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**FILED**  
ALAMEDA COUNTY

SEP 28 2022

CLERK OF THE SUPERIOR COURT

By  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL  
HEALTH, a non-profit corporation,

Plaintiff,

v.

GT'S LIVING FOODS, LLC; MILLENNIUM  
PRODUCTS, INC.; ALBERTSON'S LLC; O  
ORGANICS LLC; LUCERNE FOODS INC.;  
SAFEWAY INC.; HUMM KOMBUCHA,  
LLC; INC.; and DOES 1 through 100,  
inclusive,

Defendants.

Case No. RG-19-047748

~~PROPOSED~~ CONSENT JUDGMENT AS  
TO O ORGANICS LLC, ALBERTSONS  
LLC, LUCERNE FOODS, INC. AND  
SAFEWAY INC.

1       **1. INTRODUCTION**

2           1.1       The Parties to this Consent Judgment are the Center for Environmental Health, a  
3 California non-profit corporation (“CEH”), O Organics LLC, Albertsons LLC, Lucerne Foods, Inc.  
4 and Safeway Inc. (together “Settling Defendants”). The Parties enter into this Consent Judgment to  
5 settle certain claims asserted by CEH against Settling Defendants as set forth in the operative  
6 complaint (“Complaint”) in the above-captioned matter. This Consent Judgment covers Kombucha  
7 drinks sold by Settling Defendants as set forth in CEH’s Proposition 65 Notice other than those sold  
8 as alcoholic beverages that have been or will be sold or offered for sale to California consumers  
9 (“Covered Products”).

10           1.2       On September 30, 2019, CEH provided a 60-day Notice of Violation under  
11 Proposition 65 to the California Attorney General, the District Attorneys of every county in  
12 California, the City Attorneys of every California city with a population greater than 750,000 and  
13 Settling Defendants, alleging that, by selling the Covered Products, Settling Defendants violated  
14 Proposition 65 by exposing persons to ethyl alcohol in alcoholic beverages and alcoholic beverages  
15 (collectively, “Alcohol”) without first providing a clear and reasonable Proposition 65 warning.

16           1.3       Settling Defendants are each a corporation or other business entity that  
17 manufactures, distributes, sells or offers for sale Covered Products that are sold or offered for sale  
18 or has done so in the past.

19           1.4       On December 20, 2019, CEH filed the Complaint in the above-captioned matter  
20 naming Settling Defendants as defendants.

21           1.5       For purposes of this Consent Judgment only, CEH and Settling Defendants (the  
22 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in the  
23 Complaint and personal jurisdiction over each of the Settling Defendants as to the acts alleged in  
24 the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to  
25 enter this Consent Judgment as a full and final resolution of all claims which were or could have  
26 been raised in the Complaint based on the facts alleged therein with respect to Covered Products  
27 manufactured, distributed, and/or sold by Settling Defendants.

1           1.6     Nothing in this Consent Judgment is or shall be construed as an admission by the  
2 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the  
3 Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion  
4 of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive  
5 or impair any right, remedy, argument or defense the Parties may have in any other pending or  
6 future legal proceedings. This Consent Judgment is the product of negotiation and compromise and  
7 is accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
8 disputed in this Action. While this Consent Judgment requires reformulation of the Covered  
9 Products, the Parties acknowledge that this is not the exclusive method of complying with  
10 Proposition 65 and its implementing regulations for the Covered Products.

11     **2.     DEFINITIONS**

12           2.1     The “Complaint” means the operative complaint in the above-captioned matter.

13           2.2     “Covered Products” means kombucha drinks manufactured, distributed or sold by  
14 Settling Defendants as set forth in CEH’s Proposition 65 Notice other than kombucha drinks that  
15 are sold as alcoholic beverages.

16           2.3     “Effective Date” means the date on which notice of entry of this Consent Judgment  
17 by the Court is served upon Settling Defendants.

18           2.4     “Expiration Date” means the best-by or sell-by date of a Covered Product.

19           2.5     “Compliance Level” means less than 0.5% Alcohol by volume.

