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17 ENVIRONMENTAL DEMOCRACY PROJECT

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 FOR THE COUNTY OF ALAMEDA

20 ENVIRONMENTAL DEMOCRACY  
21 PROJECT, a non-profit corporation,

22 Plaintiff,

23 v.

24 CANDIES TOLTECA; CARDENAS  
25 MARKETS, LLC; and DOES 1 through 10,  
26 inclusive,

27 Defendants.

) Case No. RG21112735

)  
) Assigned for All Purposes to:  
) Judge Noël Wise, Dept. 24

) **[PROPOSED] CONSENT JUDGMENT**  
) **RE: CANDIES TOLTECA**

1       **1.       INTRODUCTION**

2               1.1       The Parties to this Consent Judgment are Plaintiff Environmental Democracy  
3 Project, a California non-profit corporation (“EDP”) and Defendant Candies Tolteca (“Settling  
4 Defendant”). EDP and Settling Defendant (the “Parties”) enter into this Consent Judgment to  
5 settle certain claims asserted by EDP against Settling Defendant as set forth in the operative  
6 complaint (“Complaint”) in this action.

7               1.2       On or about June 15, 2021, EDP provided a 60-day Notice of Violation of  
8 Proposition 65 to the California Attorney General, the District Attorneys of every county in  
9 California, the City Attorneys of every California city with a population greater than 750,000,  
10 and to Settling Defendant, alleging that Settling Defendant violated Proposition 65 by exposing  
11 persons to lead contained in saladitos (dried or salted plums) without first providing a clear and  
12 reasonable Proposition 65 warning.

13              1.3       Settling Defendant is a corporation or other business entity that manufactures,  
14 distributes, sells, or offers for sale saladitos (dried or salted plums) that are sold in the State of  
15 California or has done so in the past.

16              1.4       On September 10, 2021, EDP filed the original Complaint in the above-captioned  
17 matter naming Settling Defendant as defendant.

18              1.5       For purposes of this Consent Judgment only, the Parties stipulate that this Court  
19 has jurisdiction over the allegations of violations contained in the Complaint and personal  
20 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper  
21 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent  
22 Judgment as a full and final resolution of all claims which were or could have been raised in the  
23 Complaint based on the facts alleged therein with respect to Covered Products manufactured,  
24 distributed, and/or sold by Settling Defendant and Cardenas Markets LLC, and its affiliates and  
25 subsidiaries.

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

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

7 **2. DEFINITIONS**

8 2.1 The “Complaint” means the operative complaint in the above-captioned matter.

9 2.2 “Covered Products” means saladitos. Saladitos are plums that are dried or  
10 covered with salt, sugar, or chili

11 2.3 “Effective Date” means the date on which notice of entry of this Consent  
12 Judgment by the Court is served upon Settling Defendant.

13 **3. INJUNCTIVE RELIEF**

14 3.1 **Cessation of Sales of All Saladitos.** As of the Effective Date, Settling Defendant  
15 shall cease all purchases and sales of Covered Products.

16 3.2 **Recall of All Saladitos.** As of the Effective Date, to the extent it has not done so  
17 already, Settling Defendant shall use its best efforts to recall all Covered Products from the  
18 California and national marketplace including but not limited recalling the products from Settling  
19 Defendant’s wholesale customers.

20 **4. ENFORCEMENT**

21 4.1 **General Enforcement Provisions.** The parties may, by motion or application for  
22 an order to show cause before this Court, enforce the terms and conditions contained in this  
23 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of  
24 Section 3 above, the moving party shall provide the non-moving party with a notice setting forth  
25 the factual basis for the alleged violation of Section 3 (“Notice of Violation”). The Parties shall  
26 then meet and confer regarding the basis for the anticipated motion or application in an attempt to  
27 resolve it informally. Should such attempts at informal resolution fail, the moving-party may file  
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1 its enforcement motion or application. The prevailing party on any motion to enforce this  
2 Consent Judgment shall be entitled to its fees and costs associated with the motion.

