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8 Attorneys for Plaintiff,
9 Blue Water Cosaint, LLC

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

12 BLUE WATER COSAINT, LLC, a limited
13 liability company

14 Plaintiff,

15 v.

16 ISLAND SNACKS, Inc. a California corporation;
17 and DOES 1 through 10

18 DEFENDANT.

Case No. 37-2023-00020396

[PROPOSED] CONSENT JUDGMENT

19 **1. INTRODUCTION**

20 **1.1 The Parties.** This Consent Judgment (“Consent Judgment”) is entered into by
21 and between Blue Water Cosaint, LLC (“PLAINTIFF”) and Island Snacks,
22 Inc.(“DEFENDANT”). Together, PLAINTIFF and DEFENDANT are collectively referred to as
23 the “Parties.” PLAINTIFF is person pursuant to Cal. Health & Safety Code § 25249.6, *et seq.* and
24 seeks to promote awareness of exposures to toxic chemicals and to improve human health by
25 reducing or eliminating hazardous substances contained in consumer products. DEFENDANT is
26 a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
27 Enforcement Act of 1986, Cal. Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

28 **1.2 General Allegations.** PLAINTIFF allege that Lead is listed pursuant to Proposition
65 as a chemical known to the State of California to cause cancer and reproductive harm.

1 PLAINTIFF alleges DEFENDANT has exposed individuals to Lead from its sales of Island Snacks
2 Chili Mango without first providing users and consumers of the product with a clear and reasonable
3 cancer warning as required pursuant to Proposition 65.

4 **1.3 Product Description.** The products covered by this Consent Judgment are Island
5 Snacks Chili Mango, including, without limitation, all varieties and pack sizes of Island Snacks
6 Chili Mango (the “Products”) that have been manufactured, imported, distributed, offered for sale,
7 and/or sold in California by DEFENDANT or its affiliates.

8 **1.4 Notice of Violation, Complaint, and Jurisdiction.** On October 12, 2022
9 PLAINTIFF served DEFENDANT and various public enforcement agencies with a document
10 entitled “Notice of Violation of California Health & Safety Code § 25249.6 et seq.” (the “Notice”).
11 The Notice provided DEFENDANT and such others, including public enforcers, with notice that
12 alleged that DEFENDANT was in violation of Proposition 65 for failing to warn California
13 consumers and customers that use of the Products will expose them to lead. No public enforcer
14 has diligently prosecuted the allegations set forth in the Notice. On May 12, 2023, based on the
15 Notice and the absence of any authorized public prosecutor of Proposition 65 having filed a suit
16 based on the allegations contained therein, PLAINTIFF filed a complaint in the Superior Court of
17 and for San Diego County (the “Court”), Case No. 37-2023-00020396-CU-MC-CTL (the
18 “Action”). For purposes of this Consent Judgment, the Parties stipulate the Court has jurisdiction
19 over the allegations in the Complaint and personal jurisdiction over DEFENDANT, that venue is
20 proper in the County of San Diego, and that the Court has jurisdiction to enter this Consent
21 Judgment as a full and final resolution of the claims and allegations which were or could have been
22 raised in the Action based on the facts alleged therein and/or in the Notice.

23 **1.5 No Admission.** This Consent Judgment resolves claims that are denied and
24 disputed. The Parties enter into this Consent Judgment as a full and final resolution of any and all
25 claims between the Parties for the purpose of avoiding prolonged litigation. DEFENDANT denies
26 each and every material allegation contained in the Notices and the Action and maintains that it
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1 has not violated Proposition 65 and/or is not subject to that law. Nothing in this Consent Judgment
2 shall be construed as an admission by DEFENDANT of any fact, finding, issue of law, or violation
3 of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
4 by DEFENDANT of any fact, finding, conclusion, issue of law, or violation of law, such being
5 specifically denied by DEFENDANT. However, this Section 1.5 shall not diminish or otherwise
6 affect the obligations, responsibilities, and duties of DEFENDANT under this Consent Judgment.

7 **1.6 Effective Date.** For purposes of this Consent Judgment, the term “Effective Date”
8 shall mean the date this Consent Judgment has been approved by the Court and PLAINTIFF have
9 provided notice to DEFENDANT that it has been entered in the Court’s records as a consent
10 judgment. As for the Injunctive Relief as described in Section 2 of this Consent Judgment,
11 Defendant shall have 90 days following the Effective Date to either achieve the Reformulation
12 Level or comply with Proposition 65 Warning Regulations.

13 **2. INJUNCTIVE RELIEF**

14 **2.1 Reformulation or alternatively Compliance with Proposition 65 Warning**
15 **Regulations.**

16 As of 90 days following the Effective Date, and continuing thereafter, any Products
17 Defendant elects to manufacture, import, distribute, sell, or offer for sale in California
18 manufactured after the Effective Date shall not exceed the “Daily Lead Exposure Level” of more
19 than .5 micrograms of Lead per day. (“Reformulation Level”).

