

1 Vineet Dubey (SBN 243208)
2 Custodio & Dubey LLP
3 445 S. Figueroa Street, Suite 2520
4 Los Angeles, California 90071
5 Telephone: (213) 593-9095
6 Facsimile: (213) 785-2899

7 Attorney for Plaintiff
8 Ecological Alliance LLC

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

11 ECOLOGICAL ALLIANCE LLC, a
12 California limited liability company,

13 Plaintiff,

14 vs.

15 BAREBELLS FUNCTIONAL FOODS LLC
16 OF CALIFORNIA, a Delaware corporation;

17 Defendants.

Case No.

[PROPOSED] STIPULATED
CONSENT JUDGMENT

18 **I. INTRODUCTION**

19 WHEREAS, Plaintiff the Ecological Alliance (“EA”) seeks to protect the general
20 public of the State of California from exposure to lead and other toxic substances.

21 WHEREAS, as a material component of the settlement of this matter, EA
22 individually and on behalf of the public interest, shall promptly file a complaint for
23 injunctive relief and civil penalties in Los Angeles County Superior Court (“Court”) in an
24 action to be styled as *Ecological Alliance LLC v. Barebells Functional Foods LLC of*
25 *California, et al.* The complaint EA will file in this case is referred to herein as the
26 “Complaint.”
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1 WHEREAS, Defendant Barebells Functional Foods LLC of California (“BFF”)
2 (hereinafter, “Settling Defendant”) manufactures, packages, distributes, markets, and/or sells
3 protein products (“Protein Products” as defined below) to persons in the State of California.

4 WHEREAS, analysis of this general category of products, including but not limited
5 to these Protein Products using inductively coupled plasma mass spectrometry reveals that
6 there can be detectable lead in some production lots of such products, there can be variations
7 in lead concentrations within a single lot of any particular product, there can be variation
8 among different lots of the same product and, finally, there can be variation among protein
9 supplement products made by the same Defendant.

10 WHEREAS, analysis of the general category of products, including but not limited
11 to the subject Protein Products also reveals that there can be variations in lead
12 concentrations from flavor to flavor within a single protein supplement product line.

13 WHEREAS, even with use of good manufacturing practices, Protein Products can
14 still have detectable concentrations of lead.

15 WHEREAS, EA and Settling Defendant dispute how exposure to the Protein
16 Products is to be calculated, including the amount of consumption per eating occasion,
17 whether the frequency of consumption should be considered, and the frequency of
18 consumption by the average users of the Protein Products.

19 WHEREAS, Settling Defendant contends that the lead, if any is detectable,
20 contained in the Protein Products is “naturally occurring” within the meaning of California
21 Code of Regulations, Title 27, Section 25501.

22 WHEREAS, EA disputes that contention, contending that the lead contained in these
23 Protein Products is not naturally occurring for purposed of Proposition 65.

24 WHEREAS, EA and Settling Defendant recognize and acknowledge that proving or
25 disproving that any particular quantity of lead that may be contained in the Protein Products
26 is naturally occurring would be extremely expensive and time-consuming requiring the
27 expenditure of resources out of proportion with any benefits to be derived from that process.

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1 WHEREAS, the Consent Judgment in Edgerton v. Conopco (dba Slim Fast Foods
2 Co.), Atkins Nutritionals, Inc., Metabolife International, Kashi Company, and Rexall
3 Sundown, Los Angeles Superior Court Case No. BC26906 (dated 12/19/03) allows, inter
4 alia, similar protein products to be sold in California without a warning, regardless of the
5 concentration of lead in those products, provided that each covered defendant uses its “Best
6 Practices” in manufacturing its products, and keeps the lead levels in the water at its
7 manufacturing facilities under ten (10) parts per billion (“ppb”).

8 WHEREAS, the Consent Judgment in *As You Sow v. Nature’s Way Products Inc.*,
9 San Francisco Superior Court Case No. CGC-03-422848 (filed 5/24/05) allows, *inter alia*,
10 similar protein products containing a concentration of lead in the products of up to four (4)
11 micrograms per day, assuming the product is used or consumed according to the defendant’s
12 consumer use instructions, to be sold in California without a warning, provided that each
13 covered defendant uses Good Manufacturing Practices, uses ingredients grown using Good
14 Agricultural Practices when possible, and uses Quality Control measures to reduce
15 contaminants to the “lowest level currently feasible,” as that phrase is defined by California
16 Code of Regulations, Title 27, Section 25501(a)(4).

