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9 Blue Water Cosaint, LLC

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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 TRADER JOE'S COMPANY, a California
18 corporation and DOES 1 through 10

19 Defendants.

Case No. 37-2021-00000039308-CU-MC-CTL

PROPOSED CONSENT JUDGMENT

20 **1. INTRODUCTION**

21 **1.1 The Parties.** This Consent Judgment ("Consent Judgment") is entered into by
22 and between Blue Water Cosaint, LLC ("PLAINTIFF") and Trader Joe's Company, a California
23 corporation ("DEFENDANT"). Together, PLAINTIFF and DEFENDANT are collectively
24 referred to as the "Parties." PLAINTIFF is an individual that resides in the State of California and
25 seeks to promote awareness of exposures to toxic chemicals and to improve human health by
26 reducing or eliminating hazardous substances contained in consumer products. For purposes of
27 this Consent Judgment only, DEFENDANT stipulates, in accordance with section 1.5 below, that
28 it is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
Enforcement Act of 1986, Cal. Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

1 **1.2 General Allegations.** PLAINTIFF alleges the DEFENDANT exposed individuals in
2 the State of California to Cadmium from its sales of certain products without providing certain
3 consumers of the products with a clear and reasonable health hazard exposure warning as required
4 pursuant to Proposition 65. Cadmium is listed pursuant to Proposition 65 as a chemical known to
5 the State of California to cause cancer and developmental toxicity.

6 **1.3 Product Description.** The product covered by this Consent Judgment is Golden
7 Roasted Flax Seed (SKU 88587) that was manufactured, imported, distributed, offered for sale,
8 and/or sold in California by DEFENDANT or its affiliates (the “Product”).

9 **1.4 Notice of Violation, Complaint, and Jurisdiction.** On May 10, 2021, PLAINTIFF
10 served DEFENDANT and various public enforcement agencies with a document entitled “Notice
11 of Violation of California Health & Safety Code § 25249.6 et seq” (the “Notice”), alleging that
12 DEFENDANT was in violation of Proposition 65 for failing to warn California consumers and
13 customers that use of the Product will expose them to Cadmium. No public enforcer has diligently
14 prosecuted the allegations set forth in the Notice. On September 15, 2021, based on the Notice and
15 the absence of any authorized public prosecutor of Proposition 65 having filed a suit based on the
16 allegations contained therein, PLAINTIFF filed a complaint in the Superior Court of and for San
17 Diego County (the “Court”), Case No. 37-2021-00039308-CU-MC-CTL (the “Action”). For
18 purposes of this Consent Judgment, the Parties stipulate that the Court has jurisdiction over the
19 allegations in the Complaint and personal jurisdiction over DEFENDANT, that venue is proper in
20 the County of San Diego, and that the Court has jurisdiction to enter this Consent Judgment as a full
21 and final resolution of the claims and allegations which were or could have been raised in the Action
22 based on the facts alleged therein and/or in the Notice.

23 **1.5 No Admission.** This Consent Judgment resolves claims that are denied and
24 disputed. The Parties enter into this Consent Judgment as a full and final resolution of any and all
25 claims between the Parties for the purpose of avoiding prolonged litigation. DEFENDANT denies
26 each and every material, factual, and legal allegation contained in the Notice and the Action and
27 maintains that it has not violated Proposition 65 and/or is not subject to that law. Nothing in this
28 Consent Judgment shall be construed as an admission by DEFENDANT of any fact, finding,

1 conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
2 Judgment constitute or be construed as an admission by DEFENDANT of any fact, finding,
3 conclusion of law, issue of law, or violation of law, such being specifically denied by
4 DEFENDANT. However, this Section 1.5 shall not diminish or otherwise affect the obligations,
5 responsibilities, and duties of DEFENDANT under this Consent Judgment.

6 **1.6 Effective Date.** For purposes of this Consent Judgment, the term “Effective Date”
7 shall mean the date this Consent Judgment has been approved by the Court and PLAINTIFF has
8 provided notice to DEFENDANT that it has been entered in the Court’s records as a consent
9 judgment.

