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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 BEAVERTON
FOODS, INC.**

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 Beaverton Foods, Inc. (“Settling Defendant”).
4 CEH and Settling Defendant (the “Parties”) enter into this Consent Judgment to settle certain
5 claims asserted by CEH against Settling Defendant as set forth in the operative complaint
6 (“Complaint”) in the above-captioned matter. This Consent Judgment covers the lead content of
7 Dynasty Bead Molasses, a molasses product that is co-packaged by Settling Defendant and sold
8 under the Dynasty private label which is owned by JFC International, Inc. (“Covered Products”).

9 1.2 On January 8, 2020, CEH provided a 60-day Notice of Violation of Proposition 65
10 to the California Attorney General, the District Attorneys of every county in California, the City
11 Attorneys of every California city with a population greater than 750,000 and to Settling
12 Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to lead
13 and lead compounds (“Lead”) contained in Covered Products without first providing a clear and
14 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 May 27, 2020, 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

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

8 **2. DEFINITIONS**

9 2.1 The “Effective Date” is the date of entry of this Consent Judgment.

10 2.2 The “Lead Level” shall mean a concentration level of no more than 35 parts per
11 billion (“ppb”) Lead by weight.

12 2.3 The “Acrylamide Level” shall mean a concentration level of no more than 325
13 parts per billion (“ppb”) acrylamide by weight.

14 **3. INJUNCTIVE RELIEF**

15 3.1 **Clear and Reasonable Warnings for Covered Products.** While the Complaint
16 does not contain allegations regarding acrylamide in Covered Products, the parties have agreed
17 and this Consent Judgment requires that Settling Defendant will provide Proposition 65 warnings
18 for Covered Products that exceed the Acrylamide Level in addition to Proposition 65 warnings
19 for Covered Products that exceed the Lead Level. Accordingly, as of the date forty-five (45) days
20 after the Effective Date, no Covered Product that:

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

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

25 3.2 **Warning Language.** The warning required by Section 3.1 for Covered Products
26 shall state the following:

1 3.2.1 For Covered Products that contain Lead in a concentration exceeding the
2 Lead Level:

3 **WARNING:**

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

7 3.2.2 For Covered Products that contain acrylamide in a concentration
8 exceeding the Acrylamide Level:

9 **WARNING:**

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

13 3.2.3 For Covered Products that contain both Lead in a concentration
14 exceeding the Lead Level and acrylamide in a concentration exceeding the Acrylamide Level:

15 **WARNING:**

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

19 The word “**WARNING**” must be in all capital letters and bold print.

20 3.3 **Placement of Warning Language.** The warning language set forth in Section 3.2
21 must be displayed with such conspicuousness as compared with other words, statements, designs
22 or devices as to render the warning likely to be read and understood by an ordinary consumer
23 under customary conditions of purchase and use. The warning language shall appear on the
24 Covered Product’s label, set off from other surrounding information or enclosed in a box. If the
25 Covered Product’s label contains other warnings or nutritional information in a language other
26 than English, the warning language set forth in Section 3.2 must also be displayed on the label in
27 that language in addition to English. Alternatively, Settling Defendant may communicate that the

1 Covered Product may not be made available for sale in California without a warning by explicitly
2 stating such restrictions with an order confirmation in the form attached hereto as Exhibit A
3 (“Confirmation”) that Settling Defendant sends to a customer after it receives a purchase order
4 but prior to shipment of any Covered Product. The Confirmation may be sent via email in pdf
5 format provided it is sent to the primary customer contact ordering the Covered Product.

6 **3.4 Internet Sales.** Settling Defendant does not currently sell Covered Products
7 through its website. If Settling Defendant in the future sells Covered Products over the internet,
8 the warning language set forth in Section 3.2 must be prominently displayed in such a manner
9 that it is likely to be read and understood as being applicable to the Covered Product being sold
10 prior to the authorization of or actual payment by the purchaser. For purposes of this Section 3.4,
11 the warning language is not prominently displayed if the customer must search for the warning
12 language in the general content of Settling Defendant’s website or if a reasonable consumer
13 cannot determine the specific Covered Product to which the warning applies. If the product
14 display page contains other warnings or nutritional information in a language other than English,
15 the warning language set forth in Section 3.2 must also be displayed in that language in addition
16 to English.

17 **4. ENFORCEMENT**

18 **4.1 Enforcement Procedures.** This Court shall have exclusive jurisdiction over all
19 matters regarding enforcement of the Consent Judgment. Prior to bringing any motion or order to
20 show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall
21 provide the violating party thirty (30) days advanced written notice of the alleged violation. The
22 Parties shall meet and confer during such thirty (30) day period in an effort to try to reach
23 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the
24 Party seeking to enforce may, by new action, motion or order to show cause before the Superior
25 Court of Alameda, seek to enforce Proposition 65 or the terms and conditions contained in this
26 Consent Judgment.

