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FILED
ALAMEDA COUNTY

OCT 13 2021

CLERK OF THE SUPERIOR COURT

By  Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,

Plaintiff,

v.

TOTAL SWEETENERS, INC., et al.,

Defendants.

Case No. RG 19-001951

~~PROPOSED~~ AMENDED CONSENT
JUDGMENT AS TO IMPERIAL
SUGAR COMPANY

1 **1. INTRODUCTION**

2 1.1 The Parties to this Amended Consent Judgment (the "Consent Judgment") are the
3 Center For Environmental Health ("CEH"), a California non-profit corporation, and Imperial
4 Sugar Company ("Settling Defendant"). CEH and Settling Defendant (the "Parties") enter into
5 this Consent Judgment to settle certain claims asserted by CEH against Settling Defendant as set
6 forth in the operative complaint ("Complaint") in the above-captioned matter. This Consent
7 Judgment covers molasses, including ingredients made with molasses such as cane syrup, that is
8 sold or distributed by Settling Defendant and subsequently packaged by third parties and sold to
9 California consumers as molasses.

10 1.2 On July 2, 2019, CEH provided a 60-day Notice of Violation of Proposition 65 to
11 the California Attorney General, the District Attorneys of every county in California, the City
12 Attorneys of every California city with a population greater than 750,000 and to Settling
13 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to lead
14 and lead compounds ("Lead") contained in molasses without first providing a clear and
15 reasonable Proposition 65 warning.

16 1.3 On July 27, 2021, CEH provided a 60-day Notice of Violation of Proposition 65 to
17 the California Attorney General, the District Attorneys of every county in California, the City
18 Attorneys of every California city with a population greater than 750,000 and to Settling
19 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to
20 acrylamide contained in molasses without first providing a clear and reasonable Proposition 65
21 warning.

22 1.4 Settling Defendant is a corporation that manufactures, distributes, sells or offers
23 for sale Covered Products that are sold to third parties that subsequently sold the Covered
24 Products in the State of California or has done so in the past. Settling Defendant sells bulk
25 molasses, including ingredients made with molasses such as cane syrup, to other businesses, not
26 consumers.

1 1.5 On January 9, 2019, CEH filed the Complaint in the above-captioned matter. On
2 November 20, 2019, CEH amended the Complaint to add Settling Defendant as a Doe defendant
3 in the action. Upon entry of this Consent Judgment, the Complaint shall be deemed amended
4 *nunc pro tunc* to assert additional claims under Proposition 65 for alleged exposures to
5 acrylamide as to Covered Products sold by Settling Defendant.

6 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court
7 has jurisdiction over the allegations of violations contained in the Complaint and personal
8 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in
9 the County of Alameda and that this Court has jurisdiction to enter and enforce this Consent
10 Judgment as a full and final resolution of all claims which were or could have been raised in the
11 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
12 distributed or sold by Settling Defendant.

13 1.7 Nothing in this Consent Judgment is or shall be construed as an admission by the
14 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
15 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
16 conclusion of law, issue of law or violation of law. Nothing in this Consent Judgment shall
17 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
18 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
19 and compromise and is accepted by the Parties solely for purposes of settling, compromising and
20 resolving issues disputed in this Action.

21 **2. DEFINITIONS**

22 2.1 “Covered Products” means molasses, including ingredients made with molasses
23 such as cane syrup, that is sold or distributed by Settling Defendant and subsequently packaged
24 by third parties and sold to California consumers as molasses.

25 2.2 The “Effective Date” is the date CEH serves the Notice of Entry of this Consent
26 Judgment.

1 2.3 The "Lead Level" shall mean a concentration level of no more than 35 parts per
2 billion ("ppb") Lead by weight.

3 2.4 The "Acrylamide Level" shall mean a concentration level of no more than 325
4 parts per billion (" ppb") acrylamide by weight.

