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Environmental Health Advocates, Inc.

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

12 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

13 ENVIRONMENTAL HEALTH
14 ADVOCATES, INC.,

Plaintiff,

15 v.

16 NEXT WAVE SEAFOOD, INC., a Delaware
17 corporation; SPROUTS FARMERS
18 MARKET, INC., a Delaware corporation; and
DOES 1 through 100, inclusive,

19 Defendants.

Case No. CGC-25-631834

[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 Next Wave Seafood, Inc. (“Defendant” or “Next Wave Seafood”) with
5 EHA and Next Wave Seafood each individually referred to as a “Party” and collectively referred to as
6 the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Next Wave Seafood for purposes of this Consent Judgment only, is a “person in the course of
13 doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
14 and Safety Code section 25249.6 et seq. (“Proposition 65”).

15 **1.4 General Allegations**

16 EHA alleges that Next Wave Seafood manufactures, imports, sells, and distributes for sale
17 mussels, including Next Wave Seafood Mussels in a Garlic Butter Sauce, that contain cadmium. EHA
18 further alleges that Next Wave Seafood does so without providing a sufficient health hazard warning
19 as required by Proposition 65 and related Regulations. Next Wave Seafood denies these allegations
20 and asserts that its products are safe and in compliance with all applicable laws, rules and regulations.

21 **1.5 Notice of Violation**

22 On or around March 21, 2025, EHA served Defendant Next Wave Seafood Inc., Sprouts
23 Farmers Market, Inc., the California Attorney General, and all other required public enforcement
24 agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Next
25 Wave Seafood had violated Proposition 65 by failing to sufficiently warn consumers in California of
26 the health hazards associated with exposures to cadmium contained in mussels products, including but
27 not limited to Next Wave Seafood Mussels in a Garlic Butter Sauce manufactured or processed by Next
28 Wave Seafood that allegedly contain cadmium and are imported, sold, shipped, delivered, or distributed

1 for sale to consumers in California by Next Wave Seafood.

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

4 **1.6 Product Description**

5 The products covered by this Consent Judgment are mussels products, whether branded as Next
6 Wave Seafood products or private label products supplied by Next Wave Seafood, including but not
7 limited to Next Wave Seafood Mussels in a Garlic Butter Sauce, manufactured, processed, imported
8 or packaged by Next Wave Seafood that allegedly contain cadmium and are imported, sold, shipped,
9 delivered, or distributed for sale to consumers in California by Releasees (as defined in section 4.1)
10 (“Covered Products”). For purposes of this Consent Judgment, Covered products include the following
11 private label mussel products supplied by Next Wave Seafood: (a) Specially Select mussels products;
12 (b) Waterfront Bistro mussels products; (c) Open Nature mussels products; and (d) Marketside mussels
13 products.

14 **1.7 State of the Pleadings**

15 On or around December 4, 2025, EHA filed a Complaint against Next Wave Seafood for the
16 alleged violations of Proposition 65 that are the subject of the Notice (“Complaint”).

17 **1.8 No Admission**

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

1 **1.9 Jurisdiction**

2 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
3 Court has jurisdiction over Next Wave Seafood as to the allegations in the Complaint, that venue is
4 proper in the County of San Francisco, and that the Court has jurisdiction to enter and enforce the
5 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section
6 664.6.

7 **1.10 Effective Date**

8 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this
9 Consent Judgment is approved by the Court.

10 **1.11 Compliance Date**

11 For purposes of this Consent Judgment, the term “Compliance Date” means 90 days from the
12 date on which this Consent Judgment is approved and entered as a judgment of the Court, as discussed
13 in Section 5.

14 **2. INJUNCTIVE RELIEF**

15 **2.1 Reformulation of the Covered Products**

16 Beginning on or before the Compliance Date, Defendant shall be permanently enjoined from
17 manufacturing, distributing, or directly selling in the State of California, any Covered Product that
18 exposes a person to a “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium
19 based on a single serving per day unless such Covered Products comply with the warning requirements
20 of Section 2.2. The “Daily Cadmium Exposure Level” shall be calculated by multiplying the
21 recommended serving size in Covered Product by the concentration of cadmium in Covered Products.
22 As used in this Section 2, “distributed for sale in CA” means to directly ship Covered Products into
23 California or to sell Covered Products to a distributor Defendant knows will sell Covered Products in
24 California.

1 **2.2 Clear and Reasonable Warnings**

2 For Covered Products that contain cadmium in a concentration exceeding the Reformulation
3 Standard set forth in section 2.1 above, and which are distributed or directly sold by Next Wave Seafood
4 in the State of California on or after the Compliance Date, Next Wave Seafood provide a “clear and
5 reasonable” Proposition 65 warning, within the meaning of Section 2549.6 of the Act, subject to
6 Section 2.3 of this Agreement. Next Wave Seafood agrees that each warning shall be prominently
7 placed with such conspicuousness, as compared with words, statements, designs, or devices as to render
8 it likely to be seen, read, and understood by an ordinary individual under customary conditions before
9 purchase or use. Each warning shall be provided in a manner such that the consumer or user understands
10 to which specific Covered Products the warning applies, and which listed chemical is implicated, so as
11 to minimize the risk of consumer confusion.

12 For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered
13 Products shall consist of a product-specific warning via one or more of the following methods: (1) A
14 posted sign, shelf tag, or shelf sign for the consumer product at each point of display of the product;
15 (2) Any electronic device or process that automatically provides the warning to the purchaser (not
16 applicable to internet purchases, which are subject to the provisions of § 25602(b)); (3) A warning
17 directly affixed to the product’s label or tag; or (4) A short-form warning on the label that complies
18 with the content requirements set forth in §§ 25603(b) and 25603(a). Specifically, pursuant to §
19 25603(a) – (d), one of the following statements must be utilized:

20
21 1) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA**
22 **WARNING:”**: Consuming this product can expose you to cadmium,
23 which is known to the State of California to cause birth defects or other
24 reproductive harm. For more information go to
25 www.P65Warnings.ca.gov/food.

24 **OR**

25 **SHORT**
26 **FORM**

27 2) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA**
28 **WARNING:”** Risk of reproductive harm from exposure to cadmium. See
 www.P65Warnings.ca.gov/food.

OR

SHORT
FORM

3) **“WARNING:”** [or] **“CA WARNING:”** [or] **“CALIFORNIA
WARNING:”** Can expose you to cadmium, a reproductive toxicant. See
www.P65Warnings.ca.gov/food.

OR

SHORT FORM ON
A PRODUCT
MANUFACTURED
/LABELED PRIOR
TO 1/1/28,
REGARDLESS OF
DATE OF SALE

4) **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov/food.

Pursuant to Section 25607.1, where the warning is provided on the food product label, it must be set off from other surrounding information and enclosed in a box. Where a specific food product sign, label, placard, or shelf tag is used to provide a warning, it must be displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. In no case shall a warning statement appear in a type size smaller than 6-point type. Where a sign, labeling, or label as defined in Section 25600.1 is used to provide a warning that includes consumer information about a product in a language other than English, the warning must also be provided in that language in addition to English.

As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold online by Next Wave Seafood, a warning that complies with the content requirements of Cal. Code Regs. Tit. 27, § 25603 must be provided via of the following methods: (1) A warning on the product display page; (2) A clearly marked hyperlink using the word **“WARNING”** or the words **“CA WARNING”** or **“CALIFORNIA WARNING”** on the product display page that links to the warning; or (3) An otherwise prominently displayed warning provided to the purchaser prior to completing the purchase. If a warning is provided using the short-form label content pursuant to Section 25602(a)(4), the warning provided on the website may use the same content. For purposes of this section, a warning is not prominently displayed if the purchaser must search for it in the general content of the website. For internet purchases made prior to January 1, 2028, a retail seller is not responsible under Section 25600.2(e)(4) for conspicuously posting or displaying the new warning online until 60 calendar days after the retailer receives a warning or a written notice under Section 25600.2(b) and (c) which updates

1 a short-form warning compliant with Section 25603(c) with content compliant with Section 25603(b).
2 These requirements extend to any websites under the exclusive control of Next Wave Seafood where
3 Covered Products are sold into California. In addition, Next Wave Seafood shall instruct any third-party
4 website to which it directly sells its Covered Products, and which it knows or reasonably believes sells
5 the product online, to include the same online warning, as set forth above, as a condition of selling the
6 Covered Products in California.

7 **2.3 Sell-Through Period**

8 Notwithstanding anything else in this Consent Judgment, Covered Products that are
9 manufactured, packaged, or put into commerce on or before the Compliance Date shall be subject to
10 the release of liability pursuant to this Consent Judgment, without regard to when such Covered
11 Products were, or are in the future, distributed or sold to customers. As a result, the obligations of Next
12 Wave Seafood, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered
13 Products manufactured, packaged, or put into commerce between the date this Agreement is executed
14 and the Compliance Date.