1 **5. PAYMENTS**

2 **5.1 Payments by Settling Defendant.** On or before the Effective Date, Settling
3 Defendant shall pay the total sum of \$34,000 as a settlement payment as further set forth in this
4 Section.

5 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall
6 be paid in four (4) separate checks in the amounts specified below and delivered as set forth
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 A civil penalty in the amount of \$5,700 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 \$4,275 shall be made payable to OEHHA and associated with taxpayer identification
19 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 \$1,425 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”) in the amount of \$4,275 to
5 CEH pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title
6 11, §3204. CEH intends to place these funds in CEH’s Toxics in Food Fund and used to support
7 CEH programs and activities that seek to educate the public about toxic chemicals in food, to
8 work with the food industry and agriculture interests to reduce exposure to toxic chemicals in
9 food and to thereby reduce the public health impacts and risks of exposure to Lead, acrylamide
10 and other toxic chemicals in food sold in California. CEH shall obtain and maintain adequate
11 records to document that ASPs are spent on these activities and CEH agrees to provide such
12 documentation to the Attorney General within thirty days (30) of any request from the Attorney
13 General. The payment pursuant to this Section shall be made payable to the Center for
14 Environmental Health and associated with taxpayer identification number 94-3251981. This
15 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
16 94117.

17 5.2.1 Settling Defendant shall pay \$24,025 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 5.2.2 To summarize, Settling Defendant shall deliver four (4) checks made out
24 to the payees in the amounts set forth below:

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$4,275	OEHHA per Section 5.2.1

Center For Environmental Health	Penalty	\$1,425	LLG
Center For Environmental Health	ASP	\$4,275	LLG
Lexington Law Group	Fee and Cost	\$24,025	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 fails to submit to any such Debtors Exam ordered by the Court, CEH may seek an order holding Settling Defendant 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 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 downstream from Settling Defendant in the chain of sale and distribution for the Covered Products, such as distributors, wholesalers, customers, retailers, franchisees, licensors and licensees including but not limited to JFC International, Inc. (“Downstream Defendant Releasees”), of any violation of

1 Proposition 65 based on failure to warn about alleged exposure to Lead contained in Covered
2 Products that were sold by Settling Defendant prior to the Effective Date.

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

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

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

19 **8. PROVISION OF NOTICE**

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

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

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

1 Gary Roberts
2 Dentons US LLP
3 601 Figueroa Street, Suite 2500
4 Los Angeles, CA 90017
5 gary.roberts@dentons.com

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

8 **9. COURT APPROVAL**

9 9.1 This Consent Judgment shall become effective upon the date signed by CEH and
10 Settling Defendant, whichever is later, provided however, that CEH shall prepare and file a
11 Motion for Approval of this Consent Judgment and Settling Defendant shall support approval of
12 such Motion.

13 9.2 If this Consent Judgment is not entered by the Court, it shall be of no further force
14 or effect and shall not be introduced into evidence or otherwise used in any proceeding for any
15 purpose.

16 **10. GOVERNING LAW AND CONSTRUCTION**

17 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California.

19 **11. ATTORNEYS' FEES**

20 11.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
21 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs
22 unless the unsuccessful Party has acted with substantial justification. For purposes of this
23 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
24 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

25 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement
26 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
27 Civil Procedure § 1021.5 against a Party that acted with substantial justification.

28 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 Settling
18 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
19 assigns of any of 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**

1 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
2 against an entity that is not Settling Defendant on terms that are different than those contained in
3 this Consent Judgment.

4 **17. EXECUTION IN COUNTERPARTS**

5 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by
6 means of facsimile or portable document format (pdf), which taken together shall be deemed to
7 constitute one document.

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

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Dated: _____

Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: _____, 2020

CENTER FOR ENVIRONMENTAL HEALTH

Signature

Printed Name

Title

Dated: 8/31, 2020

BEAVERTON FOODS, INC.

Domonic A. Biggi

Signature

Domonic Biggi

Printed Name

CEO

Title

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IT IS SO STIPULATED:

Dated: September 8, 2020

**CENTER FOR ENVIRONMENTAL
HEALTH**



Signature

Michael Green

Printed Name

CEO

Title

Dated: _____, 2020

BEAVERTON FOODS, INC.

Signature

Printed Name

Title

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EXHIBIT A

Confirmation Form with statement informing customers that Covered Products may not be sold in California without a warning

The Dynasty Bead Molasses product contains Lead and Acrylamide, chemicals which are known to the State of California to cause cancer and birth defects or other reproductive harm.

These products are NOT labelled for sale in California and may not be sold, resold or offered for sale to California consumers.

If you sell Dynasty Bead Molasses products to other entities, you MUST pass this Notice on to those customers.