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5 Attorneys for Plaintiff Ecological Alliance, LLC

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF LOS ANGELES

8 (Unlimited Jurisdiction)

9 ECOLOGICAL ALLIANCE, LLC, a California
10 limited liability company,

11 Plaintiff,

12 v.

13 FREE TO EAT, INC., a Delaware corporation;
14 and DOES 1 through 10, inclusive,

15 Defendant.
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Case No.:21STCV39525

**[PROPOSED] STIPULATED
CONSENT JUDGMENT**

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2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Free to Eat, Inc.
3 (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as
4 follows:

5 WHEREAS: On or about June 28, 2021, Plaintiff, through Plaintiff’s counsel, served a 60
6 Day Notice to Defendant, Gelson’s Markets, the California Attorney General, the District
7 Attorneys of every County in the State of California, and the City Attorneys for every City in the
8 State of California with a population greater than 750,000 (collectively, “Public Prosecutor(s)”)
9 alleging that Defendant violated California’s Safe Drinking Water and Toxic Enforcement Act of
10 1986, California Health and Safety Code § 25249.6, et seq., and its implementing regulations
11 (collectively, “Proposition 65”) and that Plaintiff intended to file an enforcement action in the
12 public interest; and

13 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed Cybele’s
14 Free to Eat Superfood rotini containing Lead, (collectively the “Covered Products”) that were
15 sold or distributed for sale in California and further alleges that those Covered Products expose
16 consumers in the State of California to chemicals including Lead, which are listed by the State of
17 California pursuant to California Health and Safety Code § 25249.8; and

18 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed
19 to Lead in Covered Products without being provided the Proposition 65 warning set out at
20 California Health and Safety Code § 25249.6 and its implementing regulations (“Proposition 65
21 Warning”);

22 WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it has
23 violated Proposition 65 and expressly denies that it has engaged in any wrongdoing whatsoever,

24 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and
25 believes that this objective is achieved by the actions described in this Consent Judgment; and

26 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay
27 and expense of litigation.
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2 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
3 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

4 **INTRODUCTION**

5 1.1. On June 28, 2021, Plaintiff served the 60-Day Notice upon Defendant, Gelson’s
6 Markets, and on Public Prosecutors. No Public Prosecutors commenced an enforcement
7 action. No Public Prosecutor having commenced an enforcement action, Plaintiff
8 proceeded to file its Complaint against Defendant in the present action.

9 1.2. For purposes of this Consent Judgment, the Parties agree that Defendant is a
10 business entity that has employed ten or more persons at all times relevant to this action,
11 and qualifies as a “person in the course of doing business” within the meaning of
12 Proposition 65.

13 1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the
14 “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation
15 contained in the Complaint, and personal jurisdiction over Defendant as to the acts
16 alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this
17 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
18 claims which were or could have been raised in the Complaint based on the facts alleged
19 therein with respect to the Covered Products, and of all claims which were or could have
20 been raised by any person or entity based in whole or in part, directly or indirectly, on the
21 facts alleged in the 60-Day Notice, in the present action, or arising therefrom or related
22 thereto, with respect to Covered Products, including any Proposition 65 claim arising out
23 of an exposure to Covered Products (collectively, “Proposition 65 Claims”).

24 1.4. The Parties enter into this Consent Judgment as a full and final settlement of the
25 Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of
26 resolving the issues raised therein both as to past and future conduct. By execution of
27 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit
28 any fact, conclusion of law, or violation of law, nor shall Defendant’s compliance with

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2 the Consent Judgment constitute or be construed as an admission by Defendant of any
3 fact, conclusion of law, or violation of law. Defendant denies the material, factual, and
4 legal allegations in the 60-Day Notice and the Complaint and expressly denies any
5 wrongdoing whatsoever.

6 **2. DEFINITIONS**

7 2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date the
8 Consent Judgment has been approved and entered by the Court.

9 **3. INJUNCTIVE RELIEF**

10 3.1. For each Covered Product, Defendant agrees to undertake, or cause to be
11 undertaken on its behalf, either (a) reformulation of the Covered Product to bring it
12 within the Proposition 65 exemption identified in Section 3.2 below, or (b) provide a
13 warning as prescribed in Sections 3.3-3.4 below. Compliance with this Section 3.1 will
14 constitute compliance by Defendant with all requirements of Proposition 65 relating to
15 Lead exposure in the Covered Products:

16 3.2. Proposition 65 Exemption for the Covered Products

17 Subject to Section 3.5, any Covered Product that is sold, or offered for sale, to consumers
18 in the State of California ninety (90) days after the Effective Date shall be deemed to
19 comply with Proposition 65, and be exempt from any Proposition 65 warning
20 requirements with respect to Lead, if the Covered Product contains less than 10 parts per
21 billion of Lead.

