

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 GOOD FOOD,
INC.**

1 **1. INTRODUCTION**

2 1.1 The Parties to this Consent Judgment are the Center For Environmental Health
3 (“CEH”) and Good Food, Inc. (“Settling Defendant”). CEH and Settling Defendant (the
4 “Parties”) enter into this Consent Judgment to settle certain claims asserted by CEH against
5 Settling Defendant as set forth in the operative complaint (“Complaint”) in the above-captioned
6 matter. This Consent Judgment covers the lead content of molasses that is sold by Settling
7 Defendant as a finished product and then offered for sale to residents of the State of California
8 (“Covered Products”).

9 1.2 On November 30, 2018, CEH provided a 60-day Notice of Violation of
10 Proposition 65 to the California Attorney General, the District Attorneys of every county in
11 California, the City Attorneys of every California city with a population greater than 750,000 and
12 to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing
13 persons to lead and lead compounds (“Lead”) contained in Covered Products without first
14 providing a clear and reasonable Proposition 65 warning.

15 1.3 Settling Defendant is a corporation that manufactures, distributes, sells or offers
16 for sale Covered Products that are sold in the State of California or has done so in the past.

17 1.4 On January 9, 2019, CEH filed the Complaint in the above-captioned matter. On
18 August 8, 2019, CEH amended the Complaint naming Settling Defendant as a defendant in the
19 action.

20 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
21 has jurisdiction over the allegations of violations contained in the Complaint and personal
22 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in
23 the County of Alameda and that this Court has jurisdiction to enter and enforce this Consent
24 Judgment as a full and final resolution of all claims which were or could have been raised in the
25 Complaint based on the facts alleged therein with respect to Covered Products distributed or sold
26 by Settling Defendant.

27 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
28

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.** While the Complaint does not contain allegations regarding acrylamide in Covered Products, the parties have agreed and this Consent Judgment requires that Settling Defendant will provide Proposition 65 warnings for Covered Products that exceed the Acrylamide Level in addition to Proposition 65 warnings for Covered Products that exceed the Lead Level. Accordingly, as of the date forth-five (45) days after the Effective Date, no Covered Product that:

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

shall be sold or offered for sale by Settling Defendant unless Settling Defendant 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 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.

3.2.1 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 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 label, set off from other surrounding information or enclosed in a box. If the Covered Product 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.

3.4 **Internet Sales.** With respect to internet sales of Covered Products, 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 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 provide the violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to enforce may, by new action, motion or order to show cause before the Superior Court of Alameda, seek to enforce Proposition 65 or the terms and conditions contained in this Consent Judgment.

5. PAYMENTS

5.1 Payments by Settling Defendant. On or before ten days after the Effective Date, Settling Defendant shall pay the total sum of \$50,000 as a settlement payment as further set forth in this Section.

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

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

7 5.2.1 A civil penalty in the amount of \$8,400 pursuant to Health & Safety Code
8 §25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
9 Code §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
10 Health Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty
11 payment for \$6,300 shall be made payable to OEHHA and associated with taxpayer identification
12 number 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
 P.O. Box 4010, MS #19B
 Sacramento, CA 95812-4010

17 For Non-United States Postal Service Delivery:

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

21 The CEH portion of the civil penalty payment for \$2,100 shall be made
22 payable to the Center for Environmental Health and associated with taxpayer identification
23 number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero
24 Street, San Francisco, CA 94117.

25 5.2.2 An Additional Settlement Payment ("ASP") to CEH in the amount of
26 \$6,300 pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title
27 11, §3204. CEH intends to place these funds in CEH's Toxics in Food Fund and used to support
28 CEH programs and activities that seek to educate the public about toxic chemicals in food, to

work with the food industry and agriculture interests to reduce exposure to toxic chemicals in food and to thereby reduce the public health impacts and risks of 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 (30) 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 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.1 Settling Defendant shall pay \$35,300 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs (including but not limited to expert and investigative costs). The attorneys' fees and cost reimbursement shall be made by check payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

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

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$6,300	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$2,100	LLG
Center For Environmental Health	ASP	\$6,300	LLG
Lexington Law Group	Fee and Cost	\$35,300	LLG

5.3 **Failure to Comply With Payment Obligations.** Notwithstanding the provisions of the Enforcement of Judgments Law and California Code of Civil Procedure §780.160, in the event that Settling Defendant 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 Settling Defendant to submit to a Debtors Exam. In the event that Settling Defendant

1 fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding
2 Settling Defendant in contempt of Court.