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Settlement Amount**

17 Next Wave Seafood shall pay forty thousand dollars (\$40,000.00) in settlement and total
18 satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This
19 includes civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety
20 Code section 25249.7(b) and attorneys' fees and costs in the amount of thirty-five thousand dollars
21 (\$35,000.00) pursuant to Code of Civil Procedure section 1021.5.

22 **3.2 Civil Penalty**

23 The portion of the settlement attributable to civil penalties shall be allocated according to Health
24 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
25 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
26 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars
27 (\$5,000.00) in civil penalties shall be paid as follows:
28

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

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

Environmental Health Advocates
225 Broadway, Suite 2100
San Diego, CA 92101

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

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
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

Next Wave Seafood 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.

1 Products as set forth in the Notice. This Consent Judgment is a full, final, and binding resolution of all
2 claims under Proposition 65 that were or could have been asserted against Next Wave Seafood and/or
3 Releasees for failure to comply with Proposition 65 for alleged exposure to cadmium from Covered
4 Products. This release does not extend to any third-party retailers selling the product on a website who,
5 after receiving instruction from Next Wave Seafood to include a warning as set forth above in section
6 2.2, do not include such a warning.

7 **4.2 EHA's Individual Release of Claims**

8 EHA, in its individual capacity, also provides a release to Next Wave Seafood and/or Releasees,
9 which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
10 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every
11 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
12 alleged or actual exposures to cadmium in Covered Products manufactured, imported, sold, or
13 distributed by Next Wave Seafood before the Effective Date.

14 **4.3 Next Wave Seafood's Release of EHA**

15 Next Wave Seafood on its own behalf, and on behalf of Releasees as well as its past and current
16 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against
17 EHA and its attorneys and other representatives, for any and all actions taken or statements made by
18 EHA and its attorneys and other representatives, whether in the course of investigating claims,
19 otherwise seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered
20 Products.

21 **4.4 No Other Known Claims or Violations**

22 EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged
23 violations of Proposition 65 by Next Wave Seafood or for which Next Wave Seafood bears legal
24 responsibility other than those that are fully resolved by this Consent Judgment.

25 **5. COURT APPROVAL**

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

1 **6. SEVERABILITY**

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

4 **7. GOVERNING LAW**

5 The terms of this Consent Judgment shall be governed by the laws of the state of California as
6 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
7 rendered inapplicable for reasons, including but not limited to changes in the law; or in the event the
8 California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues
9 an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition
10 65; or if cadmium cases are permanently enjoined by a court of competent jurisdiction; or if Proposition
11 65 is determined to be preempted by federal law or a burden on First Amendment rights with respect
12 to cadmium in Covered Products or Covered Products substantially similar to Covered Products, then
13 Next Wave Seafood may seek relief from the injunctive obligations imposed by this Consent Judgment
14 to the extent any Covered Products are so affected by moving to modifying the agreement via the
15 mechanisms set forth in Section 12.

16 **8. ENFORCEMENT**

17 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
18 to its reasonable attorneys’ fees and costs. The injunctive terms of this Consent Judgment may be
19 enforced by public agency prosecutors pursuant to California Health and Safety Code section
20 25249.7(c), and/or by private party prosecutors acting “in the public interest” under California Health
21 and Safety Code section 25249.7(d).

22 **9. NOTICE**

23 Unless otherwise specified herein, all correspondence and notice required by this Consent
24 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
25 mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to
26 the following addresses:
27
28

1 If to Next Wave Seafood:

If to EHA:

2 Michael J. Stiles
3 StilesPomeroy LLP
4 150 N. Santa Anita Ave., Suite 300
Arcadia, California 91101
mstiles@stilespomeroy.com

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

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

7 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

11 **11. POST EXECUTION ACTIVITIES**

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

21 **12. MODIFICATION**

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

25 **13. AUTHORIZATION**

26 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
27 have read, understand, and agree to all of the terms and conditions contained herein.
28

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

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

6 **15. ENTIRE AGREEMENT**

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

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AGREED TO:

Date: 2/6/26

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:

Date: 2/9/26

By: 
NEXT WAVE SEAFOOD, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT