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9 Blue Water Cosaint, LLC

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 BLUE WATER COSAINT, LLC, a limited
14 liability company

15 Plaintiff,

16 v.

17 WHOLE FOODS MARKET GROUP, INC. a
18 Delaware corporation; AMAZON.COM, Inc. a
19 Delaware corporation and DOES 1 through 10

20 Defendants.

Case No. 37-2023-00009761-CU-MC-CTL

PROPOSED CONSENT JUDGMENT

21 **1. INTRODUCTION**

22 **1.1 The Parties.** This Consent Judgment (“Consent Judgment”) is entered into by
23 and between Blue Water Cosaint, LLC (“PLAINTIFF”) and Mrs. Gooch’s Natural Food Markets,
24 Inc. (erroneously sued as Whole Foods Market Group, Inc.) , a Delaware corporation
25 (“DEFENDANT”). Together, PLAINTIFF and DEFENDANT are collectively referred to as the
26 “Parties.” PLAINTIFF is a California limited liability company located in the State of California
27 which seeks to promote awareness of exposures to toxic chemicals and to improve human health
28 by reducing or eliminating hazardous substances contained in consumer products. For purposes of
this Consent Judgment only, DEFENDANT stipulates, in accordance with section 1.5 below, that

1 it is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, Cal. Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

3 **1.2 General Allegations.** PLAINTIFF alleges the DEFENDANT exposed individuals in
4 the State of California to Cadmium from its sales of certain products without providing consumers
5 of the products with a clear and reasonable health hazard exposure warning as required pursuant to
6 Proposition 65. Cadmium is listed pursuant to Proposition 65 as a chemical known to the State of
7 California to cause cancer and developmental toxicity.

8 **1.3 Product Description.** The products covered by this Consent Judgment are 365
9 Organic Roasted and Salted Sunflower Kernels (“Product”), including, without limitation, all
10 varieties and pack sizes of the Product, that have been manufactured, imported, distributed, offered
11 for sale, and/or sold in California by DEFENDANT or its affiliates (the “Products”).

12 **1.4 Notice of Violation, Complaint, and Jurisdiction.** On May 10, 2021, PLAINTIFF
13 contends it served Whole Foods Market, Amazon.com, Inc., and various public enforcement
14 agencies with a document entitled “Notice of Violation of California Health & Safety Code §
15 25249.6 *et seq.*” (the “Notice”). The Notice alleged violations of Proposition 65 for failing to warn
16 California consumers and customers that use of the Products will expose them to Cadmium. No
17 public enforcer has diligently prosecuted the allegations set forth in the Notice. On March 8, 2023,
18 based on the Notice and the absence of any authorized public prosecutor of Proposition 65 having
19 filed a suit based on the allegations contained therein, PLAINTIFF filed a complaint in the Superior
20 Court of and for San Diego County (the “Court”), Case No. 37-2021-00009761-CU-MC-CTL (the
21 “Action”). For purposes of this Consent Judgment, the Parties stipulate that the Court has
22 jurisdiction over the allegations in the Complaint and personal jurisdiction over DEFENDANT, that
23 venue is proper in the County of San Diego, and that the Court has jurisdiction to enter this Consent
24 Judgment as a full and final resolution of the claims and allegations which were or could have been
25 raised in the Action based on the facts alleged therein and/or in the Notice.

26 **1.5 No Admission.** This Consent Judgment resolves claims that are denied and
27 disputed. The Parties enter into this Consent Judgment as a full and final resolution of any and all
28 claims between the Parties for the purpose of avoiding prolonged litigation. DEFENDANT denies

1 each and every material, factual, and legal allegation contained in the Notice and the Action and
2 maintains that it has not violated Proposition 65 and/or is not subject to that law. Nothing in this
3 Consent Judgment shall be construed as an admission by DEFENDANT of any fact, finding,
4 conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
5 Judgment constitute or be construed as an admission by DEFENDANT of any fact, finding,
6 conclusion of law, issue of law, or violation of law, such being specifically denied by
7 DEFENDANT. However, this Section 1.5 shall not diminish or otherwise affect the obligations,
8 responsibilities, and duties of DEFENDANT under this Consent Judgment.


