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ENTORNO LAW, LLP
Noam Glick (SBN 251582)
Jake W. Schulte (SBN 293777)
Craig M. Nicholas (SBN 178444)
225 Broadway, Suite 1900
San Diego, California 92101
Tel: (619) 629-0527
Email: noam@enteronolaw.com
Email: jake@entornolaw.com
Email: craig@entornolaw.com

Attorneys for Plaintiff
Environmental Health Advocates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH
ADVOCATES, INC.,

Plaintiff,

v.

GLOBAL JUICES AND FRUITS, LLC, a
Delaware limited liability company,
WALMART INC., a Delaware corporation,
and DOES 1 through 100, inclusive,

Defendants.

Case No. 22CV009784

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

2

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 (“EHA” or “Plaintiff”) and Global Juices and Fruits, LLC (“Defendant” or “GJF”) with EHA and
5 GJF each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is a corporation organized in the state of California, acting in the interest of the general
8 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health
9 by reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 For purposes of this settlement, GJF represents that it employs ten or more individuals, or has
12 done so during times relevant to this action, and is a “person in the course of doing business” for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
14 section 25249.6 et seq. (“Proposition 65”).

15 **1.4 General Allegations**

16 EHA alleges that GJF either manufactures, imports, sells, and/or distributes for sale in
17 California, or some combination of the foregoing, Nature’s Earthly Choice Great Day Beet Powder
18 that contains lead. EHA further alleges that GJF does so without providing a sufficient health hazard
19 warning pursuant to Proposition 65 and related regulations. Pursuant to Proposition 65, lead is listed
20 as a chemical known to the State of California cause cancer, birth defects and other reproductive
21 harm.

22 **1.5 Notices of Violation**

23 On or around September 24, 2021, EHA served Defendant Global Juices and Fruits, LLC,
24 Nature’s Earthly Choice, Walmart Inc., the California Attorney General, and all other required public
25 enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice
26 alleged that GJF and others had violated Proposition 65 by failing to sufficiently warn consumers in
27 California of exposures to lead contained in nature’s Earthly Choice Great Day Beet Powder.

28 No public enforcer has commenced or is otherwise prosecuting an action to enforce the

1 violations alleged in the Notice.

2 **1.6 Product Description**

3 The products covered by this Consent Judgment are beet powder including but not limited to
4 nature's Earthly Choice Great Day Beet Powder either manufactured, or imported, or distributed or
5 sold by GJF that allegedly contain lead and are imported, sold, shipped, delivered, or distributed for
6 sale to consumers in California by Releasees or Defendant Entities (as defined in section 4.1)
7 ("Covered Products").

8 **1.7 State of the Pleadings**

9 On or around April 12, 2022, EHA filed a Complaint against GJF and Walmart, Inc. for the
10 alleged violations of Proposition 65 that are the subject of the Notice ("Complaint"). On or about
11 September 1, 2022 defendants filed responsive pleadings.

12 **1.8 No Admission**

13 GJF denies the material factual and legal allegations of the Notice and Complaint and
14 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
15 California, including Covered Products, have been, and are, in compliance with all laws. Nothing in
16 this Consent Judgment shall be construed as an admission against interest of any fact, finding,
17 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment
18 be construed as an admission against interest of any fact, finding, conclusion of law, issue of law, or
19 violation of law. This Section shall not, however, diminish or otherwise affect GJF's obligations,
20 responsibilities, and duties under this Consent Judgment.

