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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

Plaintiff,

v.

SOBISK FOODS, LLC, et al.,

Defendants.

Case No. CGC-20-587235

**[PROPOSED] CONSENT JUDGMENT AS
TO DOLLAR TREE STORES, INC.**

1 **1. INTRODUCTION**

2 1.1 The Parties to this Consent Judgment are the Center for Environmental
3 Health, a California non-profit corporation (“CEH”), and Dollar Tree Stores, Inc. (“Settling
4 Defendant”). The Parties enter into this Consent Judgment to settle certain claims asserted by CEH
5 against Settling Defendant as set forth in the operative complaint (“Complaint”) in the above-
6 captioned matter. This Consent Judgment covers Sobisk Breakfast Sandwiches sold by Settling
7 Defendant that have been or will be sold or offered for sale to California consumers (“Covered
8 Products”).

9 1.2 On July 28, 2020, CEH provided a 60-day Notice of Violation under
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 Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing persons to
13 lead and lead compounds (“Lead”) contained in Covered Products without first providing a clear
14 and reasonable Proposition 65 warning.

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

17 1.4 On October 21, 2020, CEH filed the Complaint in the above-captioned
18 matter naming Settling Defendant.

19 1.5 For purposes of this Consent Judgment only, CEH and Settling Defendant
20 (the “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained
21 in the Complaint and personal jurisdiction over Settling Defendant as to the acts alleged in the
22 Complaint, that venue is proper in the County of San Francisco, and that this Court has jurisdiction
23 to enter and enforce this Consent Judgment as a full and final resolution of all claims which were or
24 could have been raised in the Complaint based on the facts alleged therein with respect to Covered
25 Products manufactured, distributed, and/or sold by Settling Defendant.

26 1.6 Nothing in this Consent Judgment is or shall be construed as an admission
27 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
28 with the Consent Judgment constitute or be construed as an admission by the Parties of any fact,

1 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
2 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any other
3 pending or future legal proceedings. This Consent Judgment is the product of negotiation and
4 compromise and is accepted by the Parties solely for purposes of settling, compromising, and
5 resolving issues disputed in this Action.

6 **2. DEFINITIONS**

7 2.1 “Effective Date” is the date on which notice of entry of this Consent
8 Judgment is served on Settling Defendant.

9 2.2 “Compliance Level” means 20 parts per billion (“ppb”) Lead by weight.

10 **3. INJUNCTIVE RELIEF**

11 3.1 **Compliance of Covered Products.** As of the Effective Date, Settling
12 Defendant shall not purchase, manufacture, ship, sell or offer for sale Covered Products that will be
13 sold or offered for sale in California that contain a concentration of Lead that exceeds the
14 Compliance Level.

15 3.2 Methods of Testing. Settling Defendant shall determine the Lead
16 concentration by use of a test performed by an accredited laboratory using inductively coupled
17 plasma mass spectrometry (ICP-MS) equipment with a level of detection of no greater than 50% of
18 the Compliance Level that meets standard laboratory QA/QC requirements, or any other testing
19 method agreed upon by the Parties.

20 3.2.1 Laboratories Conducting Validation Testing. Any testing shall be
21 performed by an independent, accredited third party laboratory or an in-house laboratory that has
22 been certified by an independent third party or otherwise agreed to by the Parties.

23 3.2.2 Records. The testing reports and results of the any testing performed
24 pursuant to this Consent Judgment shall be retained by Settling Defendant for three (3) years and
25 made available to CEH upon reasonable request, but no more than twice per year.

26 3.3 Market Withdrawal. Nothing in this Section 3 limits or prohibits Settling
27 Defendant from ceasing sales of the Covered Products in the State of California.
28

1 **4. ENFORCEMENT**

2 **4.1 Enforcement Procedures.** This Court shall have exclusive jurisdiction over all
3 matters regarding enforcement of the Consent Judgment. Prior to bringing any motion or order to
4 show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide
5 the violating party thirty (30) days advanced written notice of the alleged violation. The Parties
6 shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on an
7 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to
8 enforce may, by new action, motion or order to show cause before the Superior Court of San
9 Francisco, seek to enforce Proposition 65 or the terms and conditions contained in this Consent
10 Judgment.