20           2.6     “Type” means flavor. To the extent different flavors of Covered Products contain  
21 identical ingredients, such products will be treated as the same Type for purposes of this Consent  
22 Judgment.

23     **3.     INJUNCTIVE RELIEF**

24           3.1     **Alcohol Content of Covered Products.** As of the Effective Date, Settling  
25 Defendants shall not sell or offer for sale a Covered Product manufactured on or after the Effective  
26 Date to California consumers if that Covered Product contains more than 0.5% Alcohol by volume  
27 as measured at any time between the production date and the expiration date of the Covered Product  
28 according to the results of the testing described in Section 3.2 below.

1           3.2     **Testing.** In order to ensure that the Covered Products meet the Compliance Level,  
2 Settling Defendants shall conduct random testing of Covered Products from its production facility  
3 and take the follow-up actions described in this section (“Validation Testing”).

4           3.2.1     Covered Products To Be Tested. Validation Testing shall be performed  
5 on a quarterly basis for each Type of Covered Product Settling Defendants manufacture or arrange  
6 to be manufactured on or after the Effective Date; such Validation Testing shall be performed on  
7 samples drawn randomly from single production lots of each Type of Covered Product  
8 manufactured during that quarter. Three (3) samples of each Type of Covered Product shall be  
9 tested at the beginning and end of the Covered Product’s shelf-life, extending from a Covered  
10 Product’s manufacturing date to its expiration or “best-by” date (the “Testing Period”).

11           3.2.2     Methods of Testing. Settling Defendants shall conduct Alcohol by  
12 Volume Validation Testing pursuant to one of the following methods: (1) Ethanol Analysis by  
13 Headspace Gas Chromatography with Mass Spectroscopy Detection; or (2) Ethanol Analysis by  
14 Headspace Gas Chromatography with Flame Ionization Detector (AOAC 2016.12). Additionally,  
15 Settling Defendants may use any other methodology for alcohol testing of kombucha products that  
16 is accepted for First Action by the AOAC in the future.

17           3.2.3     Laboratories Conducting Validation Testing. Any Validation Testing  
18 shall be performed by an independent, accredited third party laboratory.

19           3.2.4     Covered Products That Exceed Compliance Level. If the Validation  
20 Testing result indicates that any of the tests for a type of a Covered Product exceeds the Compliance  
21 Level, Settling Defendants shall, within ten days, select another production lot of the same Type  
22 and sample three additional bottles for testing (“Secondary Testing”). Should this Secondary  
23 Testing show an exceedance of a Compliance Level, Settling Defendants shall, within 10 days of  
24 the exceedance: (a) notify CEH as set forth in Section 8; and (b) undertake a root cause analysis of  
25 the formulation, production and storage of that Type of Covered Product to determine the cause of  
26 the exceedance, and shall institute appropriate corrective measures to avoid future exceedances as  
27 measured by the quarterly Validation Testing. Settling Defendants must provide CEH with notice  
28 regarding the corrective measures taken.

1                   3.2.5       Records. The testing reports and results of the Validation Testing and  
2 Secondary Testing performed pursuant to this Consent Judgment shall be retained by Settling  
3 Defendants for four (4) years and made available to CEH upon reasonable request, but no more than  
4 twice per year.

5       **4.       ENFORCEMENT**

6                   4.1       CEH may, by motion or application for an order to show cause before the Superior  
7 Court of the County of Alameda, enforce the terms and conditions contained in this Consent  
8 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3  
9 above, CEH shall provide Settling Defendants with a Notice of Violation setting forth the basis for  
10 the alleged violation. The Parties shall then meet and confer regarding the basis for CEH's  
11 anticipated motion or application in an attempt to resolve it informally. Should such attempts at  
12 meeting and conferring fail, CEH may file its enforcement motion or application. In ruling on any  
13 motion to enforce the terms of this section, the Court may, in addition to ordering compliance with  
14 the terms of this Judgment, employ such remedies as necessary to ensure compliance with  
15 Proposition 65 including, but not limited to, requiring Settling Defendants to provide warnings.  
16 Should CEH prevail on any motion or application to enforce a material violation of this Consent  
17 Judgment under this Section, CEH shall be entitled to its reasonable attorneys' fees and costs  
18 incurred as a result of such motion or application. Should Settling Defendants prevail on any  
19 motion or application under this Section, Settling Defendants may be awarded their reasonable  
20 attorneys' fees and costs as a result of such motion or application upon a finding by the court that  
21 CEH's prosecution of the motion or application was not in good faith.