9 **1.6 Effective Date.** For purposes of this Consent Judgment, the term “Effective Date”
10 shall mean 180 days after the date PLAINTIFF has provided notice to DEFENDANT that this
11 Consent Judgment has been entered in the Court’s records as a consent judgment.

12 **2. INJUNCTIVE RELIEF**

13 **2.1 Cease Sales or Alternatively, Add a Warning**

14 As of the Effective Date, DEFENDANT shall add a clear and reasonable exposure warning
15 as set forth in this §§ 2.1 - 2.3 in accordance with 27 CCR § 25602 for all sales made to California
16 consumers, including purchases made on-line, over the internet, or through use of a catalog. There
17 shall be no obligation for such an exposure warning to be provided for Products that entered the
18 stream of commerce prior to the Effective Date. The warning shall consist of either the Warning or
19 Alternative Warning described in §§ 2.1(a) or (b), respectively, unless provided pursuant to § 2.3:

20 (a) **Warning:** The “Warning” shall consist of the statement:

21  **WARNING:** Consuming this product can expose you to chemicals including Cadmium which
22 is known to the State of California to cause cancer and birth defects or other reproductive harm.

23 For more information go to www.P65Warnings.ca.gov/food

24 (b) **Alternative Warning:** Purported Violators may, but are not required to, use the
25 alternative short-form warning as set forth in this § 2.3(b) (“Alternative Warning”)
26 as follows:

27  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov/food

28 **2.2 A Warning or Alternative Warning** provided pursuant to § 2.1 must have the

1 term **“WARNING:”** printed in all capital letters and in bold font. The warning symbol to the left
2 of the word **“WARNING:”** must be a black exclamation point in a yellow equilateral triangle with
3 a black outline, except that if the label for the Products does not use the color yellow, the symbol
4 may be in black and white. The symbol must be in a size no smaller than the height of the word
5 **“WARNING:”**. The warning shall be affixed to or printed on the Products’ packaging or labeling
6 and displayed with such conspicuousness, as compared with other words, statements, or designs as
7 to render it likely to be read and understood by an ordinary individual under customary conditions
8 of purchase or use.

9 **2.3 Compliance with Warning Regulations.** DEFENDANT shall be deemed to be in
10 compliance with this Settlement Agreement by either adhering to §§ 2.1 and 2.2 of this Settlement
11 Agreement or by complying with any applicable warning requirements adopted by the State of
12 California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

13 **3. CONSENT JUDGMENT PAYMENTS**

14 **3.1 Civil Penalties**

15 DEFENDANT shall pay \$2,000 as a civil penalty, allocated in accordance with Cal. Health
16 & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the penalty to be remitted to the OEHHA
17 and the remaining 25% of the Penalty remitted to PLAINTIFF no later than ten (10) calendar days
18 following the entry of this consent judgment. More specifically, DEFENDANT shall issue two
19 separate checks for the civil penalty payment to (i) “Office of Environmental Health Hazard
20 Assessment” in the amount of \$1,500 (75%); and to (ii) “Law Offices of George Rikos in Trust” in
21 the amount of \$500 (25%). Within ten (10) calendar days of the Effective Date, DEFENDANT
22 shall deliver these payments as follows:

23 (i) The penalty payment owed to PLAINTIFF shall be delivered to the following
24 address:

25 George Rikos
26 Law Offices of George Rikos
27 555 West Beech, Suite 500
28 San Diego, CA 92101

(ii) The penalty payment owed to OEHHA (EIN: 68-0284486) shall be delivered

1 directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following address:

2 For United States Postal Service Delivery:

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

7 For Non-United States Postal Service Delivery

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

13 DEFENDANT shall provide PLAINTIFF’S counsel with a copy of the check it sends to OEHHA
14 with its penalty payment to PLAINTIFF. In association with the issuance of the payments under
15 this Consent Judgment, DEFENDANT will issue IRS 1099 or other forms as appropriate given the
16 payees.

17 **3.2 Attorneys’ Fees and Litigation Costs**

18 Within ten (10) calendar days of the entry of this Consent Judgment, DEFENDANT
19 shall reimburse PLAINTIFF’s counsel \$24,000 for fees and costs incurred as a result of
20 investigating and bringing this matter to DEFENDANT’S attention, negotiating a Consent
21 Judgment in the public interest, and obtaining the Court’s approval of the Consent
22 Judgment and its entry as a consent judgment. DEFENDANT shall issue a check for this
23 amount payable to “Law Offices of George Rikos” and deliver it to the address identified
24 in Section 3.1 above. DEFENDANT’S payment obligations shall be tolled until it receives an
25 IRS W-9 form for this payee.