20 Alternatively to achieving the Reformulation Level, as of 90 days following the Effective
21 Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§
22 2.1 and 2.2 must be provided for the Products at issue in this lawsuit that Island Snacks
23 manufacturers, imports, distributes, sells, or offers for sale in California. There shall be no
24 obligation for such an exposure warning to be provided for Products that entered the stream of
25 commerce prior to the Effective Date. The warning shall consist of either the Warning or
26 Alternative Warning described in §§ 2.1(a) or (b), respectively:
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1 (a) Warning. The “Warning” shall consist of the statement:

2 **⚠️WARNING:** This product can expose you to Lead, which is known to the State of
3 California to cause cancer and birth defects or other reproductive harm. For more information go
4 to www.P65Warnings.ca.gov/food;

5 (b) **Alternative Warning:** Island Snacks may, but are not required to, use the alternative
6 short-form warning as set forth in this § 2.3(b) (“Alternative Warning”) as follows:

7 **⚠️WARNING:** Reproductive Harm - www.P65Warnings.ca.gov/food.

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

17 2.3 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
18 compliance with this Settlement Agreement by either adhering to §§ 2.1 and 2.2 of this
19 Settlement Agreement or by complying with warning requirements adopted by the State of
20 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) that are applicable
21 to this product. In the event that the Office of Environmental Health Hazard Assessment
22 promulgates one or more regulations requiring or permitting warning text and/or methods of
23 transmission different than those set forth herein, Defendant shall be entitled to use, at its
24 discretion, such other warning text and/or method of transmission without being deemed in
25 breach of this Agreement. If regulations or legislation are enacted or issued providing that a
26 Proposition 65 warning for the product no longer is required, a lack of warning will not
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1 thereafter be a breach of this Agreement.

2 **2.4. Alternative to Warning.** For Product not packaged by Defendants but
3 sold in bulk, Defendant may as the manufacturer of the Product, **provide a written**
4 **notice directly to the authorized agent for a distributor or retail seller** who is subject
5 to Section 25249.6 of the Act, which: (1) States that the product may result in an
6 exposure to one or more listed chemicals; (2) Includes the exact name or description of
7 the product or specific identifying information for the product such as a Universal
8 Product Code or other identifying designation; (3) Includes all necessary warning
9 materials such as labels, labeling, shelf signs or tags, and warning language for products
10 sold on the Internet, that satisfies Section 25249.6 of the Act; (4) Has been sent to the
11 retail seller, and the manufacturer, producer, packager, importer, supplier, or distributor
12 has obtained confirmation electronically or in writing of receipt of the notice. If the
13 manufacturer, producer, packager, importer, supplier, or distributor of a product is
14 complying with this section by providing a written notice directly to the authorized agent:
15 (1) The notice must be renewed, and receipt of the renewed notice confirmed
16 electronically or in writing by the retail seller's authorized agent within six months
17 during the first year after the effective date of this section, then annually thereafter during
18 the period in which the Product is sold in California by the retail seller.

19 **2.5 Internet Warnings**

20 If, after the Effective Date, Defendant sells Products, via the internet, through its
21 own website, affiliated websites or a third party website, to consumers located in California
22 or to customers with nationwide distribution and e-commerce websites, Defendant shall
23 provide warnings for each Product both on the Product label in accordance with Section 2,
24 and by prominently displaying, or requiring the warning to be prominently displayed on
25 affiliated websites, third party websites or by retail customers, to the consumer during the
26 purchase of the Products without requiring customers to seek out the warning. The warning
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1 or a clearly marked hyperlink to the warning using the word “WARNING” given in
2 conjunction with the sale of the Products via the internet shall appear either: (a) on the
3 same web page on which the Products are displayed; (b) on the same web page as the
4 virtual cart displaying the Products; (c) on the same page as the price for the Products; or
5 (d) on one or more web pages displayed to a purchaser during the checkout process. The
6 warning shall appear in any of the above instances adjacent to or immediately following
7 the display, description, or price of the Products for which it is given in the same type size
8 or larger than other consumer information provided for the Products. To the extent that the
9 current Proposition 65 requirements for Internet Warnings are changed, Defendant may
10 elect to adhere to any such changes in lieu of that which is set forth herein. Where
11 Defendant sells, ships, or distributes Products to third-party retailers or e-commerce
12 marketplaces, Defendant will advise them, in writing, of the internet Warning requirements
13 under this Agreement as a condition of sale of the Products.