17 WHEREAS, the Consent Judgment in *As You Sow v. Irving Naturals, et al.*, San
18 Francisco Superior Court Case No. 429279 (filed 6/30/05) allows, *inter alia*, similar
19 products containing a concentration of lead in the products of up to four (4) micrograms per
20 day, assuming the product is used or consumed according to the defendant’s consumer use
21 instructions, to be sold in California without a warning, provided that each covered
22 defendant use Good Manufacturing Practices, use ingredients grown using Good
23 Agricultural Practices when possible, and use Quality Control measures to reduce
24 contaminants to the “lowest level currently feasible,” as that phrase is defined by California
25 Code of Regulations, Title 27, Section 25501(a)(4).

26 WHEREAS, the Consent Judgment in *As You Sow, Threshold Enterprises, Ltd., et*
27 *al.*, San Francisco Superior Court Case No. 422847 (filed 9/8/05) allows, *inter alia*, similar
28 products containing a concentration of lead in the products of up to four (4) micrograms per

1 day, assuming the product is used or consumed according to the defendant's consumer use
2 instructions, to be sold in California without a warning, provided that each covered
3 defendant use Good Manufacturing Practices, use ingredients grown using Good
4 Agricultural Practices when possible, and use Quality Control measures to reduce
5 contaminants to the "lowest level currently feasible," as that phrase is defined by California
6 Code of Regulations, Title 27, Section 25501(a)(4).

7 WHEREAS, the Consent Judgment in *As You Sow v. Botanical Laboratories, Inc.,*
8 *et al.*, San Francisco Superior Court Case No. CGC-04-429563 (filed 5/23/05) allows, *inter*
9 *alia*, similar products containing a concentration of lead in the products of up to four (4)
10 micrograms per day, assuming the product is used or consumed according to the defendant's
11 consumer use instructions, to be sold in California without a warning, provided that each
12 covered defendant use Good Manufacturing Practices, use ingredients grown using Good
13 Agricultural Practices when possible, and use Quality Control measures to reduce
14 contaminants to the "lowest level currently feasible," as that phrase is defined by California
15 Code of Regulations, Title 27, Section 25501(a)(4).

16 WHEREAS, the Consent Judgment in the case styled *Nasseri v. CytoSport, Inc.*, Los
17 Angeles Superior Court Case No. BC439181, allows lead in products which are competitor
18 products to the Protein Products of up to 4.5 micrograms per day for chocolate products and
19 up to 3.5 micrograms per day for non-chocolate products.

20 WHEREAS, the Consent Judgment in *Environmental Law Foundation v. Abbots*
21 *Laboratories, et al., As You Sow Botanical Laboratories, Inc., et al.*, San Francisco Superior
22 Court Case No. CGC-10-503002 (filed 8/26/10 and 12/17/10) allows, *inter alia*, similar
23 products up to three (3) micrograms of lead in a daily serving for protein products other than
24 chocolate protein products, and allows four (4) micrograms of lead in a daily serving of
25 chocolate protein products to be sold in California without a warning.

26 WHEREAS, Settling Defendant contends that it should be provided a naturally
27 occurring allowance of up to one (1) part per million (1000 ppb) of lead for any coca
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1 powder found in Products, pursuant to the letter dated September 28, 2001 from the
2 California Office of the Attorney General to Roger Lane Carrick and Michele Corash.

3 WHEREAS, Settling Defendant contends that it should be provided a naturally
4 occurring allowance for lead that may be present in ingredients encompassed by the Consent
5 Judgment in *People v. Warner-Lambert Co. et al.*, San Francisco Superior Court Case No.
6 984503 (filed 11/13/1998) and modified in April 2011), which allows, *inter alia*, a naturally
7 occurring allowance of 0.8 micrograms of lead per 1000 milligrams of calcium, and
8 naturally occurring allowances of 0.4 mcg/g for ferrous fumarate, 8.0 mcg/g for zinc oxide,
9 0.4 mcg/g for magnesium oxide, 0.332 mcg/g for magnesium carbonate, 0.4 mcg/g
10 magnesium hydroxide, 0.8 mcg/g zinc gluconate, and 1.1 mcg/g potassium chloride. In
11 2012 the People afforded the same naturally occurring allowances to dozens of defendants
12 in a series of consent judgments resolving a case styled *People v. 21st Century Healthcare,*
13 *Inc., et al.*, Alameda Superior Court Case No. RG08426937.

14 WHEREAS, Settling Defendant contends that it is unfairly prejudicial to subject
15 different businesses within the same competitive marketplace to different lead warning
16 thresholds pursuant to Proposition 65.

