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Environmental Health Advocates, Inc.

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 ENVIRONMENTAL HEALTH
13 ADVOCATES, INC.,

14 Plaintiff,

15 v.

16 VACAVILLE FRUIT CO., INC., a California
17 corporation, and DOES 1 through 100,
18 inclusive,

19 Defendants.

Case No. 23 CV 027309

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 (“EHA” or “Plaintiff”) and Vacaville Fruit Co., Inc. (“Defendant” or “Vacaville”) with EHA and
5 Vacaville each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 EHA alleges that Vacaville manufactures, imports, sells, and distributes for sale Beets & Okra
16 4oz and Vacaville Fruit Tropical Ginger Slices that contain lead. EHA further alleges that Vacaville
17 does so without providing a sufficient health hazard warning as required by Proposition 65 and related
18 Regulations. Vacaville denies these allegations and asserts that its products are safe and in compliance
19 with all applicable laws, rules and regulations.

20 **1.5 Notice of Violation**

21 On or around October 11, 2022, EHA served Defendant Vacaville, the California Attorney
22 General, and all other required public enforcement agencies with a 60-Day Notice of Violation of
23 Proposition 65 for Beets & Okra 4 oz (“Initial Beets & Okra Notice”).

24 On or around May 3, 2022, EHA served Defendant Vacaville, the California Attorney General,
25 and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition
26 65 for Vacaville Fruit Tropical Ginger Slices (“Initial Ginger Slices Notice”).

27 The Initial Beets & Okra Notice and Initial Ginger Slices Notices (collectively, the “Notices”)
28 alleged that Vacaville had violated Proposition 65 by failing to sufficiently warn consumers in

1 California of the health hazards associated with exposures to lead contained in beets & okra and ginger
2 slice products, including but not limited to Beets & Okra 4oz and Vacaville Fruit Tropical Ginger Slices
3 manufactured or processed by Vacaville that allegedly contain lead and are imported, sold, shipped,
4 delivered, or distributed for sale to consumers in California by Releasees (as defined in section 4.1).

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

7 **1.6 Product Description**

8 The products covered by this Consent Judgment are beets & okra and ginger slice products,
9 including but not limited to Beets & Okra 4oz and Vacaville Fruit Tropical Ginger Slices manufactured
10 or processed by Vacaville that allegedly contain lead and are imported, sold, shipped, delivered, or
11 distributed for sale to consumers in California by Releasees (as defined in section 4.1) (“Covered
12 Products”).

13 **1.7 State of the Pleadings**

14 On or around October 18, 2022, EHA filed a Complaint against Vacaville for alleged violations
15 of Proposition 65 that are the subject of the Initial Ginger Slices Notice (“Ginger Slices Complaint”).

16 On or around February 3, 2023, EHA filed a Complaint against Vacaville for the alleged
17 violations of Proposition 65 that are the subject of the Initial Beets & Okra Notice (“Beets & Okra
18 Complaint”). (The Ginger Slices Complaint and Beets & Okra Complaint may be collectively referred
19 to herein as the “Complaints”).

20 **1.8 No Admission**

21 Vacaville denies the material factual and legal allegations of the Notices and Complaints and
22 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
23 California, including Covered Products, have been, and are, in compliance with all applicable laws,
24 rules and regulations. Nothing in this Consent Judgment shall be construed as an admission of any fact,
25 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
26 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
27 of law. This Section shall not, however, diminish or otherwise affect Vacaville's obligations,
28 responsibilities, and duties under this Consent Judgment.

1 **1.9 Jurisdiction**

2 For purposes of this Consent Judgment and the Complaints only, the Parties stipulate that this
3 Court has jurisdiction over Vacaville as to the allegations in the Complaints, that venue is proper in the
4 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
5 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this
8 Consent Judgment is approved and entered as a judgment of the Court, as discussed in Section 5.

9 **1.11 Compliance Date**

10 For purposes of this Consent Judgment, the term “Compliance Date” means 30 days from the
11 date on which this Consent Judgment is approved and entered as a judgment of the Court, as discussed
12 in Section 5.