22 3.3. Warning Option

23 Subject to section 3.5, Covered Products that do not meet the warning exemption standard
24 set forth in Section 3.2 above, shall be accompanied by a warning as described in Section
25 3.4 below. This warning requirement shall only be required as to Covered Products that
26 are manufactured, distributed, marketed, sold or shipped for sale to consumers by
27 Defendant in the State of California, ninety (90) days after the Effective Date. No
28 Proposition 65 warning shall be required as to any Covered Products that are

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2 manufactured prior to the Effective Date, and all such Covered Products are hereby
3 deemed to be exempt from Proposition 65 with respect to Lead and/or expressly released
4 under this Consent Judgment.

5 3.4. Warning Language

6 Where required to meet the criteria set forth in Section 3.3, Defendant shall provide one of
7 the following warning statements (“Warning”), displayed in a reasonably conspicuous
8 manner:

9 Option (1)

10 **WARNING:** Consuming this product can expose you to chemicals
11 including Lead, which [is] are known to the State of California to
12 cause [cancer and] birth defects or other reproductive harm. For
13 more information go to www.P65Warnings.ca.gov/food
14

15 Option (2)

16 **WARNING:** [Cancer and] Reproductive Harm--
17 www.P65Warnings.ca.gov/food

18 The Warning shall be provided through one of the following methods: (1) a product-specific
19 warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point
20 of display of the product; or (2) a product-specific warning provided via any electronic device or
21 process that automatically provides the warning to the purchaser prior to or during the purchase of
22 the consumer product, without requiring the purchaser to seek out the warning; or (3) a warning
23 on the label that is securely affixed to or printed upon the label and complies with the warning
24 content provided in Option 1 or Option 2 above. In addition, for any Covered Product sold over
25 the internet, the Warning shall appear prior to checkout on the primary product page, or as a pop-
26 up when a California zip code is input into the shipping instructions, or on the checkout page on
27 the checkout page when a California delivery address is indicated for any purchase of any
28 Covered Product. The Warning may be provided with a conspicuous hyperlink stating

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2 “WARNING” in all capital and bold letters so long as the hyperlink goes directly to a page
3 prominently displaying the Warning without content that detracts from the Warning. Given
4 Defendant’s lack of control over third-party websites, the online warning requirements expressed
5 in this Section apply only to Covered Products sold through Defendant’s website. With respect to
6 any downstream reseller customers of Defendant who are subject to Proposition 65, Defendant
7 may give written notice, including labels, labeling, shelf signs, or tags bearing the Warning, and
8 all other necessary warning materials, to the authorized agent of such downstream reseller
9 customers. If subsequently enacted changes to Proposition 65 or its implementing regulations
10 require the use of additional or different information on any warning specifically applicable to the
11 Covered Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe Harbor
12 warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this
13 Section.

14 **4. MONETARY RELIEF**

15 4.1. Within ten (10) days of the Effective Date, Defendant shall pay the total sum of
16 \$28,000 which includes \$8,000 in civil penalties and \$20,000 in payment of Plaintiff’s
17 costs and reasonable attorney’s fees. The \$8,000 civil penalty shall be apportioned
18 pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$6,000, paid to
19 the State of California’s Office of Environmental Health Hazard Assessment and 25%, or
20 \$2,000, payable to Plaintiff.

21 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff’s
22 counsel Custodio & Dubey LLP as set forth below. Plaintiffs’ counsel will remit the
23 portions due to the State of California Office of Environmental Health Hazard
24 Assessment and to Plaintiff.

25 Bank: Bank of America, N.A.

26 Routing Transit No.: 026009593

27 Account No.: 325132729125

28 Beneficiary: Custodio & Dubey LLP

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3 **5. CLAIMS COVERED AND RELEASE**

4 5.1. Plaintiff acting on its own behalf and in the public interest releases Defendant, and
5 all of Defendant’s parent companies, as well as all of Defendant’s officers, directors,
6 members, shareholders, employees, attorneys, agents, parent companies, subsidiaries,
7 divisions, affiliates, suppliers, franchisees, licensees, and retailers (including Gelson’s
8 Markets), their parent and all subsidiaries, and affiliates, thereof, their respective
9 employees, agents and assigns, as well as all other upstream and downstream entities in
10 the distribution chain for any of the Covered Products, and the predecessors, successors,
11 and assigns of any of them (collectively, the “Released Parties”) from all claims for
12 violations of Proposition 65 up through the Effective Date based on exposure to Lead
13 from the Covered Products as set forth in the Notice of Violation. Compliance with the
14 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect
15 to exposures to Lead from the Covered Products as set forth in the Notice of Violation.

16 5.2. It is possible that other claims not known to the Parties arising out of the facts
17 contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered
18 Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on
19 the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment
20 is expressly intended to cover and include all such claims through and including the
21 Effective Date, including all rights of action thereon. Plaintiff and Defendant
22 acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown
23 claims, and nevertheless intend to release such claims, and in doing so waive California
24 Civil Code § 1542 which reads as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
26 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
27 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
28 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR.