17 WHEREAS, all Parties desire to achieve the lowest level of lead in these Protein
18 Products that is reasonably feasible.

19 NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

20 1.1 In its Complaint, EA alleges that Defendant manufactured, packaged,
21 distributed, marketed and/or sold protein products for human consumption containing lead
22 in an amount that resulted in an exposure to consumers in violation of the provisions of
23 Health & Safety Code §§ 25249.5 et seq. (“Proposition 65”) by knowingly and intentionally
24 exposing persons to a chemical known to the State of California to cause reproductive
25 toxicity and cancer, namely lead, without first providing a clear and reasonable warning to
26 such individuals. The protein supplement products that EA alleges contain lead, and which
27 are covered by this Consent Judgment, are those described in the Attachment A (the
28 “Protein Products”). Upon entry of the Consent Judgment, the Complaint shall be deemed

1 amended such that the term "PROTEIN PRODUCTS" in the Complaint is defined, as to
2 Settling Defendant, as the Protein Products identified in Attachment A.

3 1.2 For purposes of this Consent Judgment only, EA and Settling Defendant
4 (hereafter referred to as the "Parties"), stipulate that this Court has jurisdiction over
5 allegations of violations contained in the Complaint and personal jurisdiction over the
6 Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County
7 of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a
8 resolution of all claims which could have been raised in the Complaint based on the facts
9 alleged therein. For the sake of clarity, the term "Settling Defendant" shall mean and
10 include those entities set forth in Exhibit A attached hereto. The term "Effective Date" shall
11 mean the date on which Settling Defendant's counsel receives from EA's counsel the
12 written Notice of Entry of Judgment regarding this Consent Judgment's entry and approval
13 by the Court.

14 1.3 For the purpose of avoiding prolonged and costly litigation, the Parties enter
15 into this Consent Judgment as a full settlement of all claims that were raised in the Notice
16 and/or Complaint based on the facts alleged therein, or which could have been raised in the
17 Notice and/or Complaint arising out of the facts alleged therein.

18 1.4 Settling Defendant denies all material, factual and legal allegations contained
19 in the Notice and Complaint and maintains that all Protein Products that it manufactured,
20 packaged, imported, distributed, offered for sale, and sold have been and are in compliance
21 with all laws. Nothing in this Consent Judgment shall be construed as an admission by
22 Settling Defendant of any fact, finding, issue of law or violation of law; not shall
23 compliance with this Consent Judgment constitute or be construed as a admission by
24 Settling Defendant of any fact, finding, conclusion, issue of law or violation of law.
25 However, this paragraph shall not diminish or affect the responsibilities and duties of the
26 Parties under this Consent Judgment.

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1 **II. CLEAR AND REASONABLE WARNINGS**

2 2.1 Pursuant to this Consent Judgment, warnings are required under Proposition
3 65 only with respect to Protein Products Settling Defendant sells to California consumers
4 that expose users to more than 1.5 micrograms of lead in a Daily Serving.

5 2.2 A “Daily Serving” for purposes of determining Proposition 65 compliance for
6 chemicals present in the Protein Products shall be defined as one of the following, as
7 applicable:

8 (a) if the Protein Product label recommends a single serving, then the single
9 recommended serving size;

10 (b) if the Protein Product label includes no recommended number of servings, then
11 the serving size set forth on the “Nutritional Facts” or “Supplement Facts” portion of the
12 label;

13 2.3 Warning Standard. No later than six month after the Effective Date, Settling
14 Defendant shall not sell in the State of California any Protein Product the ingestion of which
15 results in an exposure greater than the applicable warning threshold set forth in Section 2.1,
16 as calculated in accordance with Section 2.3, unless a warning is placed on the packaging,
17 labeling or directly to or on the Protein Supplement Product that states:

18 1) “[CALIFORNIA PROPOSITION 65] **WARNING:**
19 This production contains lead, a chemical known [to the State of
20 California] to cause [cancer,] birth defect[,] or other reproductive
21 harm.” For more information go to www.P65Warnings.ca.gov/food

22 or

23 2) “[CALIFORNIA PROPOSITION 65] **WARNING:** [Cancer and] Reproductive
24 harm – www.P65Warnings.ca.gov/food.

