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Environmental Health Advocates, Inc.

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

ENVIRONMENTAL HEALTH
ADVOCATES, INC.,

Plaintiff,

v.

OREGON SEAFOODS LLC, an Oregon
limited liability company; GOLDEN GAIT
MERCANTILE LLC, a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

Case No. 22CV020984

[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 Oregon Seafoods LLC (“Defendant” or “Oregon Seafoods ”) with EHA
5 and Oregon Seafoods each individually referred to as a “Party” and collectively referred to as the
6 “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 EHA alleges that Oregon Seafoods manufactures, imports, sells, and distributes for sale Sea
17 Fare Pacific Albacore Curry that contains Lead. EHA further alleges that Oregon Seafoods does so
18 without providing a sufficient health hazard warning as required by Proposition 65 and related
19 Regulations. Oregon Seafoods denies these allegations and asserts that its products are safe and in
20 compliance with all applicable laws, rules and regulations.

21 **1.5 Notice of Violation**

22 On or around July 27, 2022, EHA served Defendant Oregon Seafoods, the California Attorney
23 General, and all other required public enforcement agencies with a 60-Day Notice of Violation of
24 Proposition 65 (“Notice”). The Notice alleged that Oregon Seafoods had violated Proposition 65 by
25 failing to sufficiently warn consumers in California of the health hazards associated with exposures to
26 Lead contained in seafood curry products, including but not limited to Sea Fare Pacific Albacore Curry
27 manufactured or processed by Oregon Seafoods that allegedly contain Lead and are imported, sold,
28 shipped, delivered, or distributed for sale to consumers in California by Releasees (as defined in section

1 4.1).

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

4 **1.6 Product Description**

5 The products covered by this Consent Judgment are seafood curry products, including but not
6 limited to Sea Fare Pacific Albacore Curry manufactured or processed by Oregon Seafoods that
7 allegedly contain Lead and are imported, sold, shipped, delivered, or distributed for sale to consumers
8 in California by Releasees (as defined in section 4.1) (“Covered Products”).

9 **1.7 State of the Pleadings**

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

12 **1.8 No Admission**

13 Oregon Seafoods denies the material factual and legal allegations of the Notice and Complaint
14 and 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 applicable laws,
16 rules and regulations. Nothing in this Consent Judgment shall be construed as an admission of any fact,
17 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
18 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
19 of law. This Section shall not, however, diminish or otherwise affect Oregon Seafoods'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 Oregon Seafoods as to the allegations in the Complaint, that venue is proper
24 in the 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 the
28 Motion to Approve this Consent Judgment is approved by the Court, as discussed in Section 5.

1 **2. INJUNCTIVE RELIEF**


2 **2.1 Reformulation of the Covered Products**

3 Beginning thirty (30) days after the Effective Date, Defendant shall be permanently enjoined
4 from manufacturing, distributing, or directly selling in the State of California, any Covered Product
5 that exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of Lead based
6 on a single serving per day unless such Covered Products comply with the warning requirements of
7 Section 2.2. The Chemical Exposure Limits shall be calculated by multiplying the recommended
8 serving size in Covered Product by the concentration of Lead in Covered Products. As used in this
9 Section 2, “distributed for sale in CA” means to directly ship Covered Products into California or to
10 sell Covered Products to a distributor Defendant 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 Reformulation
13 Standard set forth in section 2.1 above, and which are distributed or directly sold by Oregon Seafoods
14 in the State of California on or after the Effective Date, Oregon Seafoods shall provide one of the
15 following warning statements.

16 **Option 1:**

17  **WARNING:** Consuming this product can expose you to chemicals
18 including Lead, which are 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 Oregon Seafoods where Covered Products
2 are sold into California. Oregon Seafoods shall instruct any third-party website to which it directly sells
3 its Covered Products to include the same warning as a condition of selling the Covered Products in
4 California.

5 **2.3 Sell-Through Period**

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

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Settlement Amount**

15 Oregon Seafoods shall pay fifty thousand dollars (\$50,000.00) in settlement and total
16 satisfaction of all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment.
17 This includes civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and
18 Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand
19 dollars (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5.

20 **3.2 Civil Penalty**

21 The portion of the settlement attributable to civil penalties shall be allocated according to Health
22 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
23 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
24 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars
25 (\$5,000.00) in civil penalties shall be paid as follows:

- 26 • One payment of \$3,750.00 to OEHHA, due 30 (thirty) days after the Effective date.
- 27 • One payment of \$1,250.00 to EHA, due 30 (thirty) days after the Effective date.

