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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 FREELAND FOODS, LLC, a California
20 limited liability company, RALPHS
21 GROCERY COMPANY, an Ohio corporation,
22 and DOES 1 through 100, inclusive,

23 Defendants.

Case No. 22CV007609

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

14 **1.4 General Allegations**

15 EHA alleges that Freeland Foods manufactures, imports, sells, and distributes for sale Go Raw
16 Organic Sprouted Sea Salt Sunflower Seeds that contains lead. EHA further alleges that Freeland Foods
17 does so without providing a sufficient health hazard warning as required by Proposition 65 and related
18 Regulations. Pursuant to Proposition 65, lead is listed as a chemical known to cause cancer, birth
19 defects and other reproductive harm.

20 **1.5 Notices of Violation**

21 On or around September 24, 2021, EHA served Defendant Freeland Foods, Ralph’s Grocery
22 Company, the California Attorney General, and all other required public enforcement agencies with a
23 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Freeland Foods had
24 violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards
25 associated with exposures to lead contained in Go Raw Organic Sprouted Sea Salt Sunflower Seeds.

26 To the best of the Parties’ knowledge, no public enforcer has commenced or is otherwise
27 prosecuting an action to enforce the violations alleged in the Notice.
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1 **1.6 Product Description**

2 The products covered by this Consent Judgment are sunflower seeds including but not limited
3 to Go Raw Organic Sprouted Sea Salt Sunflower Seeds manufactured or processed by Freeland Foods
4 that allegedly contain lead and are imported, sold, shipped, delivered, or distributed for sale to
5 consumers in California by Releasees (as defined in section 4.1) (“Covered Products”).

6 **1.7 State of the Pleadings**

7 On or around February 25, 2022, EHA filed a Complaint against Freeland Foods and Ralph’s
8 Grocery Company for the alleged violations of Proposition 65 that are the subject of the Notice
9 (“Complaint”).

10 **1.8 No Admission**

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

19 **1.9 Jurisdiction**

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

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the
26 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 one-hundred-eighty (180) days after the Effective Date, Freeland Foods shall be
4 permanently enjoined from manufacturing, distributing, or directly selling in the State of California,
5 any Covered Product that exposes a person to a “Daily Lead Exposure Level” of more than 0.5
6 micrograms of lead per day unless such Covered Products comply with the warning requirements of
7 Section 2.2. The “Daily Lead Exposure Level” shall be calculated by multiplying the recommended
8 serving size in Covered Products by the concentration of lead in Covered Products. As used in this
9 Section 2, “distributed for sale in California” means to directly ship Covered Products into California
10 or to sell Covered Products to a distributor Freeland Foods knows will sell Covered Products in
11 California.

12 If Proposition 65 or its implementing regulations (including but not limited to the published “no
13 significant risk level” and “maximum allowable dose level” for lead set forth at Cal. Code Regs., tit.
14 27, sections 25705 and 25805 or any “alternative risk level” adopted by regulation or court decision)
15 are changed from their terms as they exist on the Effective Date, Freeland Foods shall be entitled to
16 reformulate, at its discretion, the Covered Products to such levels without being deemed in breach of
17 this Consent Judgment.

18 **2.2 Clear and Reasonable Warnings**

19 For Covered Products that contain lead in a concentration exceeding the “Daily Exposure
20 Level” set forth in section 2.1 above, and which are manufactured and packaged for distribution for
21 authorized sale or use in California on or after the Effective Date, the covered Products shall be sold in
22 California with any of the warnings provided under Cal. Code Regs., tit. 27, sections 25607.1 (Food
23 Exposure Warnings – Methods of Transmission) and 25607.2 (Food Exposure Warnings – Content),
24 which became operative on August 30, 2018. An internet warning that complies with Cal. Code Regs.,
25 tit. 27, sections 25602, subd. (b) shall be posted on any websites under the exclusive control of Freeland
26 Foods where Covered Products are sold directly to California consumers. Freeland Foods shall instruct
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1 any third party website to which it sells its Covered Products to include the same warning in compliance
2 with Cal. Code Regs., tit. 27, sections 25602, subd. (b) as a condition of selling the Covered Products.

3 The specifications for a compliant warning in this Consent Judgment comply with Proposition
4 65 and its regulations as of the date of this Consent Judgment. In the event that the Office of
5 Environmental Health Hazard Assessment or another authorized agency promulgates one or more
6 regulations requiring or permitting warning text and/or methods of transmission applicable to the
7 Covered Product which are different than those set forth above, Freeland Foods shall be entitled to use,
8 at its sole discretion, such other warning text and/or method of transmission without being deemed in
9 breach of this Consent Judgment.

10 **2.3 Sell-Through Period**

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

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Settlement Amount**

18 Freeland Foods shall pay fifty thousand dollars (\$50,000) in settlement and total satisfaction of
19 all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil
20 penalties in the amount of five thousand dollars (\$5,000) pursuant to Health and Safety Code section
21 25249.7(b) and attorneys' fees and costs in the amount forty-five thousand dollars (\$45,000) pursuant
22 to Code of Civil Procedure section 1021.5.

23 **3.2 Civil Penalty**

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

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

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

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

5 For United States Postal Service Delivery:

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

11 For Federal Express 2-Day Delivery:

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

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

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

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

23 **3.3 Attorney's Fees and Costs**

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

28 All installments will be sent to the following address:

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

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3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 EHA’s Public Release of Proposition 65 Claims**

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

23 **4.2 EHA’s Individual Release of Claims**

24 EHA, in its individual capacity, also provides a release to Freeland Foods and/or Releasees,
25 which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
26 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every
27 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
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1 alleged or actual exposures to lead in Covered Products manufactured, imported, sold, or distributed
2 by Freeland Foods before the Effective Date.

3 **4.3 Freeland Foods' Release of EHA**

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

10 **5. COURT APPROVAL**

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

14 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

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

24 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
25 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
26 requirements of Proposition 65; or if lead cases are permanently enjoined by a court of competent
27 jurisdiction; or if Proposition 65 is determined to be preempted by federal law, a burden on First
28 Amendment rights, a violation of the Commerce Clause (Article 1, Section 8, Clause 3), or otherwise

1 unlawful with respect to lead in Covered Products or Covered Products substantially similar to Covered
2 Products, then Freeland Foods shall be relieved of its obligation to 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 Freeland Foods:

11 Greg Berlin
12 Alston & Bird
13 333 South Hope Street, 16th Floor
14 Los Angeles, CA 90071

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.

15 **15. ENTIRE AGREEMENT**

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

21 **AGREED TO:**

AGREED TO:

22
23 Date: 08/08/2022

Date: 8/10/2022

24
25 By: 

By: 

26 ENVIRONMENTAL HEALTH
27 ADVOCATES, INC.

28 FREELAND FOODS, LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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