25 The text contained in the brackets is optional per Settling Defendant’s sole
26 discretion. Product Warnings shall be placed with such conspicuousness as compared with
27 other words, statements, designs and/or devices on the labeling or packaging as to render it
28 likely to be read and understood by an ordinary individual under customary conditions of
use or purchase. If the Product Warning is displayed on the product container or labeling,

1 the warning shall be at least the same size as the largest of any other health or safety
2 warnings on the container or labeling, and the word “warning” shall be in all capital letters
3 and in bold print. If printed on the labeling itself, the Product Warning shall be contained in
4 the same section of the labeling that states other safety warnings concerning the use of the
5 Protein Product.

6 2.3.1 Mail Order Sales

7 For any mail order sales by Settling Defendant to a consumer in
8 California, the warning language required under this Consent Judgment shall also be
9 included in the mail order catalogue, either on the same pages as any order form, or
10 on the same page upon which the Protein Product’s price is listed, in the same type
11 size as the surrounding, non-heading text. If necessary, the Product Warning shall
12 be added in the first print run of the mail order catalogue which occurs following
13 one year after entry of this Consent Judgment.

14 2.3.2 Internet Sales

15 For internet sales by Settling Defendant to a California consumer of
16 Protein Products subject to the warning requirements of Section 3.3, the warning
17 language required under this Consent Judgment shall be displayed in the same type
18 size as the surrounding, non-heading text, either: (a) on the same page upon which
19 the Protein Product is displayed or referenced; (b) on the same page as the order
20 form for the Protein Product; (c) on the same page as the price for the Protein
21 Product is displayed; or (d) in a dialogue box which appears when a California
22 address for delivery is provided by the consumer, so long as the dialogue box
23 appears prior to the completion of the internet sale and requires the consumer to
24 affirmatively accept receipt of the warning set forth in the dialogue box (which shall
25 be displayed in the same type size as the surrounding, non-heading text on the screen
26 at the time of the appearance of the dialogue box), as a condition precedent to
27 completing the sale. If necessary, the Product Warning shall be added following one
28 year after entry of this Consent Judgment.

1 2.4 Any changes to the language or format of the warnings required under
2 Section 2.3 shall be made only after written agreement between the parties. However, after
3 the Effective Date, if the California Office of Environmental Health Hazard Assessment
4 changes the safe harbor food warning content set forth at Cal. Code Regs Tit. 27, section
5 25607.2 and/or methods of transmission safe harbor for food exposures set forth at Cal.
6 Code Regs Tit. 27, section 25607.1, and if Settling Defendant, at its sole discretion, chooses
7 to comply with the changed food content and/or methods of transmission safe harbor
8 regulations, compliance with those regulations shall be deemed compliance with Section 2.3
9 of this Consent Judgment, and the parties do not need to enter into a written agreement to
10 change the language or format of warnings required under Section 2.3..

11 2.5 So long as Settling Defendant complies and remains in compliance with the
12 requirements of Section 2.1 through 2.4 for each of its Protein Products the Parties agree
13 that such Protein Products shall be deemed to comply with Proposition 65 with respect to
14 lead beginning immediately after the Effective Date, and that compliance with this Consent
15 Judgment shall fully and completely satisfy Settling Defendant's obligations under
16 Proposition 65 to provide warnings for such Protein Products with respect to the presence
17 lead, regardless of when manufactured, packaged, distributed, offered for sale, or sold.

18 2.6 Should EA reach a settlement or be subject to a binding disposition (judicial,
19 contractual or otherwise) with or concerning any other defendant, person or entity in any
20 threatened, pending or future lawsuit involving claims of Proposition 65 violations and
21 protein products, or with terms that set forth less stringent lead standards than those herein
22 defining when Proposition 65 warnings will not be required ("Alternative Standards"), then
23 EA shall provide Settling Defendant with a copy of the settlement or binding disposition
24 (only in the case of a settlement or binding disposition entered into by, or binding upon,
25 EA), and EA agrees to join Settling Defendant's motion to modify this Consent Judgment so
26 that the Alternative Standards apply to any protein products that Settling Defendant
27 manufactures for sale in California, distributes into California, or sells to California
28 consumers, if Settling Defendant so moves.

1 2.7 Should EA reach a settlement or be subject to a binding disposition (judicial,
2 contractual or otherwise) with or concerning any other defendant, person or entity in any
3 threatened, pending or future lawsuits involving claims of Proposition 65 violations and
4 protein products that permit warnings that are different in content, method or appearance
5 than is specified in Section 2.3 of this Consent Judgment, then EA shall provide Settling
6 Defendant with a copy of the settlement, or binding disposition (only in the case of a
7 settlement or binding disposition entered into by, or binding upon, EA), and EA agrees to
8 join Settling Defendant's motion to modify this Consent Judgment to allow Settling
9 Defendant to warn in the manner specified in such settlement or binding disposition, as to
10 any protein products that Settling Defendant sells, distributes for sale, in California, if
11 Settling Defendant so moves.

