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5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
6
7 **IN AND FOR THE COUNTY OF ALAMEDA**

8 ENVIRONMENTAL HEALTH
9 ADVOCATES, INC.,

10 Plaintiff,

11 v.

12 QUEST NUTRITION, LLC, a Delaware
13 limited liability company; THE SIMPLY
14 GOOD FOODS COMPANY, a Delaware
15 corporation; AMAZON.COM, INC., a
16 Delaware corporation; and DOES 1 through
17 100, inclusive,

18 Defendants.
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Case No. 22CV020969

[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 Simply Good Foods USA, Inc. (“Defendant” or “SGF”) with EHA and SGF
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 SGF employs ten or more individuals and for purposes of this Consent Judgment only, is a
12 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”). SGF is
14 the parent of Quest Nutrition, LLC, and an operating subsidiary of The Simply Good Foods Company,
15 defendants in this case.

16 **1.4 General Allegations**

17 EHA alleges that SGF manufactures, imports, sells, and distributes for sale products of the type
18 exemplified by Quest Tortilla Style Protein Chips Loaded Taco that contains Lead. EHA further alleges
19 that SGF does so without providing a sufficient health hazard warning as required by Proposition 65
20 and related Regulations. SGF denies these allegations and asserts that its products are safe and in
21 compliance with all applicable laws, rules and regulations.

22 **1.5 Notice of Violation**

23 On or around July 13, 2022, EHA served Defendant Quest Nutrition, LLC, The Simply Good
24 Foods Company, Amazon.com, 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 Defendants had violated Proposition 65 by failing to sufficiently warn consumers in
27 California of the health hazards associated with exposures to Lead contained in tortilla chips products,
28 including but not limited to Quest Tortilla Style Protein Chips Loaded Taco manufactured or processed

1 by SGF that allegedly contain Lead and are imported, sold, shipped, delivered, or distributed for sale
2 to consumers in California by Releasees (as defined in section 4.1).

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

5 **1.6 Product Description**

6 The products covered by this Consent Judgment are tortilla chip style products, including but
7 not limited to Quest Tortilla Style Protein Chips Loaded Taco distributed, manufactured or processed
8 by or for SGF that allegedly contain Lead and are imported, sold, shipped, delivered, or distributed for
9 sale to consumers in California by Releasees (as defined in section 4.1) (“Covered Products”).

10 **1.7 State of the Pleadings**

11 On or around November 2, 2022, EHA filed a Complaint against Defendants for the alleged
12 violations of Proposition 65 that are the subject of the Notice (“Complaint”).

13 **1.8 No Admission**

14 SGF and Defendants deny the material factual and legal allegations of the Notice and Complaint
15 and maintains that all of the products they have manufactured, imported, sold, and/or distributed for
16 sale in California, including Covered Products, have been, and are, in compliance with all applicable
17 laws, rules and regulations. Nothing in this Consent Judgment shall be construed as an admission of
18 any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this
19 Consent Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law,
20 or violation of law. This Consent Judgment is the product of negotiation and compromise and is
21 accepted by the Parties solely for the purpose of settling, compromising, and resolving issues disputed
22 in this Action. This Section shall not, however, diminish or otherwise affect the Parties’ obligations,
23 responsibilities, and duties under this Consent Judgment.

24 **1.9 Jurisdiction**

25 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
26 Court has jurisdiction over SGF as to the allegations in the Complaint and enforcement of this Consent
27 Judgment, that venue is proper in the County of Alameda, and that the Court has jurisdiction to enter
28

1 and enforce the provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil
2 Procedure section 664.6.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” means the date on Notice is
5 served that this Consent Judgment is approved and entered as a judgment of the Court, as discussed in
6 Section 5.

7 **2. INJUNCTIVE RELIEF**

8 **2.1 Reformulation of the Covered Products**

9 2.1.1 Beginning nine (9) months after the Effective Date (“Reformulation Date”), SGF shall be
10 permanently enjoined from manufacturing, distributing, or directly selling in the State of California,
11 any Covered Product that exposes a person to a “Reformulation Level” of more than 0.0234 parts per
12 million (“ppm”) of Lead unless such Covered Products comply with the warning requirements of
13 Section 2.2 (“Reformulation Standard”).