5 **3. INJUNCTIVE RELIEF**

6 3.1 **Clear and Reasonable Warnings for Covered Products.** As of the Effective
7 Date, Settling Defendant shall not sell or offer for sale any Covered Product that:

- 8 • contains acrylamide in a concentration exceeding the Acrylamide Level; or
9 • contains lead in a concentration exceeding the Lead Level,

10 unless Settling Defendant provides a clear and reasonable warning as further specified in this
11 Section 3.

12 3.2 **Warning Language.** The warning required by Section 3.1 for Covered Products
13 shall state the following:

14 3.2.1 For Covered Products that contain acrylamide in a concentration
15 exceeding the Acrylamide Level:

16 **WARNING:**

17 Consuming this product can expose you to chemicals including acrylamide, which is
18 known to the State of California to cause cancer. For more information go to
19 www.P65Warnings.ca.gov/food.

20 3.2.2 For Covered Products that contain Lead in a concentration exceeding the
21 Lead Level:

22 **WARNING:**

23 Consuming this product can expose you to chemicals including lead, which is known to
24 the State of California to cause birth defects or other reproductive harm. For more
25 information go to www.P65Warnings.ca.gov/food.

26 3.2.3 For Covered Products that contain both acrylamide in a concentration
27 exceeding the Acrylamide Level and Lead in a concentration exceeding the Lead Level:

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WARNING:

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

The word “**WARNING**” must be in all capital letters and bold print.

3.3 Placement of Warning Language. The warning language set forth in Section 3.2 shall appear on the order acknowledgment in the form attached hereto as Exhibit A (Acknowledgment) that Settling Defendant sends to a customer after it receives a purchase order but prior to shipment of any Covered Product. The warning language shall be in the substantially same size font or larger as the product description on the Acknowledgment. The Acknowledgment may be sent via email or other electronic means provided that it is sent to the usual or designated contact for the customer ordering the Covered Product.

3.4 Internet Sales. Settling Defendant does not currently sell Covered Products through its website. If Settling Defendant in the future sells Covered Products over the internet, the warning language set forth in Section 3.2 must be prominently displayed in such a manner that it is likely to be read and understood as being applicable to the Covered Product being sold prior to the authorization of or actual payment by the purchaser. For purposes of this Section 3.4, the warning language is not prominently displayed if the customer must search for the warning language in the general content of Settling Defendant’s website or if a reasonable consumer cannot determine the specific Covered Product to which the warning applies. If the product display page contains other warnings or nutritional information in a language other than English, the warning language set forth in Section 3.2 must also be displayed on the website in that language in addition to English.

4. ENFORCEMENT

4.1 Enforcement Procedures. This Court shall have exclusive jurisdiction over all matters regarding enforcement of the Consent Judgment. Prior to bringing any motion or order to show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall

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1 provide the violating party thirty (30) days advanced written notice of the alleged violation. The
2 Parties shall meet and confer during such thirty (30) day period in an effort to try to reach
3 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the
4 Party seeking to enforce may, by motion or order to show cause before the Superior Court of
5 Alameda, seek to enforce Proposition 65 or the terms and conditions contained in this Consent
6 Judgment.

7 **5. PAYMENTS**

8 5.1 **Payments by Settling Defendant.** Settling Defendant shall pay the total sum of
9 \$120,000 as a settlement payment as further set forth in this Section within ten (10) business days
10 of the Effective Date.