26 **4. RELEASE OF ALL CLAIMS**

27 **4.1 Release of DEFENDANT & Related Entities.** This Consent Judgment is a full,
28 final and binding resolution between PLAINTIFF, acting on his own behalf and in the public
interest, and DEFENDANT of any violation of Proposition 65 that was or could have been asserted
by PLAINTIFF or on behalf of his past and current agents, representatives, attorneys, predecessors,

1 successors, and/or assigns (collectively, “Releasors”) for failure to provide warnings for alleged
2 exposures to Cadmium contained in the Products, and Releasors hereby release any such claims
3 against DEFENDANT, Whole Foods Market California, Inc. and Amazon.com, Inc., as well as their
4 parents, subsidiaries, affiliated entities under common ownership or control, joint ventures,
5 divisions, subdivisions, partners, predecessors, successors, and assigns, and each of their
6 shareholders, members, directors, officers, principals, managers, employees, representatives,
7 agents, attorneys, insurers, and accountants, the unidentified and unnamed DOES 1 through 10, and
8 each entity that directly or indirectly manufactures, produces, distributes, ships, or sells the Products,
9 including but not limited to, upstream suppliers of ingredients used in the Products, entities that
10 manufacture, process, or otherwise produce the Products for DEFENDANT, and all downstream
11 distributors, marketplaces, wholesalers, customers, retailers, franchisees, and licensees, and their
12 owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants,
13 representatives, predecessors, successors, and assigns (collectively, “DEFENDANT Releasees”)
14 from all claims for or based on violations of Proposition 65 with respect to any Products
15 manufactured, distributed, and/or sold by DEFENDANT prior to the Effective Date based on failure
16 to warn of alleged exposure to the Cadmium from the Product.

17 **4.2 DEFENDANT’S Release of PLAINTIFF.** DEFENDANT, on behalf of itself and
18 its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives
19 any and all claims against PLAINTIFF, his attorneys, and other representatives, for any and all
20 actions taken or statements made by PLAINTIFF and/or his attorneys and other representatives,
21 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against
22 it in this matter.

23 **4.3. INTENTIONALLY LEFT BLANK**

24 **4.4 Deemed Compliance with Proposition 65.** Compliance by DEFENDANT with this
25 Consent Judgment constitutes compliance with Proposition 65 with respect to exposure to Cadmium
26 from the Products. Products distributed by DEFENDANT prior to the Effective Date may be sold
27 through as previously manufactured and labeled.

28 **5. ENTRY OF CONSENT JUDGMENT**

1 The Parties hereby request that the Court promptly enter this Consent Judgment as a
2 consent judgment based on the motion for its approval PLAINTIFF will be making
3 pursuant to Section 10 below. Upon entry of the Consent Judgment as a consent judgment,
4 PLAINTIFF and DEFENDANT waive their respective rights to a hearing or trial on the
5 allegations contained in the Complaint.

6 **6. SEVERABILITY**

7 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
8 Consent Judgment are deemed by a court to be unenforceable, the validity of the enforceable
9 provisions remaining shall not be adversely affected but only to the extent the deletion of the
10 provision deemed unenforceable does not materially affect, or otherwise result in the effect of the
11 Consent Judgment being contrary to the intent of the Parties in entering into this Consent Judgment.

12 **7. GOVERNING LAW/ENFORCEMENT**

13 The terms of this Consent Judgment shall be governed by the law of the State of California
14 and apply within the State of California. The rights to enforce the terms of this Consent Judgment
15 are exclusively conferred on the Parties hereto. Any Party may, after providing sixty (60) days'
16 written notice and meeting and conferring within a reasonable time thereafter to attempt to resolve
17 any issues, by motion or application for an order to show cause before this Court, enforce the terms
18 and conditions contained in this Consent Judgment. In the event that Proposition 65 or its
19 regulations applicable to the Products are repealed, or are otherwise rendered inapplicable or invalid,
20 including but not limited to by reason of law generally, due to federal preemption, or the First
21 Amendment commercial speech rights of the U.S. Constitution, as determined by a court of
22 competent jurisdiction or an agency of the federal government, then DEFENDANT shall provide
23 written notice to PLAINTIFF of any asserted repeal or determination. Upon DEFENDANT'S
24 written notice, DEFENDANT shall have no further obligations pursuant to this Consent Judgment
25 to the extent such repeal or determination affects DEFENDANT'S obligations with respect to the
26 Product.