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5.3. Plaintiff understands and acknowledges that the significance and consequence of this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim for those damages against any of the Released Parties.

5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute compliance with Proposition 65 with respect to exposure to Lead in the Covered Products as set forth in the 60 Day Notice and/or the Complaint.

6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)

6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

7. PROVISION OF NOTICE

7.1. When any Party is entitled to receive any notice or writing under this Consent Judgment, the notice or writing shall be sent by first class certified mail with return receipt requested, or by electronic mail, as follows:

To Defendant:
Abhishek K. Gurnani, Esq.
Amin Talati Wasserman, LLP
100 S. Wacker Dr., Suite 2000
Chicago, IL 60606
abhishek@amintalati.com

To Plaintiff:
Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., Ste 2520
Los Angeles, CA 90071
dubey@cd-lawyers.com

7.2. Any party may modify the person and address to whom the notice is to be sent by sending the other Party notice that is transmitted in the manner set forth in section 7.1.

8. COURT APPROVAL

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8.1. Upon execution of his Consent Judgment by all Parties, Plaintiff shall prepare and file, at its sole cost and expense, a Motion for Approval of this Consent Judgment that Defendant shall support. This Consent Judgment shall not become effective until approved and entered by the Court. If this Consent Judgment is not entered by the Court, it shall be of no force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

8.2. This Consent Judgment may apply to and benefit the Parties and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application to any Covered Products that are distributed or sold exclusively outside the State of California and that is not intended for use by California consumers.

9. GOVERNING LAW AND CONSTRUCTION

9.1. The terms of this Consent Judgment shall be governed by the laws of the State of California.

10. ENTIRE AGREEMENT

10.1. This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

10.2. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.

10.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or

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2 to bind any of the Parties hereto only to the extent that they are expressly incorporated
3 herein.

4 10.4. No supplementation, modification, waiver, or termination of this Consent
5 Judgment shall be binding unless executed in writing by the Party to be bound thereby,
6 and approved and ordered by the Court.

7 10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
8 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor
9 shall such waiver constitute a continuing waiver.

10 **11. RETENTION OF JURISDICTION & ENFORCEMENT**

11 11.1. This Court shall retain jurisdiction of this matter to implement or modify the
12 Consent Judgment.

13 11.2. If Plaintiff alleges that any Covered Products fail to comply with this Consent
14 Judgment, then Plaintiff shall inform Defendant in a reasonably prompt manner of its test
15 results, including information sufficient to permit Defendant to identify the Covered
16 Products at issue. The Parties shall first attempt to resolve the matter prior to Plaintiff
17 taking any further legal action.

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19 11.3. In the event that Proposition 65 is repealed or preempted as to food products, or
20 if lead is deemed to be naturally occurring in the Covered Products and not requiring a
21 warning through a law or regulation, then Plaintiff shall have no further obligation
22 pursuant to this Consent Judgment with respect to, and to the extent that the Covered
23 Products are so affected.

24 **12. NO EFFECT ON OTHER SETTLEMENTS**

25 12.1. Nothing in this Consent Judgment shall preclude Plaintiff from resolving any
26 claim against another entity on terms that are different from those contained in this
27 Consent Judgment.

28 **13. EXECUTION IN COUNTERPARTS**

13.1. This Consent Judgment may be executed in counterparts, each of which shall be

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2 deemed to be an original, and all of which, taken together, shall constitute the same
3 document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic
4 means, shall constitute legal and binding execution and delivery. Any photocopy of the
5 executed Consent Judgment shall have the same force and effect as the original.

6 **14. AUTHORIZATION**

7 14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent
8 Judgment on behalf of their respective parties, and have read, understood, and agree to all
9 of the terms and conditions of this Consent Judgment.

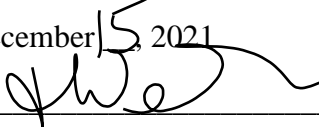
10 **15. SEVERABILITY**

11 15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is
12 declared by a Court to be invalid, void, or unenforceable, the remaining portions or
13 provisions shall continue in full force and effect.

14 **AGREED TO:**

15 **Ecological Alliance LLC**

16 Date: December 15, 2021

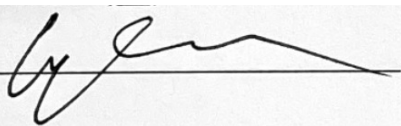
17 By:  _____

18 Harmony Welsh, Managing Member

19 **AGREED TO:**

20 **Free to Eat, Inc.**

21 Date: December 15, 2021

22 By:  _____

23
24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health &
25 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

26
27 Dated: _____

JUDGE OF THE SUPERIOR COURT