14 **3. CONSENT JUDGMENT PAYMENTS**

15 **3.1 Civil Penalties**

16 DEFENDANT shall pay \$4,500 as a civil penalty, allocated in accordance with Cal. Health
17 & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the penalty to be remitted to the California
18 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
19 Penalty remitted to PLAINTIFF no later than ten (10) business days following the Effective Date.
20 More specifically, DEFENDANT shall issue two separate checks for the civil penalty payment to
21 (a) “Office of Environmental Health Hazard Assessment” in the amount of \$3,375 (75%); and to
22 (b) “Law Offices of George Rikos in Trust” in the amount of \$1,125 (25%). Within ten (10)
23 business days of the Effective Date, DEFENDANT shall deliver these payments as follows:

24 (i) The penalty payment owed to PLAINTIFF shall be delivered to the
25 following address:

26 George Rikos
27 Law Offices of George Rikos

1 555 West Beech, Suite 500
San Diego, CA 92101

2 (ii) The penalty payment owed to OEHHA (EIN: 68-0284486) shall be
3 delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following address:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 Attn. Prop 65 Penalties – PLAINTIFF v. DEFENDANT Consent Judgment
1001 I Street
8 Sacramento, CA 95814

8 DEFENDANT shall provide PLAINTIFF’s counsel with a copy of the check it sends to OEHHA
9 with its penalty payment to PLAINTIFF. In association with the issuance of the payments under
10 this Consent Judgment, DEFENDANT will issue IRS 1099 forms as appropriate given the payees.

11 **3.2 Attorneys’ Fees and Litigation Costs**

12 Within ten (10) business days of the Effective Date, DEFENDANT shall reimburse
13 PLAINTIFF’ counsel \$34,000 for fees and costs incurred as a result of investigating and bringing
14 this matter to DEFENDANT’s attention, negotiating a Consent Judgment in the public interest,
15 and obtaining the Court’s approval of the Consent Judgment and its entry as a consent judgment.
16 DEFENDANT shall issue a check for this amount payable to “Law Offices of George Rikos” and
17 deliver it to the address identified in Section 3.1 above. DEFENDANT’s payment obligations
18 shall be tolled until it receives an IRS W-9 form for this payee.

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

20 **4.1 Release of DEFENDANT and Downstream Customers and Entities.** This
21 Consent Judgment is a full, final and binding resolution between PLAINTIFF, acting on his own
22 behalf and in the public interest, and DEFENDANT of any violation of Proposition 65 that was or
23 could have been asserted by PLAINTIFF or on behalf of his past and current agents,
24 representatives, attorneys, predecessors, successors, and/or assigns (collectively, “Releasers”) for
25 failure to provide warnings for alleged exposures to lead contained in the Products, and Releasers
26 hereby release any such claims against DEFENDANT and their parents, shareholders, members,
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1 directors, officers, managers, employees, representatives, agents, attorneys, divisions,
2 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,
3 successors, and assigns (collectively, “DEFENDANT Releasees”), and each entity to whom
4 DEFENDANT directly or indirectly distributes or sells the Products, including but not limited to,
5 downstream distributors, wholesalers, customers, and retailers, and their respective subsidiaries,
6 affiliates and parents, franchisees, cooperative members, and licensees (collectively, “Downstream
7 Releasees”), from all claims for violations of Proposition 65 with respect to any Products
8 manufactured, distributed, and/or sold by DEFENDANT prior to the Effective Date based on
9 failure to warn of alleged exposure to the chemical lead from the Products.

10 **4.2 DEFENDANT’ Release of PLAINTIFF.** DEFENDANT, on behalf of
11 themselves, their past and current agents, representatives, attorneys, successors, and/or assignees,
12 hereby waives any and all claims against PLAINTIFF, their attorneys, and other representatives,
13 for any and all actions taken or statements made by PLAINTIFF and/or his attorneys and other
14 representatives, whether in the course of investigating claims or otherwise seeking to enforce
15 Proposition 65 against it in this matter.

16 **4.3 Deemed Compliance with Proposition 65.** Compliance by DEFENDANT with
17 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposure to lead
18 from the Products. Products distributed by DEFENDANT prior to the Effective Date may be sold
19 through as previously manufactured and labeled.

20 **5. ENTRY OF CONSENT JUDGMENT**

21 The Parties hereby request that the Court promptly enter this Consent Judgment as a
22 consent judgment based on the motion for its approval PLAINTIFF will be making pursuant to
23 Section 10 below. Upon entry of the Consent Judgment as a consent judgment, PLAINTIFF and
24 DEFENDANT waive their respective rights to a hearing or trial on the allegations contained in the
25 Complaint.