3 **6. MODIFICATION AND DISPUTE RESOLUTION**

4 6.1 **Modification.** This Consent Judgment may be modified from time to time by
5 express written agreement of the Parties, with the approval of the Court, or by an order of this
6 Court upon motion and in accordance with law.

7 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
8 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
9 modify the Consent Judgment.

10 **7. CLAIMS COVERED AND RELEASE**

11 7.1 Provided that Settling Defendant complies in full with its obligations under
12 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
13 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
14 that are under common ownership, directors, officers, employees, agents, shareholders,
15 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling
16 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
17 retailers, franchisees, licensors and licensees including but not limited to Webstaurant Store, Inc.
18 (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn
19 about alleged exposure to Lead contained in Covered Products that were sold by Settling
20 Defendant prior to the Effective Date.

21 7.2 Provided that Settling Defendant complies in full with its obligations under
22 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever
23 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream
24 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
25 common law claims that have been or could have been asserted by CEH individually or in the
26 public interest regarding the failure to warn about exposure to Lead contained in Covered
27 Products sold by Settling Defendant prior to the Effective Date.

1 7.3 Provided that Settling Defendant complies in full with its obligations under
2 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant,
3 Defendant Releasees and Downstream Defendant Releasees shall constitute compliance with
4 Proposition 65 by Settling Defendant, Defendant Releasees and Downstream Defendant
5 Releasees with respect to any alleged failure to warn about Lead in Covered Products sold by
6 Settling Defendant after the Effective Date.

7 7.4 Nothing in this Consent Judgment covers or releases a Downstream Defendant
8 Releasee from any liability that may arise when a Covered Product is used as an ingredient in a
9 different product such as a cookie.

10 **8. PROVISION OF NOTICE**

11 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
12 notice shall be sent by first class and electronic mail to:

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

17 8.2 When Settling Defendant is entitled to receive any notice under this Consent
18 Judgment, the notice shall be sent by first class and electronic mail to:

19 Jack Henning
20 Dillingham & Murphy, LLP
21 601 Montgomery Street, Suite 1900
22 San Francisco, CA 94111
 JCH@dillinghammurphy.com

Shawn Sensenig
Chief Operating Officer
Good Food, Inc.
4960 Horseshoe Pike
P.O. Box 160
Honey Brook, PA 19344
ssensenig@goldenbarrel.com

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

9. COURT APPROVAL

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

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

10. GOVERNING LAW AND CONSTRUCTION

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

11. ATTORNEYS' FEES

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

11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of 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.

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, negotiations, commitments or understandings related thereto, if any, are hereby merged herein and therein. 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. 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. No supplementation, modification, waiver or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. 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.

13. SUCCESSORS AND ASSIGNS

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

14. RETENTION OF JURISDICTION

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

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

2 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
4 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

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

6 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
7 against an entity that is not Settling Defendant on terms that are different than those contained in
8 this Consent Judgment.

9 **17. EXECUTION IN COUNTERPARTS**

10 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
11 means of facsimile or portable document format (pdf), which taken together shall be deemed to
12 constitute one document.

13
14 **IT IS SO ORDERED, ADJUDGED,**
15 **AND DECREED**

16
17 Dated: _____

Judge of the Superior Court

1 IT IS SO STIPULATED:
2

3 Dated: _____, 2020
4

CENTER FOR ENVIRONMENTAL
HEALTH

5 
6

7 Signature

8 Michael Green
9

10 Printed Name

11 CEO
12

Title

13 Dated: 4-1, 2020
14

GOOD FOOD, INC.

15 
16

Signature

17 Shaun Sensenig
18 Printed Name

19 COO
20 Title