1 2 3 4	MIGUEL A. CUSTODIO, JR., STATE BAR NO. 24 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	48744	
5	Attorneys for Plaintiff Ecological Alliance, LLC		
6	SUPERIOR COURT OF THE ST	TATE OF CALIFORNIA	
7	10 / 70	COUNTY OF LOS ANGELES	
8		(Unlimited Jurisdiction)	
9	ECOLOGICAL ALLIANCE, LLC, a California limited liability company,	Case No.:21STCV38006	
11 12	Plaintiff,	[PROPOSED] STIPULATED CONSENT JUDGMENT	
13	v.		
14	Intermex Foods Corporation, a California corporation; and DOES 1 through 10, inclusive,		
15 16	Defendant.		
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Plaintiff Ecological Alliance, LLC ("Plaintiff"), and Defendant Intermex Foods

Corporation ("Defendant") hereby enter into this Stipulated Consent Judgment ("Consent

Judgment") as follows:

WHEREAS: On or about July 14, 2021, Plaintiff, through Plaintiff's counsel, served a 60 Day Notice to Defendant, 99 Cents Only Stores LLC, 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 Pagasa tricolore pasta and Pagasa spinach spaghetti 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.

INTRODUCTION

NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

- 1.1. On July 14, 2021, Plaintiff served the 60-Day Notice upon Defendant, 99 Cents Only Stores LLC, and on Public Prosecutors. No Public Prosecutors commenced an enforcement action. No Public Prosecutor having commenced an enforcement action, Plaintiff proceeded to file its Complaint against Defendant in the present action.
- 1.2. For purposes of this Consent Judgment only, Plaintiff and Defendant (the "Parties") stipulate that: 1) this Court has jurisdiction over the allegations of violation contained in the Complaint, and personal jurisdiction over Defendant as to the acts alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein with respect to the Covered Products, and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged in the 60-Day Notice, in the present action, or arising therefrom or related thereto, with respect to Covered Products, including any Proposition 65 claim arising out of an exposure to Covered Products (collectively, "Proposition 65 Claims").
- 1.3. The Parties enter into this Consent Judgment as a full and final settlement of the Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of resolving the issues raised therein both as to past and future conduct. By execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or violation of law, nor shall Defendant's compliance with 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. The Covered Products will not be sold in California. No Proposition 65 warning or other action shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date, and all such Covered Products are hereby deemed to be exempt from Proposition 65 with respect to Lead.

4. MONETARY RELIEF

- 4.1. The manufacturer of the Covered Products, Pagasa, S.A. de C.V., shall pay \$45,000 in settlement of this dispute, which includes \$10,000 in civil penalties and \$35,000 in payment of Plaintiff's costs and reasonable attorney's fees. The \$10,000 civil penalty shall be apportioned pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$7,500, paid to the State of California's Office of Environmental Health Hazard Assessment and 25%, or \$2,500, payable to Plaintiff.
- 4.2. Payment of \$45,000 shall be made within 20 days of the Effective Date.
- 4.3. 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 Plantiff, with evidence of said payment provided to Defendant's counsel.

Bank: Bank of America, N.A.

Routing Transit No.: 026009593

Account No.: 325132729125

Beneficiary: Custodio & Dubey LLP

5. CLAIMS COVERED AND RELEASE

- 5.1. Plaintiff, acting on its own behalf and in the public interest, releases 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, 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 manufacturing, distribution and sales chain for any of the Covered Products, including without limitation Pagasa, S.V. de C.V. and 99 Cents Only Stores LLC, and the predecessors, successors, and assigns of any of them (all of the foregoing collectively, the "Released Parties"), from all claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead from the Covered Products as set forth in the Notice of Violation attached hereto and incorporated herein as Exhibit A. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to Lead from the Covered Products as set forth in the Notice of Violation.
- 5.2. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on behalf of itself, and the Released Parties for any alleged violation of Proposition 65, and its implementing regulations, including without limitation 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, hereby discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been asserted, with respect to any alleged violation of Proposition 65, including without limitation for 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. 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

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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.

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 electronic mail, as follows:

To Defendant:
Paul Beard II, Esq.
Fisher Broyles LLP
paul.beard@fisherbroyles.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

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.