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1 **6. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
3 Consent Judgment are deemed by a court to be unenforceable, the validity of the enforceable
4 provisions remaining shall not be adversely affected but only to the extent the deletion of the
5 provision deemed unenforceable does not materially affect, or otherwise result in the effect of the
6 Consent Judgment being contrary to, the intent of the Parties in entering into this Consent
7 Judgment.

8 **7. GOVERNING LAW/ENFORCEMENT**

9 The terms of this Consent Judgment shall be governed by the law of the State of California
10 and apply within the State of California. The rights to enforce the terms of this Consent Judgment
11 are exclusively conferred on the Parties hereto. Any Party may, after providing sixty (60) days'
12 written notice and meeting and conferring within a reasonable time thereafter to attempt to resolve
13 any issues, by motion or application for an order to show cause before this Court, enforce the terms
14 and conditions contained in this Consent Judgment. In the event that Proposition 65 or its
15 regulations applicable to the Products are repealed, or are otherwise rendered inapplicable or
16 invalid, including but not limited to by reason of law generally, due to federal preemption, or the
17 First Amendment commercial speech rights of the U.S. Constitution, as determined by a court of
18 competent jurisdiction of an agency of the federal government, then DEFENDANT shall provide
19 written notice to PLAINTIFF of any asserted repeal or determination. Upon DEFENDANT's
20 written notice, DEFENDANT shall have no further obligations pursuant to this Consent Judgment
21 to the extent such repeal or determination affects DEFENDANT's obligations with respect to the
22 Product.

23 **8. NOTICES**

24 Unless specified herein, all correspondence and notices required to be provided pursuant
25 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class
26 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
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1 Party by the other Party to the following addresses:

2 For DEFENDANT:

3 Samuel Yu, Esq.
4 Kahana Feld, LLP
5 2603 Main Street, Suite 900
6 Irvine, CA 92614

7 For PLAINTIFF:

8 George Rikos, Esq.
9 Law Offices of George Rikos
10 555 West Beech, Suite 500
11 San Diego, CA 92101

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

14 **9. COUNTERPARTS: SIGNATURES**

15 This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature,
16 each of which shall be deemed an original, and all of which, when taken together, shall constitute
17 one and the same document.

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

19 PLAINTIFF agrees to comply with the reporting requirements referenced in Health &
20 Safety Code Section 25249.7(f) and to seek, by formal and properly noticed motion (including
21 with service to the Office of the California Attorney General being fully effectuated at least forty-
22 five (45) days prior to a requested hearing thereon), approval of this Consent Judgment's terms
23 pursuant to Proposition 65 and its associated entry as a consent judgment by the Court.

24 **11. MODIFICATION**

25 Unless otherwise provided for herein, this Consent Judgment may be modified only by a
26 written agreement of the Parties and the approval of the Court or upon a duly noticed motion of
27 either Party for good cause shown. A showing of technical infeasibility or commercial
28 unreasonableness in meeting the requirements of Section 2 with respect to the Products shall be
deemed to constitute good cause for a modification to substitute an alternative no significant risk

1 level on the basis of 27 Cal. Code Regs. § 25703(b) in place of the cancer risk level and
2 presumptive ppb average concentration threshold set forth in Sections 2.1 and 2.2, and such a
3 modification shall not be opposed by PLAINTIFF. Any proposed modification shall be sent to the
4 Office of the California Attorney General in advance of its submission to the Court such that the
5 Attorney General has a reasonable opportunity to review and comment thereon.

6 **12. ENTIRE AGREEMENT**

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

12 **13. AUTHORIZATION**

13 The undersigned are authorized to execute this Consent Judgment and have read,
14 understood and agree to all of the terms and conditions contained in this Consent Judgment.

<p>15 APPROVED AS TO FORM:</p> <p>16</p> <p>17 Date: May 8, 2024</p> <p>18 By: <i>George Rikos</i></p> <p>19 George Rikos</p> <p>20 Counsel to PLAINTIFF</p>	<p>15 APPROVED AS TO FORM:</p> <p>16</p> <p>17 Date: April 26, 2024</p> <p>18 By: <i>Samuel Yu</i></p> <p>19 Samuel Yu</p> <p>20 Counsel for DEFENDANT</p>
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21 **AGREED TO:** **AGREED TO:**

22 Date: 5/8/24 Date: 4/26/24

23

24 By: *[Signature]* By: *NISIM BARAK*

25 PLAINTIFF DEFENDANT

26 Blue Water Cosaint, LLC Island Snacks, Inc.

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1 **IT IS SO ORDERED, ADJUDGED AND DECREED THAT THE CONSENT**
2 **JUDGMENT SET FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A**
3 **CONSENT JUDGMENT BY THIS COURT:**

4 DATED: _____

5 _____
6 JUDGE OF THE SUPERIOR COURT
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