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ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

MAR 28 2016

Sherri R. Carter, Executive Officer/Clerk  
By Armando Garcia, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES  
11 (Unlimited Jurisdiction)

12 JESSE GARRETT, an individual,

13 Plaintiff,

14 v.

15 THE KROGER CO., an Ohio corporation; and  
16 DOES 1 through 100, inclusive,

17 Defendants.

Case No.: BC555670

~~PROPOSED~~ STIPULATED  
CONSENT JUDGMENT

1  
2 Plaintiff Jesse Garrett (“Plaintiff”), and Defendant The Kroger Co. (“Defendant”) hereby  
3 enter into this Stipulated Consent Judgment (“Consent Judgment”) as follows:

4 WHEREAS: On or about June 16, 2014, Plaintiff, through Plaintiff’s counsel, served a 60  
5 Day Notice to Defendant, the California Attorney General, the District Attorneys of every County  
6 in the State of California, and the City Attorneys for every City in the State of California with a  
7 population greater than 750,000 (collectively, “Public Prosecutor(s)”) alleging that Defendant  
8 violated California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”)  
9 and that Plaintiffs intended to file an enforcement action in the public interest; and

10 (A) WHEREAS: Plaintiff alleges that Defendant made, sells and/or distributed Kroger  
11 Brand P\$\$t wheat bread for sale in California (“Covered Products”) that expose  
12 consumers in the State of California to Ethyl carbamate (“urethane”) a chemical listed  
13 by the State of California pursuant to California Health and Safety Code § 25249.8;  
14 and

15 (B) WHEREAS: Plaintiff further alleges that persons in the State of California were  
16 exposed to urethane in Covered Products in excess of any safe harbor and without  
17 being provided the Proposition 65 warning set out at California Health and Safety  
18 Code § 25249.6 *et seq.* and its implementing regulations (“Proposition 65 Warning”);

19 (C) WHEREAS Plaintiff further alleges that almost all of the urethane in the Covered  
20 Products is present as a result of conversion or degradation of Azodicarbonamide, an  
21 ingredient used in some bread, that occurs when the bread is heated or toasted; and

22 (D) WHEREAS: Plaintiff and Defendant wish to resolve their differences without the  
23 delay and expense of litigation.

24 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN  
25 PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

26 **1. INTRODUCTION**

27 1.1. On June 16, 2014, Plaintiff served a 60-Day Notice upon Defendant and on Public  
28 Prosecutors. No Public Prosecutors commenced an enforcement action. No Public

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Prosecutor having commenced an enforcement action, Plaintiff filed its Complaint against Defendant in the present action.

1.2. Defendant employs ten (10) or more persons.

1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation contained in the Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged in the 60-Day Notices, in the present action, or arising therefrom or related thereto, with respect to Covered Products, including any Proposition 65 claim arising out of an exposure to Covered Products (collectively, “Proposition 65 Claims”).

1.4. The Parties enter into this Consent Judgment as a full and final settlement of the Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of resolving the issues raised therein both as to past and future conduct. By execution of this Consent Judgment, the Parties do not admit any fact, conclusion of law, or violation of law, nor shall Defendant’s compliance with the Consent Judgment constitute or be construed as an admission by Defendant of any fact, conclusion of law, or violation of law. Defendant denies the material, factual, and legal allegations in the 60-Day Notices and the Complaint and expressly deny any wrongdoing whatsoever.

**2. DEFINITIONS**

2.1. “Effective Date” shall mean, with respect to this Consent Judgment, ten (10) days from the date on which this Court enters the Consent Judgment.

**3. INJUNCTIVE RELIEF**

3.1. Defendant agrees to either undertake, or cause to be undertaken on its behalf, the measures identified in 3.2 below, compliance with which will constitute compliance by

1  
2 Defendant with the Proposition 65 Warning requirements of California Health and Safety  
3 Code § 25249.6, arising from exposure to Covered Products:

4 3.2. Reformulation Option

5 The Defendant has reformulated the Covered Products by removing the added  
6 ingredient that contained Azodicarbonamide (“ADA”). By removing ADA from the  
7 Covered Products, the Defendant has ensured that any urethane left in the bread, if any  
8 urethane is in fact present, is naturally occurring, as defined under Proposition 65 and its  
9 regulations, and/or is within the allowable limit (i.e. “safe harbor”) set out under  
10 Proposition 65 for urethane and therefore the Covered Products are not in violation of  
11 Proposition 65.

12 **4. MONETARY RELIEF**

13 4.1. Within ten (10) days of the Effective Date, Defendant shall pay to Plaintiff the  
14 total sum of \$10,000, of which \$1,000 shall constitute penalties and \$9,000 shall  
15 constitute reimbursement of Plaintiffs’ reasonable attorneys’ fees and costs. Of the  
16 \$1,000 constituting penalties, 75% shall go to the State of California’s Office of  
17 Environmental Health Hazard Assessment and the remaining 25% shall go to Plaintiff, as  
18 provided by California Health and Safety Code § 25249.12(d).

