

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

MIGUEL A. CUSTODIO, JR., STATE BAR NO. 248744  
VINEET DUBEY, STATE BAR NO. 243208  
CUSTODIO & DUBEY LLP  
445 S. Figueroa St., Suite 2520  
Los Angeles, CA 90071  
Telephone: (213) 593-9095  
Facsimile: (213) 785-2899

Attorneys for Plaintiff Ecological Alliance, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
(Unlimited Jurisdiction)

ECOLOGICAL ALLIANCE, LLC, a California  
limited liability company,

Plaintiff,

v.

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

Defendant.

Case No.:21STCV39525

**[PROPOSED] STIPULATED  
CONSENT JUDGMENT**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

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

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

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

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

WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay and expense of litigation.

1  
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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**2. DEFINITIONS**

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

**3. INJUNCTIVE RELIEF**

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

3.2. Proposition 65 Exemption for the Covered Products

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

3.3. Warning Option

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

3.4. Warning Language

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

- (1) **WARNING:** Consuming this product can expose you to chemicals including Lead, which [is] are known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)
- (2) **WARNING:** [Cancer and] Reproductive Harm--  
[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

The Warning shall be provided through one of the following methods: (1) a product-specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point of display of the product; or (2) a product-specific warning provided via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the consumer product, without requiring the purchaser to seek out the warning; or (3) a warning on the label that is securely affixed to or printed upon the label and complies with this Section. If subsequently enacted changes to Proposition 65 or its implementing regulations require the use of additional or different information on any warning specifically applicable to the Covered Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe Harbor warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this Section.

**4. MONETARY RELIEF**

4.1. Within ten (10) days of the Effective Date, Defendant shall pay the total sum of \$28,000 which includes \$8,000 in civil penalties and \$20,000 in payment of Plaintiff’s

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

costs and reasonable attorney's fees. The \$8,000 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$6,000, paid to the State of California's Office of Environmental Health Hazard Assessment and 25%, or \$2,000, payable to Plaintiff.

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

Bank: Bank of America, N.A.

Routing Transit No.: 026009593

Account No.: 325132729125

Beneficiary: Custodio & Dubey LLP

#### 5. CLAIMS COVERED AND RELEASE

5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of itself, and acting in the public interest, and Defendant, and all of Defendant's parent companies, as well as all of Defendant's officers, directors, members, shareholders, employees, attorneys, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, and retailers (including Gelson's Markets), their parent and all subsidiaries, and affiliates, thereof, their respective employees, agents and assigns, as well as all other upstream and downstream entities in the distribution chain for any of the Covered Products, and the predecessors, successors, and assigns of any of them (collectively, the "Released Parties"), for any alleged violation of Proposition 65, and its implementing regulations, for failure to provide Proposition 65 warnings for the Covered Products with respect to Lead, and fully resolves all claims that have been brought, or which could have been brought in this action up to and including the Effective Date. Plaintiff on behalf of itself, and in the public interest, hereby discharges the Released Parties from any and all claims, actions, causes of action, suits,

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been asserted, with respect to any alleged violation of Proposition 65 arising from the failure to provide Proposition 65 warnings about exposures to Lead for any or all of the Covered Products, through and including the Effective Date.

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

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

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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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](mailto: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](mailto: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**

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,



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

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

**11. RETENTION OF JURISDICTION & ENFORCEMENT**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

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

**12. NO EFFECT ON OTHER SETTLEMENTS**

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

**13. EXECUTION IN COUNTERPARTS**

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

**14. AUTHORIZATION**

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**15. SEVERABILITY**

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

**AGREED TO:**

**Ecological Alliance LLC**

Date: October 21, 2021  
By: [Signature]

Harmony Welsh, Managing Member

**AGREED TO:**

**Free to Eat, Inc.**

Date: October 10, 2021  
By: [Signature]  
DocuSigned by:  
F458F0D6CC084ED...

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT