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8	SUPERIOR COURT FOR THE S	STATE OF CALIFORNIA
9	FOR THE COUNTY O	DE ALAMEDA
10	FOR THE COUNT I	
11	CENTER FOR ENVIRONMENTAL HEALTH,	Case No. RG 19-001951
12	Plaintiff,	[PROPOSED] CONSENT JUDGMENT AS TO IMPERIAL
13	V.	SUGAR COMPANY
14	TOTAL SWEETENERS, INC., et al.,	
15	Defendants.	
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26 27	-1- CONSENT JUDGMENT – IMPERIAL SUGAR C	COMPANY – CASE NO. RG 19-001951

## 1 1. INTRODUCTION

2 1.1 The Parties to this Consent Judgment are the Center For Environmental Health 3 ("CEH"), a California non-profit corporation, and Imperial Sugar Company ("Settling 4 Defendant"). CEH and Settling Defendant (the "Parties") enter into this Consent Judgment to 5 settle certain claims asserted by CEH against Settling Defendant as set forth in the operative 6 complaint ("Complaint") in the above-captioned matter. This Consent Judgment covers 7 molasses, including ingredients made with molasses such as cane syrup, that is sold or distributed by Settling Defendant and subsequently packaged by third parties and sold to California 8 9 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 Settling Defendant is a corporation that manufactures, distributes, sells or offers
17 for sale Covered Products that are sold to third parties that subsequently sold the Covered
18 Products in the State of California or has done so in the past. Settling Defendant sells bulk
19 molasses, including ingredients made with molasses such as cane syrup, to other businesses, not
20 consumers.

1.4 On January 9, 2019, CEH filed the Complaint in the above-captioned matter. On
November 20, 2019, CEH amended the Complaint to add Settling Defendant as a Doe defendant
in the action.

1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
 has jurisdiction over the allegations of violations contained in the Complaint and personal
 jurisdiction over Settling Defendant 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
 -2-

1 Judgment as a full and final resolution of all claims which were or could have been raised in the 2 Complaint based on the facts alleged therein with respect to Covered Products manufactured, 3 distributed or sold by Settling Defendant.

4 Nothing in this Consent Judgment is or shall be construed as an admission by the 1.6 5 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, 6 7 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 8 . 9 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 10 11 resolving issues disputed in this Action.

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2.

### DEFINITIONS

13 2.1 "Covered Products" means molasses, including ingredients made with molasses 14 such as cane syrup, that is sold or distributed by Settling Defendant and subsequently packaged 15 by third parties and sold to California consumers as molasses.

The "Effective Date" is the date CEH serves the Notice of Entry of this Consent 16 2.2 17 Judgment.

2.3 The "Lead Level" shall mean a concentration level of no more than 35 parts per 18 billion ("ppb" ) Lead by weight. 19

20 2.4 The "Acrylamide Level" shall mean a concentration level of no more than 325 21 parts per billion (" ppb" ) acrylamide by weight.

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#### **INJUNCTIVE RELIEF**

3.1 Clear and Reasonable Warnings for Covered Products. As of the Effective 24 Date, Settling Defendant shall not sell or offer for sale any Covered Product that:

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

1	unless Settling Defendant provides a clear and reasonable warning as further specified in this				
2	Section 3.				
3	3.2 Warning Language. The warning required by Section 3.1 for Covered Products				
4	shall state the following:				
5	3.2.1 For Covered Products that contain acrylamide in a concentration				
6	exceeding the Acrylamide Level:				
7	WARNING:				
8	Consuming this product can expose you to chemicals including acrylamide, which is				
9	known to the State of California to cause cancer. For more information go to				
10	www.P65Warnings.ca.gov/food.				
11	3.2.2 For Covered Products that contain Lead in a concentration exceeding the				
12	Lead Level:				
13	WARNING:				
14	Consuming this product can expose you to chemicals including lead, which is known to				
15	the State of California to cause birth defects or other reproductive harm. For more				
16	information go to www.P65Warnings.ca.gov/food.				
17	3.2.3 For Covered Products that contain both acrylamide in a concentration				
18	exceeding the Acrylamide Level and Lead in a concentration exceeding the Lead Level:				
19	WARNING:				
20	Consuming this product can expose you to chemicals including lead and acrylamide,				
21	which are known to the State of California to cause cancer and birth defects or other				
22	reproductive harm. For more information go to <u>www.P65Warnings.ca.gov/food</u> .				
23	The word "WARNING" must be in all capital letters and bold print.				
24	3.3 Placement of Warning Language. The warning language set forth in Section 3.2				
25	shall appear on the order acknowledgment in the form attached hereto as Exhibit A				
26	(Acknowledgment) that Settling Defendant sends to a customer after it receives a purchase order				
27	but prior to shipment of any Covered Product. The warning language shall be in the substantially				
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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.

4 3.4 Internet Sales. Settling Defendant does not currently sell Covered Products 5 through its website. If Settling Defendant in the future sells Covered Products over the internet, 6 the warning language set forth in Section 3.2 must be prominently displayed in such a manner 7 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, 8 9 the warning language is not prominently displayed if the customer must search for the warning 10 language in the general content of Settling Defendant's website or if a reasonable consumer 11 cannot determine the specific Covered Product to which the warning applies. If the product 12 display page contains other warnings or nutritional information in a language other than English, 13 the warning language set forth in Section 3.2 must also be displayed on the website in that 14 language in addition to English.

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4.

# **ENFORCEMENT**

16 4.1 Enforcement Procedures. This Court shall have exclusive jurisdiction over all 17 matters regarding enforcement of the Consent Judgment. Prior to bringing any motion or order to 18 show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall 19 provide the violating party thirty (30) days advanced written notice of the alleged violation. The 20 Parties shall meet and confer during such thirty (30) day period in an effort to try to reach 21 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the 22 Party seeking to enforce may, by 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 23 24 Judgment. 25

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### 1 5. PAYMENTS

2 5.1 Payments by Settling Defendant. Settling Defendant shall pay the total sum of
3 \$120,000 as a settlement payment as further set forth in this Section within ten (10) business days
4 of the Effective Date.

5 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 6 7 below. Any failure by Settling Defendant to comply with the payment terms herein shall be 8 subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each 9 day the full payment is not received after the applicable payment due date set forth in Section 5.1. 10 The late fees required under this Section shall be recoverable, together with reasonable attorneys' 11 fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The 12 funds paid by Settling Defendant shall be allocated as set forth below between the following 13 categories and made payable as follows:

14 5.2.1 \$20,360 as a civil penalty pursuant to Health & Safety Code \$25249.7(b). 15 The civil penalty payment shall be apportioned in accordance with Health & Safety Code 16 §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health 17 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty 18 payment for \$15,270 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: Attn: Mike Gyurics 21 Fiscal Operations Branch Chief Office of Environmental Health Hazard Assessment 22 P.O. Box 4010, MS #19B Sacramento, CA 95812-4010 23 For Non-United States Postal Service Delivery: 24 Attn: Mike Gyurics **Fiscal Operations Branch Chief** 25 Office of Environmental Health Hazard Assessment 1001 I Street, MS #19B 26

Sacramento, CA 95814

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The CEH portion of the civil penalty payment for \$5,090 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 5.2.2 \$15,265 as an Additional Settlement Payment ("ASP") to CEH pursuant to 6 Health & Safety Code §25249.7(b), and California Code of Regulations, Title 11, §3204. CEH 7 intends to place these funds in CEH's Toxics in Food Fund and use these funds to support CEH 8 programs and activities that seek to educate the public about toxic chemicals in food, to work 9 with the food industry and agriculture interests to reduce exposure to toxic chemicals in food and 10 to thereby reduce the public health impacts and risks of exposure to acrylamide, Lead and other 11 toxic chemicals in food sold in California. CEH shall obtain and maintain adequate records to 12 document that ASPs are spent on these activities and CEH agrees to provide such documentation 13 to the Attorney General within thirty (30) days of any request from the Attorney General. The 14 payment pursuant to this Section shall be made payable to the Center for Environmental Health 15 and associated with taxpayer identification number 94-3251981. This payment shall be delivered 16 to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 Settling Defendant shall pay \$84,375 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.

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

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Payee	Туре	Amount	<b>Deliver</b> To
ОЕННА	Penalty	\$15,270	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$5,090	LLG
Center For Environmental Health	ASP	\$15,265	LLG
Lexington Law Group	Fee and Cost	\$84,375	LLG

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#### 6. **MODIFICATION AND DISPUTE RESOLUTION**

8 6.1 Modification. This Consent Judgment may be modified from time to time by 9 express written agreement of the Parties, with the approval of the Court, or by an order of this 10 Court upon motion and in accordance with law.

11 6.2 Notice; Meet and Confer. Any Party seeking to modify this Consent Judgment 12 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to 13 modify the Consent Judgment.

14 6.3 **Change in Proposition 65.** If Proposition 65 or its implementing regulations are 15 changed from their terms as they exist on the date of entry of this Consent Judgment, by any 16 means including a final court decision, in a manner that impacts the Acrylamide Level and/or 17 Lead Level, or if OEHHA takes some other final regulatory action for products similar to the 18 Covered Products that impacts whether a warning is required for the Covered Products, then CEH 19 or Settling Defendant may seek to modify this Consent Judgment to be consistent with any such 20 change.

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#### 7. CLAIMS COVERED AND RELEASE

22 7.1 Provided that Settling Defendant complies in full with its obligations under 23 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of 24 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities 25 that are under common ownership, directors, officers, employees, agents, shareholders, 26 successors, assigns, and attorneys ("Defendant Releasees"), and all entities to which Settling 27 Defendant distributes or sells or has distributed or sold Covered Products, such as distributors, 28

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wholesalers, customers, retailers, franchisees, brokers, licensors and licensees ("Downstream
 Defendant Releasees"), of any violation of Proposition 65 based on failure to warn about alleged
 exposure to Lead contained in Covered Products that were sold by Settling Defendant prior to the
 Effective Date.

5 7.2 Provided that Settling Defendant complies in full with its obligations under 6 Section 5, CEH, for itself, its agents, successors and assigns, releases, waives and forever 7 discharges any and all claims against Settling Defendant, Defendant Releasees and Downstream 8 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or 9 common law claims that have been or could have been asserted by CEH individually or in the 10 public interest regarding the failure to warn about exposure to Lead or acrylamide contained in 11 Covered Products sold or distributed by Settling Defendant prior to the Effective Date. 12 7.3 Provided that Settling Defendant complies in full with its obligations under

12 7.5 Provided that Setting Defendant complex in full with its obligations under
 13 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant shall
 14 constitute compliance with Proposition 65 by Settling Defendant with respect to any alleged
 15 failure to warn about Lead or acrylamide in Covered Products sold or distributed by Settling
 16 Defendant after the Effective Date.

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8.

#### **PROVISION OF NOTICE**

18 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
19 notice shall be sent by first class and electronic mail to:

Lexington Law Group

503 Divisadero Street San Francisco, CA 94117

esomers@lexlawgroup.com

Eric S. Somers

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

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CONSENT JUDGMENT - IMPERIAL SUGAR COMPANY - CASE NO. RG 19-001951

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1	Peg Carew Toledo	
2	Arnold & Porter Three Embarcadero Center, 10th Floor	
3	San Francisco, CA 94111-4024 peg.toledo@arnoldporter.com	
4	Any Party may modify the person and/or address to whom the notice is to be sent	
5	by sending the other Party notice by first class and electronic mail.	
6	9. COURT APPROVAL	
7	9.1 CEH shall prepare and file a Motion for Approval of this Consent Judgment and	
8	Settling Defendant shall support approval of such Motion. This Section 9.1 shall become	
9	effective upon the date signed by CEH and Settling Defendant, whichever is later.	
10	9.2 If this Consent Judgment is not entered by the Court, it shall be of no further force	
11	or effect and shall not be introduced into evidence or otherwise used in any proceeding for any	
12	purpose.	
13	10. GOVERNING LAW AND CONSTRUCTION	
14	10.1 The terms of this Consent Judgment shall be governed by the laws of the State of	
15	California.	
16	11. ATTORNEYS' FEES	
17	11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent	
18	Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs	
19	unless the unsuccessful Party has acted with substantial justification. For purposes of this	
20	Consent Judgment, the term substantial justification shall carry the same meaning as used in the	
21	Civil Discovery Act of 1986, Code of Civil Procedure §§2016.010, et seq.	
22	11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement	
23	action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of	
24	Civil Procedure §1021.5 against a Party that acted with substantial justification.	
25	11.3 Nothing in this Section 11 shall preclude a party from seeking an award of	
26	sanctions pursuant to law.	
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	CONSENT JUDGMENT – IMPERIAL SUGAR COMPANY – CASE NO. RG 19-001951	
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## **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, negotiations, commitments or understandings related thereto, if any, are hereby merged herein 4 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

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# 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

- 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
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1	against an entity that is not Settling Defendant on terms that are different than those contained in
2	this Consent Judgment.
3	17. EXECUTION IN COUNTERPARTS
4	17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
5	means of facsimile or portable document format (pdf), which taken together shall be deemed to
6	constitute one document.
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8	IT IS SO ORDERED, ADJUDGED,
9	AND DECREED
10	
11	Dated:Judge of the Superior Court
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20	CONSENT JUDGMENT – IMPERIAL SUGAR COMPANY – CASE NO. RG 19-001951
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1	IT IS SO STIPULATED:	
2		
3	Dated: <u>June 4</u> , 2021	CENTER FOR ENVIRONMENTAL HEALTH
4 5		
6		Michael (
7		Signature
8		
9		Michael Green Printed Name
0		
1		CEO Title
2		The
3	Dated:, 2021	
4	Dated, 2021	IMPERIAL SUGAR COMPANY
5		
6		Signature
7		
8		Printed Name
9		
)		Title
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8		-13- PERIAL SUGAR COMPANY – CASE NO. RG 19-001951

**IT IS SO STIPULATED:** Dated: \_\_\_\_\_, 2021 **CENTER FOR ENVIRONMENTAL** HEALTH Signature Printed Name Title Dated: JUNE 7, 2021 **IMPERIAL SUGAR COMPANY** Signature MICHAEL GORRELL Printed Name PRES, DENT + CEO Title -13-CONSENT JUDGMENT - IMPERIAL SUGAR COMPANY - CASE NO. RG 19-001951

			EXHIBI				
			Sales Order Ackno	wledqmen	<u>t</u>		
		r: IMP1816589 der Number: 10188571	Date: 05/11/2021		Pay Terms: I	2210	Page: 1
old 1	Го:		Sav Imp 2 G	p From: annah Sugar arial - Sava range Road t Wentworth,	nnah LP		
ine-sc	hed	Product Number Description	Requested Ship Projected Ship/Schedu	UOM 11ed Arrival	Quantity Net 1	Price	Extended Amt
	1-1	120476W 3000# SYR SKRAFT REF (W)	07/01/2021 07/01/2021 / 07/	EA 01/2021	14.00 1,10	5.5000	15,477.00
		Warnings.ca.gov/food. ip To:			Freight Terms: Carrier: Contract No.: Drop Shipment:		01
					Order Adjus	tment	0.00
ođs		15,477.00		Taxes	0.00	Grand Total	15,477.0
a)pr	roduct	nd shipment of this order is availability, b)current tran of outstanding invoices and	sportation constraints	in the mark	etplace, c) crea		
Plea	ase con	tact your customer service r	representative immediate	ly if there	are any discrep	pancies, **	
* incl	luding	pricing, for proper handling	g before order is proces	sed for shi	pment and billin	ng. **	
	1.1						