22       **5.       PAYMENTS**

23                   5.1       **Payments by Settling Defendants.** Within fifteen (15) calendar days of the  
24 Effective Date, Settling Defendants shall jointly pay the total sum of \$70,000 as a settlement  
25 payment as further set forth in this Section.

26                   5.2       **Allocation of Payments.** The total settlement amount for Settling Defendants shall  
27 be paid in (4) four checks in the amounts specified below and delivered as set forth below. Any  
28 failure by Settling Defendants to comply with the payment terms herein shall be subject to a joint

1 and several stipulated late fee to be paid by Settling Defendants in the amount of \$100 for each day  
2 the full payment is not received after the applicable payment due date set forth in Section 5.1. The  
3 late fees required under this Section shall be recoverable, together with reasonable attorneys' fees,  
4 in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The funds  
5 paid by Settling Defendants shall be allocated as set forth below between the following categories  
6 and made payable as follows:

7 5.2.1 \$9,460 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

8 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
9 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health  
10 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment  
11 for \$7,095 shall be made payable to OEHHA and associated with taxpayer identification number  
12 68-0284486. This payment shall be delivered as follows:

13 For United States Postal Service Delivery:

14 Attn: Mike Gyurics

15 Fiscal Operations Branch Chief  
16 Office of Environmental Health Hazard Assessment  
17 P.O. Box 4010, MS #19B  
Sacramento, CA 95812-4010

18 For Non-United States Postal Service Delivery:

19 Attn: Mike Gyurics  
20 Fiscal Operations Branch Chief  
21 Office of Environmental Health Hazard Assessment  
1001 I Street, MS #19B  
Sacramento, CA 95814

22 The CEH portion of the civil penalty payment for \$2,365 shall be made  
23 payable to the Center for Environmental Health and associated with taxpayer identification number  
24 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
25 Francisco, CA 94117.

26 5.2.2 \$7,090 as an Additional Settlement Payment ("ASP") to CEH pursuant  
27 to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH  
28 intends to place these funds in CEH's Toxics in Food Fund, which is used to support CEH programs

1 and activities that seek to educate the public about alcohol and other toxic chemicals in food, to  
 2 work with the food industry and agriculture interests to reduce exposure to alcohol and other toxic  
 3 chemicals in food, and to thereby reduce the public health impacts and risks of exposure to  
 4 acrylamide and other toxic chemicals in food sold in California. CEH shall obtain and maintain  
 5 adequate records to document that ASPs are spent on these activities and CEH agrees to provide  
 6 such documentation to the Attorney General within thirty (30) days of any request from the  
 7 Attorney General. The payment pursuant to this Section shall be made payable to the Center for  
 8 Environmental Health and associated with taxpayer identification number 94-3251981. This  
 9 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
 10 94117.

11 5.2.3 \$53,450 as a reimbursement of a portion of CEH's reasonable attorneys'  
 12 fees and costs. The attorneys' fees and cost reimbursement shall be made in payable to the  
 13 Lexington Law Group and associated with taxpayer identification number 94-3317175. This  
 14 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
 15 94117.

16 5.2.4 To summarize, Settling Defendants shall deliver checks made out to the  
 17 payees and in the amounts set forth below:

19 Payee	Type	Amount	Deliver To
20 OEHHA	Penalty	\$7,095	OEHHA per Section 5.2.1
21 Center For Environmental Health	Penalty	\$2,365	LLG
22 Center For Environmental Health	ASP	\$7,090	LLG
23 Lexington Law Group	Fee and Cost	\$53,450	LLG

24 5.2.5 Notwithstanding the provisions of the Enforcement of Judgments Law  
 25 and Code of Civil Procedure § 780.160, in the event that Settling Defendants do not comply fully  
 26  
 27  
 28

1 with its payment obligations under this Section 5, in addition to any other enforcement mechanism  
2 available to CEH, CEH may seek an order requiring Settling Defendants to submit a debtor's  
3 examination in the Alameda County Superior Court. In the event that Settling Defendants fail to  
4 submit to any such debtor's examination ordered by the Court, CEH may seek an order holding  
5 Settling Defendants in contempt of Court.