21 **1.9 Jurisdiction**

22 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
23 Court has jurisdiction over GJF as to the allegations in the Complaint, that venue is proper in the
24 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
25 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
28 Plaintiff serves notice on GJF that the Court has granted the motion for approval of this Consent

1 Judgment, as discussed in Section 5.

2 **2. INJUNCTIVE RELIEF**

3 **2.1 Reformulation of the Covered Products**

4 Beginning thirty (30) days after the Effective Date, for Covered Products manufactured and
5 packaged for authorized sale or use in California on or after the Effective Date, GJF shall be
6 permanently enjoined from manufacturing, distributing, or directly selling in the State of California,
7 any Covered Product that expose a person to a “Daily Lead Exposure Level” of more than 0.5
8 micrograms of lead per day unless such Covered Products comply with the warning requirements of
9 Section 2.2. As used in this Section 2, “distributed for sale in California” means GJF directly ships
10 Covered Products into California or sells Covered Products to a distributor GJF knows will sell
11 Covered Products in California.

12 **2.2 Clear and Reasonable Warnings**

13 For Covered Products that contain lead in a concentration exceeding the “Daily Exposure
14 Level” of 0.5 micrograms set forth in section 2.1 above, and which are manufactured and packaged
15 for distribution for authorized sale or use in California on or after the Effective Date, GJF shall
16 provide one of the following warning statements.

17 **Option 1:**

18 **⚠️ WARNING :** Consuming this product can expose you to chemicals
19 including lead, which is known to the State of California to cause
20 cancer and birth defects or other reproductive harm. For more
information go to www.P65warnings.ca.gov/food

21 **Option 2:**

22 **⚠️ WARNING :** Cancer and Reproductive Harm –
www.P65Warnings.ca.gov/food

23 This warning statement shall be prominently displayed on the Covered Products, on the
24 packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is
25 displayed with such conspicuousness, as compared with other words, statements, or designs as to
26 render it likely to be read and understood by an ordinary individual prior to sale. If the warning
27 statement is displayed on the Covered Products’ packaging, it must be in a type size no smaller than
28 the largest type size used for other consumer information on the product. In no case shall a warning

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1 statement displayed on the Covered Products' packaging appear in a type size smaller than 6-point
2 type. The same warning shall be posted on any websites under the exclusive control of GJF where
3 Covered Products are sold into California. GJF shall instruct any third-party website sellers to which
4 it sells its Covered Products to include the same warning as a condition of selling the Covered
5 Products into California.

6 The warning shall be provided to California consumers in a manner that complies with 27
7 C.C.R. § 25602(b). Specifically, for internet purchases from any websites under the exclusive control
8 of GJF, a warning must also be provided by including either the warning or a clearly marked
9 hyperlink using the word "WARNING" on the product display page, or by otherwise prominently
10 displaying the warning to the purchaser prior to completing the purchase.

11 2.3 Sell-Through Period

12 Notwithstanding anything else in this Consent Judgment, the Covered Products that are
13 manufactured on or prior to the Effective Date shall be subject to releases of liability pursuant to this
14 Consent Judgment, without regard to when such Covered Products were, or are in the future,
15 distributed or sold to customers. As a result, the warning obligations of GJF, Defendant Entities, or
16 any Releasees (if applicable), do not apply to these Covered Products manufactured on or prior to the
17 Effective Date.

18 3. MONETARY SETTLEMENT TERMS

19 3.1 Settlement Amount

20 GJF shall pay seventy five thousand dollars (\$75,000.00) in settlement and total satisfaction
21 of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes
22 civil penalties in the amount of seven thousand dollars (\$7,000.00) pursuant to Health and Safety
23 Code section 25249.7(b) and attorneys' fees and costs in the amount sixty eight thousand dollars (\$-
24 68,000.00) pursuant to Code of Civil Procedure section 1021.5.

25 3.2 Civil Penalty

26 The portion of the settlement attributable to civil penalties shall be allocated according to
27 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
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1 penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and
2 the remaining twenty-five percent (25%) of the penalty paid to EHA individually.

3 All payments owed to EHA shall be delivered to the following address:

4 Environmental Health Advocates
5 225 Broadway, Suite 2100
6 San Diego, CA 92101.

7 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
(Memo Line "Prop 65 Penalties") at the following addresses:

8 For United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010
13 Sacramento, CA 95812-4010.

14 For Federal Express 2-Day Delivery:

15 Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street
19 Sacramento, CA 95814.

