

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, on August 30, 2023, EA individually and on behalf of the public
22 interest, filed a complaint for injunctive relief and civil penalties in Los Angeles County
23 Superior Court (“Court”) in an action entitled *Ecological Alliance LLC v. Barebells*
24 *Functional Foods LLC of California, et al.*, Case No. 23STCV20931. The complaint in
25 this case is referred to herein as the “Complaint.”

26 WHEREAS, Defendant Barebells Functional Foods LLC of California (“BFF”)
27 (hereinafter, “Settling Defendant”) manufactures, packages, distributes, markets, and/or
28

1 sells protein products (“Protein Products” as defined below) to persons in the State of
2 California.

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

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

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

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

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

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

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

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
12 defendant’s consumer use instructions, to be sold in California without a warning, provided
13 that each covered defendant uses Good Manufacturing Practices, uses ingredients grown
14 using Good Agricultural Practices when possible, and uses Quality Control measures to
15 reduce contaminants to the “lowest level currently feasible,” as that phrase is defined by
16 California 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 *er al.*, San Francisco Superior Court Case No. CGC-04-429563 (filed 5/23/05) allows,
9 *inter alia*, similar products containing a concentration of lead in the products of up to four
10 (4) micrograms per day, assuming the product is used or consumed according to the
11 defendant's consumer use instructions, to be sold in California without a warning, provided
12 that each covered defendant use Good Manufacturing Practices, use ingredients grown
13 using Good Agricultural Practices when possible, and use Quality Control measures to
14 reduce contaminants to the "lowest level currently feasible," as that phrase is defined by
15 California 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. Abbott*
21 *Laboratories, et al., As You Sow Botanical Laboratories, Inc., et al.*, San Francisco
22 Superior Court Case No. CGC-10-503002 (filed 8/26/10 and 12/17/10) allows, *inter alia*,
23 similar products up to three (3) micrograms of lead in a daily serving for protein products
24 other than chocolate protein products, and allows four (4) micrograms of lead in a daily
25 serving of 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 cocoa
28

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
5 Consent Judgment in *People v. Warner-Lambert Co. et al.*, San Francisco Superior Court
6 Case No. 984503 (filed 11/13/1998) and modified in April 2011), which allows, *inter alia*,
7 a naturally occurring allowance of 0.8 micrograms of lead per 1000 milligrams of calcium,
8 and naturally occurring allowances of 0.4 mcg/g for ferrous fumarate, 8.0 mcg/g for zinc
9 oxide, 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
24 intentionally exposing persons to a chemical known to the State of California to cause
25 reproductive toxicity and cancer, namely lead, without first providing a clear and
26 reasonable warning to such individuals. The protein products that EA alleges contain lead,
27 and which are covered by this Consent Judgment, are those described in the Attachment A
28 (the “Protein Products”). Upon entry of the Consent Judgment, the Complaint shall be

1 deemed amended such that the term “PROTEIN PRODUCTS” in the Complaint is defined,
2 as to 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
7 County of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment
8 as a resolution of all claims which could have been raised in the Complaint based on the
9 facts 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.

11 1.3 Settling Defendant denies the allegations set forth in the Complaint.

12 1.4 For the purpose of avoiding prolonged and costly litigation, the Parties enter
13 into this Consent Judgment as a full settlement of all claims that were raised in the
14 Complaint based on the facts alleged therein, or which could have been raised in the
15 Complaint arising out of the facts alleged therein. By execution of this Consent Judgment,
16 Settling Defendant does not admit any violation of Proposition 65 or any other law and
17 specifically denies that it has committed any such violations and maintains that all Protein
18 Products that it has sold and distributed in California have been and are in compliance with
19 all laws. Nothing in this Consent Judgment shall be construed as an admission by Settling
20 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this
21 paragraph shall not diminish or affect the responsibilities and duties of the Parties under
22 this Consent Judgment.

