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9 Blue Water Cosaint, LLC

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 BLUE WATER COSAINT, LLC

14 Plaintiff,

15 v.

16 ROLF C. HAGEN (USA) CORP., a
17 Massachusetts Corporation; AMAZON.COM,
18 Inc., a Delaware corporation; DOES 1-10

19 Defendants.

Case No. 37-2022-00019504-CU-MC-CTL

[PROPOSED] CONSENT JUDGMENT

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1 **1. INTRODUCTION**

2 **1.1 The Parties.** This settlement and prospective consent judgment (“Settlement”) is
3 entered into by and between Blue Water Cosaint, LLC (“Blue Water”) and Rolf C. Hagen (USA)
4 Corp. (“Rolf Hagen”). Together, Blue Water and Rolf Hagen are collectively referred to as the
5 “Parties.” Blue Water is a limited liability company located in the State of California and seeks to
6 promote awareness of exposures to toxic chemicals and to improve human health by reducing or
7 eliminating hazardous substances contained in consumer products.

8 **1.2 General Allegations.** Blue Water alleges that Rolf Hagen is a person in the course
9 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
10 Health & Safety Code Sections 25249.6 et seq. (“Proposition 65”) and that Wood Dust is listed
11 pursuant to Proposition 65 as a substance known to the State of California to cause cancer. Blue
12 Water alleges that Rolf Hagen has therefore exposed individuals to Wood Dust from its sales of
13 Living World Wood Aspen Shavings without first providing users and consumers of the product
14 with a clear and reasonable cancer warning as required pursuant to Proposition 65. Rolf Hagen
15 denies Blue Water’s allegations.

16 **1.3 Product Description.** The products covered by this Settlement are all Living World
17 Wood Aspen Shavings, including, without limitation, all varieties (the “Products”) that have been
18 manufactured, imported, distributed, offered for sale and/or sold in California by Rolf Hagen or any
19 of its downstream distributors to whom it sells its products.

20 **1.4 Notice of Violation, Complaint, and Jurisdiction.** On November 19, 2021 Blue
21 Water served Rolf Hagen and various public enforcement agencies with a document entitled “Notice
22 of Violation of California Health & Safety Code § 25249.6 et seq.” (the “Notice”). The Notice
23 provided Rolf Hagen and such others, including public enforcers, with notice that alleged that Rolf
24 Hagen was in violation of California Health & Safety Code § 25249.6 for failing to warn California
25 consumers and customers that use of the Products will expose them to Wood Dust. No public
26 enforcer has diligently prosecuted the allegations set forth in the Notice. On November 18, 2022,
27 based on the Notice and the absence of any authorized public prosecution of Proposition 65, Plaintiff
28 filed suit (the “Complaint”). For purposes of this Settlement, the parties stipulate that this Court has

1 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
2 over Rolf Hagen, that venue is proper in the County of San Diego, and that this Court has jurisdiction
3 to enter this Settlement as a consent judgment as a full and final resolution of the claims and
4 allegations contained in the Complaint.

5 **1.5 No Admission.** This Settlement resolves claims that are denied and disputed. The
6 Parties enter into this Settlement as a full and final settlement of any and all claims between the
7 Parties for the purpose of avoiding prolonged litigation. Nothing in this Settlement shall be
8 construed as an admission by Rolf Hagen of any fact, finding, issue of law, or violation of law; nor
9 shall compliance with this Settlement constitute or be construed as an admission by Rolf Hagen of
10 any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Rolf
11 Hagen. However, this Section 1.5 shall not diminish or otherwise affect Rolf Hagen’s obligations,
12 responsibilities and duties under this Settlement.

13 **1.6 Effective Date.** For purposes of this Settlement, the term “Effective Date” shall
14 mean the date Blue Water has provided notice to Rolf Hagen that this Settlement has been
15 approved by the Court and has been entered in the Court’s records as a consent judgment.