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

1
2 Isaac Fayman
3 Environmental Health Advocates
4 225 Broadway, Suite 2100
5 San Diego, CA 92101

6 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
7 (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 Oregon Seafoods agrees to provide EHA's counsel with a copy of the check payable to
21 OEHHA, simultaneous with its penalty payment to EHA.

22 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.
23 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 95814.

26 **3.3 Attorney's Fees and Costs**

27 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's
28 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 Oregon Seafoods's attention, as well
as litigating and negotiating a settlement in the public interest.

Oregon Seafoods shall provide its payment for civil penalty and for attorneys' fees and costs to
EHA's counsel by physical check or by electronic means, including wire transfers, at Oregon

1 Seafoods's discretion, as follows: forty-five thousand dollars (\$45,000.00) in Attorney’s Fees and Costs
2 shall be paid as follows:

- 3 • One payment of \$7,500.00, due thirty (30) days after the Effective Date.
- 4 • One payment of \$7,500.00, due sixty (60) days after the Effective Date.
- 5 • One payment of \$7,500.00, due ninety (90) days after the Effective Date.
- 6 • One payment of \$7,500.00, due one hundred twenty (120) days after the Effective Date.
- 7 • One payment of \$7,500.00, due one hundred fifty (150) days after the Effective Date.
- 8 • One payment of \$7,500.00, due one hundred eighty (180) days after the Effective Date.

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

11 Noam Glick
12 Entorno Law, LLP
225 Broadway, Suite 1900
13 San Diego, CA 92101

14 **4. CLAIMS COVERED AND RELEASE**

15 **4.1 EHA’s Public Release of Proposition 65 Claims**

16 Plaintiff, acting on its own behalf and in the public interest, releases Oregon Seafoods, and its
17 parents, subsidiaries, affiliated entities under common ownership or control, its directors, officers,
18 principals, agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns
19 (“Defendant Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells
20 the Covered Products, including but not limited to downstream distributors, wholesalers, customers,
21 retailers (including but not limited to Golden Gait Mercantile LLC), and marketplaces franchisees,
22 franchisors, cooperative members, suppliers, licensees, and licensors, and all of the foregoing entities’
23 owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants,
24 representatives, predecessors, successors, and assigns (collectively referred to as the “Releasees”) from
25 all claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead
26 from Covered Products as set forth in the Notice(s). Compliance with the terms of this Consent
27 Judgment constitutes compliance with Proposition 65 with respect to exposures to Lead from Covered
28 Products as set forth in the Notice(s). This Consent Judgment is a full, final, and binding resolution of
all claims under Proposition 65 that were or could have been asserted against Oregon Seafoods and/or

1 Releasees for failure to comply with Proposition 65 for alleged exposure to Lead from Covered
2 Products. This release does not extend to any third-party retailers selling the product on a website who,
3 after receiving instruction from Oregon Seafoods to include a warning as set forth above in section 2.2,
4 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 Oregon Seafoods and/or Releasees,
7 which 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 every
9 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
10 alleged or actual exposures to Lead in Covered Products manufactured, imported, sold, or distributed
11 by Oregon Seafoods before the Effective Date.

12 **4.3 Oregon Seafoods's Release of EHA**

13 Oregon Seafoods on its own behalf, and on behalf of Releasees as well as its past and current
14 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against
15 EHA and its attorneys and other representatives, for any and all actions taken or statements made by
16 EHA and its attorneys and other representatives, whether in the course of investigating claims,
17 otherwise seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered
18 Products.

19 **4.4 No Other Known Claims or Violations**

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

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, or
26 by such additional time as the Parties may agree to in writing.
27
28

1 **6. SEVERABILITY**

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

4 **7. GOVERNING LAW**

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

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

18 **8. ENFORCEMENT**

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

21 **9. NOTICE**

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

1 If to Oregon Seafoods:

If to EHA:

2 Randy Harvey
3 Employment Law Professionals
4 20015 SW Pacific Hwy. Suite 221
5 Sherwood, OR 97140
6 randy@elpnw.com

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

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

9 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

13 **11. POST EXECUTION ACTIVITIES**

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

23 **12. MODIFICATION**

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

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

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

15. **ENTIRE AGREEMENT**

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

AGREED TO:

AGREED TO:

Date: 08/30/23

Date: 8/30/2023 | 06:40:58 PDT

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

DocuSigned by:
By: 
OREGON SEAFOODS LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT