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Environmental Health Advocates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH
ADVOCATES, INC., a California organization,

Plaintiff,

v.

WILLIAMS FOODS LLC, a Delaware limited
liability company, and DOES 1 through 100,
inclusive,

Defendants.

Case No.:

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 (EHA) and Williams Foods LLC (Defendant or Williams) with EHA and Williams each individually
5 referred to as a Party and collectively referred to as the Parties.

6 **1.2 Plaintiff**

7 EHA is a corporation organized in the state of California, acting in the interest of the general
8 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendants**

11 Williams employs ten or more individuals and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 EHA alleges that Williams manufactures, imports, sells, and distributes for sale chili seasoning
16 that contains lead. EHA further alleges that Williams does so without providing a sufficient health
17 hazard warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65, lead
18 is listed as a chemical known to cause cancer, birth defects and other reproductive harm.

19 **1.5 Notices of Violation**

20 On October 15, 2020, EHA served Williams Foods LLC, IGA, Inc., Foodland #3 156, the
21 California Attorney General, and all other required public enforcement agencies with a 60-Day Notice
22 of Violation of California Health and Safety Code section 25249.6 *et seq.* (Original Notice). The
23 Original Notice alleged that Williams had violated Proposition 65 by failing to sufficiently warn
24 consumers in California of the health hazards associated with exposures to lead contained in its Best
25 Yet Original Chili Seasoning.

26 On February 4, 2021, EHA served Williams Foods LLC, IGA, Inc., C&S Wholesale Grocers,
27 Inc., the California Attorney General, and all other required public enforcement agencies with a 60-
28 Day Notice of Violation of California Health and Safety Code section 25249.6 *et seq.* (Amended

1 Notice). The Amended Notice alleged that Williams had violated Proposition 65 by failing to
2 sufficiently warn consumers in California of the health hazards associated with exposures to
3 lead contained in its Best Yet Original Chili Seasoning.

4 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
5 violations alleged in the Notices.

6 **1.6 Product Description**

7 The products covered by this Consent Judgment are products containing the formula (or
8 substantially similar formula) of the Best Yet Original Chili Seasoning (regardless of the
9 product, brand, or marketing names) manufactured or processed by Williams that allegedly
10 contain lead and are imported, sold, shipped, delivered or distributed for sale to consumers in
11 California by Releasees (as defined in section 4.1) (Covered Products).

12 **1.7 No Admission**

13 Williams denies the material factual and legal allegations of the Notices and Complaint
14 and maintains that all of the products it has manufactured, imported, sold, and/or distributed for
15 sale in California, including Covered Products, have been, and are, in compliance with all laws.
16 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
17 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
18 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or
19 violation of law. This Section shall not, however, diminish or otherwise affect Williams's
20 obligations, responsibilities, and duties under this Consent Judgment.

21 **1.8 Jurisdiction**

22 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
23 Court has jurisdiction over Williams as to the allegations in the Complaint, that venue is proper in the
24 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
25 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

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1 **1.9 Effective Date and Compliance Date**

2 For purposes of this Consent Judgment, the term Effective Date means the date on which the
3 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5. The
4 Compliance Date is the date that is sixty (60) days after the Effective Date.

5 **2. INJUNCTIVE RELIEF: REFORMULATION OF PRODUCTS**

6 **2.1** Unless the Covered Products comply with the warning requirements of Section 2.2, any
7 Covered Products that are manufactured by Williams on and after the Compliance Date that Williams
8 sells in California or distributes for sale in California shall have a maximum average reformulation
9 level of 56 parts per billion (ppb) for lead, using the average of three separate samples, and a maximum
10 single unit concentration level of 57.5 parts per billion, with all testing to be performed by a laboratory
11 accredited by the State of California, a federal agency, or a nationally recognized accrediting
12 organization, using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry). As used in this
13 Section 2, distributes for sale in California means to directly ship Covered Products into California or
14 to sell Covered Products to a distributor Williams knows will sell Covered Products in California.