16 **2. INJUNCTIVE RELIEF**

17 **2.1 Cease Sales or Compliance with Proposition 65 Warning Regulations.** As of the
18 Effective Date, and continuing thereafter, Rolf Hagen shall cease sales of the Products in
19 California. If Rolf Hagen elects to resume sales of the Products after the Effective Date, a clear
20 and reasonable exposure warning as set forth herein must be provided for the Products at issue in
21 this lawsuit that Rolf Hagen manufactures, imports, distributes, sells, or offers for sale in
22 California. There shall be no obligation for such an exposure warning to be provided for Products
23 that entered the stream of commerce prior to the Effective Date. The warning shall consist of
24 either the Warning or Alternative Warning described in §§ 2.1(a) or (b), respectively:

25 (a) Warning. The “Warning” shall consist of the statement:

26
27 **⚠WARNING:** This product can expose you to Wood Dust, which is known to the State of
28 California to cause cancer. For more information go to www.P65Warnings.ca.gov;

1 (b) **Alternative Warning:** Rolf Hagen may, but is not required to, use the alternative
2 short-form warning as set forth in this § 2.3(b) (“Alternative Warning”) as follows:

3 **⚠WARNING:** Cancer - www.P65Warnings.ca.gov.

4 2.2 A **Warning or Alternative Warning** provided pursuant to § 2.1 must have the term
5 “**WARNING:**” printed in all capital letters and in bold font. The warning symbol to the left of the
6 word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a
7 black outline, except that if the label for the Products does not use the color yellow, the symbol
8 may be in black and white. The symbol must be in a size no smaller than the height of the word
9 “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling
10 and displayed with such conspicuousness, as compared with other words, statements, or designs as
11 to render it likely to be read and understood by an ordinary individual under customary conditions
12 of purchase or use.

13 2.3 **Compliance with Warning Regulations.** Rolf Hagen shall be deemed to be in compliance
14 with this Settlement Agreement by either adhering to §§ 2.1 or 2.2 of this Settlement Agreement
15 or by complying with warning requirements adopted by the State of California’s Office of
16 Environmental Health Hazard Assessment (“OEHHA”) that are applicable to these Products.

17 2.4. **Alternative to Warning.** For Products not packaged by Rolf Hagen but sold in bulk,
18 Rolf Hagen may as the manufacturer of the Product, **provide a written notice directly to the**
19 **authorized agent for a distributor or retail seller** who is subject to Section 25249.6 of the Act,
20 which: (1) States that the product may result in an exposure to one or more listed chemicals; (2)
21 Includes the exact name or description of the product or specific identifying information for the
22 product such as a Universal Product Code or other identifying designation; (3) Includes all
23 necessary warning materials such as labels, labeling, shelf signs or tags, and warning language for
24 products sold on the Internet, that satisfies Section 25249.6 of the Act; (4) Has been sent to the
25 retail seller, and the manufacturer, producer, packager, importer, supplier, or distributor has
26 obtained confirmation electronically or in writing of receipt of the notice. If the manufacturer,
27 producer, packager, importer, supplier, or distributor of a product is complying with this section
28 by providing a written notice directly to the authorized agent: (1) The notice must be renewed, and

1 receipt of the renewed notice confirmed electronically or in writing by the retail seller's authorized
2 agent within six months during the first year after the effective date of this section, then annually
3 thereafter during the period in which the Products are sold in California by the retail seller.