11 5.2 **Allocation of Payments.** The total settlement amount for Settling Defendant shall
12 be paid in four (4) separate checks in the amounts specified below and delivered as set forth
13 below. Any failure by Settling Defendant to comply with the payment terms herein shall be
14 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each
15 day the full payment is not received after the applicable payment due date set forth in Section 5.1.
16 The late fees required under this Section shall be recoverable, together with reasonable attorneys'
17 fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The
18 funds paid by Settling Defendant shall be allocated as set forth below between the following
19 categories and made payable as follows:

20 5.2.1 \$20,360 as a civil penalty pursuant to Health & Safety Code §25249.7(b).
21 The civil penalty payment shall be apportioned in accordance with Health & Safety Code
22 §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
23 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
24 payment for \$15,270 shall be made payable to OEHHA and associated with taxpayer
25 identification number 68-0284486. This payment shall be delivered as follows:

26 For United States Postal Service Delivery:
27 Attn: Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

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1 P.O. Box 4010, MS #19B
2 Sacramento, CA 95812-4010

3 For Non-United States Postal Service Delivery:
4 Attn: Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 1001 I Street, MS #19B
8 Sacramento, CA 95814

9 The CEH portion of the civil penalty payment for \$5,090 shall be made payable to the Center for
10 Environmental Health and associated with taxpayer identification number 94-3251981. This
11 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
12 94117.

13 5.2.2 \$15,265 as an Additional Settlement Payment ("ASP") to CEH pursuant to
14 Health & Safety Code §25249.7(b), and California Code of Regulations, Title 11, §3204. CEH
15 intends to place these funds in CEH's Toxics in Food Fund and use these funds to support CEH
16 programs and activities that seek to educate the public about toxic chemicals in food, to work
17 with the food industry and agriculture interests to reduce exposure to toxic chemicals in food and
18 to thereby reduce the public health impacts and risks of exposure to acrylamide, Lead and other
19 toxic chemicals in food sold in California. CEH shall obtain and maintain adequate records to
20 document that ASPs are spent on these activities and CEH agrees to provide such documentation
21 to the Attorney General within thirty (30) days of any request from the Attorney General. The
22 payment pursuant to this Section shall be made payable to the Center for Environmental Health
23 and associated with taxpayer identification number 94-3251981. This payment shall be delivered
24 to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

25 5.2.3 Settling Defendant shall pay \$84,375 as a reimbursement of a portion of
26 CEH's reasonable attorneys' fees and costs (including but not limited to expert and investigative
27 costs). The attorneys' fees and cost reimbursement shall be made by check payable to the
28 Lexington Law Group and associated with taxpayer identification number 94-3317175. This
29 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
30 94117.

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1 5.2.4 To summarize, Settling Defendant shall deliver four checks made out to
2 the payees in the amounts set forth below:

3

| 4 Payee | Type | Amount | Deliver To |
|---------------------------------------|--------------|---------------|-------------------------|
| 5 OEHHA | Penalty | \$15,270 | OEHHA per Section 5.2.1 |
| 6 Center For Environmental Health | Penalty | \$5,090 | LLG |
| 7 Center For Environmental Health | ASP | \$15,265 | LLG |
| 8 Lexington Law Group | Fee and Cost | \$84,375 | LLG |

9

10 **6. MODIFICATION AND DISPUTE RESOLUTION**

11 6.1 **Modification.** This Consent Judgment may be modified from time to time by
12 express written agreement of the Parties, with the approval of the Court, or by an order of this
13 Court upon motion and in accordance with law.

14 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
15 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
16 modify the Consent Judgment.

17 6.3 **Change in Proposition 65.** If Proposition 65 or its implementing regulations are
18 changed from their terms as they exist on the date of entry of this Consent Judgment, by any
19 means including a final court decision, in a manner that impacts the Acrylamide Level and/or
20 Lead Level, or if OEHHA takes some other final regulatory action for products similar to the
21 Covered Products that impacts whether a warning is required for the Covered Products, then CEH
22 or Settling Defendant may seek to modify this Consent Judgment to be consistent with any such
23 change.

24 **7. CLAIMS COVERED AND RELEASE**

25 7.1 Provided that Settling Defendant complies in full with its obligations under
26 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
27 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
28

1 that are under common ownership, directors, officers, employees, agents, shareholders,
2 successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which Settling
3 Defendant distributes or sells or has distributed or sold Covered Products, such as distributors,
4 wholesalers, customers, retailers, franchisees, brokers, licensors and licensees ("Downstream
5 Defendant Releasees"), of any violation of Proposition 65 based on failure to warn about alleged
6 exposure to Lead or acrylamide contained in Covered Products that were sold by Settling
7 Defendant prior to the Effective Date.