12 **III. RIGHT TO CURE**

13 3.1 EA shall have the exclusive right to enforce the provisions of this Consent
14 Judgment. EA represents and warrants neither EA nor its agents or attorneys have assigned
15 or otherwise transferred, or attempted to assign, or transfer, any claims or claims against
16 Settling Defendant to a third-party. EA further warrants that neither EA nor its agents or
17 attorneys are aware of any other potential private enforcer or attorney who intends to bring
18 litigation based on the subject matter of the Consent Judgment.

19 3.2 To the extent EA identifies any Protection Product(s) as set forth in
20 Attachment A after the Effective Date which it believes is not in compliance with this
21 Consent Judgment, EA agrees to advise Settling Defendant of such alleged breach in the
22 manner set forth in Section XIV, and provide Settling Defendant with the opportunity to
23 either substantiate the Protein Product(s) comply with the terms of this Consent Judgment,
24 or cure any alleged violation of this Consent Judgment, in accordance with the provisions
25 set forth below (the "Notice to Cure"). Such Notice to Cure to Settling Defendant must
26 contain information sufficient for Settling Defendant to identify the Protein Product at issue
27 in the Notice to Cure, including, at minimum, the UPC (Universal Product Code) Number, a
28 photograph of the front and back of the labeling of Protein Product, and purchase receipt

1 reflecting that the Protein Product tested by EA was purchased by an agent or employee of
2 EA no later than ninety (90) days prior to service of the Notice to Cure.

3 3.3 Such Notice to Cure must also include a laboratory report for at least three (3)
4 individual units from three (3) separate lots of each Protein Product at issue in the Notice to
5 Cure (nine (9) individual units in total) reflecting that at least one unit from each lot contains
6 lead in excess of the levels set forth in Section 2.1, and the results must have been reported
7 by the laboratory no later than 30-days prior to service of the Notice to Cure. The testing
8 performed by EA must comply with the provisions of Section 3.3.1, 3.3.2, and 3.3.3, below.

9 3.3.1 EA must perform testing with an independent third-party laboratory
10 certified by the State of California; or accredited by the State of California, a United
11 States federal agency, or the National Environmental Laboratory Accreditation
12 Program; or is registered with the United States Food & Drug Administration; or is
13 certified or accredited by NSF International; American Association for Laboratory
14 Accreditation for Chemical Testing; International Standards Organization/IEC via
15 ANSI-ASQ.

16 3.3.2 The testing must be performed using a laboratory method that complies
17 with the performance and quality control factors appropriate for the method used,
18 including limit of detection and limit of quantification, qualification, sensitivity,
19 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-
20 Mass Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or
21 equal to 0.010 mg/kg, or any other testing method agreed upon in writing by the
22 Parties. The foregoing notwithstanding, lead concentrations may be measured using
23 inductively coupled plasma mass spectrometry (“ICP-MS”) utilizing scientifically
24 appropriate adherence to the protocols set forth in EPA Methods 6020, 6020a,
25 isotope dilution or AOAC 2011.19, 993.14 and 2015.01 (modified).

26 3.4 EA reserves the right to seek additional civil penalties, reimbursement of
27 reasonable attorney’s fees and costs, and any other available remedies arising from or
28 related to Notices to Cure associated with Protein Products covered by the Consent