10 **2. INJUNCTIVE RELIEF**

11 **2.1 Post Warnings in California Stores Selling the Product**

12 As of the Effective Date, and continuing thereafter, if DEFENDANT elects to resume sales
13 of the Product, Defendant shall post a clear and reasonable exposure warning as set forth in this §§
14 2.1 - 2.2 and in accordance with 27 CCR § 25602 for all sales that Defendant makes to California
15 consumers. There shall be no obligation for such an exposure warning to be provided for Products
16 that entered the stream of commerce prior to the Effective Date. The warning shall consist of the
17 Warning described in § 2.1 unless provided pursuant to § 2.2:

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

19 **WARNING:** Consuming Golden Roasted Flax Seeds (SKU 88587) can expose you to chemicals
20 including Cadmium, which is known to the State of California to cause cancer and birth defects or
21 other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

22 **2.2 Compliance with Warning Regulations.** The Purported Violators shall be deemed
23 to be in compliance with this Settlement Agreement by either adhering to § 2.1 of this Settlement
24 Agreement or by complying with any applicable warning requirements adopted by the State of
25 California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

26 **3. CONSENT JUDGMENT PAYMENTS**

27 **3.1 Civil Penalties**

28 DEFENDANT shall pay \$2,000 as a civil penalty, allocated in accordance with Cal. Health

1 & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the penalty to be remitted to the OEHHA
2 and the remaining 25% of the Penalty remitted to PLAINTIFF no later than ten (10) calendar days
3 following the Effective Date. More specifically, DEFENDANT shall issue two separate checks for
4 the civil penalty payment to (i) “Office of Environmental Health Hazard Assessment” in the amount
5 of \$1,500 (75%); and to (ii) “Law Offices of George Rikos in Trust” in the amount of \$500 (25%).
6 Within ten (10) calendar days of the Effective Date, DEFENDANT shall deliver these payments as
7 follows:

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

10 George Rikos
11 Law Offices of George Rikos
12 555 West Beech, Suite 500
13 San Diego, CA 92101

14 (ii) The penalty payment owed to OEHHA (EIN: 68-0284486) shall be delivered
15 directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following address:

16 For United States Postal Service Delivery:
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 P.O. Box 4010
20 Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery
22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street
26 Sacramento, CA 95814

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

3.2 Attorneys’ Fees and Litigation Costs

1 Within ten (10) calendar days of the Effective Date, DEFENDANT shall reimburse
2 PLAINTIFF’s counsel \$35,000 for fees and costs incurred as a result of investigating and
3 bringing this matter to DEFENDANT’S attention, negotiating a Consent Judgment in the
4 public interest, and obtaining the Court’s approval of the Consent Judgment and its entry
5 as a consent judgment. DEFENDANT shall issue a check for this amount payable to “Law
6 Offices of George Rikos” and deliver it to the address identified in Section 3.1 above.
7 DEFENDANT’S payment obligations shall be tolled until it receives an IRS W-9 form for this
8 payee.

9 **4. RELEASE OF ALL CLAIMS**

10 **4.1 Release of DEFENDANT & Related Entities.** This Consent Judgment is a full,
11 final and binding resolution between PLAINTIFF, acting on his own behalf and in the public
12 interest, and DEFENDANT of any violation of Proposition 65 that was or could have been asserted
13 by PLAINTIFF or on behalf of his past and current agents, representatives, attorneys, predecessors,
14 successors, and/or assigns (collectively, “Releasers”) for failure to provide warnings for alleged
15 exposures to Cadmium contained in the Product, and Releasers hereby release any such claims
16 against DEFENDANT and its parents, shareholders, members, directors, officers, principals,
17 managers, employees, representatives, agents, attorneys, insurers, divisions, subdivisions,
18 subsidiaries, partners, and affiliates, and their predecessors, successors, and assigns, the unidentified
19 and unnamed DOES 1 through 10, and each entity that directly or indirectly manufactures, produces,
20 distributes, ships, or sells the Product, including but not limited to, upstream suppliers of the Product
21 or ingredients used in the Product, entities that manufacture, process, or otherwise produce the
22 Product for DEFENDANT, and all downstream distributors, wholesalers, customers, retailers,
23 franchisees, and licensees, and their owners, directors, officers, agents, principals, employees,
24 attorneys, insurers, representatives, predecessors, successors, and assigns (collectively,
25 “DEFENDANT Releasees”) from all claims for or based on violations of Proposition 65 with
26 respect to any Product manufactured, distributed, and/or sold by DEFENDANT prior to the
27 Effective Date based on failure to warn of alleged exposure to the Cadmium from the Product.

