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

CENTER FOR ENVIRONMENTAL HEALTH,)

Plaintiff,)

v.)

SEE'S CANDY SHOPS, INC., et al.,)

Defendants.)

Case No. RG-16-819342

**[PROPOSED] CONSENT
JUDGMENT AS TO SEE'S CANDY
SHOPS, 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”), and See’s Candy Shops, Inc. (“See’s Candy”). The
4 Parties enter into this Consent Judgment to settle certain claims asserted by CEH against See’s
5 Candy as set forth in the operative complaint (“Complaint”) in the above-captioned matter. This
6 Consent Judgment covers lollypop candies sold by See’s Candy that have been or will be sold or
7 offered for sale to California consumers, including but not limited to Little Pops hard candy treats
8 and similar candies that do not have lollypop sticks and Lollypops (“Covered Products”).

9 1.2. On February 18, 2016, CEH provided a 60-day Notice of Violation under
10 Proposition 65 to See’s Candy, the California Attorney General, the District Attorneys of every
11 county in California and the City Attorneys of every California city with a population greater than
12 750,000, alleging that See’s Candy violated Proposition 65 by exposing persons to lead and lead
13 compounds (“Lead”) contained in Covered Products without first providing a clear and
14 reasonable Proposition 65 warning.

15 1.3. See’s Candy is a corporation or other business entity that manufactures,
16 distributes, sells or offers for sale Covered Products or has done so in the past.

17 1.4. On June 13, 2016, CEH filed the Complaint in the above-captioned matter, which
18 names See’s Candy as a defendant.

19 1.5. For purposes of this Consent Judgment only, CEH and See’s Candy (the “Parties”)
20 stipulate that this Court has jurisdiction over the allegations of violations contained in the
21 Complaint and personal jurisdiction over See’s Candy as to the acts alleged in the Complaint, that
22 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and
23 enforce this Consent Judgment as a full and final resolution of all claims which were or could
24 have been raised in the Complaint based on the facts alleged therein with respect to Covered
25 Products manufactured, distributed, sold or offered for sale by See’s Candy.

26 1.6. Nothing in this Consent Judgment is or shall be construed as an admission by the
27 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
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1 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
2 conclusion of law, issue of law or violation of law. Nothing in this Consent Judgment shall
3 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
4 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
5 and compromise and is accepted by the Parties solely for purposes of settling, compromising and
6 resolving issues disputed in this Action.

7 1.7. The "Effective Date" of this Consent Judgment shall be the date it is entered by the
8 Court.

9 **2. INJUNCTIVE RELIEF**

10 2.1. **Reformulation of Covered Products.** After the Effective Date, See's Candy shall
11 not purchase, manufacture, or otherwise produce any Covered Product that will be offered for
12 sale to California consumers that contains more than forty (40) parts per billion ("ppb") Lead by
13 weight (the "Reformulation Level"), such concentration to be determined by use of a test
14 performed by an accredited laboratory using equipment with a level of detection of at least ten
15 (10) ppb such as inductively coupled plasma mass spectrometry (ICP-MS) (the "Test Protocol").
16 In addition, after June 1, 2017, See's Candy shall not ship, sell or offer for sale any Covered
17 Product that will be offered for sale to California consumers that exceeds the Reformulation
18 Level, such concentration to be determined by the Test Protocol.

19 **3. ENFORCEMENT**

20 3.1. **General Enforcement Provisions.** CEH or See's Candy may, by motion or
21 application for an order to show cause before this Court, enforce the terms and conditions
22 contained in this Consent Judgment. Any action to enforce alleged violations of Section 2.1 by
23 See's Candy shall be brought exclusively pursuant to this Section 3.

24 3.2. **Enforcement of Reformulation Commitment.**

25 3.2.1. Notice of Violation. In the event that CEH identifies a Covered Product
26 manufactured, distributed, or sold by See's Candy for which CEH has laboratory test results
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1 showing that See's Candy violated Section 2.1, CEH may issue a Notice of Violation pursuant to
2 this Section.

3 3.2.2. Service of Notice of Violation and Supporting Documentation.

4 3.2.2.1. Subject to Section 3.2.1, the Notice of Violation shall be
5 sent to the person(s) identified in Section 7.2 to receive notices for See's Candy, and must be
6 served within sixty (60) days of the later of either the date the Covered Products at issue were
7 purchased or otherwise acquired by CEH or the date that CEH learns that the Covered Products
8 were manufactured or sold by See's Candy, provided that CEH may have up to an additional
9 forty-five (45) days to provide See's Candy with the test data required by Section 3.2.2.2 below if
10 it has not yet obtained such test data from its laboratory.