4 **2.5 Internet Warnings**

5 If, after the Effective Date, Rolf Hagen sells the Products, via the internet, through its own
6 website, affiliated websites or a third party website, to consumers located in California or to
7 customers with nationwide distribution and e-commerce websites, Rolf Hagen shall provide
8 warnings for each Product both on the Product label in accordance with Section 2.3(d), and by
9 prominently displaying , or requiring the warning to be prominently displayed on affiliated websites,
10 third party websites or by retail customers, to the consumer during the purchase of the Products
11 without requiring customers to seek out the warning. The warning or a clearly marked
12 hyperlink to the warning using the word "WARNING" given in conjunction with the sale of the
13 Products via the internet shall appear either: (a) on the same web page on which the Products
14 are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same
15 page as the price for the Products; or (d) on one or more web pages displayed to a
16 purchaser during the checkout process. The warning shall appear in any of the above instances
17 adjacent to or immediately following the display, description, or price of the Products for which
18 it is given in the same type size or larger than other consumer information provided for the
19 Products. To the extent that the current Proposition 65 requirements for Internet Warnings are
20 changed, Rolf Hagen may elect to adhere to any such changes in lieu of that which is set forth herein.
21 Where Rolf Hagen sells, ships, or distributes Products to third-party retailers or e-commerce
22 marketplaces, Rolf Hagen will advise them, in writing, of the internet Warning requirements under
23 this Agreement as a condition of sale of the Products.

24 **3. SETTLEMENT PAYMENTS**

25 **3.1 Civil Penalties**

26 In settlement of all the claims referred to in this Settlement, Rolf Hagen shall pay \$3,000 as
27 a civil penalty, allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1)
28 and (d), with 75% of the penalty to be remitted to the California Office of Environmental Health

1 Hazard Assessment (“OEHHA”) and the remaining 25% of the Penalty remitted to Blue Water no
2 later than ten (10) business days following the Effective Date. More specifically, Rolf Hagen shall
3 issue two separate checks for the civil penalty payment to (a) “Office of Environmental Health
4 Hazard Assessment” in the amount of \$2,250(75%); and to (b) “Blue Water Cosaint, LLC” in the
5 amount of \$750 (25%). These Payments shall be sent as follows:

6
7 (i) The penalty payment owed to Blue Water shall be sent to the following
8 address:

9
10 George Rikos
11 Law Offices of George Rikos
12 555 West Beech, Suite 500
13 San Diego, CA 92101

14 (ii) The penalty payment owed to OEHHA (EIN: 68-0284486) shall be sent to
15 OEHHA (Memo Line “Prop 65 Penalties”) at the following address:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 Attn. Prop 65 Penalties – Blue Water v. Rolf Hagen Settlement
20 1001 I Street
21 Sacramento, CA 95814

22 Rolf Hagen shall provide Blue Water’s counsel with a copy of the check it sends to OEHHA with
23 its penalty payment to Blue Water. Late payments by Rolf Hagen shall be subject to additional
24 penalties of \$100/day to be allocated between OEHHA and Blue Water in the same ratio as set forth
25 above. Blue Water’s counsel shall provide Rolf Hagen with an IRS W-9 form for its firm and trust
26 account for Blue Water within three (3) days of the Effective Date and Rolf Hagen’s payment
27 deadlines under this Agreement shall be tolled pending its receipt of the W-9 form. In association
28 with the issuance of the payments under this Settlement, Rolf Hagen will issue IRS 1099 forms as
appropriate given the payees.

1 **3.2 Attorneys' Fees and Litigation Costs**

2 Rolf Hagen shall reimburse Blue Water's counsel \$47,000 for fees and costs incurred as a
3 result of investigating and bringing this matter to Rolf Hagen's attention, filing a complaint,
4 negotiating a settlement in the public interest, and obtaining the Court's approval of the Settlement
5 and its entry as a consent judgment. The payment shall be made within 10 business days of the
6 Effective Date.

7 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

8 **4.1 Release of Rolf Hagen and Downstream Customers and Entities**

9 This Settlement is a full, final and binding resolution between Blue Water, acting on its own
10 behalf and in the public interest, and Rolf Hagen, of any violation of Proposition 65 that was or
11 could have been asserted by Blue Water or on behalf of its past and current agents, representatives,
12 attorneys, successors, and/or assigns ("Releasors") for failure to provide warnings for alleged
13 exposures to Wood Dust contained in the Products, and Releasors hereby release any such claims
14 against Rolf Hagen and its parents, subsidiaries, affiliated entities, shareholders, marketplaces,
15 directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom
16 Rolf Hagen directly or indirectly distributes or sells the Products, including but not limited to,
17 downstream distributors, wholesalers, customers, retailers, and its respective subsidiaries, affiliates
18 and parents, franchisees, cooperative members and licensees (collectively, the "Releasees"), from
19 all claims for violations of Proposition 65 through the Effective Date based on their failure to warn
20 of alleged exposure to the substance Wood Dust from use of the Products.

