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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.

19 Case No. 37-2023-00020396-CU-MC-CTL  
20 [PROPOSED] CONSENT JUDGMENT

21 **1. INTRODUCTION**

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

**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  
27

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 0.5 micrograms of Lead per day. (“Reformulation Level”). This shall be based on the single  
20 serving size of 28 grams as identified on the package of the Product.

21 Alternatively to achieving the Reformulation Level, as of 90 days following the Effective  
22 Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§  
23 2.1 and 2.2 must be provided for the Products at issue in this lawsuit that Island Snacks  
24 manufacturers, imports, distributes, sells, or offers for sale in California. There shall be no  
25 obligation for such an exposure warning to be provided for Products that entered the stream of  
26 commerce prior to the Effective Date. The warning shall consist of either the Warning or  
27

1 Alternative Warning described in §§ 2.1(a) or (b), respectively:

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

3 **⚠️WARNING:** Consuming this product can expose you to Lead which is known to the State  
4 of California to cause cancer and birth defects or other reproductive harm. For more information  
5 go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food);

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

8 **⚠️WARNING:** Cancer & Reproductive Harm - [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

9 2.2 A **Warning or Alternative Warning** provided pursuant to § 2.1 must have the  
10 term “**WARNING:**” printed in all capital letters and in bold font. The warning symbol to the left  
11 of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle  
12 with a black outline, except that if the label for the Products does not use the color yellow, the  
13 symbol may be in black and white. The symbol must be in a size no smaller than the height of  
14 the word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging  
15 or labeling and must be set off from other surrounding information, enclosed in a box, and  
16 displayed with such conspicuousness, as compared with other words, statements, or designs as to  
17 render it likely to be read and understood by an ordinary individual under customary conditions  
18 of purchase or use. Where a specific food product sign, label, or shelf tag used to provide a  
19 warning includes consumer information in a language other than English, the warning must also  
20 be provided in that language in addition to English.

21 2.3 **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
22 compliance with this Settlement Agreement by either adhering to §§ 2.1 and 2.2 of this  
23 Settlement Agreement or by complying with warning requirements adopted by the State of  
24 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) that are applicable  
25 to this product and the chemicals at issue here. In the event that the Office of Environmental  
26 Health Hazard Assessment promulgates one or more regulations requiring or permitting warning  
27

1 text and/or methods of transmission different than those set forth herein, Defendant shall be  
2 entitled to use, at its discretion, such other warning text and/or method of transmission without  
3 being deemed in breach of this Agreement. If regulations or legislation are enacted or issued  
4 providing that a Proposition 65 warning for the product no longer is required, the Defendants  
5 may seek a modification of the consent judgment from the court which may be done by way of  
6 stipulation with forty-five days notice to the California Attorney General's Office.

7 **2.4. Alternative to Warning.** For Product not packaged by Defendants but  
8 sold in bulk, Defendant may as the manufacturer of the Product, **provide a written**  
9 **notice directly to the authorized agent for a distributor or retail seller** who is subject  
10 to Section 25249.6 of the Act, which: (1) States that the product may result in an  
11 exposure to one or more listed chemicals; (2) Includes the exact name or description of  
12 the product or specific identifying information for the product such as a Universal  
13 Product Code or other identifying designation; (3) Includes all necessary warning  
14 materials such as labels, labeling, shelf signs or tags, and warning language for products  
15 sold on the Internet, that satisfies Section 25249.6 of the Act; (4) Be renewed annually  
16 during the period in which the product is sold in California,

17 If Defendants are providing a written notice pursuant to this subsection, receipt of  
18 the notice must be received electronically or in writing from the authorized agent to  
19 whom Defendants sent the notice.

#### 20 **2.5 Internet Warnings**

21 If, after the Effective Date, Defendant sells Products, via the internet, through its  
22 own website, affiliated websites or a third party website, to consumers located in California  
23 or to customers with nationwide distribution and e-commerce websites, Defendant shall  
24 provide warnings for each Product both on the Product label in accordance with Section 2,  
25 and by prominently displaying, or requiring the warning to be prominently displayed on  
26 affiliated websites, third party websites or by retail customers, to the consumer during the  
27

1 purchase of the Products without requiring customers to seek out the warning. The warning  
2 or a clearly marked hyperlink to the warning using the word “WARNING” given in  
3 conjunction with the sale of the Products via the internet shall appear either: (a) on the  
4 same web page on which the Products are displayed; (b) on the same web page as the  
5 virtual cart displaying the Products; (c) on the same page as the price for the Products; or  
6 (d) on one or more web pages displayed to a purchaser during the checkout process. The  
7 warning shall appear in any of the above instances adjacent to or immediately following  
8 the display, description, or price of the Products for which it is given in the same type size  
9 or larger than other consumer information provided for the Products. To the extent that the  
10 current Proposition 65 requirements for Internet Warnings are changed, Defendant may  
11 elect to adhere to any such changes in lieu of that which is set forth herein. Where  
12 Defendant sells, ships, or distributes Products to third-party retailers or e-commerce  
13 marketplaces, Defendant will advise them, in writing, of the internet Warning requirements  
14 under this Agreement as a condition of sale of the Products.