20 GJF agrees to provide EHA’s counsel with a copy of the check payable to OEHHA,
21 simultaneous with its penalty payment to EHA.

22 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as
23 required. Relevant information is set out below:

- 24 • “Environmental Health Advocates, Inc.” (EIN: 84-2322975) at the address provided above.
- 25 • “Office of Environmental Health Hazard Assessment” 1001 “I” Street, Sacramento, CA
26 95814.

27 **3.3 Attorney’s Fees and Costs**

28 The portion of the settlement attributable to attorneys’ fees and costs shall be paid to EHA’s
counsel, who are entitled to attorneys’ fees and costs incurred by it in this action, including but not
limited to investigating potential violations, bringing this matter to GJF’s attention, as well as
litigating and negotiating a settlement in the public interest.

1 GJF shall provide their payments to EHA's Counsel the amount of sixty-eight thousand
2 dollars (\$68,000.00), payable to Entorno Law, LLP. The payments will be sent to the following
3 address:

4 Noam Glick
5 Entorno Law, LLP
6 225 Broadway, Suite 2100
7 San Diego, CA 92101.

8 **3.4 Payment Timetable**

9 The payments referenced above shall be made by the following deadlines:

10 (a) \$25,000.00 shall be due by December 15, 2022, if the Effective Date is prior to December
11 1, 2022, or within fifteen (15) days of the Effective Date, whichever is later; this first payment shall
12 include the \$7,000.00 civil penalty payments and \$18,000.00 in attorney's fees and costs;

13 (b) \$25,000.00 shall be due by March 15, 2023, comprised entirely of attorney's fees and
14 costs;

15 (c) \$25,000.00 shall be due by June 15, 2023, comprised entirely of attorney's fees and costs;

16 (d) the payments in 3.4(c) and (d) are due on the dates identified above only if the Effective
17 Date is on or prior to December 15, 2022; if the Effective Date is later than December 15, 2022, then
18 the payment due dates are extended by the number of days between December 15, 2022 and the
19 Effective Date.

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 EHA's Public Release of Proposition 65 Claims**

22 Plaintiff acting on its own behalf and in the public interest releases GJF, and its parents,
23 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,
24 employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant
25 Entities"), each entity from whom GJF obtains Covered Products and to whom Defendant directly or
26 indirectly distributes, ships, or sells the Covered Products including but not limited to downstream
27 distributors, wholesalers, customers, and retailers, including but not limited to Walmart Inc. (and its
28 affiliates, including Wal-Mart.com), franchisees, franchisors, cooperative members, suppliers,
licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents,

1 principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and
2 assigns (collectively referred to as the "Releasees") from all claims for violations of Proposition 65
3 up through the Effective Date based on exposure to lead from Covered Products as set forth in the
4 Notice(s) and Complaint. GJF's compliance with the terms of this Consent Judgment constitutes
5 compliance with Proposition 65 with respect to exposures to lead from use of the Covered Products
6 after the Effective Date. This Consent Judgment is a full, final, and binding resolution of all claims
7 under Proposition 65 that were or could have been asserted against GJF, Defendant Entities and/or
8 Releasees for failure to provide warnings pursuant to Proposition 65 for alleged exposure to lead
9 through use of the Covered Products.

10 **4.2 EHA's Individual Release of Claims**

11 EHA, in its individual capacity, also provides a release to GJF, Defendant Entities and/or
12 Releasees, which shall be a full and final accord and satisfaction of, as well as a bar to, all actions,
13 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and
14 demands of every nature, character, and kind, whether known or unknown, suspected or unsuspected,
15 arising out of alleged or actual exposures to lead in Covered Products either manufactured, imported,
16 sold, or distributed by GJF before and on the Effective Date.