23 **II. MONITORING**

24 2.1 No later than one hundred and eighty (180) days after entry of this Consent
25 Judgment, Settling Defendant will test or arrange for the testing for lead of each of its
26 Protein Products that it intends to distribute or sell in California. In establishing an initial
27 data set for purposes of this Consent Judgment, Settling Defendant may rely on testing
28 conducted prior to entry of this Consent Judgment if such testing documents lead levels in

1 Protein Supplement Products either already in the stream of commerce, in process, or
2 which are ready for distribution or sale. For purposes of this Consent Judgment, the term
3 “Effective Date” shall mean the date of the Court’s entry of this Consent Judgment.

4 2.1.1 Settling Defendant may use a testing laboratory certified by the State
5 of California; or accredited by the State of California, a United States federal
6 agency, or the National Environmental Laboratory Accreditation Program; or is
7 registered with the United States Food & Drug Administration; or is certified or
8 accredited by NSF International; American Association for Laboratory
9 Accreditation for Chemical Testing; International Standards Organization/IEC via
10 ANSI-ASQ; or an in-house laboratory or other facility experienced in testing for
11 lead levels in foods that complies with the Production and Process Control System:
12 Requirements for Laboratory Operations set forth in 21 C.F.R. Part 111, Subpart J,
13 including but not limited to the requirements for written procedures, requirements
14 for laboratory control processes, requirements for laboratory methods for testing and
15 examination, record retention policies, and other laboratory requirements.

16 2.1.2 The testing pursuant to this Consent Judgment shall be performed
17 using a laboratory method that complies with the performance and quality control
18 factors appropriate for the method used, including limit of detection and limit of
19 quantification, qualification, sensitivity, accuracy and precision that meets the
20 following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
21 achieving a limit of quantification of less than or equal to 0.010 mg/kg, or any
22 other testing method agreed upon in writing by the Parties. The foregoing
23 notwithstanding, lead concentrations may be measured using inductively coupled
24 plasma mass spectrometry (“ICP-MS”) utilizing scientifically appropriate
25 adherence to the protocols set forth in EPA Methods 6020, 6020a, isotope dilution
26 or AOAC 2011.19, 993.14 and 2015.01 (modified).

27 2.2 To fulfill its monitoring obligation under Section 2.1 and using a testing
28 method described therein, Settling Defendant must test or cause to be tested three (3)

1 samples of the final product which comprises each Protein Product, with samples randomly
2 selected from three (3) different lots (or from the maximum number of lots that are
3 available for testing if there are fewer than three (3) lots available). The testing required
4 under this Section 2.2 will be repeated annually for two years following the compilation of
5 the initial data set described in Section 2.1. Notwithstanding any language to the contrary
6 herein, if at any time there is a material change in formula of a Protein Product that is
7 reasonably likely to affect the lead levels in the product, that product shall be tested
8 pursuant to Sections 2.1 and 2.2 for a minimum of two years. All laboratory test data and
9 certifications (if applicable) must be retained by Settling Defendant for a period of three
10 years from the date of testing. However, Settling Defendant is not required to test any
11 Protein Products if it is providing a warning for such products that complies with Section 3.

12 2.2.1 On and after the Effective Date, any single test result which exceeds
13 5.75 ug/day lead as calculated under this Section 2 shall be deemed an outlier. On
14 and after the first anniversary of the Effective Date, any single test result which
15 exceeds 5.0 ug/day lead as calculated under this Section 2 shall be deemed an
16 outlier. Any outlier result as described in this Section 2.2.1 is referred to hereinafter
17 as an "Outlier."

18 2.2.2 At Settling Defendant's option, any single Outlier test result may be
19 subject to validation before it is deemed a final Outlier result for purposes of this
20 Consent Judgment. The validation process shall consist of two steps.