15 **3. CONSENT JUDGMENT PAYMENTS**

16 **3.1 Civil Penalties**

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

25 (i) The penalty payment owed to PLAINTIFF shall be delivered to the  
26 following address:  
27

1 George Rikos  
2 Law Offices of George Rikos  
3 555 West Beech, Suite 500  
4 San Diego, CA 92101

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

7 Mike Gyurics  
8 Fiscal Operations Branch Chief  
9 Office of Environmental Health Hazard Assessment  
10 Attn. Prop 65 Penalties – PLAINTIFF v. DEFENDANT Consent Judgment  
11 1001 I Street  
12 Sacramento, CA 95814

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

16 **3.2 Attorneys’ Fees and Litigation Costs**

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

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

25 **4.1 Release of DEFENDANT and Downstream Customers and Entities.** This  
26 Consent Judgment is a full, final and binding resolution between PLAINTIFF, acting on his own  
27 behalf and in the public interest, and DEFENDANT of any violation of Proposition 65 that was or  
28 could have been asserted by PLAINTIFF or on behalf of his past and current agents,  
representatives, attorneys, predecessors, successors, and/or assigns (collectively, “Releasers”) for  
failure to provide warnings for alleged exposures to lead contained in the Products, and Releasers

1 hereby release any such claims against DEFENDANT and their parents, shareholders, members,  
2 directors, officers, managers, employees, representatives, agents, attorneys, divisions,  
3 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors,  
4 successors, and assigns (collectively, “DEFENDANT Releasees”), and each entity to whom  
5 DEFENDANT directly or indirectly distributes or sells the Products, including but not limited to,  
6 downstream distributors, wholesalers, customers, and retailers, and their respective subsidiaries,  
7 affiliates and parents, franchisees, cooperative members, and licensees (collectively, “Downstream  
8 Releasees”), from all claims for violations of Proposition 65 with respect to any Products  
9 manufactured, distributed, and/or sold by DEFENDANT prior to the Effective Date based on  
10 failure to warn of alleged exposure to the chemical lead from the Products.

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

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

21 **5. ENTRY OF CONSENT JUDGMENT**

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



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2 **6. SEVERABILITY**

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

9 **7. GOVERNING LAW/ENFORCEMENT**

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

24 **8. NOTICES**

25 Unless specified herein, all correspondence and notices required to be provided pursuant  
26 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class  
27

1 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any  
2 Party by the other Party to the following addresses:

3 For DEFENDANT:

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

7 For PLAINTIFF:

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

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

12 **9. COUNTERPARTS: SIGNATURES**

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

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

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

22 **11. MODIFICATION**

23 Unless otherwise provided for herein, this Consent Judgment may be modified only by a  
24 written agreement of the Parties and the approval of the Court or upon a duly noticed motion of  
25 either Party for good cause shown. Any proposed modification shall be sent to the Office of the  
26 California Attorney General in advance of its submission to the Court such that the Attorney  
27


1 General has a reasonable opportunity to review and comment thereon.

2 **12. ENTIRE AGREEMENT**

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

8 **13. AUTHORIZATION**

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

<p><b>APPROVED AS TO FORM:</b></p> <p>Date:</p> <p>By: George Rikos Counsel to PLAINTIFF</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: July 16, 2024</p> <p>By:  Samuel Yu Counsel for DEFENDANT</p>
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<p><b>AGREED TO:</b></p> <p>Date: _____</p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p>
<p>By: _____ PLAINTIFF Blue Water Cosaint, LLC</p>	<p>By: _____ DEFENDANT Island Snacks, Inc.</p>

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

26 DATED: \_\_\_\_\_

27 \_\_\_\_\_  
28 JUDGE OF THE SUPERIOR COURT

1 General has a reasonable opportunity to review and comment thereon.

2 **12. ENTIRE AGREEMENT**

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

8 **13. AUTHORIZATION**

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

<p><b>APPROVED AS TO FORM:</b></p> <p>Date: 7/16/24</p> <p>By: <i>George Rikos</i> George Rikos Counsel to PLAINTIFF</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: July 16, 2024</p> <p>By: <i>Samuel Yu</i> Samuel Yu Counsel for DEFENDANT</p>
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<p><b>AGREED TO:</b></p> <p>Date: <u>7/16/24</u></p>	<p><b>AGREED TO:</b></p> <p>Date: _____</p>
<p>By: <u><i>[Signature]</i></u> PLAINTIFF Blue Water Cosaint, LLC</p>	<p>By: _____ DEFENDANT Island Snacks, Inc.</p>

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

26 DATED: \_\_\_\_\_  
27 \_\_\_\_\_  
28 JUDGE OF THE SUPERIOR COURT

Date: \_\_\_\_\_ Date: \_\_\_\_\_

By: George Rikos  
Counsel to PLAINTIFF

By: Samuel Yu  
Counsel for DEFENDANT

AGREED TO:

AGREED TO:

Date: \_\_\_\_\_

Date: 7/15/24

By: \_\_\_\_\_

By: NISIM BARAK

PLAINTIFF  
Blue Water Cosaint, LLC

DEFENDANT  
Island Snacks, Inc.

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

DATED: \_\_\_\_\_

JUDGE OF THE SUPERIOR COURT

CONSENT JUDGMENT