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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 DOMINO
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 Domino 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 molasses that is
7 sold or distributed by Settling Defendant and subsequently packaged by third parties and sold to
8 consumers as molasses.

9 1.2 On April 17, 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 molasses 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 molasses that is sold to third parties that subsequently sell molasses as a finished product
17 in the State of California or has done so in the past. Settling Defendant sells bulk molasses,
18 including ingredients made with molasses, to other businesses, not consumers.

19 1.4 On January 9, 2019, CEH filed the Complaint in the above-captioned matter. On
20 January 5, 2021, CEH amended the Complaint to add Settling Defendant as a defendant in this
21 Action.

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

1 distributed or sold by Settling Defendant.

2 1.6 Nothing in this Consent Judgment is or shall be construed as an admission by the
3 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
4 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
5 conclusion of law, issue of law or violation of law. Nothing in this Consent Judgment shall
6 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
7 other pending or future legal proceedings. This Consent Judgment is the product of negotiation
8 and compromise and is accepted by the Parties solely for purposes of settling, compromising and
9 resolving issues disputed in this Action.

10 **2. DEFINITIONS**

11 2.1 “Covered Products” means molasses or sweeteners used in retail molasses that is
12 sold or distributed by Settling Defendant and subsequently packaged by third parties and sold to
13 California consumers as molasses.

14 2.2 The “Effective Date” is the date of entry of this Consent Judgment.

15 2.3 The “Lead Level” shall mean a concentration level of no more than 35 parts per
16 billion (“ppb”) Lead by weight.

17 **3. INJUNCTIVE RELIEF**

18 3.1 **Clear and Reasonable Warnings for Covered Products.** As of the Effective
19 Date, Settling Defendant shall not sell or offer for sale any Covered Products that contains lead in
20 a concentration exceeding the Lead Level, unless Settling Defendant provides a clear and
21 reasonable warning as further specified in this Section 3.

22 3.2 **Warning Language.** The warning required by Section 3.1 for Covered Products
23 that contain Lead in a concentration exceeding the Lead Level:

24 **WARNING:**

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

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

2 **3.3 Placement of Warning Language.** The warning set forth in Section 3.2 shall be
3 communicated by placing the warning in the specification sheet provided to purchasers of any
4 Covered Product and sending it with an order confirmation in the form attached hereto as Exhibit
5 A (“Confirmation”) that Settling Defendant shall send to each of its customers after it receives a
6 purchase order but prior to shipment of any Covered Product. The Confirmation shall be in
7 substantially similar form to the Confirmation attached and may contain information that is
8 supplemental to the content required by Section 3.2 only to the extent that it identifies the source
9 of the exposure or provides information on how to avoid or reduce exposure to the identified
10 chemical or chemicals. The Confirmation may be sent via email in pdf format provided that it is
11 sent to the primary customer contact ordering the Covered Product. Settling Defendant shall
12 retain documents and records regarding the provision of these warning and make them available
13 to CEH for a period of two years from issuance.

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

25 **4. ENFORCEMENT**

26 **4.1 Enforcement Procedures.** This Court shall have exclusive jurisdiction over all
27 matters regarding enforcement of the Consent Judgment. Prior to bringing any motion or order to

1 show cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall
2 provide the other party thirty (30) days advanced written notice of the alleged violation. The
3 Parties shall meet and confer during such thirty (30) day period in an effort to try to reach
4 agreement on an appropriate cure for the alleged violation. After such thirty (30) day period, the
5 Party seeking to enforce may, by new action, motion or order to show cause before the Superior
6 Court of Alameda, seek to enforce Proposition 65 or the terms and conditions contained in this
7 Consent Judgment.

8 **5. PAYMENTS**

9 **5.1 Payments by Settling Defendant.** On or before the date seven days after the
10 Effective Date, Settling Defendant shall pay the total sum of \$250,000 as a settlement payment as
11 further set forth in this Section.

12 **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall
13 be paid in four (4) separate checks in the amounts specified below and delivered as set forth
14 below. The funds paid by Settling Defendant shall be allocated as set forth below between the
15 following categories and made payable as follows:

16 **5.2.1** A civil penalty in the amount of \$44,140 pursuant to Health & Safety Code
17 §25249.7(b). The civil penalty payment shall be apportioned in accordance with Health & Safety
18 Code §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental
19 Health Hazard Assessment (“OEHHA”). Accordingly, the OEHHA portion of the civil penalty
20 payment for \$33,105 shall be made payable to OEHHA and associated with taxpayer
21 identification number 68-0284486. This payment shall be delivered as follows:

22 For United States Postal Service Delivery:

23 Attn: Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010, MS #19B
27 Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Attn: Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

1001 I Street, MS #19B
Sacramento, CA 95814

The CEH portion of the civil penalty payment for \$11,035 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.

5.2.2 An Additional Settlement Payment (“ASP”) in the amount of \$33,060 to CEH pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title 11, §3204. CEH intends to place these funds in CEH’s Toxics in Food Fund and use these funds to support 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.

5.2.3 Settling Defendant shall pay \$172,800 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:

1	Payee	Type	Amount	Deliver To
2	OEHHA	Penalty	\$ 33,105	OEHHA per Section 5.2.1
3	Center For Environmental Health	Penalty	\$ 11,035	LLG
4	Center For Environmental Health	ASP	\$ 33,060	LLG
5	Lexington Law Group	Fee and Cost	\$172,800	LLG

6 **6. MODIFICATION AND DISPUTE RESOLUTION**

7 6.1 **Modification.** This Consent Judgment may be modified from time to time by
8 express written agreement of the Parties, with the approval of the Court, or by an order of this
9 Court upon motion and in accordance with law.

10 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
11 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
12 modify the Consent Judgment.

13 6.3 **Change in Proposition 65.** If Proposition 65 or its implementing regulations are
14 changed from their terms as they exist on the date of entry of this Consent Judgment, by any means,
15 including a final court decision, in a manner that impacts the Lead Level, or if OEHHA takes some
16 other final regulatory action for products similar to the Covered Products that impacts whether a
17 warning is required for the Covered Products, then CEH or Settling Defendant may seek to modify
18 this Consent Judgment to be consistent with any such change.

19 **7. CLAIMS COVERED AND RELEASE**

20 7.1 Provided that Settling Defendant complies in full with its obligations under
21 Section 5, this Consent Judgment is a full, final and binding resolution between CEH on behalf of
22 itself and the public interest and Settling Defendant and its parents, subsidiaries, affiliated entities
23 that are under common ownership, directors, officers, employees, agents, shareholders,
24 successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling
25 Defendant distributes or sells or has distributed or sold Covered Products, such as distributors,
26 wholesalers, customers, retailers, franchisees, brokers, licensors and licensees, including but not
27 limited to B&G Foods North America, Inc. and Walmart.com USA, LLC, and each of their

1 respective parents, subsidiaries, affiliated entities that are under common ownership, directors,
2 officers, employees, agents, shareholders, successors, assigns, and attorneys (“Downstream
3 Defendant Releasees”), of any violation of Proposition 65 based on failure to warn about alleged
4 exposure to Lead contained in Covered Products that were sold by Settling Defendant prior to the
5 Effective Date.

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

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

18 7.4 Within five (5) days of the date that Settling Defendant complies with all of its
19 obligations under Section 5 of this Consent Judgment, CEH will dismiss the Complaint as to
20 B&G Foods North America, Inc. and Walmart.com USA, LLC without prejudice provided that
21 such parties have each agreed in writing that they shall not seek attorneys’ fees or costs relating to
22 the Complaint pursuant to California Code of Civil Procedure Sections 1021 through 1038, or any
23 other applicable law or equitable doctrine.

24 **8. PROVISION OF NOTICE**

25 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by first class and electronic mail to:

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

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:

Rick R. Rothman
Morgan, Lewis & Bockius LLP
300 South Grand Avenue, Twenty-Second Floor
Los Angeles, CA 90071-3132
rick.rothman@morganlewis.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.

9.2 With the exception of the obligations of the Parties set forth in Section 9.1 which shall be effective on execution of this Consent Judgment, this Consent Judgment shall become effective upon the Effective Date.

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.*

1 11.2 Notwithstanding Section 11.1, a Party who prevails in a contested enforcement
2 action brought pursuant to Section 4 may seek an award of attorneys' fees pursuant to Code of
3 Civil Procedure §1021.5 against a Party that acted with substantial justification.

4 11.3 Nothing in this Section 11 shall preclude a party from seeking an award of
5 sanctions pursuant to law.

6 **12. ENTIRE AGREEMENT**

7 12.1 This Consent Judgment contains the sole and entire agreement and understanding
8 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
9 negotiations, commitments or understandings related thereto, if any, are hereby merged herein
10 and therein. There are no warranties, representations or other agreements between the Parties
11 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
12 other than those specifically referred to in this Consent Judgment have been made by any Party
13 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
14 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
15 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
16 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
17 modification, waiver or termination of this Consent Judgment shall be binding unless executed in
18 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
19 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
20 whether or not similar, nor shall such waiver constitute a continuing waiver unless executed in
21 writing by the party to be bound thereby.

22 **13. SUCCESSORS AND ASSIGNS**

23 13.1 This Consent Judgment shall apply to and be binding upon CEH and Settling
24 Defendant, and their respective divisions, subdivisions and subsidiaries, and the successors or
25 assigns of any of them.

26 **14. RETENTION OF JURISDICTION**

27 14.1 This Court shall retain jurisdiction of this matter to enforce, implement or modify
28

1 the Consent Judgment.

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

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

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

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

10 **17. EXECUTION IN COUNTERPARTS**

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

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15 **IT IS SO ORDERED, ADJUDGED,
16 AND DECREED**

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18 Dated: _____

Judge of the Superior Court

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IT IS SO STIPULATED:

Dated: April 7, 2022

CENTER FOR ENVIRONMENTAL HEALTH



Signature

Michael Green

Printed Name

CEO

Title

Dated: _____, 2022

DOMINO FOODS, INC.

Signature

Printed Name

Title

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IT IS SO STIPULATED:

Dated: _____, 2022

**CENTER FOR ENVIRONMENTAL
HEALTH**

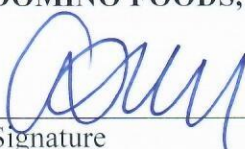
Signature

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Dated: April 7, 2022

DOMINO FOODS, INC.



Signature

Armando A. Tabonilla
Printed Name

Vice president
Title

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EXHIBIT A
Order Confirmation with Warning Form
[Domino Logo Or Other Clear Identification of Company]
Molasses Proposition 65 Warning

The following warning is provided pursuant to California Health and Safety Code Section 25249.6 (“Proposition 65”). You may be required to pass this warning on to your customers and may face legal liability for failure to do so.

WARNING:

Consuming this product can expose you to chemicals including lead, 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.