1 Judgment. However, EA shall not be entitled to seek or recover any civil penalties, and EA
2 and its counsel shall not be entitled to recovery or reimbursement of attorney's fees and/or
3 costs, or any other available remedies arising from or related to Notice to Cure associated
4 with Protein Products covered by the Consent Judgment or the alleged breach or violation of
5 the Consent Judgment, provided Settling Defendant (1) substantiates within thirty (30)
6 business days of service of the Notice to Cure that the Protein Product at issue in the Notice
7 to Cure complies with Sections 2.1-2.3 by producing to EA a laboratory report for at least
8 three (3) individual units from three (3) separate lots of each Protein Product at issue in the
9 Notice to Cure (nine (9) individual units in total) reflecting that each unit does not contain
10 lead in excess of the levels set forth in Section 2.1 by following the laboratory procedures in
11 Section 3.3, or (2) submits proof within thirty (30) business days of service of the Notice to
12 Cure that the Protein Product at issue in the Notice to Cure (a) displayed warnings in
13 accordance with Section 2.3 or 2.4 prior to or at the time EA served the Notice to Cure, or
14 (b) will display warnings in accordance with Section 2.3 or 2.4 within ninety (90) business
15 days of service of the Notice to Cure for any Protein Product at issue in the Notice to Cure
16 that exceeds the lead levels in Section 2. If Settling Defendant substantiates the Protein
17 Products comply with Sections 2.1 within thirty (30) business days after service of the
18 Notice to Cure in accordance with the procedures in this Section, or cures the alleged
19 violation in accordance with this Section by displaying warnings within ninety (90) business
20 days of service of the Notice to Cure for any Protein Product that exceeds the levels for lead
21 in Section 2.1, then Settling Defendant shall not be deemed in breach or violation of this
22 Consent Judgment in any respect, and Settling Defendant shall not be liable (whether for
23 civil penalties or attorneys' fees or costs) for sales of any such Protein Product in California
24 referenced in the Notice to Cure occurring prior to the expiration of the applicable
25 substantiation or cure period.

26 **IV. MONETARY RELIEF**

27 4.1 Settling Defendant shall pay ninety-five thousand dollars (\$95,000.00) in
28 settlement and total satisfaction of all the claims referred to in the Notice(s), the Complaint,

1 and this Consent Judgment. This includes civil penalties in the amount of \$30,000 pursuant
2 to Health and Safety Code section 25249.7(b) and attorneys' fees and costs in the amount of
3 \$65,000 pursuant to Code of Civil Procedure section 1021.5.

4 4.2 The payment made pursuant to Section 4.1 shall be the only monetary
5 obligation of Settling Defendant with respect to this Consent Judgment, including as to any
6 fees, costs, or expenses EA has incurred in relation to this action.

7 **V. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

8 EA agrees to comply with the reporting requirements referenced in California Health
9 & Safety Code §25249.7(f). Pursuant to the regulations promulgated under that section, EA
10 shall present this Consent Judgment to the California Attorney General's Office within two
11 (2) days after receipt of all necessary signatures. The Parties acknowledge that, pursuant to
12 Health & Safety Code § 25249.7, a noticed motion must be filed to obtain judicial approval
13 of the Consent Judgment. Accordingly, a motion for approval of the Consent Judgment
14 shall be prepared and filed by EA within a reasonable period of time after the date this
15 Consent Judgment is signed by all Parties.

16 **VI. MODIFICATION OF SETTLEMENT**

17 This Consent Judgment may be modified by: (1) written agreement among the
18 Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion
19 of EA or of Settling Defendant as provided by law and upon entry of a modified Consent
20 Judgment by the Court thereon. All Parties and the California Attorney General's Office
21 shall be served with notice of any proposed modification of this Consent Judgment at least
22 fifteen (15) days in advance of its consideration by the Court.

23 **VII. APPLICATION OF CONSENT JUDGMENT**

24 7.1 Each signatory to this Consent Judgment certifies that he or she is fully
25 authorized by the Parties that he or she represents to enter into and execute the Consent
26 Judgment on behalf of the Party represented and legally bind that Party.

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1 7.2 This Consent Judgment shall apply to and be binding upon EA Settling
2 Defendant, and each of their officers, directors, and shareholders and the predecessors,
3 successors or assigns of each of them.

4 **VIII. CLAIMS COVERED**

5 8.1 This Consent Judgment is a final and binding resolution between EA, on the
6 behalf and in the public interest, and Settling Defendant of any violation of Proposition 65
7 up through the date of entry of this order by the Court that could have been asserted against
8 any Settling Defendant for failure to provide clear, reasonable and lawful warnings of
9 exposures to lead that result from ingestion of Protein Products as defined herein. No claim
10 is reserved as between EA on its own behalf and Settling Defendant, and EA on its behalf
11 and Settling Defendant expressly waive any and all rights which they may have under the
12 provisions of Section 1542 of the Civil Code of the State of California, which provides:

13 **A general release does not extend to claims which the creditor does**
14 **not know or suspect to exist in his favor at the time of executing the**
15 **release, which if known by him must have materially affected his**
16 **settlement with the debtor.**

