

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 IMPERIAL
SUGAR COMPANY**

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
8 by Settling Defendant and subsequently packaged by third parties and sold to California
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.

21 1.4 On January 9, 2019, CEH filed the Complaint in the above-captioned matter. On
22 November 20, 2019, CEH amended the Complaint to add Settling Defendant as a Doe defendant
23 in the action.

24 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
25 has jurisdiction over the allegations of violations contained in the Complaint and personal
26 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in
27 the County of Alameda and that this Court has jurisdiction to enter and enforce this Consent
28

MLG

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

12 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.

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

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

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

22 3. INJUNCTIVE RELIEF

23 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:

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

MG

1 same size font or larger as the product description on the Acknowledgment. The
2 Acknowledgment may be sent via email or other electronic means provided that it is sent to the
3 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
8 prior to the authorization of or actual payment by the purchaser. For purposes of this Section 3.4,
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.

15 **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
23 Alameda, seek to enforce Proposition 65 or the terms and conditions contained in this Consent
24 Judgment.

Mb

1 The CEH portion of the civil penalty payment for \$5,090 shall be made payable to the Center for
2 Environmental Health and associated with taxpayer identification number 94-3251981. This
3 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
4 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.

17 5.2.3 Settling Defendant shall pay \$84,375 as a reimbursement of a portion of
18 CEH’s reasonable attorneys’ fees and costs (including but not limited to expert and investigative
19 costs). The attorneys’ fees and cost reimbursement shall be made by check payable to the
20 Lexington Law Group and associated with taxpayer identification number 94-3317175. This
21 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
22 94117.

23 5.2.4 To summarize, Settling Defendant shall deliver four checks made out to
24 the payees in the amounts set forth below:
25
26
27

ML

Payee	Type	Amount	Deliver To
OEHHA	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

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.

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

7. CLAIMS COVERED AND RELEASE

7.1 Provided that Settling Defendant 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 Settling Defendant and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling Defendant distributes or sells or has distributed or sold Covered Products, such as distributors,

MG

1 wholesalers, customers, retailers, franchisees, brokers, licensors and licensees (“Downstream
2 Defendant Releasees”), of any violation of Proposition 65 based on failure to warn about alleged
3 exposure to Lead contained in Covered Products that were sold by Settling Defendant prior to the
4 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
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.

17 **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:

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

25 8.2 When Settling Defendant is entitled to receive any notice under this Consent
26 Judgment, the notice shall be sent by first class and electronic mail to:
27
28

MG

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

Peg Carew Toledo
Arnold & Porter
Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
peg.toledo@arnoldporter.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 CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant shall support approval of such Motion. This Section 9.1 shall become effective upon the date signed by CEH and Settling Defendant, whichever is later.

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.

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
28

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.

7

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

10

11 Dated: _____

Judge of the Superior Court

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

MG

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

IT IS SO STIPULATED:

Dated: June 4, 2021

CENTER FOR ENVIRONMENTAL HEALTH



Signature

Michael Green

Printed Name

CEO

Title

Dated: _____, 2021

IMPERIAL SUGAR COMPANY

Signature

Printed Name

Title

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

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

PRESIDENT + CEO
Title