11 3.2.2.2. The Notice of Violation shall, at a minimum, set forth:
12 (a) the date the alleged violation was observed; (b) the location at which the Covered Products
13 were offered for sale; (c) a description of the Covered Products giving rise to the alleged
14 violation; and (d) all test data obtained by CEH regarding the Covered Products and supporting
15 documentation sufficient for validation of the test results, including any laboratory reports,
16 quality assurance reports and quality control reports associated with testing of the Covered
17 Products. Such Notice of Violation shall be based upon the Test Protocol. Wipe, swipe, swab
18 and X-ray fluorescence testing are not sufficient to support a Notice of Violation. As an
19 alternative, CEH may rely on testing conducted and published by the California Department of
20 Public Health ("CDPH") to support a Notice of Violation, so long as CEH first obtains a full
21 description of the Covered Product tested from CDPH and CEH makes a good faith attempt to
22 obtain information from CDPH that would identify the product lot, such as a "best by" or "sell
23 by" date, as well as the location at which the Covered Product was offered for sale, and the date
24 the product was obtained by CDPH. CEH shall share any such information with See's Candy.
25 Should CEH be unable to obtain any such information, See's Candy shall contact CDPH and
26 request such information and shall share such information with CEH upon receipt from CDPH.

1 3.2.3. Levels over 40 but no more than 45 parts per billion. If the level of lead
2 alleged in the Notice of Violation is over 40 ppb but no more than 45 ppb, See's Candy shall refer
3 the matter to an internal food quality officer to investigate the incident and prepare a report that
4 shall be provided to CEH within 60 days of receipt of the Notice of Violation explaining the
5 reason for the exceedance and detailing steps See's Candy has taken to ensure that the exceedance
6 does not reoccur in the future. No additional monetary payment shall be due for a Notice of
7 Violation alleging a lead level of no more than 45 ppb.

8 3.2.4. Levels in excess of 45 parts per billion. If the level of lead alleged in the
9 Notice of Violation is over 45 ppb, CEH and See's Candy shall meet and confer to attempt to
10 resolve their dispute and remedy the violations during the thirty day period after service of the
11 Notice of Violation. If no informal resolution of a Notice of Violation results during such time,
12 CEH may file an enforcement motion or application pursuant to Section 3.1. In any such
13 proceeding, CEH may seek whatever fines, costs, penalties, attorneys' fees or other remedies are
14 provided by law for failure to comply with the Consent Judgment.

15 3.2.5. Repeat Violations. If See's Candy has received four or more Notices of
16 Violation alleging violations related to lead levels of 45 ppb or less, CEH may treat future
17 violations alleging lead levels of 45 ppb or less under section 3.2.4.

18 **4. PAYMENTS**

19 4.1. **Payments by See's Candy.** Within five (5) days of the entry of this Consent
20 Judgment, See's Candy shall pay the total sum of \$150,000 as a settlement payment, as further set
21 forth in this Section 4.

22 4.2. **Allocation of Payments.** The total settlement amount for See's Candy shall be
23 paid in four (4) separate checks and delivered as set forth below. The funds paid by See's Candy
24 shall be allocated as set forth below between the following categories and made payable as
25 follows:

26 4.2.1. \$24,316 as a civil penalty pursuant to Health & Safety Code §
27 25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety

1 Code § 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
2 Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty
3 payment for \$18,237 shall be made payable to OEHHA and associated with taxpayer
4 identification number 68-0284486. This payment shall be delivered as follows:

5 For United States Postal Service Delivery:
6 Attn: Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 P.O. Box 4010, MS #19B
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:
12 Attn: Mike Gyurics
13 Fiscal Operations Branch Chief
14 Office of Environmental Health Hazard Assessment
15 1001 I Street, MS #19B
16 Sacramento, CA 95814

17 The CEH portion of the civil penalty payment for \$6,079 shall be made payable
18 to the Center for Environmental Health and associated with taxpayer identification number 94-
19 3251981. This payment shall be delivered to the Lexington Law Group, 503 Divisadero Street,
20 San Francisco, CA 94117.

21 4.2.2. \$18,231 as an Additional Settlement Payment (“ASP”) to CEH
22 pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, §
23 3204. CEH intends to restrict use of the ASP received from the Consent Judgment before the
24 Court to the following purpose: the funds will be placed in CEH’s Toxics in Food Fund and used
25 to support CEH programs and activities that seek to educate the public about lead and other toxic
26 chemicals in food, work with the food industry and agriculture interests to reduce exposure to
27 lead and other toxic chemicals in food, and thereby reduce the public health impacts and risks of
28 exposure to lead and other toxic chemicals in food sold in California. CEH shall obtain and
maintain adequate records to document that ASPs are spent on these activities and CEH agrees to
provide such documentation to the Attorney General within thirty days of any request from the
Attorney General. The payment pursuant to this Section shall be made payable to the Center for
Environmental Health and associated with taxpayer identification number 94-3251981. This

1 payment shall be delivered to the Lexington Law Group, 503 Divisadero Street, San Francisco,
2 CA 94117.

3 4.2.3. \$107,453 as a reimbursement of a portion of CEH’s reasonable
4 attorneys’ fees and costs. This amount shall be divided into two checks: (1) a check in the
5 amount of \$96,918 shall be made payable to the Lexington Law Group and associated with
6 taxpayer identification number 94-3317175; and (2) a check in the amount of \$10,535 shall be
7 made payable to the Center for Environmental Health and associated with taxpayer identification
8 number 94-3251981. These payments shall be delivered to the Lexington Law Group, 503
9 Divisadero Street, San Francisco, CA 94117.