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

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

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 3 14.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent 4 Judgment on behalf of their respective parties, and have read, understood, and agree to all 5 of the terms and conditions of this Consent Judgment 6 15. SEVERABILITY 7 15.1. If subsequent to Court approval of this Consent Judgment, any part or provision is 8 declared by a Court to be invalid, void, or unenforceable, the remaining portions or 9 provisions shall continue in full force and effect. 10 AGREED TO: 11 Ecological Alliance LLC 12 November 13 Date: Outob 14 15 Harmony Welsh, Managing Member 16 AGREED TO: 17 **Intermex Food Corporation** 18 Date: October 3/, 2021 19 By: 20 Emiliano GALLEGO 21 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & 22 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6. judgment is hereby entered. 23 24 Dated: 25 JUDGE OF THE SUPERIOR COURT 26 27 28

EXHIBIT A



July 14, 2021

Intermex Foods Corporation c/o Fernando Carrillo 371 E Street Chula Vista, CA 91910

99 Cents Only Stores LLC c/o CT Corporation System 330 N. Brand Blvd., Ste 700 Glendale, CA 91203

Re: NOTICE OF VIOLATION AGAINST INTERMEX FOODS CORPORATION AND 99 CENTS ONLY STORES LLC OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.6

To Whom It May Concern and to Public Prosecutors:

Ecological Alliance, LLC, a California limited liability company ("Alliance") is a California company acting in the interest of the general public seeking to further, among other causes, the protection of the environment, toxics reduction, the promotion and improvement of human health, the improvement of workers and consumer rights, environmental education and corporate accountability. As described below, Alliance has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65" or "Act"), codified at Cal. Health & Safety Code §25249.5 *et seq.* by Intermex Foods Corporation, a California corporation and 99 Cents Only Stores LLC, a California limited liability company (collectively the "Violators"). This letter serves to provide Alliance's notification of these violations to the Violators and elected prosecutors. Pursuant to §25249.7(d) of the statute, Alliance intends to bring an enforcement action sixty (60) days or more after effective service of this notice unless the appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

The products which are causing an exposure without a warning in violation of Proposition 65, are Pagasa tricolore pasta, including but not limited to UPC #070952008591; and Pagasa spinach spaghetti, including but not limited to UPC #070952002551 ("Products") manufactured/distributed by Intermex Foods Corporation and offered for sale by retailers, including 99 Cents Only Stores LLC, to California consumers.

A copy of the Proposition 65 summary prepared by the Office of Environmental Health Hazard Assessment is attached, to the copy of this letter served to the Violators.

Because of this lack of a warning, consumers were exposed to the following chemicals without the proper required Proposition 65 warnings: 1) Lead. The routes of exposure for this chemical are ingestion and dermal. Such exposure can cause cancer, birth defects and other reproductive harm. Exposures to the listed chemical from the use of the Products have been occurring without the clear and reasonable warnings required by Proposition 65, dating as far back as July 14, 2020, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the Products. Without proper warnings regarding the toxic effects of exposures to the listed chemical resulting from contact with the Products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the listed chemical from reasonable foreseeable use of the Products.

Alliance intends to file a private enforcement action as provided for in the Act for the alleged violations by the Violators, unless Violaters agree in an enforceable written instrument to: (1) recall the listed products so as to eliminate further exposures to the identified chemicals; or (2) affix clear and reasonable Proposition 65 warning labels for products sold in the future or reformulate such products to eliminate the exposures; and (3) pay an appropriate civil penalty.

Consistent with the public interest goals of Proposition 65, Alliance is interested in seeking a constructive resolution to this matter, and invites Violators, should they seek early resolution of this matter, to communicate directly with Alliance's attorneys. Such resolution will avoid further unwarned consumer exposures, as well as resource intensive litigation.

Please direct all questions concerning this notice to Alliance's attorney, Vineet Dubey (dubey@cd-lawyers.com), Custodio & Dubey LLP, 445 S. Figueroa St., Suite 2520, Los Angeles, CA 90071, 213-593-9095.

Sincerely,

Vineet Dubey

Custodio & Dubey LLP

cc: see attached distribution list

Attachments:
Proposition 65 summary
Certificate of Merit
Certificate of Service

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

Re: Ecological Alliance, LLC's Notice of Proposition 65 Violations by Intermex Foods Corporation and 99 Cents Only Stores LLC

- I, Vineet Dubey, hereby declare:
- 1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- 2. I am an attorney for the noticing party.
- 3. I have consulted with one or more persons with relevant and appropriate experience and have assembled evidence attached to the copy for the California Attorney General as Exhibit 1 to this Certificate of Merit regarding the lack of warnings for the listed chemical that is the subject of the notice.
- 4. Based on the information obtained and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
- 5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2).

Dated: July 14, 2021

Xineet Dubey, Attorney at Law

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 445 S. Figueroa St., Ste 2520, Los Angeles, CA 90071.

