respect to any Cadmium in the
15 Covered Products manufactured, distributed, or sold on or after the Compliance Date.

16 **4.3** CAG on behalf of itself and the CAG Releasors only, hereby waives all rights to
17 institute or participate in, directly or indirectly, any form of legal action, and discharges and
18 releases all Claims as to all Released Parties, whether known or unknown or suspected or
19 unsuspected, regarding the Covered Products manufactured, distributed or sold by the Released
20 Parties arising from any violation of Proposition 65 or any other statutory or common law
21 regarding alleged exposures to, or failure to warn about alleged exposures to, Cadmium, lead and
22 lead compounds, and organic or inorganic arsenic in the Covered Products. With respect to the
23 Claims released in this Section 4.3, CAG, on behalf of itself and the CAG Releasors, waives any
24 and all rights and benefits which it now has, or in the future may have, conferred upon it with
25 respect to by virtue of the provisions of section 1542 of the California Civil Code, which provides
26 as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
28 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT

1 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
2 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
3 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
4 OR RELEASED PARTY.

5 CAG understands and acknowledges that the significance and consequence of this waiver
6 of California Civil Code section 1542.

7 In addition, CAG agrees that the warning requirements of Section 2.3 shall be deemed to
8 be compliant for the claims as to alleged exposures to lead and lead compounds ("Lead") that are
9 covered in a prior settlement agreement between GIMME and CAG dated April 8, 2016 ("Lead
10 Settlement").

11 **5. ENFORCEMENT OF JUDGMENT**

12 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties
13 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
14 California, County of Marin, enforce the terms and conditions contained herein. A Party may
15 enforce any of the terms and conditions of this Consent Judgment only after that Party first
16 provides thirty days' written notice to the Party allegedly failing to comply with the terms and
17 conditions of this Consent Judgment and attempts to resolve such Party's failure to comply in an
18 open and good faith manner and follows the procedures set out in this Section 5. For purposes of
19 this section, "lot" shall mean the Universal Product Code Number printed on the packaging of a
20 product, not a number added by a subsequent seller unless GIMME no longer prints a Universal
21 Product Code Number on product packaging, and the best by date printed on the packaging.

22 **5.2 Notice of Violation.** Prior to bringing any Proposition 65 60-day notice of
23 violation under Cal. Health & Safety Code § 25249.7 as to any Product, or prior to bringing any
24 motion, order to show cause, or other proceeding to enforce the terms of this Consent Judgment or
25 the Lead Settlement, CAG shall provide a Notice of Violation ("NOV") to GIMME and follow the
26 enforcement provisions of this Section 5. The enforcement provisions of this Consent Judgment
27 supersede the enforcement provisions of the Lead Settlement with respect to any lead in the
28 Products. The NOV shall include for each of the Products: (a) the name of the Product; (b)
specific dates when CAG purchased and tested the samples of the Products; (c) the store or other

1 place at which the Product samples were purchased by CAG; (d) all analytical testing results, from
2 a California certified laboratory, of samples of the same Product showing an average concentration
3 of cadmium, lead, or inorganic arsenic, as applicable, that exceeds the level set forth in this
4 Consent Judgment or the Lead Settlement, as applicable; (e) the lot code(s) for the lot(s) at issue in
5 the NOV; (f) evidence establishing the warning required in Section 2.3 was not provided; and (g)
6 any other evidence or support for the allegations in the NOV. In order to avail itself of this
7 provision with respect to a Product, CAG must produce to GIMME all testing for cadmium, lead,
8 or inorganic arsenic, as applicable, in its possession, custody, or control pertaining to the lot of the
9 Product at issue in the NOV that was performed within the year prior to CAG issuing its NOV.
10 The results of all such samples shall be included in calculating the average concentration of
11 cadmium, lead, or inorganic arsenic in Section 5.2(d).

12 **5.2.1 Non-Contested NOV.** CAG shall take no further action of any kind
13 regarding the alleged violation if, within 60 days of receiving such NOV, GIMME serves a Notice
14 of Election (“NOE”) not to contest the NOV that meets one of the two conditions listed below. If
15 GIMME complies with this Section 5.2.1, CAG is not entitled to seek monetary penalties, fees or
16 costs of any kind, or any other non-monetary relief.

17 (a) A statement that the Product was manufactured before the
18 Compliance Date; or

19 (b) A statement that, since receiving the NOV, GIMME has taken
20 corrective action by requesting that its customers in California remove the lot(s) of the Product
21 identified in the NOV from sale in California and destroy or return the Product to GIMME.

22 **5.2.2 Contested NOV.** GIMME may serve a Notice of Election (“NOE”)
23 informing CAG of its election to contest the NOV within 60 days of receiving the NOV.

24 (a) In its election, GIMME may request that the sample(s) of the
25 Product tested by CAG be subject to confirmatory testing at a California-accredited laboratory.

26 (b) If the confirmatory testing establishes that the Product does not
27 contain cadmium, lead, or inorganic arsenic above the standards in the Consent Judgment or the
28 Lead Settlement, as applicable, CAG shall take no further action regarding the alleged violation.

1 If the testing does not establish compliance with the cadmium, lead, or inorganic arsenic standards
2 set in the Consent Judgment or the Lead Settlement, as applicable, GIMME may withdraw its
3 NOE to contest the violation and may serve a new NOE pursuant to Section 5.2.1.