8 7.2 Provided that Settling Defendant complies in full with its obligations under
9 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
10 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream
11 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
12 common law claims that have been or could have been asserted by CEH individually or in the
13 public interest regarding the failure to warn about exposure to Lead or acrylamide contained in
14 Covered Products sold or distributed by Settling Defendant prior to the Effective Date.

15 7.3 Provided that Settling Defendant complies in full with its obligations under
16 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall
17 constitute compliance with Proposition 65 by Settling Defendant with respect to any alleged
18 failure to warn about Lead or acrylamide in Covered Products sold or distributed by Settling
19 Defendant after the Effective Date.

20 **8. PROVISION OF NOTICE**

21 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
22 notice shall be sent by first class and electronic mail to:

23 Eric S. Somers
24 Lexington Law Group
25 503 Divisadero Street
26 San Francisco, CA 94117
27 esomers@lexlawgroup.com

28 8.2 When Settling Defendant is entitled to receive any notice under this Consent

1 Judgment, the notice shall be sent by first class and electronic mail to:

2 Peg Carew Toledo
3 Arnold & Porter
4 Three Embarcadero Center, 10th Floor
5 San Francisco, CA 94111-4024
6 peg.toledo@arnoldporter.com

7 Any Party may modify the person and/or address to whom the notice is to be sent
8 by sending the other Party notice by first class and electronic mail.

9 **9. COURT APPROVAL**

10 9.1 CEH shall prepare and file a Motion for Approval of this Consent Judgment and
11 Settling Defendant shall support approval of such Motion. This Section 9.1 shall become
12 effective upon the date signed by CEH and Settling Defendant, whichever is later.

13 9.2 If this Consent Judgment is not entered by the Court, it shall be of no further force
14 or effect and shall not be introduced into evidence or otherwise used in any proceeding for any
15 purpose.

16 **10. GOVERNING LAW AND CONSTRUCTION**

17 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California.

19 **11. ATTORNEYS' FEES**

20 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
21 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
22 unless the unsuccessful Party has acted with substantial justification. For purposes of this
23 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
24 Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, *et seq.*

25 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement
26 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
27 Civil Procedure §1021.5 against a Party that acted with substantial justification.

28 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of
sanctions pursuant to law.

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1 **12. ENTIRE AGREEMENT**

2 12.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments or understandings related thereto, if any, are hereby merged herein
5 and therein. There are no warranties, representations or other agreements between the Parties
6 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
7 other than those specifically referred to in this Consent Judgment have been made by any Party
8 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
9 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
10 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
11 Parties hereto only to the extent that they are expressly incorporated herein. No waiver of any of
12 the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
13 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
14 waiver unless executed in writing by the party to be bound thereby.

15 **13. SUCCESSORS AND ASSIGNS**

16 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
17 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
18 assigns of any of them.

19 **14. RETENTION OF JURISDICTION**

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

22 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

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

26 **16. NO EFFECT ON OTHER SETTLEMENTS**

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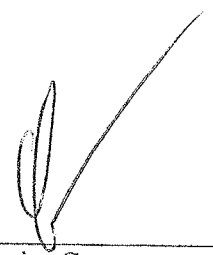
against an entity that is not Settling Defendant on terms that are different than those contained in this Consent Judgment.

