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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] CONSENT
JUDGMENT AS TO NATURAL
AMERICAN FOODS, INC.**

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jurisdiction over NAF as to the acts alleged in the Complaint, that venue is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein with respect to Covered Products distributed or sold by NAF.

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

2. DEFINITIONS

2.1 The “Effective Date” is the date of entry of this Consent Judgment.

2.2 The “Lead Level” shall mean a concentration level of no more than 35 parts per billion (“ppb”) Lead by weight.

2.3 The “Acrylamide Level” shall mean a concentration level of no more than 325 parts per billion (“ppb”) acrylamide by weight.

3. INJUNCTIVE RELIEF

3.1 **Clear and Reasonable Warnings for Covered Products.** As of the Effective Date, no Covered Product that:

- contains acrylamide in a concentration exceeding the Acrylamide Level; or
- contains Lead in a concentration exceeding the Lead Level,

shall be sold or offered for sale by NAF unless NAF provides a clear and reasonable warning as further specified in this Section 3.

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

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

WARNING:

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

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

WARNING:

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

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

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 must be displayed with such conspicuousness as compared with other words, statements, designs or devices as to render the warning likely to be read and understood by an ordinary consumer under customary conditions of purchase and use. The warning language shall appear on the Covered Product’s label, set off from other surrounding information or enclosed in a box on the label. If the Covered Product’s label 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 label in that language in addition to English.

1 **3.4 Alternative Warning Method.** For Covered Products that are not shipped or sold
2 directly by NAF to a person or entity in California, NAF may as an alternative to an on label
3 warning, comply with this Section 3 by sending a letter that is substantially and materially in the
4 same form as the letter attached hereto as Exhibit A with the appropriate warning set forth in
5 Section 3.2 to each customer prior to any shipment of Covered Products. The letter may be sent
6 with confirmation of purchase order, invoice, Certificate of Analysis or other documentation
7 provided that it is received by the customer prior to the shipment of Covered Product and clearly
8 references the Covered Product shipment and specific Covered Products to which it applies. The
9 letter may be sent via email in pdf format provided that it is sent to the primary customer contact
10 ordering the Covered Product.

11 **3.5 Internet Sales.** With respect to internet sales of Covered Products, the warning
12 language set forth in Section 3.2 must be prominently displayed in such a manner that it is likely
13 to be read and understood as being applicable to the Covered Product being sold prior to the
14 authorization of or actual payment by the purchaser. For purposes of this Section 3.4, the
15 warning language is not prominently displayed if the customer must search for the warning
16 language in the general content of NAF's website or if a reasonable consumer cannot determine
17 the specific Covered Product to which the warning applies. If the product display page contains
18 other warnings or nutritional information in a language other than English, the warning language
19 set forth in Section 3.2 must also be displayed in that language in addition to English.

20 **4. ENFORCEMENT**

21 **4.1 Enforcement Procedures.** This Court shall have exclusive jurisdiction over all
22 matters regarding enforcement of the Consent Judgment. Prior to bringing any motion or order to
23 show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall
24 provide the violating party thirty (30) days advance written notice of the alleged violation. The
25 Parties shall meet and confer during such thirty (30) day period in an effort to try to reach
26 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the
27 Party seeking to enforce may, by new action, motion or order to show cause before the Superior
28

1 Court of Alameda, seek to enforce Proposition 65 or the terms and conditions contained in this
2 Consent Judgment.

3 **5. PAYMENTS**

4 5.1 **Payments by NAF.** On or before ten (10) days after the Effective Date, NAF
5 shall pay the total sum of \$100,000 as a settlement payment as further set forth in this Section.

6 5.2 **Allocation of Payments.** The total settlement amount shall be paid in four (4)
7 separate checks in the amounts specified below and delivered as set forth below. Any failure by
8 NAF to comply with the payment terms herein shall be subject to a stipulated late fee to be paid
9 by NAF in the amount of \$100 for each day the full payment is not received after the applicable
10 payment due date set forth in Section 5.1. The late fees required under this Section shall be
11 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
12 pursuant to Section 4 of this Consent Judgment. The funds paid by NAF shall be allocated as set
13 forth below between the following categories and made payable as follows:

14 5.2.1 A civil penalty of \$16,892 pursuant to Health & Safety Code
15 §25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
16 Code §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
17 Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
18 payment for \$12,669 shall be made payable to OEHHA and associated with taxpayer
19 identification number 68-0284486. This payment shall be delivered as follows:

20 For United States Postal Service Delivery:

21 Attn: Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B
Sacramento, CA 95812-4010

24 For Non-United States Postal Service Delivery:

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

28 The CEH portion of the civil penalty payment for \$4,223 shall be made

1 payable to the Center for Environmental Health and associated with taxpayer identification
2 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
3 Street, San Francisco, CA 94117.