6 **6. MODIFICATION AND DISPUTE RESOLUTION**

7 6.1 **Modification.** This Consent Judgment may be modified from time to time by  
8 express written agreement of the Parties, with the approval of the Court, or by an order of this Court  
9 upon motion and in accordance with law. The Parties agree that if Proposition 65 or its  
10 implementing regulations (including but not limited to any "safe harbor" set forth in the regulations,  
11 or any "alternative risk level" adopted by regulation or court decision) are implemented or amended  
12 from their terms as they exist on the date of entry of this Consent Judgment in a manner that  
13 impacts the 0.5% ABV set forth herein, or if OEHHA or a state or federal department or agency,  
14 including but not limited to California's Alcohol Beverage Control ("ABC") or the U.S. Department  
15 of the Treasury's Alcohol, and Tobacco Tax Trade Bureau ("TTB") takes some other regulatory  
16 action pertaining to the Covered Products in a manner that impacts the 0.5% ABV level, or that  
17 determines that warnings are not required on kombucha or similar products then Settling  
18 Defendants may seek to modify or terminate this Consent Judgment. Similarly, if a court of  
19 competent jurisdiction or an agency of the federal government, including, but not limited to, the  
20 U.S. Food and Drug Administration, states through any final decision, guidance, regulation or  
21 legally binding act that federal law has preemptive effect on any of the requirements of this Consent  
22 Judgment, then Settling Defendants may seek to modify or terminate this Consent Judgment. The  
23 Parties recognize that the injunctive relief provisions set forth herein are based on a compromise of  
24 a number of issues, and that potential changes to warning requirements related to Alcohol as  
25 described above would not necessarily entitle a Party to a modification of the terms of this Consent  
26 Judgment.



1           6.2    **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment  
2 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to  
3 modify the Consent Judgment.

4    **7.       CLAIMS COVERED AND RELEASE**

5           7.1    This Consent Judgment is a full, final and binding resolution between CEH on behalf  
6 of itself and the public interest and Settling Defendants and Settling Defendants' parents,  
7 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,  
8 agents, shareholders, successors, assigns, and attorneys ("Defendant Releasees"), and all entities to  
9 which Settling Defendants directly or indirectly distribute or sell Covered Products, including but  
10 not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees  
11 ("Downstream Defendant Releasees"), of any violation of Proposition 65 based on failure to warn  
12 about alleged exposure to Alcohol contained in Covered Products that were sold, distributed or  
13 offered for sale by Settling Defendants prior to the Effective Date.

14          7.2    CEH, for itself, its agents, successors and assigns, releases, waives, and forever  
15 discharges any and all claims against Settling Defendants, Defendant Releasees, and Downstream  
16 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common  
17 law claims that have been or could have been asserted by CEH individually or in the public interest  
18 regarding the failure to warn about exposure to Alcohol arising in connection with Covered  
19 Products manufactured by or for Settling Defendants prior to the Effective Date .

20          7.3    Compliance with the terms of this Consent Judgment by Settling Defendants shall  
21 constitute compliance with Proposition 65 by Settling Defendants, their Defendant Releasees and  
22 their Downstream Defendant Releasees with respect to any alleged failure to warn about Alcohol in  
23 Covered Products manufactured, distributed or sold by Settling Defendants after the Effective Date  
24 for as long as Settling Defendants continue testing in accordance with Section 3.2.