11 **4.2 Any action to enforce alleged violations of Section 3.1 by Settling Defendant or to**
12 **enforce future alleged violations of Proposition 65 with respect to Lead exposures from Covered**
13 **Products sold or offered for sale by Settling Defendant shall be brought exclusively pursuant to this**
14 **Section 4, and be subject to the meet and confer requirement of Section 4.1, if applicable.**

15 **5. PAYMENTS**

16 **5.1 Payments by Settling Defendant.** Within fifteen (15) calendar days of
17 the Effective Date, Settling Defendant shall pay the total sum of \$30,000 as a settlement payment as
18 further set forth in this Section.

19 **5.2 Allocation of Payments.** The total settlement amount for Settling
20 Defendant shall be paid in five (5) separate checks in the amounts specified below and delivered as
21 set forth below. Any failure by Settling Defendant to comply with the payment terms herein shall
22 be subject to a stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each
23 day the full payment is not received after the applicable payment due date set forth in Section 5.1.
24 The late fees do not apply if the checks are post-marked or otherwise dispatched to an overnight
25 delivery service prior to the due date set forth in Section 5.1. The late fees required under this
26 Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding
27 brought pursuant to Section 4 of this Consent Judgment. The funds paid by Settling Defendant shall
28

1 be allocated as set forth below between the following categories and made payable as follows:

2 5.2.1 \$3,920 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).

3 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §
4 25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health
5 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty payment
6 for \$2,940 shall be made payable to OEHHA and associated with taxpayer identification number
7 68-0284486. This payment shall be delivered as follows:

8 For United States Postal Service Delivery:

9 Attn: Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010, MS #19B
13 Sacramento, CA 95812-4010

14 For Non-United States Postal Service Delivery:

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

20 The CEH portion of the civil penalty payment for \$980 shall be made payable to the Center for
21 Environmental Health and associated with taxpayer identification number 94-3251981. This
22 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA
23 94117.

24 5.2.2 \$2,940 as an Additional Settlement Payment ("ASP") to CEH pursuant
25 to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH
26 intends to place these funds in CEH's Toxics in Food Fund, and will use the funds to support CEH
27 programs and activities that seek to educate the public about toxic chemicals in food, to work with
28 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 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.

5.2.3 \$23,140 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) \$20,295 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) \$2,845 payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

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

Payee	Type	Amount	Deliver To
OEHHA	Penalty	\$2,940	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	\$980	LLG
Center For Environmental Health	ASP	\$2,940	LLG
Lexington Law Group	Fee and Cost	\$20,295	LLG
Center For Environmental Health	Fee and Cost	\$2,845	LLG

6. MODIFICATION AND DISPUTE RESOLUTION

6.1 **Modification.** This Consent Judgment may be modified 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.

1 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
2 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion
3 to modify the Consent Judgment.

4 **7. CLAIMS COVERED AND RELEASE**

5 7.1 Provided that Settling Defendant complies in full with its obligations
6 under Section 5, this Consent Judgment is a full, final and binding resolution between CEH on
7 behalf of itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated
8 entities that are under common ownership, directors, officers, employees, agents, shareholders,
9 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling
10 Defendant distributes or sells Covered Products, such as distributors, wholesalers, customers,
11 retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any violation
12 of Proposition 65 based on failure to warn about alleged exposure to Lead contained in Covered
13 Products that were sold, distributed or offered for sale by Settling Defendant prior to the Effective
14 Date.

15 7.2 Provided that Settling Defendant complies in full with its obligations
16 under Section 5, CEH, for itself, its agents, successors and assigns, releases, waives, and forever
17 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream
18 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common
19 law claims that have been or could have been asserted by CEH regarding the failure to warn about
20 exposure to Lead contained in Covered Products sold by Settling Defendant prior to the Effective
21 Date.

22 7.3 Provided that Settling Defendant complies in full with its obligations
23 under Section 5, compliance with the terms of this Consent Judgment by Settling Defendant shall
24 constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees and
25 Downstream Defendant Releasees with respect to any alleged failure to warn about Lead in
26 Covered Products manufactured, distributed or sold by Settling Defendant after the Effective Date.
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1 **8. PROVISION OF NOTICE**

2 8.1 When CEH is entitled to receive any notice under this Consent Judgment,
3 the notice shall be sent by overnight delivery or first class mail with a courtesy copy by electronic
4 mail to:

5 Ryan Berghoff
6 Howard Hirsch
7 Lexington Law Group
8 503 Divisadero Street
9 San Francisco, CA 94117
10 rberghoff@lexlawgroup.com
11 hhirsch@lexlawgroup.com

12 8.2 When Settling Defendant is entitled to receive any notice under this
13 Consent Judgment, the notice shall be sent by overnight delivery or first class mail with a courtesy
14 copy by electronic mail to:

15 Peg Carew Toledo
16 Arnold & Porter Kaye Scholer LLP
17 Three Embarcadero Center, 10th Floor
18 San Francisco, CA 94111-4024
19 Peg.Toledo@arnoldporter.com

20 8.3 Any Party may modify the person and address to whom the notice is to be
21 sent by sending the other Party notice by overnight delivery or first class mail with a courtesy copy
22 by electronic mail.

23 **9. COURT APPROVAL**

24 9.1 This Consent Judgment shall become effective on the Effective Date.
25 CEH shall prepare and file a Motion for Approval of this Consent Judgment and Settling Defendant
26 shall support approval of such Motion.

27 9.2 If this Consent Judgment is not entered by the Court, it shall be of no
28 further force or effect and shall not be introduced into evidence or otherwise used in any proceeding
for any purpose. other than to allow the Court to determine if there was a material breach of Section
9.1.

10 **10. GOVERNING LAW AND CONSTRUCTION**

11 10.1 The terms of this Consent Judgment shall be governed by the laws of the
12 State of California.

1 **11. ATTORNEYS' FEES**

2 11.1 A Party who unsuccessfully brings or contests an action arising out of this
3 Consent Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and
4 costs unless the unsuccessful Party has acted with substantial justification. For purposes of this
5 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
6 Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

7 11.2 Nothing in this Section 11 shall preclude a party from seeking an award of
8 sanctions pursuant to law.

9 **12. ENTIRE AGREEMENT**

10 12.1 This Consent Judgment contains the sole and entire agreement and
11 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
12 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
13 merged herein and therein. There are no warranties, representations, or other agreements between
14 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
15 implied, other than those specifically referred to in this Consent Judgment have been made by any
16 Party hereto. No other agreements not specifically contained or referenced herein, oral or
17 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
18 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
19 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
20 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
21 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of
22 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
23 hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

24 **13. SUCCESSORS AND ASSIGNS**

25 13.1 This Consent Judgment shall apply to and be binding upon CEH and
26 Settling Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors
27 or assigns of any of them.
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14.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

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

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

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.

Dated: _____, 2021

Judge of the Superior Court of the State of California

1 **IT IS SO STIPULATED:**

2 Dated: November 18, 2021

CENTER FOR ENVIRONMENTAL HEALTH

3
4 

5 _____
6 Michael Green
7 Chief Executive Officer

8 Dated: _____, 2021

DOLLAR TREE STORES, INC.

9
10 _____
11 Signature

12 _____
13 Printed Name

14 _____
15 Title

1 IT IS SO STIPULATED:

2 Dated: _____, 2021

CENTER FOR ENVIRONMENTAL HEALTH

5 _____
Michael Green
Chief Executive Officer

7 Dated: 11/5, 2021

DOLLAR TREE STORES, INC.

10 _____
Signature

11 _____
Keith Zanni
Printed Name

13 _____
Title

14 Deputy Gen. Counsel