17 8.2 **EA Release of Settling Defendant.** In further consideration of the promises
18 and agreements herein contained, and for the payment to be made pursuant to Section 4.1,
19 EA, on behalf of itself and in the public interest, its past and current agents, representatives,
20 attorneys, successors and/or assignees, hereby waives all rights to institute or participate in,
21 directly or indirectly, any form of legal action addressing all claims occurring on or before
22 the entry of this Consent Judgment, and releases all claims occurring on or before the
23 Effective Date, including, without limitation, all actions, causes of action, in law or in
24 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
25 expenses, including, but not limited to, investigation fees, expert fees and attorneys' fees of
26 any nature whatsoever, whether known or unknown, fixed or contingent against Settling
27 Defendants and their past, present and future owners, direct and indirect parent companies,
28 corporate affiliates, subsidiaries, upstream and downstream suppliers, distributors,
29 manufacturers or customers, direct and indirect retailers (including, but not limited to,
30 Trader Joe's), clients, and each of their respective officers, directors, attorneys,

1 representatives, shareholders, agents, insurers, employees successors and assigns arising
2 under Proposition 65 related to the alleged failure to warn about exposures to or
3 identification of lead contained in the Protein Products as set forth in Attachment A
4 manufactured, packaged, distributed, marketed, offered for sale, or sold by Settling
5 Defendant.

6 EA, on behalf of itself, its past and current agents, representatives, attorneys,
7 successors and/or assignees, and in the public interest, and Settling Defendant further agree
8 and acknowledge that this Consent Judgment is a full, final, and binding resolution of any
9 violations occurring on or before the Effective Date by Settling Defendant and its past,
10 present and future owners, direct and indirect parent companies, corporate affiliates,
11 subsidiaries, upstream and downstream suppliers, distributors, manufacturers or customers,
12 direct and indirect retailers (including, but not limited to, Trader Joe's), clients and each of
13 their respective officers, directors, attorneys, representatives, shareholders, agents, insurers,
14 employees, successors and assigns arising under Proposition 65 related to the alleged failure
15 to warn about exposures to or identification of lead contained in the Protein Products as set
16 forth in Attachment A manufactured, packaged, distributed, marketed, offered for sale, or
17 sold by Settling Defendant.

18 In addition, EA, on behalf of itself, its attorneys and its agents, waives all rights to
19 institute or participate in, directly or indirectly, any form of legal action addressing all
20 claims occurring on or before the Effective Date, and releases all claims occurring on or
21 before the Effective Date against Settling Defendant arising under Proposition 65 related to
22 Settling Defendant's alleged failure to warn about exposures to or identification of lead
23 contained in the Protein Products and for all actions or statements regarding the alleged
24 failures to warn about exposure to or identification of lead contained in the Protein Products
25 made by Settling Defendant or its attorneys or representatives in the course of responding to
26 those alleged violations of Proposition 65 as alleged in the Complaint.

27 8.3 Release of EA. Settling Defendant waives all rights to institute any form of
28 legal action against EA or its officers, employees, agents, attorneys or representatives, for all

1 actions taken or statements made or undertaken by EA and its officers, employees, agents,
2 attorneys or representatives, in the court of seeking enforcement of Proposition 65 in this
3 action.

4 **IX. RETENTION OF JURISDICTION**

5 This Court shall retain jurisdiction of this matter to implement this Consent
6 Judgment.

7 **X. COURT APPROVAL**

8 If this Consent Judgment is not approved by this Court, it shall be of no force or
9 effect and cannot be used in any proceeding for any purpose.

10 **XI. ENFORCEMENT**

11 In the event that a dispute arises with respect to any provisions of this Consent
12 Judgment, the Parties shall meet and confer with thirty (30) days of receiving written notice
13 of the alleged violation from another party. In the event that the Parties are unable to
14 resolve their dispute through the meet and confer process, this Consent Judgment may be
15 enforced using any available provision of law. This Consent Judgment shall be enforceable
16 by the Parties hereto.

17 **XII. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable
20 by reason of law generally, or as to the Protein Products specifically, then Settling
21 Defendant shall have no further obligations pursuant to this Consent Judgment with respect
22 to those Protein Products that are affected.

23 **XIII. EXCHANGE IN COUNTERPARTS**

24 Stipulations to this Consent Judgment may be executed in counterparts and by
25 facsimile, each of which shall be deemed an original, and all of which, when taken together,
26 shall be deemed to constitute one document.

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1 **XIV. NOTICES**

2 All correspondence and notices required to be provided pursuant to this Consent
3 Judgment shall be in writing and personally delivered or sent by: (a) first-class, registered,
4 certified return receipt requested, or (b) by overnight courier on EA or Settling Defendant by
5 the other at the addresses set forth below. Either EA or Settling Defendant may specify in
6 writing to the other Parties a change of address to which all notices and other
7 communications shall be sent.

