

1 PETER HSIAO (Bar No. 119881)  
PHsiao@kslaw.com  
2 **KING & SPALDING LLP**  
3 633 West Fifth Street, Suite 1600  
Los Angeles, California 90071  
4 Telephone: (213) 443-4355  
Facsimile: (213) 443-4310  
5

6 Attorney for Defendants THE COCA-COLA  
COMPANY (erroneously sued as TOPO CHICO)  
7 and STATER BROS. MARKETS INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO**

10  
11 BLUE WATER COSAINT, LLC, a  
California limited liability company

12 Plaintiff,

13 v.  
14

15 TOPO CHICO, business organization, form  
unknown; STATER BROS. MARKETS, a  
16 California corporation; and DOES 1 through  
10, inclusive,  
17

18 Defendants.

Case No. 37-2022-00008167-CU-MC-CTL  
**[PROPOSED] CONSENT JUDGMENT**

Dept: C-71  
Judge: Hon. Gregory W. Pollack

Action Filed: March 2, 2022  
Trial Date: August 25, 2023

1 **I. INTRODUCTION**

2 **A. The Parties**

3 This Consent Judgment is entered into by and between plaintiff Blue Water Cosaint, LLC  
4 (“Blue Water” or “Plaintiff”) and defendant The Coca-Cola Company (“TCCC” or  
5 “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties.” The releases  
6 set forth herein will apply to and release defendant Statler Bros. Markets, Inc. and other parties  
7 as more fully described below (individually referred to as “Stater Bros.” and collectively referred  
8 to along with TCCC as “Defendants”).

9 **B. Plaintiff**

10 Per the Complaint filed in this action, Blue Water is a limited liability company located in  
11 San Diego County, California who brings the instant action in the public interest pursuant to  
12 California Health & Safety Code Section 25249.7, subdivision (d) (“Proposition 65”).

13 **C. Defendant**

14 Defendant is a business that for purposes of this consent judgment falls within the  
15 definition of a person in the course of doing business for purposes of Health & Safety Code  
16 §25249.6 *et seq.*

17 **D. General Allegations**

18 Plaintiff alleges that Topo Chico Mineral Water (“Products”) exposes the consumer to the  
19 chemical Perfluorooctanoic acid (“PFOA”), which is a member of a chemical group called per-  
20 and polyfluoralkyl substances (“PFAS”) that also includes other PFAS subject to regulation  
21 under Proposition 65 such as Perfluorononanoic acid (“PFNA”) and its salts and Perfluorooctane  
22 sulfonic acid (“PFOS”) and its salts and transformation and degradation precursors. Defendant  
23 denies this allegation. Plaintiff alleges that Defendants have and continues to manufacture,  
24 package, distribute, market and/or offer the Products for sale or use in California and the County  
25 of San Diego.

26 **E. Notices of Violation**

27 Per the Complaint, on May 12, 2021, Plaintiff sent Defendants and various public  
28 enforcement agencies a “60-Day Notice of Violation” (“Notice”) that provided Defendants and

1 public enforcers with notice of alleged violations of Health & Safety Code § 25249.6 for failing  
2 to warn consumers that the Products that Defendants sold exposed users in California to PFOA.  
3 No public enforcer has diligently prosecuted the allegations set forth in the Notice.

4 **F. Complaint**

5 On March 2, 2022, Plaintiff, who was and is acting in the interest of the general public in  
6 California, filed a complaint (“Complaint” or “Action”) in this case in the Superior Court of the  
7 State of California for the County of San Diego against Defendants and Does 1 through 10,  
8 alleging violations of Health & Safety Code Section 25249.6 regarding the Products. Defendants  
9 filed their answers to the Complaint on April 20, 2022.