14 2.1.2 In calculating the Reformulation Level for a Covered Product, SGF shall be allowed to
15 deduct the amount of lead which is deemed “naturally occurring” in the ingredients listed in **Table 1**
16 that are contained in that Covered Product.¹

17 **TABLE 1**

| 18 INGREDIENT | 19 ALLOWANCES OF AMOUNT OF LEAD |
|------------------------|---------------------------------|
| 20 Calcium (elemental) | 0.8 micrograms/gram |
| 21 Ferrous Fumarate | 0.4 micrograms/gram |
| 22 Zinc Oxide | 8.0 micrograms/gram |
| 23 Magnesium Oxide | 0.4 micrograms/gram |
| 24 Magnesium Carbonate | 0.332 micrograms/gram |
| 25 Magnesium Hydroxide | 0.4 micrograms/gram |
| 26 Zinc Gluconate | 0.8 micrograms/gram |
| Potassium Chloride | 1.1 micrograms/gram |

27 ¹ Table 1 sets out allowance for naturally occurring lead agreed to in the consent judgment
28 entered in *People of the State of California v 21st Century Healthcare, Inc., et al*, Alameda Superior
Court Case No. RG08426937/

1 2.1.3 For purposes of measuring and determining compliance with the Reformulation Level,
2 the average lead level of five (5) randomly selected samples of the Covered Product shall be controlling
3 so long as the ReformulationLevel does not exceed 0.0266 ppm of lead in any one sample. A “sample”
4 for purposes of measuring compliance is based on the composite of one complete sales unit of the
5 Covered Product.

6 2.1.4 As used in this Section 2, “distributed for sale in CA” means to directly ship Covered
7 Products into California or to sell Covered Products to a distributor SGF knows will sell Covered
8 Products in California.

9 **2.2 Clear and Reasonable Warnings**

10 For Covered Products that contain Lead in a concentration exceeding the Reformulation Level
11 set forth in section 2.1 above, and which are distributed or directly sold by SGF in the State of California
12 on or after the Reformulation Date, SGF shall provide one of the following warning statements.

13 **Option 1:**

14 WARNING: Consuming this product can expose you to lead, which is known to the
15 State of California to cause cancer and birth defects or other reproductive harm. For
16 more information go to www.P65Warnings.ca.gov/food.

17 **Option 2:**

18 WARNING: [Cancer and]Reproductive Harm –
19 www.P65Warnings.ca.gov/food.

20 SGF shall use the phrase “cancer and” in the warning if SGF has reason to believe that the Daily
21 Lead Exposure level is greater than 15 micrograms of lead as determined pursuant to Section 2.1 or if
22 SGF has reason to believe that another Proposition 65 chemical is present which may require a cancer
23 warning.

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

1 statement displayed on the Covered Products' packaging appear in a type size smaller than 6-point
2 type. The warning shall also comply with 27 C.C.R. § 25602 (d). Specifically, where the product sign-
3 or label used to provide the warning includes consumer information in a language other than English,
4 the warning must also be provided in that language in addition to English. The same warning shall be
5 posted on any websites under the exclusive control of SGF where Covered Products are sold into
6 California. SGF shall instruct any third-party website to which it directly sells its Covered Products to
7 include the same warning as a condition of selling the Covered Products in California.

8 **2.3 Sell-Through Period**

9 Notwithstanding anything else in this Consent Judgment, Covered Products that are
10 manufactured, packaged, or put into commerce on or after the date this Agreement is executed shall be
11 subject to the release of liability pursuant to this Consent Judgment, without regard to when such
12 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations
13 of SGF, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products
14 manufactured, packaged, or put into commerce between the date this Agreement is executed and the
15 Reformulation Date.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Settlement Amount**

18 SGF shall pay sixty thousand dollars (\$60,000.00) in settlement and total satisfaction of all the
19 claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil
20 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
21 25249.7(b) and attorneys' fees and costs in the amount of fifty-five thousand dollars (\$55,000.00)
22 pursuant 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. The five thousand dollars
28 (\$5,000.00) in civil penalties shall be paid as follows:

- One payment of \$3,750.00 to OEHHA, due 15 (fifteen) business days after the Effective date.
- One payment of \$1,250.00 to EHA, due 15 (fifteen) business days after the Effective date.

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

Isaac Fayman
Environmental Health Advocates
225 Broadway, Suite 2100
San Diego, CA 92101

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

For United States Postal Service Delivery:

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

For Federal Express 2-Day Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

SGF agrees to provide EHA's counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payment to EHA.

Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.

Relevant information is set out below:

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

3.3 Attorney's Fees and Costs

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

1 limited to investigating potential violations, bringing this matter to SGF's attention, as well as litigating
2 and negotiating a settlement in the public interest.

3 SGF shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's
4 counsel by physical check or by electronic means, including wire transfers, at SGF's discretion, as
5 follows: fifty-five thousand dollars (\$55,000.00) in Attorney's Fees and Costs shall be paid in one
6 payment of \$55,000.00, due fifteen (15) business days after the Effective Date.