8 Whenever notice or a document is required to be sent to EA, it shall be sent to:

9 Vineet Dubey, Esq.
10 Custodio & Dubey LLP
444 S. Figueroa Street, Suite 2520
Los Angeles, CA 90071

11 Whenever notice or a document is required to be sent to Settling Defendant, it shall
12 be sent to:

13 Steven R. Tekosky, Esq.
Tatro Tekosky Sadwick LLP
6600 W. Sunset Blvd., Suite 304
14 Los Angeles, CA 90028

15 Nicolas Norlin, Esq.
Vitamin Well
16 Box 5140, 102 43
Stockholm, Sweden
17 With a copy to: legal@vitaminwell.se

18 **XV. SEVERABILITY**

19 If subsequent to court approval to this Consent Judgment, any of the provisions of
20 this Consent Judgment are held by a court to be unenforceable, the validity of the
21 enforceable provisions remaining shall not be adversely affected.

22 **XVI. ENTIRE AGREEMENT**

23 This Consent Judgment contains the sole and entire agreement and understanding of
24 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
25 negotiations, commitments, and understandings related hereto. No representations, oral or
26 otherwise, express or implied, other than those contained herein have been made by any
27 Party hereto. No other agreements not specifically referred to herein, oral or otherwise,
28 shall be deemed to exist or to bind any of the Parties.

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AGREED TO:

Ecological Alliance LLC

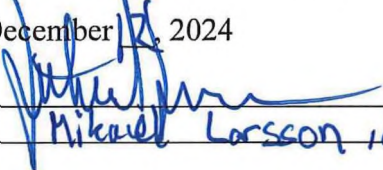
Date: December 10, 2024

By: 
Harmony Welsh, Managing Member

AGREED TO:

Barebells Functional Foods LLC

Date: December 12, 2024

By: 
Michael Larsson, Group CFO

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT

ATTACHMENT A

The “Settling Defendant” is Barebells Functional Foods LLC of California (“BFF”) on behalf of BFF and all of BFF’s past, present, future, direct and indirect (a) owners, (b) parent companies, (c) corporate affiliates, (d) related companies, (e) subsidiaries and each of their respective successors and assigns; without limitation, “Settling Defendant” includes [shall we list Vitamin Well and/or any others?]

1. The **“Protein Products”** covered by this Consent Judgment are: all sizes, flavors, packaging, forms, and potencies of foods supplying at least 5 grams of protein according to the “Nutrition Facts” or “Supplement Facts” panel on the product label previously or currently manufactured by, sold by, or distributed directly or indirectly in or into California by, or on behalf of, the Settling Defendant, and include those protein products and foods otherwise meeting the definition of Protein Products in this paragraph 1 which are first introduced into California subsequent to the effective date of this Consent Judgment and manufactured by, sold by, or distributed directly and indirectly in or into California by, or on behalf of, the Settling Defendant or under Settling Defendant’s brand.

2. The Protein Products of the Settling Defendant that are covered by this Consent Judgment include, but are not limited to, the following:

- 1) Barebells Salty Peanut Protein Bar;
- 2) Barebells Raspberry Cream Protein Bar;
- 3) Barebells Pumpkin Spice Protein Bar;
- 4) Barebells Caramel Cashew Protein Bar;
- 5) Barebells Cookies & Cream Protein Bar;
- 6) Barebells Hazelnut & Nougat Protein Bar
- 7) Barebells Chocolate Dough Protein Bar;
- 8) Barebells Salted Peanut Caramel Protein Bar;
- 9) Barebells White Chocolate Almond Protein Bar;
- 10) Barebells Creamy Crisp Protein Bar;
- 11) Barebells Crunchy Fudge Protein Bar;
- 12) Barebells Choco Hazelnut Protein Bar;
- 13) Barebells Caramel Choco Protein Bar;
- 14) Barebells Plant Based Salty Peanut Protein Bar;
- 15) Barebells Plant Based Hazelnut Nougat Protein Bar;
- 16) Barebells Cookies and Caramel Protein Bar;
- 17) Barebells Birthday Cake Protein Bar;
- 18) Barebells Peppermint Bark Protein Bar;

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- 19) Barebells Key Lime Pie Protein Bar;
- 20) Barebells Choco Hazelnut Protein Bar;
- 21) Barebells Peanut Butter Protein Bar;
- 22) Barebells Minty Chocolate Protein Bar;
- 23) Barebells Banana Caramel Protein Bar;
- 24) Barebells Plant Based Chocolate Dough Protein Bar.