17. EXECUTION IN COUNTERPARTS

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

**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: 10/05/21



Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: August 18 , 2021

**CENTER FOR ENVIRONMENTAL
HEALTH**



Signature

Michael Green

Printed Name

CEO

Title

Dated: _____, 2021

IMPERIAL SUGAR COMPANY

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: _____, 2021

**CENTER FOR ENVIRONMENTAL
HEALTH**

Signature

Printed Name

Title

Dated: 8/23, 2021

IMPERIAL SUGAR COMPANY



Signature

MICHAEL GORRELL
Printed Name

PRESIDENT + CEO
Title

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EXHIBIT A

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EXHIBIT A

Sales Order Acknowledgment

Order Number: IMP1816489 Date: 05/11/2021 Pay Terms: R210 Page: 1
 Purchase Order Number: 10186571
 BYA:

Sold To:

Ship From:
 Savannah Sugar Ref - HWT
 Imperial - Savannah LF
 3 Grange Road
 Port Wentworth, GA 31507

| Line-Code | Product Number Description | Requested Ship Projected Ship/Scheduled Arrival | UOM | Quantity | Net Price | Extended Net |
|-----------|------------------------------------|--|-----|----------|------------|--------------|
| 1-1 | 129476W 3000# SYR SWEET REF (W) | 07/01/2021 07/01/2021 / 07/01/2021 | EA | 14.00 | 1,105.8000 | 15,477.00 |

California Proposition 65 Warning Statement

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

Ship To:

Freight Terms: FOB ORIGINATOR
 Carrier:
 Contract No.:
 Drop shipment: N

Order Adjustment 0.00

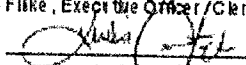
| | | | | | |
|-------|-----------|-------|------|-------------|-----------|
| Foods | 15,477.00 | Taxes | 0.00 | Grand Total | 15,477.00 |
|-------|-----------|-------|------|-------------|-----------|

Fulfillment and shipment of this order is not guaranteed. At any time, orders are subject to being placed on hold due to a) product availability, b) current transportation constraints in the marketplace, c) credit approval, d) non-payment of outstanding invoices and/or e) any other events beyond our control.

** Please contact your customer service representative immediately if there are any discrepancies. **

** including pricing, for proper handling before order is processed for shipment and billing. **

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| | |
|---|---|
| SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA | Reserved for Clerk's File Stamp |
| COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612 | FILED Superior Court of California County of Alameda 10/18/2021 Clad Finke, Executive Officer / Clerk of the Court By:  Deputy J. Castaneda |
| PLAINTIFF/PETITIONER: Center For Environmental Health | |
| DEFENDANT/RESPONDENT: Total Sweetners, Inc. et al | |
| CERTIFICATE OF MAILING | CASE NUMBER: RG19001951 |

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Judgment upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Oakland, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Eileen Ridley
Foley & Lardner LLP
555 California Street
Suite 1700
San Francisco, CA 94104-

Eric S. Somers
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117-

Gary Roberts
SONNENSCHNEN NATH & ROSENTHAL LLP
601 South Figueroa Street
Suite 2500
Los Angeles, CA 90017-5704

Gregory P O'Hara
Nixon Peabody LLP
One Embarcadero Center
32nd Floor
San Francisco, CA 94111-

J Noah Hagey
Braunhagey & Borden LLP
351 California Street
10th Floor
San Francisco, CA 94104-

Jack C. Henning
Dillingham & Murphy, LLP
601 California Street
Suite 1900
San Francisco, CA 94108-

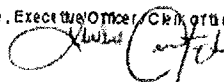
Jeffrey B. Margulies
NORTON ROSE FULBRIGHT US LLP
555 South Flower St., 41st Fl.
Los Angeles, CA 90071-

Chad Finke, Executive Officer / Clerk of the Court

Dated: 10/19/2021

By:

Clad Finke, Executive Officer / Clerk of the Court



J. Castaneda, Deputy Clerk

CERTIFICATE OF MAILING

SHORT TITLE: Center For Environmental Health VS Total
Sweetners, Inc.

CASE NUMBER: RG19001951

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1111 Broadway, Suite 1700
Oakland, CA 94607-

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Los Angeles, CA 90017-

Margaret Carew Toledo
Arnold & Porter Kaye Scholer LLP
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