10 **G. No Admission**

11 Defendants deny all allegations without waiver, admission or exception, including the  
12 allegations of fact and law contained in Plaintiff’s Notice and Complaint, and maintain all  
13 Products that they have sold and distributed in California have been and are in compliance with  
14 all applicable laws. Nothing in this Consent Judgment shall be construed as an admission by  
15 Defendants of any fact, finding, issue of law, or violation of law; nor shall compliance with this  
16 Consent Judgment constitute or be construed as an admission by Defendants of any fact, finding,  
17 conclusion, issue of law, or violation of law, such being specifically denied by Defendants.  
18 However, this Section shall not diminish or otherwise affect Defendant’s obligations,  
19 responsibilities, and duties under this Consent Judgment.

20 **H. Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is  
23 proper in the County of San Diego and that this Court has jurisdiction to enter and enforce the  
24 provisions of this Consent Judgment.

25 **I. Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean April 14,  
27 2023.

28 ///

1 **II. INJUNCTIVE RELIEF: REFORMULATION IN LIEU OF WARNINGS**

2 **A. Reformulation**

3 As of the Effective Date, Defendant shall only manufacture or cause to be manufactured  
4 Products for sale in California that comply with the Proposed PFAS National Primary Drinking  
5 Water Regulation issued by the U.S. Environmental Protection Agency (“EPA”) published on  
6 March 29, 2023 at 88 Federal Register 18638 (“EPA PFAS Federal Register Notice”). In part,  
7 EPA’s proposed rule states as follows: “Considering feasibility, including currently available  
8 analytical methods to measure and treat these chemicals in drinking water, EPA is proposing  
9 individual [Maximum Contaminant Levels]” of 4.0 nanograms per liter (“ng/L”) or parts per  
10 trillion (“ppt”) for PFOA, 4.0 ppt for PFOS, and 1.0 (unitless) Hazard Index for PFNA as  
11 calculated as described in the EPA PFAS Federal Register Notice.

12 **III. MONETARY PAYMENTS**

13 **A. Payments Pursuant to Health & Safety Code §25249.7, subdivision (b)**

14 Pursuant to Health & Safety Code § 25249.7, subdivision (b), the total civil penalty  
15 assessed shall be \$10,000 to be paid by Defendant. Civil penalties are to be apportioned in  
16 accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to  
17 the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) and  
18 the remaining 25% of the penalty remitted to Plaintiff under California Health & Safety Code  
19 §25249.12, subdivision (d). Defendant shall issue two separate checks for the penalty payment:  
20 (a) one check made payable to “The Law Offices of George Rikos in Trust For OEHHA” in the  
21 amount of \$7,500, representing 75% of the total penalty; and (b) one check to “The Law Offices  
22 of George Rikos in Trust for Blue Water Cosaint, LLC” in the amount of \$2,500, representing  
23 25% of the total penalty. Two separate 1099s shall be issued for the above payments: (a)  
24 OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Blue Water  
25 Cosaint, LLC, which information shall be provided five (5) calendar days before the payment is  
26 due. Payment shall be delivered to the Law Offices of George Rikos as his address of record in  
27 this action within thirty (30) days of the date that this proposed Consent Judgment is executed by  
28 all parties and approved by the Court.

1 **IV. REIMBURSEMENT OF FEES AND COSTS**

2 **A. Attorney Fees and Costs**

3 The Parties have negotiated at arms-length and agreed to the compensation due to  
4 Plaintiff and its counsel under general contract principles and the private attorney general  
5 doctrine codified at California Code of Civil Procedure Section 1021.5 for all work performed  
6 through the mutual execution, filing, Court approval and all other actions related to this action  
7 and this Consent Judgment. Defendant shall reimburse Plaintiff and his counsel a total of  
8 \$70,000 for all attorney fees and costs incurred, including those related to the investigation,  
9 Notice, this lawsuit and all related proceedings, and negotiating a settlement in the public  
10 interest. Defendant shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall  
11 make the check payable to “The Law Offices of George Rikos.” Payment shall be delivered to  
12 the Law Offices of George Rikos as his address of record in this action within thirty (30) days of  
13 the date that this proposed Consent Judgment is executed by all parties and approved by the  
14 Court.