15 **2.2 Warnings**

16 **2.2.1** If Williams provides warnings under Section 2.1, Covered Products may be sold in
17 California with one of the following warning statements:

18 **Option 1:**

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

22 **Option 2:**

23 **WARNING:** Cancer and Reproductive Harm –
www.P65Warnings.ca.gov/food.

24 The warning in Option 2 may only be used if the warning appears on the product container or
25 labeling. The word **WARNING** shall be displayed in all capital letters and bold print. This warning
26 statement shall be prominently displayed on the Covered Products, on the packaging of the Covered
27 Products, or on a placard, shelf tag, or sign provided that the statement is displayed with such
28 conspicuousness, as compared with other words, statements, or designs as to render it likely to be read

1 and understood by an ordinary individual prior to sale. If the warning statement is displayed on
2 the Covered Products' label, it must be set off from other surrounding information.

3 **2.2.2** The warning requirements set forth herein are imposed pursuant to the terms of
4 this Consent Judgment and are recognized by the Parties as not being the exclusive manner of
5 providing a warning for the Covered Products. Warnings may be provided as specified in the
6 Proposition 65 regulations for food in effect as of the Effective Date (Title 27, California Code
7 of Regulations, section 25601, *et seq.*) or as such regulations may be amended in the future, or
8 pursuant to a settlement agreement or consent judgment involving lead. In addition, Williams
9 may follow the notification procedure set out in Title 27, California Code of Regulations,
10 section 25600.2 or a similar procedure where Williams instructs its distributor or retailer
11 customers to provide warnings for the Covered Products consistent with Section 2.2. The same
12 warning shall be posted on any websites where the Covered Products are sold in California.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Settlement Amount**

15 Williams shall pay eighty thousand dollars (\$80,000) in settlement and total satisfaction
16 of all the claims referred to in the Notices, the Complaint, and this Consent Judgment. This
17 includes civil penalties in the amount of eight thousand dollars (\$8,000) pursuant to Health and
18 Safety Code section 25249.7(b) and attorney's fees and costs in the amount of seventy-two
19 thousand dollars (\$72,000) pursuant to Code of Civil Procedure section 1021.5.

20 **3.2 Civil Penalty**

21 The portion of the settlement attributable to civil penalties shall be allocated according
22 to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of
23 the penalty paid to the California Office of Environmental Health Hazard Assessment
24 (OEHHA), and the remaining twenty-five percent (25%) of the penalty paid to EHA
25 individually.

26 All payments owed to EHA shall be delivered to the following address:

27 Environmental Health Advocates
28 225 Broadway, Suite 1900
 San Diego, CA 92101

1 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
2 (Memo Line Prop 65 Penalties) at the following addresses:

3 For United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010
8 Sacramento, CA 95812-4010

9 For Non-Federal Express 2-Day Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

15 Williams agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
16 simultaneous with its penalty payments to EHA.

17 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.
18 Relevant information is set out below:

- 19 • Glick Law Group (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 20 • Nicholas & Tomasevic (EIN: 46-3474065) at the address provided in Section 3.2(a)(i); and
- 21 • Office of Environmental Health Hazard Assessment 1001 I Street, Sacramento, CA 95814.

22 **3.3 Attorney's Fees and Costs**

23 The portion of the settlement attributable to attorney's fees and costs shall be paid to EHA's
24 counsel, who are entitled to attorney's fees and costs incurred by it in this action, including but not
25 limited to investigating potential violations, bringing this matter to Williams's attention, as well as
26 litigating and negotiating a settlement in the public interest.