4 5.2.2 An Additional Settlement Payment (“ASP”) of \$12,658 to CEH pursuant
5 to Health & Safety Code §25249.7(b), and California Code of Regulations, Title 11, §3204. CEH
6 intends to place these funds in CEH’s Toxics in Food Fund and used to support CEH programs
7 and activities that seek to educate the public about toxic chemicals in food, to work with the food
8 industry and agriculture interests to reduce exposure to toxic chemicals in food and to thereby
9 reduce the public health impacts and risks of exposure to acrylamide, Lead and other toxic
10 chemicals in food sold in California. CEH shall obtain and maintain adequate records to
11 document that ASPs are spent on these activities and CEH agrees to provide such documentation
12 to the Attorney General within thirty (30) days of any request from the Attorney General. The
13 payment pursuant to this Section shall be made payable to the Center for Environmental Health
14 and associated with taxpayer identification number 94-3251981. This payment shall be delivered
15 to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

16 5.2.1 NAF shall pay \$70,450 as a reimbursement of a portion of CEH’s
17 reasonable attorneys’ fees and costs (including but not limited to expert and investigative costs).
18 The attorneys’ fees and cost reimbursement shall be made by check payable to the Lexington Law
19 Group and associated with taxpayer identification number 94-3317175. This payment shall be
20 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

21 5.2.2 To summarize, NAF shall deliver four (4) checks made out to the payees
22 in the amounts set forth below:

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$12,669	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$4,223	LLG
Center For Environmental Health	ASP	\$12,658	LLG
Lexington Law Group	Fee and Cost	\$70,450	LLG

5.3 **Failure to Comply With Payment Obligations.** Notwithstanding the provisions of the Enforcement of Judgments Law and California Code of Civil Procedure § 708.160, in the event that NAF does not comply fully with its payment obligations under Section 5, in addition to any other enforcement mechanism available to CEH, CEH may obtain an order requiring NAF to submit to a Debtors Exam. In the event that NAF fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding NAF in contempt of Court.

6. MODIFICATION AND DISPUTE RESOLUTION

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

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

7. CLAIMS COVERED AND RELEASE

7.1 Provided that NAF complies in full with its obligations under Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of itself and the public interest and NAF, and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), Smart & Final, LLC and all entities to which NAF distributes or sells Covered Products, such as distributors, wholesalers, customers, retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on

1 failure to warn about alleged exposure to acrylamide or Lead contained in Covered Products that
2 were sold by NAF prior to the Effective Date.

3 7.2 Provided that NAF complies in full with its obligations under Section 5, CEH, for
4 itself, its agents, successors and assigns, releases, waives and forever discharges any and all
5 claims against NAF, and its Defendant Releasees and its Downstream Defendant Releasees
6 arising from any violation of Proposition 65 or any other statutory or common law claims that
7 have been or could have been asserted by CEH individually or in the public interest regarding the
8 failure to warn about exposure to acrylamide or Lead contained in Covered Products sold by NAF
9 prior to the Effective Date.

10 7.3 Provided that NAF complies in full with its obligations under Section 5 hereof,
11 compliance with the terms of this Consent Judgment by NAF and its Defendant Releasees shall
12 constitute compliance with Proposition 65 by NAF and its Defendant Releasees with respect to
13 any alleged failure to warn about acrylamide or Lead in Covered Products sold by NAF after the
14 Effective Date.

15 7.4 Nothing in this Consent Judgment covers or releases a Downstream Defendant
16 Releasee from any liability that may arise when a Covered Product is used as an ingredient in a
17 different product such as a cookie.

18 **8. PROVISION OF NOTICE**

19 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
20 notice shall be sent by first class and electronic mail to:

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

26 8.2 When NAF is entitled to receive any notice under this Consent Judgment, the
27 notice shall be sent by first class and electronic mail to:

1 Eileen Ridley and
2 Megan Curran
3 Foley & Lardner LLP
4 555 California Street, Suite 1700
5 San Francisco, CA 94104
6 eridley@foley.com
7 mcurran@foley.com

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

10 **9. COURT APPROVAL**

11 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
12 NAF, whichever is later, provided however, that CEH shall prepare and file a Motion for
13 Approval of this Consent Judgment and NAF shall support approval of such Motion.

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

17 **10. GOVERNING LAW AND CONSTRUCTION**

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

20 **11. ATTORNEYS' FEES**

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

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

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

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 supplementation,
12 modification, waiver or termination of this Consent Judgment shall be binding unless executed in
13 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
14 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
15 whether or not similar, nor shall such waiver constitute a continuing waiver.

16 **13. SUCCESSORS AND ASSIGNS**

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

20 **14. RETENTION OF JURISDICTION**

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

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

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

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

16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against an entity other than NAF 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: _____

Judge of the Superior Court

1 **IT IS SO STIPULATED:**

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3 Dated: 1/22/20

**CENTER FOR ENVIRONMENTAL
HEALTH**

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Signature

Michael Green

Printed Name

CEO

Title

Dated: _____

NATURAL AMERICAN FOODS, INC.

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: _____

**CENTER FOR ENVIRONMENTAL
HEALTH**

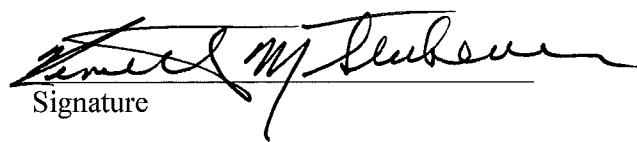
Signature

Printed Name

Title

Dated: 1/10/2020

NATURAL AMERICAN FOODS, INC.


Signature

Kenneth M Stickerers
Printed Name

CEO
Title

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Should you have any questions or concerns about this matter, please do not hesitate to contact [Natural American Foods Contact] at 1-800-XXX-XXXX by phone, or by mail at the above address.

Sincerely,

Title
Name