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Attorneys for Defendant
HOOSIER HILL FARM, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

VICTORIA JAMISON, an individual

Plaintiff,

v.

HOOSIER HILL FARM, LLC, an Indiana limited liability company; NATURAL FOODS, Inc., an Ohio corporation; WALMART, Inc., a Delaware corporation and DOES 1 through 10, inclusive

Defendants.

Case No. 37-2021-00026483-CU-MC-CTL

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.5 *et seq.*)

1. INTRODUCTION

1.1 The Parties. This Consent Judgment ("Consent Judgment") is entered into by and between VICTORIA JAMISON ("PLAINTIFF") and HOOSIER HILL FARM, LLC ("DEFENDANT"). Together, PLAINTIFF and DEFENDANT are collectively referred to as the

"Parties." PLAINTIFF is an individual who resides in the State of California and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. DEFENDANT is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Cal. Health & Safety Code § 25249.5, *et seq.* ("Proposition 65").

1.2 General Allegations. PLAINTIFF alleges acrylamide is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm. PLAINTIFF alleges that DEFENDANT has exposed individuals to acrylamide from its sales of Hoosier Hill Farm Molasses Powder without first providing users and consumers of the product with a clear and reasonable warning that PLAINTIFF alleges is required under Proposition 65.

DEFENDANT denies a Proposition 65 warning is required for its product and denies all other material allegations contained in the Notice and Complaint. Defendant maintains its product is compliant with all applicable federal and state laws, including with Proposition 65. Defendant asserts the following defenses, among other applicable defenses. To the extent any acrylamide is present in the product, the product is exempt from a Proposition 65 warning because under Title 27, Section 25721 of the California Code of Regulations, average users and consumers of molasses powder would not be exposed above the regulatory safe harbor threshold for acrylamide based on their expected use and average rate of intake of the product; to the extent any acrylamide is present in the product, it is naturally occurring and therefore does not constitute or count towards an "exposure" pursuant to Title 27, Section 25501 of the California Code of Regulations; there is insufficient scientific evidence showing that acrylamide in food poses a risk to human health and therefore requiring a warning on the product violates the rights and protections of the DEFENDANT under the California and United States Constitutions, including but not limited to its procedural due process and First Amendment rights.

1.3 Product Description. The products covered by this Consent Judgment are Hoosier Hill Farm Molasses Powder, including, without limitation, all varieties and pack sizes of Hoosier

Hill Farm Molasses Powder that have been manufactured, imported, distributed, offered for sale, and/or sold in California by DEFENDANT or its affiliates (the "Products").

1.4 Notice of Violation, Complaint and Jurisdiction. On November 12, 2020 and March 25, 2021, PLAINTIFF served DEFENDANT and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.6 et seq." (the "Notice"). The Notice provided DEFENDANT and such others, including public enforcers, with notice that alleged that DEFENDANT was in violation of Proposition 65 for failing to warn California consumers and customers that use of the Products will expose them to acrylamide. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

On June 17, 2021, based on the Notice and the absence of any authorized public prosecutor of Proposition 65 having filed a suit based on the allegations contained therein, PLAINTIFF filed a complaint in the Superior Court of and for San Diego County (the "Court"), Case No. 37-2021-00026483-CU-MC-CTL (the "Action") and served the complaint on DEFENDANT on July 13, 2021.

For purposes of this Consent Judgment only, the Parties stipulate that the Court has jurisdiction over the allegations in the Complaint and personal jurisdiction over DEFENDANT, that venue is proper in the County of San Diego, and that the Court has jurisdiction to enter this Consent Judgment as a full and final resolution of the claims and allegations which were or could have been raised in the Action based on the facts alleged therein and/or in the Notice.

1.5 No Admission. This Consent Judgment resolves claims that are denied and disputed. The Parties enter into this Consent Judgment as a full and final resolution of any and all claims between the Parties for the purpose of avoiding expensive and prolonged litigation. DEFENDANT denies each and every material allegation contained in the Notice and Action and maintains that it has not violated or threatened to violate Proposition 65 or any other law or legal duty and that acrylamide in food does not pose any risk to human health. Nothing in this Consent Judgment shall be construed as an admission by DEFENDANT of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as

an admission by DEFENDANT of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by DEFENDANT. However, this Section 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties of DEFENDANT under this Consent Judgment.

1.6 Effective Date. For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this Consent Judgment has been approved by the Court and PLAINTIFF has provided notice to DEFENDANT that it has been entered in the Court's records as a consent judgment.

1.7 Compliance Date. For purposes of this Consent Judgment, the term "Compliance Date" shall mean 45 days from the Effective Date.

2. INJUNCTIVE RELIEF

2.1 Compliance with Proposition 65 Warning Regulations. DEFENDANT has ceased sales of the Products. In the event DEFENDANT resumes sales of the Products in California, Defendant shall provide a clear and reasonable exposure warning for the Products. There shall be no obligation for such an exposure warning to be provided for Products that entered the stream of commerce prior to the Effective Date. Stream of commerce shall mean and refer to any Product that was manufactured, labeled, sold and/or distributed prior to the Effective Date. The warning shall consist one of the following described warnings:

(a) **WARNING**: Consuming this product can expose you to acrylamide, which is 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.

(b) **WARNING**: Consuming this product can expose you to chemicals including acrylamide, which is 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.

(c) **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov/food.

A warning provided pursuant to this subsection must have the term "**WARNING**" printed in

all capital letters and in bold font. The warning shall be affixed to or printed on the Products' packaging or labeling and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

2.2 Compliance with Warning Regulation. Defendant shall be deemed to be in compliance with this Consent Judgment by not selling the Products in California, providing a warning pursuant to Section 2.1, or by complying with the warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA").

3. SETTLEMENT PAYMENT

3.1 Civil Penalties

DEFENDANT shall pay $3,000 as a civil penalty, allocated in accordance with Cal. Health & Safety Code Sections 25249.12(c)(1) and (d), with 75% of the penalty to be remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the Penalty remitted to PLAINTIFF no later than ten (10) calendar days following the Effective Date. More specifically, DEFENDANT shall issue two separate checks for the civil penalty payment to (a) "Office of Environmental Health Hazard Assessment" in the amount of $2,250 (75%); and to (b) "Law Offices of George Rikos in Trust" in the amount of $750 (25%). Within ten (10) calendar days of the Effective Date, DEFENDANT shall deliver these payments as follows:

(i) The penalty payment owed to PLAINTIFF shall be delivered to the following address:

George Rikos
Law Offices of George Rikos
555 West Beech, Suite 500
San Diego, CA 92101

(ii) The penalty payment owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following address:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
Attn. Prop 65 Penalties
1001 I Street
Sacramento, CA 95814

DEFENDANT shall provide PLAINTIFF'S counsel with a copy of the check it sends to OEHHA with its penalty payment to PLAINTIFF. In association with the issuance of the payments under this Consent Judgment, DEFENDANT will issue IRS 1099 forms as appropriate given the payees.

3.2 Attorney Fees and Litigation Costs

Within ten (10) calendar days of the Effective Date, DEFENDANT shall reimburse PLAINTIFF's counsel $38,000 for fees and costs incurred as a result of investigating and bringing this matter to DEFENDANT'S attention, negotiating a Consent Judgment in the public interest, and obtaining the Court's approval of the Consent Judgment and its entry as a consent judgment. DEFENDANT shall issue a check for this amount payable to "Law Offices of George Rikos" and deliver it to the address identified in Section 3.1 above. DEFENDANT'S payment obligations shall be tolled until it receives an IRS W-9 form for this payee.

4. MATTERS COVERED BY THIS CONSENT JUDGMENT

4.1 Release of DEFENDANT and Downstream Customers and Entities. This Consent Judgment is a full, final and binding resolution between PLAINTIFF, acting on her own behalf and in the public interest, and DEFENDANT of any violation of Proposition 65 that was or could have been asserted by PLAINTIFF or on behalf of her past and current agents, representatives, attorneys, predecessors, successors, and/or assigns (collectively, "Releasors") for failure to provide warnings for alleged exposures to acrylamide contained in the Products, and Releasors hereby release any such claims against DEFENDANT and its parents, shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and its predecessors, successors, and assigns (collectively, "DEFENDANT Releasees"), and each entity to whom DEFENDANT directly or indirectly distributes or sells the Products, including but not limited to,

downstream distributors, wholesalers, customers, and retailers, and their respective subsidiaries, affiliates and parents, franchisees, cooperative members, licensees, and all other entities in the distribution chain of the Product (collectively, "Downstream Releasees"), from all claims for violations of Proposition 65 with respect to any Products manufactured, distributed, and/or sold by DEFENDANT prior to the Compliance Date based on failure to warn of alleged exposure to the chemical acrylamide from the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 above, PLAINTIFF, on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the DEFENDANT Releasees and/or Downstream Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to chemicals contained in DEFENDANT'S Product. Once this Consent Judgment is approved by the Court and all payment obligations are completed by DEFENDANT, PLAINTIFF will dismiss all remaining defendants from this Action.

4.2 DEFENDANT'S Release of PLAINTIFF. DEFENDANT, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against PLAINTIFF, her attorneys, and other representatives, for any and all actions taken or statements made by PLAINTIFF and/or her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter.

4.3 California Civil Code Section 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. PLAINTIFF on behalf of herself only, on the one hand, and DEFENDANT, on

the other hand, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims up through the Compliance Date, including all rights of action therefrom. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code Section 1542 as to any such unknown claims. California Civil Code Section 1542 reads as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

PLAINTIFF and DEFENDANT each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code Section 1542.

4.4 Deemed Compliance with Proposition 65. Compliance by DEFENDANT with this Consent Judgment constitutes compliance with Proposition 65 with respect to exposure to acrylamide from the Products. Products distributed by DEFENDANT prior to the Compliance Date may be sold through as previously manufactured and labeled.

5. COURT APPROVAL

The Parties hereby request that the Court promptly enter this Consent Judgment based on Plaintiff's Motion for Approval pursuant to Section 10 below. Upon entry of the Consent Judgment, Plaintiff and Defendant waive their respective rights to a hearing or trial on the allegations contained in the Complaint. This Consent Judgment is not effective until it is approved by the Court and shall be null and void if it is not approved by the Court within one year after it has been fully executed by the Parties, or by such additional time as the Parties may agree to in writing.

6. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the

provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Consent Judgment being contrary to, the intent of the Parties in entering into this Consent Judgment.

7. GOVERNING LAW/ENFORCEMENT

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. The rights to enforce the terms of this Consent Judgment are exclusively conferred on the Parties hereto.

7.1 Change in Proposition 65. If Proposition 65 or its implementing regulations are amended after the date of entry of this Consent Judgment, or if OEHHA issues a safe use determination, interpretive guideline or takes any other final regulatory action that determines warnings for acrylamide are not required or that modify the standard for warnings for acrylamide, then DEFENDANT may seek to modify the warning requirements contained within this Consent Judgment. If DEFENDANT seeks any assistance or cooperation from PLAINTIFF in modifying this Consent Judgment, DEFENDANT shall pay PLAINTIFF's counsel all reasonable and necessary attorney fees and costs in so doing. Said fees and costs shall not exceed $15,000 and shall be paid within 10 days of any request for cooperation or assistance by PLAINTIFF.

7.2 Court Decisions. If any court, including but not limited to the United States District Court for the Eastern District of California in the litigation entitled *California Chamber of Commerce v. Rob Bonta,* No. 2:19-cv-02019-KJM-JDP (E.D. Cal.), or the Ninth Circuit Court of Appeals in the 2021 appeal related to the same litigation, determines that warnings for acrylamide exposures are not required or that enforcement of Proposition 65 claims concerning acrylamide warnings are preempted or otherwise deemed unlawful or unconstitutional, then DEFENDANT may move to modify this Consent Judgment to conform to such ruling as it relates to the warning requirements contained herein.

7.3 Federal Agency Action and Preemption. If a court of competent jurisdiction or an agency of the federal government, including but not limited to the U.S. Food and Drug Administration, states through any guidance, regulation or legally binding act that federal law has

preemptive effect on any of the requirements of this Consent Judgment, then DEFENDANT may seek to modify this Consent Judgment with respect to the warning requirements contained herein.

8. NOTICES

Unless otherwise specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and sent to the other Party at the address listed below by: (i) personal delivery; (ii) first-class mail, registered or certified, return receipt requested; or (iii) overnight or two-day courier.

For DEFENDANT:

Margaret K. Cerrato-Blue
Andrew Russell
Fox Rothschild LLP
10250 Constellation Blvd.
Suite 900
Los Angeles, CA 90067

For PLAINTIFF:

George Rikos, Esq.
Law Offices of George Rikos
555 West Beech, Suite 500
San Diego, CA 92101

Either Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS: SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

PLAINTIFF agrees to comply with the reporting requirements referenced in California Health & Safety Code Section 25249.7(f) and to seek, by formal and properly noticed motion (including with service to the Office of the California Attorney General being fully effectuated at least forty-five (45) days prior to a requested hearing thereon), approval of this Consent Judgment's terms and its entry as a consent judgment by the Court.

11. MODIFICATION

Unless otherwise provided for herein, this Consent Judgment may be modified only by a written agreement of the Parties, and if approval of the Court is required for such modification, upon a duly noticed motion of either Party for good cause shown. Any proposed modification requiring the Court's approval shall be sent to the Office of the California Attorney General in advance of its submission to the Court such that the Attorney General has a reasonable opportunity to review and comment thereon.

12. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof. This Consent Judgment shall have no effect if it is not approved by the Court and entered as a consent judgment.

13. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood and agree to all of the terms and conditions contained in this Consent Judgment.

AGREED TO:	**AGREED TO:**
Date: 12/15/21	Date: 12/15/21
By: _____	By: _____
Victoria Jamison	Hoosier Hill Farm, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED THAT THE CONSENT JUDGMENT SET FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A CONSENT JUDGMENT BY THIS COURT:

DATED: _____

_____
JUDGE OF THE SUPERIOR COURT