7 The attorney fee payments shall be made payable to Entorno Law, LLP. The address for this
8 entity is:

9 Noam Glick
10 Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

11 **4. CLAIMS COVERED AND RELEASE**

12 **4.1 EHA's Public Release of Proposition 65 Claims**

13 Plaintiff EHA, acting on its own behalf and in the public interest, releases SGF, and its parents,
14 subsidiaries, affiliated entities under common ownership or control (including, but not limited to, Quest
15 Nutrition, LLC, and The Simply Good Foods Company), their directors, officers, principals,
16 shareholders, agents, employees, attorneys, insurers, accountants, divisions, subdivisions,
17 predecessors, successors, and assigns ("Defendant Entities"), each entity to whom Defendant Entities
18 directly or indirectly distribute, ship, or sell the Covered Products, including but not limited to
19 downstream distributors, wholesalers, customers, retailers (including but not limited to Amazon.com,
20 Inc.), and marketplaces franchisees, franchisors, cooperative members, suppliers, licensees, and
21 licensors, and all of the foregoing entities' owners, directors, officers, agents, principals, employees,
22 attorneys, insurers, accountants, representatives, predecessors, successors, and assigns (collectively
23 referred to as the "Releasees") from all claims for violations of Proposition 65 up through the Effective
24 Date based on exposure to Lead from Covered Products as set forth in the Notice(s). Compliance with
25 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
26 exposures to Lead from Covered Products as set forth in the Notice(s). This Consent Judgment is a full,
27 final, and binding resolution between Plaintiff, on behalf of itself and in the public interest, and
28 Defendant Entities of all claims under Proposition 65 that were or could have been asserted against

1 SGF and/or Releasees, including Defendant Entities, for failure to comply with Proposition 65 for
2 alleged exposure to Lead from Covered Products. This release does not extend to any third-party
3 retailers selling the product on a website who, after receiving instruction from SGF to include a warning
4 as set forth above in section 2.2, do not include such a warning.

5 **4.2 EHA's Individual Release of Claims**

6 EHA, in its individual capacity, also provides a release to SGF and/or Releasees, which
7 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
8 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of
9 every nature, character, and kind, whether known or unknown, suspected or unsuspected, arising
10 out of alleged or actual exposures to Lead in Covered Products manufactured, imported, sold, or
11 distributed by SGF before the Effective Date. EHA acknowledges that the claims released herein
12 may include unknown claims, and nevertheless is aware of and waives California Civil Code
13 section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

19 EHA acknowledges and understand the significance and consequences of this specific waiver
20 of California Civil Code section 1542.

21 **4.3 SGF's Release of EHA**

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

27 **4.4 No Other Known Claims or Violations**

28 EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged
violations of Proposition 65 by SGF or for which SGF bears legal responsibility other than those that
are fully resolved by this Consent Judgment.

1 **4.5 Application of Consent Judgment.** This Consent Judgment may apply to, be
2 binding upon, and benefit the Parties and their respective officers, directors, shareholders,
3 employees, agent, parent companies, subsidiaries, divisions franchisees, licensees, customers,
4 distributors, wholesalers, retailers, predecessors, successors and assigns.

5 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

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

12 **7. GOVERNING LAW**

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

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

25 **8. ENFORCEMENT**

26 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
27 to its reasonable attorneys' fees and costs. This Consent Judgment is enforceable solely by the Parties
28 hereto and any alleged breach of the terms of this Consent Judgment must be brought in this Court.

1 **9. NOTICE**

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

6 If to SGF:

7 Legal Department
8 Simply Good Foods USA, Inc.
9 1225 17th Street, Suite 1000 |
10 Denver, CO 80202

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101
noam@entornolaw.com

11 With a copy to:

12 Lauren M. Michals
13 Nixon Peabody LLP
14 One Embarcadero Center, 32nd Floor
15 San Francisco, CA 94111
16 lmichals@nixonpeabody.com

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

19 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

23 **11. POST EXECUTION ACTIVITIES**

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

1 Court if so requested.

2 **12. MODIFICATION**

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

6 **13. AUTHORIZATION**

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

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

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

14 **15. ENTIRE AGREEMENT**

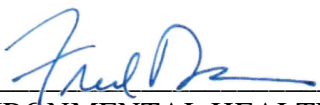
15 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
16 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
17 commitments, and understandings related hereto. No representations, oral or otherwise, express or
18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

20 **AGREED TO:**

AGREED TO:

21 Date: 10/3/2023

Date: September 29, 2023

22 By: 
23 ENVIRONMENTAL HEALTH
24 ADVOCATES, INC.

25 By: 
26 SIMPLY GOOD FOODS USA, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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