21 (a) First, Settling Defendant shall check its equipment, test
22 processes, validation procedures, laboratory contamination, operator error and
23 any other factors which could have produced an erroneous result. If the result
24 in determined erroneous due to testing error or failure to satisfy quality
25 assurance or quality control procedures, the result shall be discarded and not
26 used for any purpose under this Consent Judgment. The Protein Product shall
27 then be re-tested as if such test were the first test.
28

1 (b) Second, if a single Outlier test result is obtained and the steps in
2 2.2.2 (a) have not invalidated the result, then Settling Defendant may collect
3 up to three (3) more samples from the same lot or batch and have those
4 samples tested in accordance with this Section 2. The arithmetic mean of the
5 test results of all samples tested from the single lot or batch (including the
6 original Outlier test result) shall then be determined. That mean test result
7 shall be deemed the final result and shall constitute the applicable test result
8 for purposes of this Consent Judgment. If this validated test result is an
9 Outlier as defined in Section 2.2.1, then the terms of Section 3.3 shall apply
10 to that Outlier test result.

11 2.3 If there is an allegation that a Protein Product is in violation of Section 3.4,
12 EA may make a written request to Settling Defendant, delivered to the address of the
13 Settling Defendant as set forth on Attachment B, for data generated in compliance with
14 Sections 2.1 and 2.2. In response to such a request, Settling Defendant will provide to EA
15 the date the analysis was performed, the name of the laboratory conducting the test, the test
16 method used by the laboratory, the detection limit used by the laboratory, the lot numbers
17 of the samples tested, and the analytical results within thirty (30) days of EA's written
18 request. EA shall keep all such information and data confidential. Settling Defendant shall
19 provide to EA within 45 days of completing the initial testing of its Protein Products under
20 Section 2.1, and annually thereafter during the testing period set forth in Section 2.2, a list
21 of all such products for which the test results obtained pursuant to this Section II indicate a
22 Proposition 65 warning is required pursuant to Section III herein.

23 **III. CLEAR AND REASONABLE WARNINGS**

24 3.1 Pursuant to this Consent Judgment, warnings are required under Proposition
25 65 only with respect to Protein Products Settling Defendant sells to California consumers
26 that expose users to more than three (3.0) micrograms of lead in a Daily Serving, unless the
27 Protein Product is a Chocolate Product, as those terms are defined in this paragraph and
28 identified on Attachment A. Warnings are required for Chocolate Products Settling

1 Defendant sells to California consumers that expose users to more than four (4.0)
2 micrograms of lead in a Daily Serving. “Chocolate Products” are Protein Products that
3 contain any variety of form of the ingredient generally referred to as “chocolate,” including
4 without limitations, the ingredients chocolate, chocolate liquor, cocoa, cocoa mass, cocoa
5 butter, cocoa powder, cacao, fudge, or any variation of, or substitute for, any of those
6 ingredients.

7 3.2 A “Daily Serving” for purposes of determining Proposition 65 compliance for
8 chemicals present in the Protein Products shall be defined as one of the following, as
9 applicable:

10 (a) if the Protein Product label recommends a single serving, then the single
11 recommended service size;

12 (b) if the Protein Product label includes no recommended number of servings, then
13 the serving size set forth on the “Nutritional Facts” or “Supplement Facts” portion of the
14 label; - What do this actually mean?

15 (c) if the Protein Product label recommends a range of servings in one day, then the
16 amount which is two-thirds (2/3) of the maximum number of servings recommended on the
17 label;

18 (d) if the Protein Product label recommends a specific number of servings per day
19 that is more than one serving per day, then the amount which is two-thirds (2/3) of the
20 specifically recommended servings; or

21 (e) commencing on the first anniversary of the Effective Date, if the Protein Product
22 label recommends a specific number of servings per day that is more than one serving per
23 day, then the specifically recommended number of servings. On the first anniversary of the
24 Effective Date, Section 3.2(d) shall terminate.