On the date shown below, I served the following:

- 1) 60-Day Notice of Intent to Sue Under Health and Safety Code section 25249.6
- 2) Certificate of Merit; Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy); Factual information sufficient to establish the basis of the certificate of merit (only sent to Attorney General)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); A Summary

on the alleged violator listed below via First Class Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such envelope to a United States Postal Service Representative:

Intermex Foods Corporation c/o Fernando Carrillo 371 E Street Chula Vista, CA 91910

99 Cents Only Stores LLC c/o CT Corporation System 330 N. Brand Blvd., Ste 700 Glendale, CA 91203

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to the parties listed on the attached Distribution List.

I declare under penalty of perjury that under the laws of the State of California that the foregoing is true and correct.

July 14, 2021

Vineet Dubey

Los Angeles County District Attorney 210 W Temple St, 18th Floor	Mono County District Attorney P0 Box 617
Los Angeles, CA 90012	Bridgeport, CA 93517
Madera County District Attorney 209 W Yosemite Ave	San Joaquin County District Attorney PO Box 990
	Stockton, CA 95201 -0990 San Francisco County District Attorney
P.O. Box 730	850 Bryant St, Rm 322 San Francisco, CA 94103
	San Diego County District Attorney
3501 Civic Center Drive, #130	San Diego, CA 92101-3803
Mendocino County District Attorney	San Bernardino County District Attorney
P.O. Box 1000 Ukiah, CA 95482	316 N Mountain View Ave San Bernardino, CA 92415-0004
Los Angeles City Attorney	San Francisco City Attorney
200 N Main St Ste 1800 Los Angeles CA 90012	# 1 Dr. Carlton B. Goodlett Place, Suite 23- San Francisco, CA 94102
Inyo County District Attorney	Placer County District Attorney
P.O. Drawer D	10810 Justice Center Drive
independence, CA 93526	Suite 240 Roseville, CA 95678-6231
Orange County District Attorney	Merced County District Attorney
	550 W. Main St. Merced, CA 95340
Nevada County District Attorney	Napa County District Attorney
10075 Levon Ave.	P0 Box 720
	Nana, CA 94559-0720 Riverside County District Attorney
520 Main Street, Rm 404	3960 Orange Street, Suite 6
	Riverside, CA 92501 San Benito County District Attorney
	419 4th St
Sacramento, CA 95814	Hollister, CA 95023
	Siskiyou County District Attorney PO Box 986
San Luis Obispo, CA 93408	Yreka, CA 96097
San Mateo County District Attorney	Solano County District Attorney
	600 Union Ave Fairfield, CA 94533
Santa Barbara County District Attorney	Sonoma County District Attorney
	600 Administration Dr. Rm 212-J
Sama Barbara, CA 75101	Santa Rosa, CA 95403
Santa Clara County District Attorney	Shasta County District Attorney
San Jose, CA 95110	1355 West St. Redding, CA 96001-1632
Santa Cruz County District Attorney	Sierra County District Attorney
701 Ocean St., Room 200	P0 Box 457 Downieville, CA 95936-0457
	Trinity County District Attorney
P0 Box 442	PO Box 310 Weaverville, CA 96093
Sutter County District Attorney	Yuba County District Attorney
446 Second Street	215 5th St Marysville, CA 95901
	Monterey County District Attorney
200 S Lassen St, Suite 8	PO Box 1131
Susanville, CA 96130	Salinas, CA 93902
 	Yolo County District Attorney
Tulare County District Attorney	
County Civic Center, Rm 224	310 Second St
County Civic Center, Rm 224 Visalia, CA 93291	310 Second St Woodland, CA 95695
County Civic Center, Rm 224	310 Second St
	210 W Temple St, 18th Floor Los Angeles, CA 90012 Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637 Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338 Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903 Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482 Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012 Inyo County District Attorney P.O. Drawer D Independence, CA 93526 Orange County District Attorney P.O. Drawer D Independence, CA 93526 Orange County District Attorney P.O. Box 808 Santa Ana, CA 92702 Nevada County District Attorney 10075 Levon Ave. Truckee, CA 96161 Plumas County District Attorney 520 Main Street, Rm 404 Ouincv, CA 95971 Sacramento County District Attorney 901 G Street Sacramento, CA 95814 San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408 San Mateo County District Attorney 400 County Center Redwood City, CA 94063 Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101 Santa Clara County District Attorney 70 W Hedding St. Santa Barbara, CA 93101 Santa Cruz, CA 95060 Stanislaus County District Attorney 70 Box 442 Modesto, CA 95353 Sutter County District Attorney PO Box 442 Modesto, CA 95353 Sutter County District Attorney PO Box 442 Modesto, CA 95353 Sutter County District Attorney PO Box 442 Modesto, CA 95991 Lassen County District Attorney 200 S Lassen St, Suite 8