13 **2. INJUNCTIVE RELIEF**


14 **2.1 Reformulation of the Covered Products**

15 Beginning on or before the Compliance Date, Vacaville shall be permanently enjoined from
16 manufacturing, distributing, or directly selling in the State of California, any Covered Product that
17 exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead based on a
18 single serving per day unless such Covered Products comply with the warning requirements of Section
19 2.2. The “Daily Lead Exposure Level” shall be calculated by multiplying the recommended serving
20 size in Covered Product by the concentration of lead in Covered Products. As used in this Section 2,
21 “distributed for sale in CA” means to directly ship Covered Products into California or to sell Covered
22 Products to a distributor Vacaville knows will sell Covered Products in California.


23 **2.2 Clear and Reasonable Warnings**

24 For Covered Products that contain lead in a concentration exceeding the Reformulation
25 Standard set forth in section 2.1 above, and which are distributed or directly sold by Vacaville in the
26 State of California on or after the Compliance Date, Vacaville shall provide one of the following
27 warning statements.

1 **Option 1:**

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

5 **Option 2:**

6  **WARNING:** Cancer and Reproductive Harm –
7 www.P65Warnings.ca.gov/food.

8 This warning statement shall be prominently displayed on the Covered Products, on the packing
9 of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with
10 such conspicuousness, as compared with other words, statements, or designs as to render it likely to be
11 read and understood by an ordinary individual prior to sale. If the warning statement is displayed on
12 the Covered Products’ packaging, it must be in a type size no smaller than the largest type size used
13 for other consumer information on the product. In no case shall a warning statement displayed on the
14 Covered Products’ packaging appear in a type size smaller than 6-point type. The warning shall consist
15 of either Option 1 or Option 2 described above in this subsection, or any warning that complies with
16 Title 27, California Code of Regulations, section 25600, et. seq., as amended August 30, 2016 and
17 subsequently thereafter. If the Covered Products’ packaging contains consumer information in a
18 foreign language, a warning statement in that language is required. The same warning shall be posted
19 on any websites under the exclusive control of Vacaville where Covered Products are sold into
20 California. Vacaville shall instruct any third-party website to which it directly sells its Covered
21 Products to include the same warning as a condition of selling the Covered Products in California.

22 **2.3 Sell-Through Period**

23 Notwithstanding anything else in this Consent Judgment, Covered Products that are
24 manufactured, packaged, or put into commerce on or after the date this Agreement is executed shall be
25 subject to the release of liability pursuant to this Consent Judgment, without regard to when such
26 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations
27 of Vacaville, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products
28 manufactured, packaged, or put into commerce between the date this Agreement is executed and the
Effective Date.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Settlement Amount**

3 Vacaville shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of all
4 the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes civil
5 penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code section
6 25249.7(b) and attorneys' fees and costs in the amount of forty-five thousand dollars (\$45,000.00)
7 pursuant to Code of Civil Procedure section 1021.5.

8 **3.2 Civil Penalty**

9 The portion of the settlement attributable to civil penalties shall be allocated according to Health
10 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
11 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
12 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars
13 (\$5,000.00) in civil penalties shall be paid as follows:

- 14 • One payment of \$3,750.00 to OEHHA, due 14 (fourteen) days after the Effective Date.
- 15 • One payment of \$1,250.00 to EHA, due 14 (fourteen) days after the Effective date.

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

17
18 Isaac Fayman
19 Environmental Health Advocates
20 225 Broadway, Suite 2100
21 San Diego, CA 92101

22 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
23 (Memo Line "Prop 65 Penalties") at the following addresses:

24 For United States Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 P.O. Box 4010
Sacramento, CA 95812-4010

For Federal Express 2-Day Delivery:

Mike Gyurics
Fiscal Operations Branch Chief

Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

Vacaville agrees to provide EHA's counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payment to EHA.

Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required. Relevant information is set out below:

- "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

All payments referenced in this section shall be paid within fourteen (14) days of the date the Court approves EHA's motion to approve this Consent Judgment.

3.3 Attorney's Fees and Costs

The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not limited to investigating potential violations, bringing this matter to Vacaville's attention, as well as litigating and negotiating a settlement in the public interest.