28 **4.2 DEFENDANT’S Release of PLAINTIFF.** DEFENDANT, on behalf of itself and

1 its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives
2 any and all claims against PLAINTIFF, his attorneys, and other representatives, for any and all
3 actions taken or statements made by PLAINTIFF and/or his attorneys and other representatives,
4 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against
5 it in this matter.

6 **4.3 California Civil Code Section 1542.** It is possible that other claims not known to
7 the Parties arising out of the facts alleged in the Notice and relating to the Product will develop or
8 be discovered. PLAINTIFF on behalf of himself only, on one hand, and DEFENDANT, on the
9 other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all
10 such claims up through the Effective Date, including all rights of action therefor. The Parties
11 acknowledge that the claims released in Sections 4.1 and 4.2, above, may include unknown claims,
12 and nevertheless waive California Civil Code Section 1542 as to any such unknown claims.
13 California Civil Code Section 1542 reads as follows:

14 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
15 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
16 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
17 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
18 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
19 **THE DEBTOR OR RELEASED PARTY.**

20 PLAINTIFF and DEFENDANT each acknowledge and understand the significance and
21 consequences of this specific waiver of California Civil Code Section 1542.

22 **4.4 Deemed Compliance with Proposition 65.** Compliance by DEFENDANT with this
23 Consent Judgment constitutes compliance with Proposition 65 with respect to exposure to Cadmium
24 from the Product. Products distributed by DEFENDANT prior to the Effective Date may be sold
25 through as previously manufactured and labeled.

26 **5. ENTRY OF CONSENT JUDGMENT**

27 The Parties hereby request that the Court promptly enter this Consent Judgment as a
28 consent judgment based on the motion for its approval PLAINTIFF will be making

1 pursuant to Section 10 below. Upon entry of the Consent Judgment as a consent judgment,
2 PLAINTIFF and DEFENDANT waive their respective rights to a hearing or trial on the
3 allegations contained in the Complaint.

4 **6. SEVERABILITY**

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

10 **7. GOVERNING LAW/ENFORCEMENT**

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

25 **8. NOTICES**

26 Unless specified herein, all correspondence and notices required to be provided pursuant to
27 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class
28 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any

1 Party by the other Party to the following addresses:

2 For DEFENDANT:

3 Dawn Sestito
4 Collins Kilgore
5 O'Melveny & Myers LLP
6 400 S. Hope St.
7 Los Angeles, CA 90071
8 dsestito@omm.com
9 ckilgore@omm.com

10 For PLAINTIFF:

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

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

18 **9. COUNTERPARTS: SIGNATURES**

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

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

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

28 **11. MODIFICATION**

Unless otherwise provided for herein, this Consent Judgment may be modified only by a
written agreement of the Parties and the approval of the Court or upon a duly noticed motion of
either Party for good cause shown. A showing of technical infeasibility or commercial

1 unreasonable in meeting the requirements of Section 2 with respect to the Product shall be
2 deemed to constitute good cause for a modification to substitute an alternative no significant risk
3 level on the basis of 27 Cal. Code Regs. § 25703(b) and such a modification shall not be opposed
4 by PLAINTIFF. Any proposed modification shall be sent to the Office of the California Attorney
5 General in advance of its submission to the Court such that the Attorney General has a reasonable
6 opportunity to review and comment thereon.

7 **12. ENTIRE AGREEMENT**

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

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17 **13. AUTHORIZATION**

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

<p>20 APPROVED AS TO FORM:</p> <p>21 Date: <u>5/22/2023</u></p> <p>22 By: <u>George Rikos</u> George Rikos Counsel to PLAINTIFF Blue Water Cosant, LLC</p>	<p>20 APPROVED AS TO FORM:</p> <p>21 Date: <u>May 15, 2023</u></p> <p>22 By: <u>Dawn Sestito</u> Dawn Sestito, Esq. Counsel for DEFENDANT Trader Joe's Company</p>
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26 **AGREED TO:**

27 Date: 5/22/23

28 By: [Signature]
Blue Water Cosaint, LLC

26 **AGREED TO:**

27 Date: 5/18/23

28 By: [Signature]
Trader Joe's Company

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

DATED: _____

JUDGE OF THE SUPERIOR COURT