21 In further consideration of the promises and agreements herein contained, and for the
22 payments to be made pursuant to Section 3 above, Blue Water, on behalf of itself, its past and current
23 agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and
24 waives any right to institute, participate in, directly or indirectly, any form of legal action and
25 releases all claims that he may have, including without limitation, all actions and causes of action
26 in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert
27 fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the
28 Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected,

1 limited to and arising out of the alleged or actual exposure to substances contained in Rolf Hagen's
2 Products.

3 **4.2 Rolf Hagen's Release of Blue Water.** Rolf Hagen, on behalf of itself, its past and
4 current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all
5 claims against Blue Water, its attorneys and other representatives, for any and all actions taken or
6 statements made by Blue Water and/or its attorneys and other representatives, whether in the course
7 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter.

8 **4.3 California Civil Code Section 1542.** It is possible that other claims not known to
9 the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or
10 be discovered. Blue Water on behalf of itself only, on one hand, and Rolf Hagenfhiom, on the other
11 hand, acknowledge that this Agreement is expressly intended to cover and include all such claims
12 up through the Effective Date, including all rights of action therefor. The Parties acknowledge that
13 the claims released in Sections 4.1 and 4.2, above, may include unknown claims, and nevertheless
14 waive California Civil Code Section 1542 as to any such unknown claims. California Civil Code
15 Section 1542 reads as follows:

16 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
17 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
18 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
19 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
20 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
21 **THE DEBTOR OR RELEASED PARTY.**

22 Blue Water and Rolf Hagen each acknowledge and understand the significance and consequences
23 of this specific waiver of California Civil Code Section 1542.

24 **4.4 Deemed Compliance with Proposition 65.** Compliance by Rolf Hagen with this
25 Settlement following the Effective Date constitutes compliance with Proposition 65 with respect to
26 exposure to WOOD DUST from the Products. Products distributed by Rolf Hagen prior to the
27 Effective Date may be sold through as previously manufactured and labeled.

1 **5. ENTRY OF CONSENT JUDGMENT**

2 The Parties hereby request that the Court promptly enter this Settlement as a consent
3 judgment based on the motion for its approval Blue Water will be making pursuant to Section 10
4 below. Upon entry of the Settlement as a consent judgment, Blue Water and Rolf Hagen waive
5 their respective rights to a hearing or trial on the allegations contained in the Complaint.

6 **6. SEVERABILITY**

7 If, subsequent to the execution of this Settlement, any of the provisions of this Settlement
8 are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall
9 not be adversely affected but only to the extent the deletion of the provision deemed unenforceable
10 does not materially affect, or otherwise result in the effect of the Settlement being contrary to the
11 intent of the Parties in entering into this Settlement.

12 **7. GOVERNING LAW/ENFORCEMENT**

13 The terms of this Settlement shall be governed by the law of the State of California and apply
14 within the State of California. The rights to enforce the terms of this Settlement are exclusively
15 conferred on the Parties hereto and this Court shall retain jurisdiction over any enforcement actions
16 , including but not limited to, any failure by Rolf Hagen to make the payments identified above.
17 Any Party may, after providing sixty (60) days written notice and meeting and conferring within a
18 reasonable time thereafter to attempt to resolve any issues, by motion or application for an order to
19 show cause before this Court, enforce the terms and conditions contained in this Settlement. In the
20 event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of
21 law generally, due to federal preemption or the First Amendment commercial speech rights of the
22 U.S. Constitution, or as to the Products, Rolf Hagen shall provide written notice to Blue Water of
23 any asserted change in the law, and shall have no further obligations pursuant to this Settlement
24 Agreement with respect to, and to the extent that, a Product is so affected.