Vacaville shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's counsel by physical check or by electronic means, including wire transfers, at Vacaville's discretion, as follows: forty-five thousand dollars (\$45,000.00) in Attorney's Fees and Costs shall be paid as follows:

- One payment of \$40,000.00, due fourteen (14) days after the Effective Date (the "First Installment").
- One payment of \$5,000.00, due on or before the Compliance Date. However, notwithstanding any other provision of this Consent Judgment, this payment obligation shall be waived, and become null and void, upon timely payment of First Installment.

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

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

1 **4. CLAIMS COVERED AND RELEASE**

2 **4.1 EHA’s Public Release of Proposition 65 Claims**

3 Plaintiff, acting on its own behalf and in the public interest, releases Vacaville, and its parents,
4 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals,
5 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns (“Defendant
6 Entities”), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
7 Products, including but not limited to downstream distributors, wholesalers, customers, retailers , and
8 marketplaces franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all
9 of the foregoing entities’ owners, directors, officers, agents, principals, employees, attorneys, insurers,
10 accountants, representatives, predecessors, successors, and assigns (collectively referred to as the
11 “Releasees”) from all claims for violations of Proposition 65 up through the Effective Date based on
12 exposure to lead from Covered Products as set forth in the Notice(s). Compliance with the terms of this
13 Consent Judgment constitutes compliance with Proposition 65 with respect to any alleged or actual
14 failure to warn regarding exposures to lead from Covered Products as set forth in the Notice(s). This
15 Consent Judgment is a full, final, and binding resolution of all claims under Proposition 65 that were
16 or could have been asserted against Vacaville and/or Releasees for failure to comply with Proposition
17 65 with regard to the Covered Products. This release does not extend to any third-party retailers selling
18 the product on a website who, after receiving instruction from Vacaville to include a warning as set
19 forth above in section 2.2, do not include such a warning.

20 **4.2 EHA’s Individual Release of Claims**

21 EHA, in its individual capacity, also provides a release to Vacaville and/or Releasees, which
22 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
23 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every
24 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
25 alleged or actual exposures to lead in Covered Products manufactured, imported, sold, or distributed
26 by Vacaville before the Effective Date.

27 **4.3 Vacaville’s Release of EHA**

28 Vacaville on its own behalf, and on behalf of Releasees as well as its past and current agents,

1 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
2 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
3 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
4 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

5 **4.4 No Other Known Claims or Violations**

6 EHA and EHA’s counsel affirm that they are not presently aware of any actual or alleged
7 violations of Proposition 65 by Vacaville or for which Vacaville bears legal responsibility other than
8 those that are fully resolved by this Consent Judgment.

9 **5. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved by the Court and shall be null and
11 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
12 by such additional time as the Parties may agree to in writing.

13 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

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

23 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
24 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
25 requirements of Proposition 65; or if lead cases are permanently enjoined by a court of competent
26 jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden on First
27 Amendment rights with respect to lead in Covered Products or Covered Products substantially similar
28 to Covered Products, then Vacaville shall be relieved of its obligation to comply with Section 2 herein.

1 **8. ENFORCEMENT**

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

4 **9. NOTICE**

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

9 If to Vacaville:

10 Landon Bailey
11 Bailey PLC
12 1200 Suncastr Lane, Suite 7
El Dorado Hills, CA 95762
landon@baileyplc.com

If to EHA:

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

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

15 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

19 **11. POST EXECUTION ACTIVITIES**

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

1 **12. MODIFICATION**

2 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
3 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
4 Party, and the entry of a modified consent judgment thereon by the Court.

5 **13. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
7 have read, understand, and agree to all of the terms and conditions contained herein.

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

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

13 **15. ENTIRE AGREEMENT**


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

19 **AGREED TO:**

AGREED TO:

20
21 Date: 2/1/24

Date: 2/1/24

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23 By: 
24 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: *Nicole Ciarabellini*
VACAVILLE FRUIT CO., INC.

IT IS SO ORDERED.

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Date: _____

JUDGE OF THE SUPERIOR COURT