27 Williams shall provide their payment to EHA's counsel in two checks, divided equally, payable
28 to Glick Law Group, PC (\$36,000) and Nicholas & Tomasevic, LLP (\$36,000) respectively. The
addresses for these two entities are:

Noam Glick
Glick Law Group
225 Broadway, 19th Floor
San Diego, CA 92101

3.4 Timing

The above-mentioned checks will be issued within fourteen (14) days of the Effective Date.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Public Release of Proposition 65 Claims

For any claim or violation arising under Proposition 65 alleging a failure to warn about exposures to lead from Covered Products manufactured, imported, sold, or distributed by Williams prior to the Effective Date, EHA, acting for the general public, releases Williams of any and all liability arising under Proposition 65. This includes Williams's owners, parents, subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees, attorneys, and each entity to whom Williams directly or indirectly distributes or sells Covered Products, including but not limited to upstream and downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, and all entities identified in the Original and Amended Notices (including, but not limited to, C&S Wholesale Grocers, Inc., IGA, Inc., and Foodland) (collectively, the Releasees). Releasees include defendants, their parents, and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns that sell any Covered Products. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead from Covered Products manufactured, imported, sold, or distributed after the Effective Date. This Consent Judgment is a full, final and binding resolution of all claims that were or could have been asserted against Williams and/or Releasees for failure to provide warnings required under Proposition 65 for alleged exposure to lead contained in Covered Products.

4.2 EHA's Individual Release of Claims

EHA, in its individual capacity, also provides a release to Williams and/or Releasees, which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes

1 of action, obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands
2 of every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out
3 of alleged or actual exposures to lead in Covered Products manufactured, imported, sold, or distributed
4 by Williams before the Effective Date.

5 **4.3 Williams's Release of EHA**

6 Williams on its own behalf, and on behalf of Releasees as well as its past and current agents,
7 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
8 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
9 and its attorneys and other representatives, whether in the course of investigating claims, or otherwise
10 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

11 **5. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved by the Court and shall be null and
13 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
14 by such additional time as the Parties may agree to in writing.

15 **6. SEVERABILITY**

16 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
17 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the state of California as
20 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
21 rendered inapplicable for reasons, including but not limited to changes in the law, then Williams may
22 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations
23 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so
24 affected. However, any such change in law will have no effect on Williams's financial obligations set
25 forth in this Consent Judgment.

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1 **8. NOTICE**

2 Unless otherwise specified herein, all correspondence and notice required by this
3 Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,
4 registered, or certified mail, return receipt requested; or (iii) a recognized overnight courier to
5 the following addresses:

6 If to Williams:

7 Robert Niemann
8 Nury H. Yoo
9 Keller and Heckman LLP
10 Three Embarcadero Center, Suite 1420
11 San Francisco, CA 94111

6 If to EHA:

7 Noam Glick
8 Glick Law Group, PC
9 225 Broadway, 19th Floor
10 San Diego, CA 92101

11 Any Party may, from time to time, specify in writing to the other, a change of address
12 to which notices and other communications shall be sent.

13 **9. COUNTERPARTS; DIGITAL SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile signature,
15 each of which shall be deemed an original, and all of which, when taken together, shall
16 constitute one and the same document.

17 **10. POST EXECUTION ACTIVITIES**

18 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
19 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
20 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
21 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
22 employ their best efforts, including those of their counsel, to support the entry of this agreement as
23 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this
24 Section, best efforts shall include, at a minimum, supporting the motion for approval, responding to
25 any objection that any third-party may make, and appearing at the hearing before the Court if so
26 requested.

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1 **11. MODIFICATION**

2 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
3 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
4 Party, and the entry of a modified consent judgment thereon by the Court.

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
7 have read, understand, and agree to all of the terms and conditions contained herein.

8 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

13 **14. ENTIRE AGREEMENT**

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

3 **AGREED TO:**

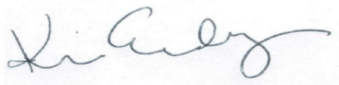
AGREED TO:

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5
6 Date: 07-16-2021

7
8 Date: 7-16-21

9 ENVIRONMENTAL HEALTH
10 ADVOCATES, INC.

11 WILLIAMS FOODS LLC

12 By: 

13 By: 

14 Its: Secretary

15 Its: 

16 **IT IS SO ORDERED.**

17
18 Date: _____

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20 JUDGE OF THE SUPERIOR COURT

21 4814-1981-6178, v. 1