25 **8. NOTICES**

26 Unless specified herein, all correspondence and notices required to be provided pursuant to
27 this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class
28 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any

1 party by the other party to the following addresses:

2 For Rolf Hagen:

3 Matthew Lewis, Esq.
4 White & Case, LLP
5 555 South Flower Street, Suite 2700
6 Los Angeles, CA 90071-2433
7 Email: mlewis@whitecase.com

8

9

For Blue Water Cosaint, LLC:

10

11 George Rikos, Esq.
12 Law Offices of George Rikos
13 555 West Beech Street, Suite 500
14 San Diego, CA 92101
15 Email: george@georgerikoslaw.com

16

17 Either party, from time to time, may specify in writing to the other party a change of address to
18 which all notices and other communications shall be sent.

19 **9. COUNTERPARTS: SIGNATURES**

20 This Settlement may be executed in counterparts and by facsimile or .pdf signature, each of
21 which shall be deemed an original, and all of which, when taken together, shall constitute one and
22 the same document.

23 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

24 Blue Water agrees to comply with the reporting requirements referenced in Health & Safety
25 Code Section 25249.7(f) and to seek, by formal and properly noticed motion (including with service
26 to the Office of the California Attorney General being fully effectuated at least 45 days prior to a
27 requested hearing thereon), approval of this Settlement's terms pursuant to Proposition 65 and its
28 associated entry as a consent judgment by the Court.

29

30 **11. MODIFICATION**

31 This Settlement may be modified only by a written agreement of the Parties and the approval
32 of the Court or upon a duly noticed motion of either Party for good cause shown. A showing of

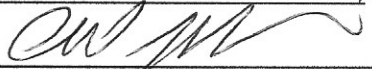
1 technical infeasibility or commercial unreasonableness in meeting the requirements of Section 2
2 with respect to the Products shall be deemed to constitute good cause for a modification to substitute
3 an alternative no significant risk level on the basis of 27 Cal. Code Regs. § 25703(b) in place of the
4 cancer risk level and presumptive part per billion average concentration threshold set forth in
5 Sections 2.1 and 2.2, and such a modification shall not be opposed by Blue Water. Any proposed
6 modification shall be sent to the Office of the California Attorney General in advance of its
7 submission to the Court such that the Attorney General has a reasonable opportunity to review and
8 comment thereon.

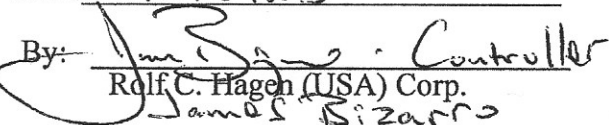
9 **12. ENTIRE AGREEMENT**

10 This Settlement contains the sole and entire agreement of the Parties and any and all prior
11 negotiations and understandings related hereto shall be deemed to have been merged within it. No
12 representations or terms of agreement other than those contained herein exist or have been made by
13 any Party with respect to the other Party or the subject matter hereof. This Settlement shall have no
14 effect if it is not approved by the Court and entered as a consent judgment.

15 **13. AUTHORIZATION**

16 The undersigned are authorized to execute this Settlement and have read, understood and
17 agree to all of the terms and conditions contained of this Settlement.

18 **AGREED TO:**
19 Date: 12/8/23
20 By: 
Blue Water Cosaint, LLC

AGREED TO:
Date: 12/8/23
By:  Controller
Rolf C. Hagen (USA) Corp.
James Bizarro

21 **IT IS SO ORDERED, ADJUDGED AND DECREED THAT THE SETTLEMENT SET**
22 **FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A CONSENT JUDGMENT BY**
23 **THIS COURT:**

24 DATED: _____

25 _____
26 JUDGE OF THE SUPERIOR COURT
27
28