19 4.2. The payment specified in Section 4.1. shall be made by delivery to Plaintiff’s  
20 counsel by check payable to “Custodio & Dubey LLP, client trust account”, or by wire  
21 transfer to Plaintiff’s counsel per the following wire instructions:

22 Bank: Union Bank

23 Routing Transit No.: 122000496

24 Account No.: 0040621083

25 Beneficiary: Custodio & Dubey LLP

26 **5. CLAIMS COVERED AND RELEASE**

27 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff  
28 acting in the public interest, on the one hand, and on the other hand, Defendant and its  
parent entities, shareholders, members, divisions, subdivisions, subsidiaries, partners,

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related companies, affiliated entities, distributors, wholesalers, and retailers, entities to whom Defendant directly or indirectly distributes or sells the Covered Products, and their respective officers, directors, representatives, shareholders, agents, and employees, and each of their successors and assigns (collectively, "Releasees") of any violation of Proposition 65 that has been or could have been asserted in the public interest against the Releasees arising out of exposure to the Covered Products prior to the Effective Date.

5.2. Plaintiff, acting on his own behalf and in the public interest pursuant to California Health and Safety Code § 25249.7(d), release, waive, and forever discharge any and all claims against the Releasees arising from any violation of Proposition 65 that has been or could have been asserted in the public interest regarding the failure to warn under Proposition 65 arising in connection with exposure to the Covered Products manufactured, distributed, offered for sale, sold, and/or served in the State of California by Releasees prior to the Effective Date.

In further consideration of the promises and agreements herein, Plaintiff, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demand, obligations, damages, costs, fines, penalties, losses, or expenses, including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to exposure to urethane from Covered Products manufactured, distributed, sold and/or offered for sale by Defendant and Releasees prior to the Effective Date.

To the extent that the foregoing release is one to which California Civil Code § 1542 (or similar provisions of law) applies, it is the intention of the Parties that the release shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities, and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected specified herein. In furtherance of this intention, Plaintiffs expressly waive

1  
2 any and all rights and benefits conferred upon them by the provisions of California Civil  
3 Code § 1542 (or similar provisions of law), which reads as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH  
5 THE CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS  
6 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
7 KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS  
8 SETTLEMENT WITH THE DEBTOR.

9 Plaintiff understands and acknowledges that the significance and consequence of  
10 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages  
11 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the  
12 Covered Product, including but not limited to any exposure to, or failure to warn with  
13 respect to exposure to, the Products, Plaintiff will not be able to make any claim for those  
14 damages against Releasees.

15 5.3. Compliance by Defendant with the terms of this Consent Judgment shall constitute  
16 compliance with Proposition 65 with respect to exposure to the Covered Products.

17  
18 **6. PROVISION OF NOTICE**

19 6.1. When any Party is entitled to receive any notice or writing under this Consent  
20 Judgment, the notice or writing shall be sent by (a) first class mail with return receipt  
21 requested, (b) by personal delivery, or by (c) a recognized overnight courier on any Party  
22 as follows:

23 To Defendant:

24 Gregory O'Hara

25 Lauren M. Michals

26 Nixon Peabody LLP

27 2 Palo Alto Square

28 Palo Alto, CA 94306

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To Plaintiff:

Vineet Dubey  
Custodio & Dubey LLP  
448 S. Hill St., Ste 850  
Los Angeles, CA 90013

6.2. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class mail with return receipt requested or by electronic mail.

**7. COURT APPROVAL**

7.1. This Consent Judgment shall become effective on the Effective Date, provided however, that Plaintiff shall prepare and file a Motion for Approval of this Consent Judgment and Defendants shall support approval of such Motion for Approval.

7.2. If this Consent Judgment is not entered by the Court, it shall be of no force or effect and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

**8. GOVERNING LAW AND CONSTRUCTION**

8.1. The terms of this Consent Judgment shall be governed by the laws of the State of California.

**9. ENTIRE AGREEMENT**

9.1. This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

9.2. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto.

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9.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein.

9.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby.

9.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

**10. RETENTION OF JURISDICTION**

10.1. This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

**11. NO EFFECT ON OTHER SETTLEMENTS**

11.1. Nothing in this Consent Judgment shall preclude Plaintiffs from resolving any claim against another entity on terms that are different from those contained in this Consent Judgment.

**12. EXECUTION IN COUNTERPARTS**

12.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

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**13. AUTHORIZATION**

13.1. The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO :**

**AGREED TO:**

**Jesse Garrett**

**The Kroger Co.**

Date: 2-3-16

Date: 2/4/16

By: Jesse Garrett

By: [Signature]

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AGREED TO :

AGREED TO:

Jesse Garrett

The Kroger Co.

Date: 2-3-16

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

By: Jesse Garrett

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

*It is so Ordered,*

Date MAR 28 2016

**GAIL RUDERMAN FEUER**