25 3.3 When calculating whether a Protein Product exceeds the warning threshold:

26 (1) Settling Defendant must compare the warning threshold value to the arithmetic mean of a
27 least three (3) samples tested in accordance with Section 2.1. However, Settling Defendant
28 may, at its option, calculate the arithmetic mean using up to ten (10) samples; and (2)

1 Settling Defendant must base its calculation on the Daily Serving amount as defined in
2 section 3.2. Notwithstanding the foregoing, Settling Defendant may not include an Outlier
3 test result (as defined in Section 2.2.1) in calculating the arithmetic mean, and if Settling
4 Defendant elects to sell a Protein Product to California consumers for which an Outlier test
5 result is obtained and validated as provided for in Section 2.2.2, then that specific product
6 lot or batch from which the Outlier result was derived shall be subject to the warning
7 obligations of this Section 3. Settling Defendant shall have ninety (90) days from the date
8 the relevant test result mean is calculated to satisfy the applicable obligations of this
9 Section 3 for Protein Products manufactured, distributed or sold after that date.

10 3.4 Warning Standard. No later than one year after entry of this Consent
11 Judgment, Settling Defendant shall not manufacture for sale in the State of California,
12 distribute into the State of California, or sell in the State of California any Protein Product
13 the ingestion of which results in an exposure greater than the applicable warning threshold
14 set forth in Section 3.1, as calculated in accordance with Section 3.3, unless a warning
15 (“Product Warning”) is placed on the packaging, labeling or directly to or on the Protein
16 Supplement Product that states either:

17 1) “[CALIFORNIA PROPOSITION 65] **WARNING:**
18 Consuming this product can expose you to [chemicals including] lead, which is [are]
19 known to the State of California to cause [cancer and] birth defects or other reproductive
20 harm.” For more information go to www.P65Warnings.ca.gov/food

21 or

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

24 The text contained in the brackets is optional per Settling Defendant’s sole
25 discretion. Product Warnings shall be placed with such conspicuousness as compared with
26 other words, statements, designs and/or devices on the labeling or packaging as to render it
27 likely to be read and understood by an ordinary individual under customary conditions of
28 use or purchase. If the Product Warning is displayed on the product container or labeling,
the warning shall be at least the same size as the largest of any other health or safety
warnings on the container or labeling, and the word “warning” shall be in all capital letters

1 and in bold print. If printed on the labeling itself, the Product Warning shall be contained
2 in the same section of the labeling that states other safety warnings concerning the use of
3 the Protein Product.

4 3.4.1 Mail Order Sales

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

12 3.4.2 Internet Sales

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

1 3.5 Any changes to the language or format of the warnings required under
2 Section 3.3 shall be made only after Court approval and following written notice to Plaintiff
3 and to the Attorney General.

4 3.6 Settling Defendant may sell or distribute in California or ship to California a
5 Protein Product without any of the warnings required under Section 3.3 following one year
6 after entry of this Consent Judgment only if Settling Defendant has conducted testing in
7 accordance with the requirements in Section 3.1 demonstrating that the Protein Product
8 does not expose users to more lead in a Daily Serving than allowed under Section 3.4
9 without a warning, as determined using the calculation set forth in Section 3.3.

10 3.7 So long as Settling Defendant complies and remains in compliance with the
11 requirements of Section 3.1 through 3.5 for each of its Protein Products the Parties agree
12 that such Protein Products shall be deemed to comply with Proposition 65 with respect to
13 lead beginning immediately upon entry of the Consent Judgment, and that compliance with
14 this Consent Judgment shall fully and completely satisfy Settling Defendant's obligations
15 under Proposition 65 to provide warnings for such Protein Products with respect to the
16 presence lead, regardless of when manufactured, distributed or sold.

17 3.8 At least sixty (60) days before any discontinuance of any warnings that
18 Settling Defendant has issued pursuant to this Consent Judgment, Settling Defendant shall
19 conduct the testing required to demonstrate that the Protein Products conform to Sections
20 3.1, using the analytical methods set forth in Section 2.1. If there is an allegation that a
21 Protein Product for which there has been a discounted warning is in violation of Section
22 3.4, then EA may, as provided for in Section 2.3, request all related data generated in
23 compliance with this Consent Judgment. EA shall keep confidential all such information
24 and data received from Settling Defendant. This Section 3.8 shall not apply to a Protein
25 Product which is discontinued.