25    **8.       PROVISION OF NOTICE**

26          8.1    When CEH is entitled to receive any notice under this Consent Judgment, the notice  
27 shall be sent by first class and electronic mail to:  
28

1 Mark N. Todzo  
2 Lexington Law Group  
3 503 Divisadero Street  
4 San Francisco, CA 94117  
5 mtodzo@lexlawgroup.com

6 8.2 When Settling Defendants are entitled to receive any notice under this Consent  
7 Judgment, the notice shall be sent by first class and electronic mail to:

8 Stephen L. Raucher  
9 Reuben Raucher & Blum  
10 12400 Wilshire Boulevard, Ste. 800  
11 Los Angeles, CA 90071  
12 sraucher@rrbattorneys.com

13 8.3 Any Party may modify the person and address to whom the notice is to be sent by  
14 sending the other Party notice by first class and electronic mail.

15 **9. COURT APPROVAL**

16 9.1 This Consent Judgment shall become effective as a contract upon the date signed by  
17 CEH and Settling Defendants, whichever is later, provided however, that CEH shall also prepare  
18 and file a Motion for Approval of this Consent Judgment and Settling Defendants shall support  
19 approval of such Motion.

20 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
21 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

22 **10. GOVERNING LAW AND CONSTRUCTION**

23 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California.

25 **11. ATTORNEYS' FEES**

26 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
27 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs.

28 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of sanctions  
pursuant to law.

**12. ENTIRE AGREEMENT**

12.1 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,

1 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and  
2 therein. There are no warranties, representations, or other agreements between the Parties except as  
3 expressly set forth herein. No representations, oral or otherwise, express or implied, other than  
4 those specifically referred to in this Consent Judgment have been made by any Party hereto. No  
5 other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed  
6 to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced  
7 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the  
8 extent that they are expressly incorporated herein. No supplementation, modification, waiver, or  
9 termination of this Consent Judgment shall be binding unless executed in writing by the Party to be  
10 bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
11 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such  
12 waiver constitute a continuing waiver.

### 13 **13. SUBMISSION OF REPORTS AND DATA TO CEH**

14 13.1 For any report or information that Settling Defendants submit to CEH pursuant to  
15 this Consent Judgment, Settling Defendants may make such a submission subject to the terms of the  
16 protective order previously entered in this action and the protective order's terms shall apply to the  
17 report or information as if it were still in effect.

### 18 **14. RETENTION OF JURISDICTION**

19 14.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
20 Judgment.

### 21 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

22 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
23 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute  
24 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

### 25 **16. NO EFFECT ON OTHER SETTLEMENTS**

26 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
27 against an entity that is not a Settling Defendants on terms that are different than those contained in  
28 this Consent Judgment.

1 **17. EXECUTION IN COUNTERPARTS**

2 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
3 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
4 constitute one document.

5  
6 **IT IS SO ORDERED, ADJUDGED, AND  
7 DECREED:**

8  
9 Dated: 9-20, 2022

10   
11 \_\_\_\_\_  
12 Judge of the Superior Court of the State of California

13  
14  
15 **IT IS SO STIPULATED:**

16  
17 Dated: May 31, 2022

18 **CENTER FOR ENVIRONMENTAL HEALTH**

19  
20   
21 \_\_\_\_\_  
22 Michael Green  
23 Chief Executive Officer

Dated: May 19th, 2022

**O ORGANICS LLC**

DocuSigned by:  
*Adwoa Charley-Tagee Seymour*  
FAD74A2FC8E4AC1

Signature

Adwoa Seymour

Printed Name

VP, Litigation

Title

Dated: May 19th, 2022

**ALBERTSONS LLC**

DocuSigned by:  
*Adwoa Charley-Tagee Seymour*  
FAD74A2FC8E4AC1

Signature

Adwoa Seymour

Printed Name

VP, Litigation

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Dated: May 19th, 2022

**LUCERNE FOODS, INC.**

DocuSigned by:  
*Adwoa Charley-Tagee Seymour*  
FAD74A2FC8EA4C1  
\_\_\_\_\_  
Signature

Adwoa Seymour  
Printed Name

VP, Litigation  
Title

Dated: May 19th, 2022

**SAFEWAY INC.**

DocuSigned by:  
*Adwoa Charley-Tagee Seymour*  
FAD74A2FC8EA4C1  
\_\_\_\_\_  
Signature

Adwoa Seymour  
Printed Name

VP, Litigation  
Title