27 **8. NOTICES**

28 Unless specified herein, all correspondence and notices required to be provided pursuant to

1 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class
2 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
3 Party by the other Party to the following addresses:

4 For DEFENDANT:

5 John Hempfling
6 Whole Foods Market
7 828 W. 6th Street
8 Suite 200
9 Austin, TX 78703

8 And

9 Wells Blaxter
10 Blaxter Blackman LLP
11 601 Montgomery Street
12 Suite 1110
13 San Francisco, CA 94111

12 For PLAINTIFF:

13 George Rikos, Esq.
14 Law Offices of George Rikos
15 555 West Beech, Suite 500
16 San Diego, CA 92101
17 Email: george@georgerikoslaw.com

17 Either Party, from time to time, may specify in writing to the other Party a change of address to
18 which all notices and other communications shall be sent.

19 **9. COUNTERPARTS: SIGNATURES**

20 This Consent Judgment may be executed in counterparts and by facsimile or portable
21 document format (.pdf or PDF) signature, each of which shall be deemed an original, and all of
22 which, when taken together, shall constitute one and the same document.

23 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

24 PLAINTIFF agrees to comply with the reporting requirements referenced in Health & Safety
25 Code Section 25249.7(f) and to seek, by formal and properly noticed motion (including with service
26 to the Office of the California Attorney General being fully effectuated at least forty-five (45) days
27 prior to a requested hearing thereon), approval of this Consent Judgment's terms pursuant to
28 Proposition 65 and its associated entry as a consent judgment by the Court.

1 **11. MODIFICATION**

2 Unless otherwise provided for herein, this Consent Judgment may be modified only by a
3 written agreement of the Parties or the approval of the Court or upon a duly noticed motion of either
4 Party for good cause shown. A showing of technical infeasibility or commercial unreasonableness
5 in meeting the requirements of Section 2 with respect to the Products shall be deemed to constitute
6 good cause for a modification to substitute an alternative no significant risk level on the basis of 27
7 Cal. Code Regs. § 25703(b) and such a modification shall not be opposed by PLAINTIFF. Any
8 proposed modification shall be sent to the Office of the California Attorney General in advance of
9 its submission to the Court such that the Attorney General has a reasonable opportunity to review
10 and comment thereon.

11 **12. ENTIRE AGREEMENT**

12 This Consent Judgment contains the sole and entire agreement of the Parties and any and all
13 prior negotiations and understandings related hereto shall be deemed to have been merged within it.
14 No representations or terms of agreement other than those contained herein exist or have been made
15 by any Party with respect to the other Party or the subject matter hereof. This Consent Judgment
16 shall have no effect if it is not approved by the Court and entered as a consent judgment.

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1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment and have read, understood,
3 and agree to all of the terms and conditions contained in this Consent Judgment.

APPROVED AS TO FORM: Date: <u>10/7/2024</u> By: <u>George Rikos</u> George Rikos Counsel to PLAINTIFF Blue Water Cosant, LLC	APPROVED AS TO FORM: Date: <u>9/23/24</u> By: <u>[Signature]</u> Wells Blaxter, Esq. Counsel for DEFENDANT Mrs. Gooch's Natural Food Markets, Inc.
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10 **AGREED TO:**
11 Date: 9/23/24
12 By: [Signature]
Blue Water Cosaint, LLC

AGREED TO:
Date: 9/23/24
By: [Signature]
Mrs. Gooch's Natural Food Markets, Inc.

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14
15 **IT IS SO ORDERED, ADJUDGED, AND DECREED THAT THE CONSENT JUDGMENT**
16 **SET FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A CONSENT JUDGMENT**
17 **BY THIS COURT:**

18 DATED: _____

19 _____
20 JUDGE OF THE SUPERIOR COURT
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