4 (c) If GIMME does not withdraw a NOE to contest the NOV, the
5 Parties shall meet and confer for a period of no less than 60 days before CAG may seek relief
6 through a judicial proceeding. In any such proceeding with respect to Products other than Covered
7 Products, GIMME does not waive its right to rebut the standards set in Section 2.1 based on the
8 statutory warning exemption, regulatory safe harbor level, or other applicable defenses to
9 Proposition 65 enforcement, and the terms of this Consent Judgment shall not constitute or be
10 construed as an admission by Gimme, or give rise to any inference against Gimme, as to the
11 appropriate warning standard in that event.

12 **5.3** In no case shall CAG issue more than one NOV per Product per year. Provided
13 however, CAG shall not issue any NOV in the first twelve months after the Effective Date.

14 **5.4** In the event there is a Contested NOV under Section 5.2.2, in any proceeding
15 brought by either Party to enforce this Consent Judgment or the Lead Settlement, the prevailing
16 Party shall be entitled to recover its reasonable attorney's fees and costs.

17 **6. ENTRY OF CONSENT JUDGMENT**

18 **6.1** CAG shall promptly prepare and file a motion seeking approval of this Consent
19 Judgment pursuant to California Health & Safety Code § 25249.7(f). Upon entry of the Consent
20 Judgment, CAG and GIMME waive their respective rights to a hearing and trial on the allegations
21 in the Notices and Complaint, except as provided in Section 5 of this Consent Judgment.

22 **6.2** If this Consent Judgment is not approved in full by the Court: (a) this Consent
23 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
24 become null and void, and the actions shall revert to the status that existed prior to the execution
25 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
26 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
27 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
28

1 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
2 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

3 **6.3** Within five days of the Effective Date, CAG shall file a request for dismissal
4 without prejudice of the Fourth Cause of Action of the Complaint as to Sprouts Farmers Market,
5 Inc.

6 **7. RETENTION OF JURISDICTION**

7 **7.1** This Court shall retain jurisdiction of this matter to implement and enforce the
8 terms of this Consent Judgment under Code of Civil Procedure § 664.6. Nothing in this Consent
9 Judgment limits or affects the Court's authority to modify this Consent Judgment as provided by
10 law.

11 **8. SERVICE ON THE ATTORNEY GENERAL**

12 **8.1** CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
13 California Attorney General so that the Attorney General may review this Consent Judgment prior
14 to its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney
15 General has received the aforementioned copy of this Consent Judgment, CAG may then submit it
16 to the Court for approval.

17 **9. ATTORNEY FEES**

18 **9.1** Except as specifically provided in Sections 3.1.3 and 5.4, each Party shall bear its
19 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

20 **10. GOVERNING LAW**

21 **10.1** The validity, construction and performance of this Consent Judgment shall be
22 governed by the laws of the State of California, without reference to any conflicts of law
23 provisions of California law.

24 **10.2** In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
25 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
26 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
27 rendered inapplicable by reason of law generally as to the Products, then Defendant may provide
28 written notice to CAG of any asserted change in the law, and shall have no further obligations

1 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
2 affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any
3 obligation to comply with any other pertinent state or federal law or regulation.

4 **10.3** The Parties, including their counsel, have participated in the preparation of this
5 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
6 Consent Judgment was subject to revision and modification by the Parties and has been accepted
7 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
8 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
9 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
10 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
11 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
12 this regard, the Parties hereby waive California Civil Code § 1654.

13 **11. EXECUTION AND COUNTERPARTS**

14 **11.1** This Consent Judgment may be executed in counterparts and by means of facsimile
15 or portable document format (pdf), which taken together shall be deemed to constitute one
16 document and have the same force and effect as original signatures.

17 **12. NOTICES**

18 **12.1** Any notices under this Consent Judgment shall be by delivery of First-Class Mail.

19 If to CAG:

20 Reuben Yeroushalmi
21 Yeroushalmi & Yeroushalmi
22 9100 Wilshire Boulevard, Suite 240W
23 Beverly Hills, CA 90212

24 If to Defendant GIMME:

25 Sarah Esmaili
26 Arnold & Porter Kaye Scholer
27 Three Embarcadero Center, 10th Floor
28 San Francisco, CA 94111-4024


1 **13. AUTHORITY TO STIPULATE**

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

5
6 **IT IS SO STIPULATED:**

7 Dated: Feb 22, 2019

PLAINTIFF CONSUMER ADVOCACY
GROUP, INC.

8 
9 Signature

10 Michael Marcus
11 Printed Name

12 Director
13 Title

14
15 Dated: _____, 2019

DEFENDANT GIMME HEALTH FOODS, INC.
(FORMERLY KNOWN AS GIMME HEALTH
FOODS, LLC)

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18 _____
19 Signature

20 _____
21 Printed Name

22 _____
23 Title

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25 **IT IS SO ORDERED.**

26 Date: _____

JUDGE OF THE SUPERIOR COURT

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6 IT IS SO STIPULATED:

PLAINTIFF CONSUMER ADVOCACY
GROUP, INC.

Printed Name _____

Title

DEFENDANT GIMME HEALTH FOODS, INC.
(FORMERLY KNOWN AS GIMME HEALTH
FOODS, LLC)

Printed Name _____

Title

25 Date: _____

JUDGE OF THE SUPERIOR COURT