26 3.9 Should EA reach a settlement or be subject to a binding disposition (judicial,
27 contractual or otherwise) with or concerning any other defendant, person or entity in any
28 threatened, pending or future lawsuit involving claims of Proposition 65 violations and

1 protein products, or with terms that set forth less stringent lead standards than those herein
2 defining when Proposition 65 warnings will not be required (“Alternative Standards”), then
3 EA shall provide Settling Defendant with a copy of the settlement or binding disposition
4 (only in the case of a settlement or binding disposition entered into by, or binding upon,
5 EA), and EA agrees to join Settling Defendant’s motion to modify this Consent Judgment
6 so that the Alternative Standards apply to any protein products that Settling Defendant
7 manufactures for sale in California, distributes into California, or sells to California
8 consumers, if Settling Defendant so moves.

9 3.10 Should EA reach a settlement or be subject to a binding disposition (judicial,
10 contractual or otherwise) with or concerning any other defendant, person or entity in any
11 threatened, pending or future lawsuits involving claims of Proposition 65 violations and
12 protein products that permit warnings that are different in content, method or appearance
13 than is specified in Section 3.4 of this Consent Judgment, then EA shall provide Settling
14 Defendant with a copy of the settlement, or binding disposition (only in the case of a
15 settlement or binding disposition entered into by, or binding upon, EA), and EA agrees to
16 join Settling Defendant’s motion to modify this Consent Judgment to allow Settling
17 Defendant to warn in the manner specified in such settlement or binding disposition, as to
18 any protein products that Settling Defendant sells, distributes for sale, in California, if
19 Settling Defendant so moves.

20 **IV. MONETARY RELIEF**

21 4.1 Within 30 days after the Effective Date, Settling Defendant shall pay ninety-
22 five thousand dollars (\$95,000.00) in settlement and total satisfaction of all the claims
23 referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil
24 penalties in the amount of \$30,000 pursuant to Health and Safety Code section 25249.7(b)
25 and attorneys’ fees and costs in the amount of \$65,000 pursuant to Code of Civil Procedure
26 section 1021.5.

27 The payments specified in this section shall be made by wire transfer to Plaintiff’s
28 counsel Custodio & Dubey LLP as set forth below. Plaintiff’s counsel will remit the

1 portions due to the State of California Office of Environmental Health Hazard Assessment
2 and to Plaintiff.

3 Bank: Bank of America, N.A.

4 Routing Transit No.: 026009593

5 Account No.: 325149324377

6 Beneficiary: Custodio & Dubey LLP

7 4.2 The payment made pursuant to Section 4.1 shall be the only monetary
8 obligation of Settling Defendant with respect to this Consent Judgment, including as to any
9 fees, costs, or expenses EA has incurred in relation to this action.

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

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

19 **VI. MODIFICATION OF SETTLEMENT**

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

1 **VII. APPLICATION OF CONSENT JUDGMENT**

2 7.1 Each signatory to this Consent Judgment certifies that he or she is fully
3 authorized by the Parties that he or she represents to enter into and execute the Consent
4 Judgment on behalf of the Party represented and legally bind that Party.

5 7.2 This Consent Judgment shall apply to and be binding upon EA Settling
6 Defendant, and each of their officers, directors, and shareholders and the predecessors,
7 successors or assigns of each of them.

8 **VIII. CLAIMS COVERED**

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

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

20 8.2 **EA Release of Settling Defendant.** In further consideration of the promises
21 and agreements herein contained, and for the payment to be made pursuant to Section 4.1,
22 EA, on behalf of itself and in the public interest, its past and current agents, representatives,
23 attorneys, successors and/or assignees, hereby waives all rights to institute or participate in,
24 directly or indirectly, any form of legal action addressing all claims occurring on or before
25 the entry of this Consent Judgment, and releases all claims occurring on or before the entry
26 of this Consent Judgment, including, without limitation, all actions, causes of action, in law
27 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses
28 or expenses, including, but not limited to, investigation fees, expert fees and attorneys' fees