15 **V. RELEASE OF ALL CLAIMS**

16 **A. Plaintiff’s Release of Defendants**

17 In further consideration of the promises and agreements herein contained, the injunctive  
18 relief commitments set forth in Section 2.1, and for the payments to be made pursuant to  
19 Sections 3 and 4, Plaintiff on behalf of itself, its past and current agents, representatives,  
20 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives  
21 all rights to institute or participate in, directly or indirectly, any form of legal action and releases  
22 all claims, including, without limitation, all actions, and causes of action, in law or in equity,  
23 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses  
24 (including, but not limited to, investigation fees, expert fees, and attorneys’ fees) of any nature  
25 whatsoever, whether known or unknown, fixed or contingent (collectively “claims”), against  
26 Defendants and each of their related parties and downstream customers (including Stater Bros.),  
27 including but not limited to their wholesalers, licensors, licensees, import partners, auctioneers,  
28 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate

1 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,  
2 shareholders, agents, and employees, and sister and parent entities. This release is limited to  
3 those claims that arise under Proposition 65, as such claims relate to the alleged failure to warn  
4 about the alleged exposures to chemicals in the Products.

5 **B. Defendants' Release of Plaintiff**

6 Defendants waive any and all claims against Plaintiff, its attorneys, and other  
7 representatives for any and all actions taken or statements made (or those that could have been  
8 taken or made) by Plaintiff and its attorneys and other representatives, whether in the course of  
9 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this  
10 matter, and/or with respect to the Products.

11 **VI. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and  
13 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
14 year after it has been fully executed by all Parties.

15 **VII. SEVERABILITY**

16 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
17 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
18 provisions remaining shall not be adversely affected.

19 **VIII. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of  
21 California and apply within the State of California. In the event that Proposition 65 is repealed,  
22 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the  
23 Products, then Defendant shall have no further obligations pursuant to this Consent Judgment  
24 with respect to, and to the extent that, the Products are so affected.

25 **IX. NOTICES**

26 All correspondence and notices required to be provided pursuant to this Consent  
27 Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or  
28 certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at

1 the addresses of their respective counsel of record herein. Any party, from time to time, may  
2 specify in writing to the other party a change of address to which all notices and other  
3 communications shall be sent.

4 **X. COUNTERPARTS; FACSIMILE SIGNATURES**

5 This Consent Judgment may be executed in counterparts and by electronic copy, each of  
6 which shall be deemed an original, and all of which, when taken together, shall constitute one  
7 and the same document.

8 **XI. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

9 Plaintiff agrees to comply with the reporting form requirements referenced in California  
10 Health & Safety Code § 25249.7(f).

11 **XII. ADDITIONAL POST EXECUTION ACTIVITIES**

12 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed  
13 motion is required to obtain judicial approval of this Consent Judgment. To obtain such  
14 approval, the Parties and their respective counsel agree to mutually employ their best efforts to  
15 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent  
16 Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall  
17 include, at a minimum, cooperating on the drafting and filing any papers in support of the  
18 required motion for judicial approval.

19 **XIII. MODIFICATION**

20 This Consent Judgment may be modified only: (1) by written agreement of the Parties  
21 and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful  
22 motion of any Party and entry of a modified consent judgment by the Court. The California  
23 Attorney General shall be served with notice of any proposed modification to this Consent  
24 Judgment at least fifteen (15) days in advance of its consideration by the Court.

25 ///

26 ///

27 ///

28 ///

1 **XIV. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective parties and have read, understood, and agree to all of the terms and conditions of this  
4 Consent Judgment

5 **REVIEWED AND AGREED AS TO FORM AND CONTENT**

6 Dated: July 11, 2023

LAW OFFICES OF GEORGE RIKOS

7  
8 By: George Rikos  
George Rikos

9 Attorney for Plaintiff  
10 BLUE WATER COSAINT, LLC

11 **REVIEWED AND AGREED AS TO FORM AND CONTENT**

12 Dated: July 7, 2023

KING & SPALDING LLP

13  
14 By: Peter Hsiao  
15 Peter Hsiao

16 Attorney for Defendants THE COCA-COLA  
17 COMPANY (erroneously sued as TOPO CHICO)  
18 and STATER BROS. MARKETS INC.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28