17 **4.3 GJF's Release of EHA**

18 GJF on its own behalf, and on behalf of Defendant Entities hereby waives any and all claims
19 against EHA and its attorneys and other representatives up through the Effective Date, for any and all
20 actions taken or statements made by EHA and its attorneys and other representatives, whether in the
21 course of investigating claims, otherwise seeking to enforce Proposition 65 against them, in this
22 matter or with respect to the Covered Products.

23 **5. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved by the Court and shall be null and
25 void if it is not approved by the Court within one year after it has been fully executed by the Parties,
26 or by such additional time as the Parties may agree to in writing.
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1 **6. SEVERABILITY**

2 Subsequent to the Court’s approval and entry of this Consent Judgment, if any provision is
3 held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely
4 affected.

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the state of California as
7 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
8 rendered inapplicable for reasons, including but not limited to changes in the law, then GJF may
9 provide written notice to EHA of any asserted change, and shall have no further injunctive
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
11 Products are so affected.

12 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
13 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
14 requirements of Proposition 65; or if lead cases are permanently enjoined by a court of competent
15 jurisdiction; or if Proposition 65 is determined by a court of competent jurisdiction to be preempted
16 by federal law or a burden on First Amendment rights with respect to lead in Covered Products or
17 Covered Products substantially similar to Covered Products, then GJF shall be relieved of its
18 obligation to comply with Section 2 herein.

19 **8. ENFORCEMENT**

20 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be
21 entitled to its reasonable attorneys’ fees and costs. This Consent Judgment shall be enforceable
22 solely by the Parties hereto. The Court shall retain continuing jurisdiction to implement the terms of
23 this Consent Judgment, or to consider any modifications, enforcement or motions to terminate.

24 **9. NOTICE**

25 Unless otherwise specified herein, all correspondence and notice required by this Consent
26 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
27 mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:
28



1 If to GJF:

2 Judith M. Praitis
3 Faegre Drinker Biddle & Reath LLP
4 1800 Century Park East, Suite 1500
5 Los Angeles, CA 90067.

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101.

6 Any Party may, from time to time, specify in writing to the other, a change of address to
7 which notices and other communications shall be sent.

8 **10. COUNTERPARTS; DIGITAL SIGNATURES**

9 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
10 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
11 same document.

12 **11. POST EXECUTION ACTIVITIES**

13 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
14 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
15 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
16 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to
17 mutually employ their best efforts, including those of their counsel, to support the entry of this
18 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
19 purposes of this Section, "best efforts" shall include, at a minimum, GJF not opposing the motion for
20 approval, and the Parties responding to any objection that any third-party may make, and appearing at
21 the hearing before the Court if so requested. Plaintiff agrees to dismiss defendant Walmart, Inc.
22 within fifteen (15) after the Effective Date.

23 **12. MODIFICATION**

24 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry
25 of a modified Consent Judgment thereon by the Court; or (ii) a successful motion or application of
26 any Party, and the entry of a modified consent judgment thereon by the Court.

27 **13. AUTHORIZATION**

28 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
have read, understand, and agree to all of the terms and conditions contained herein.



1 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

2 If a dispute arises with respect to either Party's compliance with the terms of this Consent
3 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
4 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
5 in the absence of such a good faith attempt to resolve the dispute beforehand.

6 **15. ENTIRE AGREEMENT**

7 This Consent Judgment contains the sole and entire agreement and understanding of the
8 Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
9 commitments, and understandings related hereto. No representations, oral or otherwise, express or
10 implied, other than those contained herein have been made by any Party. No other agreements, oral or
11 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

12 **AGREED TO:**

AGREED TO:

13
14 Date: 9/20/2022

Date: 9/19/22

15
16 By: 
17 ENVIRONMENTAL HEALTH
18 ADVOCATES, INC.

By: 
GLOBAL JUICES AND FRUITS, LLC

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21 **IT IS SO ORDERED.**

22 Date: _____

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24 JUDGE OF THE SUPERIOR COURT

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