10 **5. MODIFICATION OF CONSENT JUDGMENT**

11 5.1. **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 5.2. **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. CLAIMS COVERED AND RELEASE**

18 6.1. This Consent Judgment is a full, final and binding resolution between CEH on
19 behalf of itself and the public interest and See’s Candy and See’s Candy’s parents, subsidiaries,
20 affiliated entities that are under common ownership, directors, officers, employees, agents,
21 shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which
22 See’s Candy directly or indirectly distributes or sells Covered Products, including but not limited
23 to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees
24 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
25 about alleged exposure to Lead contained in Covered Products that were sold, distributed or
26 offered for sale by See’s Candy prior to the Effective Date.

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1 6.2. CEH, for itself, its agents, successors and assigns, releases, waives, and forever
2 discharges any and all claims against See's Candy, Defendant Releasees, and Downstream
3 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
4 common law claims that have been or could have been asserted by CEH individually or in the
5 public interest regarding the failure to warn about exposure to Lead arising in connection with
6 Covered Products manufactured by See's Candy prior to the Effective Date.

7 6.3. Compliance with the terms of this Consent Judgment by See's Candy shall
8 constitute compliance with Proposition 65 by See's Candy, its Defendant Releasees and its
9 Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in
10 Covered Products manufactured, distributed or sold by See's Candy after the Effective Date.

11 **7. PROVISION OF NOTICE**

12 7.1. When CEH is entitled to receive any notice under this Consent Judgment, the
13 notice shall be sent by first class and electronic mail to:

14 Eric S. Somers
15 Lexington Law Group
16 503 Divisadero Street
17 San Francisco, CA 94117
18 esomers@lexlawgroup.com

19 7.2. When See's Candy is entitled to receive any notice under this Consent Judgment,
20 the notice shall be sent by first class and electronic mail to:

21 Meredith A. Jones-McKeown
22 Sheppard Mullin Richter & Hampton LLP
23 Four Embarcadero Center, 17th Floor
24 San Francisco, CA 94111
25 mjonesmckeown@sheppardmullin.com

26 7.3. Any Party may modify the person and address to whom the notice is to be sent by
27 sending the other Party notice by first class and electronic mail.

28 **8. COURT APPROVAL**

 8.1. This Consent Judgment shall become effective as a contract upon the date
signed by CEH and See's Candy, whichever is later, provided however, that CEH shall also

1 prepare and file a Motion for Approval of this Consent Judgment and See's Candy shall support
2 approval of such Motion.

3 8.2. If this Consent Judgment is not entered by the Court, it shall be of no force
4 or effect and shall not be introduced into evidence or otherwise used in any proceeding for any
5 purpose.

6 **9. GOVERNING LAW AND CONSTRUCTION**

7 9.1. The terms of this Consent Judgment shall be governed by the laws of the State of
8 California.

9 **10. ATTORNEY'S FEES**

10 10.1. A Party who prevails in an action to enforce the terms of this Consent Judgment
11 shall be entitled to recover its reasonable attorneys' fees and costs related to such enforcement
12 from the non-prevailing party. Nothing in this Section 10 shall preclude a party from seeking an
13 award of sanctions pursuant to law.

14 **11. ENTIRE AGREEMENT**

15 11.1. This Consent Judgment contains the sole and entire agreement and understanding
16 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
17 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
18 and therein. There are no warranties, representations, or other agreements between the Parties
19 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
20 other than those specifically referred to in this Consent Judgment have been made by any Party
21 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
22 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
23 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
24 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
25 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
26 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
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1 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
2 whether or not similar, nor shall such waiver constitute a continuing waiver.

3 **12. RETENTION OF JURISDICTION**

4 12.1. This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

6 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

7 13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
8 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
9 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

10 **14. NO EFFECT ON OTHER SETTLEMENTS**

11 14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim
12 against an entity that is not See's Candy on terms that are different than those contained in this
13 Consent Judgment.

14 **15. EXECUTION IN COUNTERPARTS**

15 15.1. The stipulations to this Consent Judgment may be executed in counterparts and by
16 means of facsimile or portable document format (pdf), which taken together shall be deemed to
17 constitute one document.

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19 **IT IS SO STIPULATED:**

20 **CENTER FOR ENVIRONMENTAL HEALTH**

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Charlie Pizarro
Associate Director

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SEE'S CANDY SHOPS, INC.



Digitally signed by Brad, Kinstler
DN: cn=Brad, Kinstler, o=See's Candy, ou=See's
Candy, email=bkinstler@sees.com, c=US
Date: 2017.01.23 10:06:25 -08'00'

Signature

Bradley D. Kinstler

Printed Name

President and CEO

Title

IT IS SO ORDERED:

Dated: _____, 2017

Judge of the Superior Court of California