1 of any nature whatsoever, whether known or unknown, fixed or contingent against Settling
2 Defendants and its past, present and future owners, direct and indirect parent companies,
3 corporate affiliates, subsidiaries, upstream and downstream suppliers, distributors,
4 manufacturers or customers, direct and indirect retailers (including, but not limited to,
5 Trader Joe's Company), clients, and each of their respective officers, directors, attorneys,
6 representatives, shareholders, agents, insurers, employees successors and assigns arising
7 under Proposition 65 related to the alleged failure to warn about exposures to or
8 identification of lead contained in the Protein Products manufactured, packaged,
9 distributed, marketed, or sold by Settling Defendant.

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

21 In addition, EA, on behalf of itself, its attorneys and its agents, waives all rights to
22 institute or participate in, directly or indirectly, any form of legal action addressing all
23 claims occurring on or before the entry of this Consent Judgment, and releases all claims
24 occurring on or before the entry of this Consent Judgment against Settling Defendant
25 arising under Proposition 65 related to Settling Defendant's alleged failure to warn about
26 exposures to or identification of lead contained in the Protein Products and for all actions or
27 statements regarding the alleged failures to warn about exposure to or identification of lead
28 contained in the Protein Products made by Settling Defendant or its attorneys or

1 representatives in the course of responding to those alleged violations of Proposition 65 as
2 alleged in the Complaint.

3 8.3 Release of EA. Settling Defendant waives all rights to institute any form of
4 legal action against EA or its officers, employees, agents, attorneys or representatives, for
5 all actions taken or statements made or undertaken by EA and its officers, employees,
6 agents, attorneys or representatives, in the court of seeking enforcement of Proposition 65
7 in this action.

8 **IX. RETENTION OF JURISDICTION**

9 This Court shall retain jurisdiction of this matter to implement this Consent
10 Judgment.

11 **X. COURT APPROVAL**

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

14 **XI. ENFORCEMENT**

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

21 Notwithstanding any language to the contrary in Section 2.3, 3.8 or otherwise herein, EA
22 and/or the Attorney General may disclose Settling Defendant's test results in a court filing
23 in support of any motion to enforce this Consent Judgment provided that EA and/or the
24 Attorney General first provides Settling Defendant an opportunity to make a motion for
25 leave to seal such data pursuant.

26 **XII. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California. In the event that Proposition 65 is repealed or is otherwise rendered

1 inapplicable by reason of law generally, or as to the Protein Products specifically, then
2 Settling Defendant shall have no further obligations pursuant to this Consent Judgment with
3 respect to those Protein Products that are affected.

4 **XIII. EXCHANGE IN COUNTERPARTS**

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

8 **XIV. NOTICES**

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

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

16 Vineet Dubey, Esq.
17 Custodio & Dubey LLP
18 444 S. Figueroa Street, Suite 2520
19 Los Angeles, CA 90071

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

22 Steven R. Tekosky, Esq.
23 Tatro Tekosky Sadwick LLP
24 7083 Hollywood Blvd., Suite 500
25 Los Angeles, CA 90028

26 Nicolas Norlin, Esq.
27 Vitamin Well
28 Box 5140, 102 43
Stockholm, Sweden
With a copy to: legal@vitaminwell.se

1 **XV. SEVERABILITY**

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

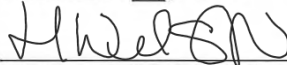
5 **XVI. ENTIRE AGREEMENT**

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

12
13 **AGREED TO:**

14 **Ecological Alliance LLC**


15 Date: December 11, 2023

16 By: 
Harmony Welsh, Managing Member

17
18 **AGREED TO:**

19 **Barebells Functional Foods LLC**

20 Date: December 8, 2023

21 By: 
TED KRISTENSSON, CHIEF PRODUCT OFFICER

22
23 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health
24 & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby
25 entered.

26
27 Dated: _____

28 _____
JUDGE OF THE SUPERIOR COURT