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12 Environmental Health Advocates, Inc.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF ALAMEDA**

15 ENVIRONMENTAL HEALTH
16 ADVOCATES, INC.,

17 Plaintiff,

18 v.

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

23 Defendants.

Case No. 22CV009784

[PROPOSED] CONSENT JUDGMENT

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

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 GJF
5 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 by
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 GJF employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that GJF manufactures, imports, sells, and distributes for sale Nature’s Earthly
16 Choice Great Day Beet Powder that contains lead. EHA further alleges that GJF does so without
17 providing a sufficient health hazard warning as required by Proposition 65 and related Regulations.
18 Pursuant to Proposition 65, lead is listed as a chemical known to cause cancer, birth defects and other
19 reproductive harm.

20 **1.5 Notices of Violation**

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

27 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
28 violations alleged in the Notice.

1 **1.6 Product Description**

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

6 **1.7 State of the Pleadings**

7 On or around April 12, 2022, EHA filed a Complaint against GJF for the alleged violations of
8 Proposition 65 that are the subject of the Notice (“Complaint”).

9 **1.8 No Admission**

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

18 **1.9 Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
25 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

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1 **2. INJUNCTIVE RELIEF**


2 **2.1 Reformulation of the Covered Products**

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


11 **2.2 Clear and Reasonable Warnings**

12 For Covered Products that contain lead in a concentration exceeding the “Daily Exposure
13 Level” of .5 micrograms set forth in section 2.1 above, and which are manufactured and packaged for
14 distribution for authorized sale or use in California on or after the Effective Date, GJF shall provide
15 one of the following warning statements.

16 **Option 1:**

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

20 **Option 2:**

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

22 This warning statement shall be prominently displayed on the Covered Products, on the packing
23 of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with
24 such conspicuousness, as compared with other words, statements, or designs as to render it likely to be
25 read and understood by an ordinary individual prior to sale. If the warning statement is displayed on
26 the Covered Products’ packaging, it must be in a type size no smaller than the largest type size used
27 for other consumer information on the product. In no case shall a warning statement displayed on the
28 Covered Products’ packaging appear in a type size smaller than 6-point type. The same warning shall

1 be posted on any websites under the exclusive control of GJF where Covered Products are sold into
2 California. GJF shall instruct any third-party website to which it sells its Covered Products to include
3 the same warning as a condition of selling the Covered Products.

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

9 **2.3 Sell-Through Period**

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

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Settlement Amount**

17 GJF shall pay seventy five thousand dollars (\$75,000.00) in settlement and total satisfaction of
18 all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil
19 penalties in the amount of seven thousand dollars (\$7,000.00) pursuant to Health and Safety Code
20 section 25249.7(b) and attorneys' fees and costs in the amount sixty eight thousand dollars (\$68,000)
21 pursuant to Code of Civil Procedure section 1021.5.

22 **3.2 Civil Penalty**

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

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

2 Environmental Health Advocates
3 225 Broadway, Suite 2100
4 San Diego, CA 92101

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

6 For United States Postal Service Delivery:

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

12 For Federal Express 2-Day Delivery:

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

18 GJF agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
19 simultaneous with its penalty payments to EHA.

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

- 22 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- 23 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

24 **3.3 Attorney's Fees and Costs**

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

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

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4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 EHA's Public Release of Proposition 65 Claims**

6 Plaintiff acting on its own behalf and in the public interest releases GJF, and its parents,
7 subsidiaries, affiliated entities under common ownership, its directors, officers, principals, agents,
8 employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant
9 Entities"), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
10 Products including but not limited to downstream distributors, wholesalers, customers, and retailers
11 (including but not limited to Walmart Inc., franchisees, franchisors, cooperative members, suppliers,
12 licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents, principals,
13 employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns
14 (collectively referred to as the "Releasees") from all claims for violations of Proposition 65 up through
15 the Effective Date based on exposure to lead from Covered Products as set forth in the Notice(s).
16 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with
17 respect to exposures to lead from Covered Products as set forth in the Notice(s). This Consent Judgment
18 is a full, final, and binding resolution of all claims under Proposition 65 that were or could have been
19 asserted against GJF and/or Releasees for failure to provide warnings required under Proposition 65
20 for alleged exposure to lead through reasonably foreseeable use of the Covered Products. This release
21 does not extend to any third-party retailers selling the product on a website who, after receiving
22 instruction from GJF to include a warning as set forth above in section 2.2, do not include such a
23 warning.

24 **4.2 EHA's Individual Release of Claims**

25 EHA, in its individual capacity, also provides a release to GJF and/or Releasees, which shall be
26 a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
27 costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every nature,
28 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or

1 actual exposures to lead in Covered Products manufactured, imported, sold, or distributed by GJF
2 before the Effective Date.

3 **4.3 GJF's Release of EHA**

4 GJF on its own behalf, and on behalf of Releasees as well as its past and current agents,
5 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
6 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
7 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
8 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

9 **5. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved by the Court and shall be null and
11 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
12 by such additional time as the Parties may agree to in writing.

13 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

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

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

3 **8. ENFORCEMENT**

4 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
5 to its reasonable attorneys' fees and costs.

6 **9. NOTICE**

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

10 **If to GJF:**

11 Judith M. Praitis
12 Faegre Drinker Biddle & Reath LLP
13 1800 Century Park East, Suite 1500
14 Los Angeles, CA 90067

If to EHA:

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

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

16 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

20 **11. POST EXECUTION ACTIVITIES**

21 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
22 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
23 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
24 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
25 employ their best efforts, including those of their counsel, to support the entry of this agreement as
26 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this
27 Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to
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1 any objection that any third-party may make, and appearing at the hearing before the Court if so
2 requested.

3 **12. MODIFICATION**

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

7 **13. AUTHORIZATION**

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

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

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

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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

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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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