3 **5. PAYMENTS**

4 5.1 **Payments by Settling Defendant.** Within seven calendar days of the Effective  
5 Date, Settling Defendant shall pay the total sum of \$50,000 as a settlement payment as further set  
6 forth in this Section.

7 5.2 **Allocation of Payments.** The total settlement amount shall be paid by three  
8 separate checks delivered as set forth below (and summarized in Section 5.2.4). Any failure by  
9 Settling Defendant to comply with the payment terms herein shall be subject to a stipulated late  
10 fee to be paid by Settling Defendant in the amount of \$100 for each day the full payment is not  
11 received after the applicable payment due date set forth in Section 5.1. The late fees required  
12 under this Section shall be recoverable, together with reasonable attorneys' fees, in an  
13 enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The funds paid  
14 by Settling Defendant shall be allocated as set forth below between the following categories and  
15 made payable as follows:

16 5.2.1 \$10,000 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).  
17 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
18 25249.12 (25% to EDP and 75% to the State of California's Office of Environmental Health  
19 Hazard Assessment ("OEHHA")). Accordingly, the OEHHA portion of the civil penalty  
20 payment for \$7,500 shall be made payable to OEHHA and associated with taxpayer identification  
21 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 EDP portion of the civil penalty payment for \$2,500 shall be made payable to Environmental Democracy Project and associated with taxpayer identification number 84-3998900. This payment shall be delivered to Williams Environmental Law, 356 49<sup>th</sup> Street, Oakland, CA 94609.

5.2.2 \$35,000 as a reimbursement of a portion of EDP's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made payable to Williams Environmental Law and associated with taxpayer identification number 84-4252225. This check shall be delivered to Williams Environmental Law at 356 49<sup>th</sup> Street, Oakland, CA 94609.

5.2.3 \$5,000 as an Additional Settlement Payment ("ASP") to EDP pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. EDP shall use these funds to support EDP programs and activities that seek to educate the public about toxic chemicals including lead, and to advocate on behalf of impacted communities for businesses practices that are equitable, and safe for human health and the environment. EDP shall obtain and maintain adequate records to document that this ASP is spent on these activities and EDP agrees to provide such documentation to the Attorney General within thirty (30) days of any request from the Attorney General. This payment shall be made payable to Environmental Democracy Project and associated with employer identification number 84-3998900 and shall be delivered to Williams Environmental Law at 356 49<sup>th</sup> Street, Oakland, CA 94609.

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	\$7,500	OEHHA per Section 5.2.1
Williams Environmental Law (WEL)	Fees/Costs	\$35,000	WEL per Section 5.2.1

Environmental Democracy Project	Penalty and ASP	\$7,500	WEL per Section 5.2.2
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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 hereof, this Consent Judgment is a full, final, and binding resolution between EDP 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 directly or indirectly distribute or sell Covered Products, including but not limited to Cardenas Markets LLC, and its affiliates and subsidiaries, and any and all distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn about alleged exposure to lead contained in Covered that were sold, distributed or offered for sale by Settling Defendant prior to the Effective Date.

7.2 Provided that Settling Defendant complies in full with its obligations under Section 5 hereof, EDP, for itself, its agents, successors and assigns, releases, waives, and forever discharges any and all claims against Settling Defendant, Defendant Releasees, Cardenas Markets LLC, and its affiliates and subsidiaries, and Downstream Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted by EDP individually or in the public interest regarding the failure to warn about exposure to lead arising in connection with Covered Products manufactured, distributed or

1 sold by Settling Defendant prior to the Effective Date.

2 7.3 Provided that Settling Defendant complies in full with its obligations under  
3 Section 5 hereof, compliance with the terms of this Consent Judgment by Settling Defendant  
4 shall constitute compliance with Proposition 65 by Settling Defendant, Defendant Releasees, and  
5 Downstream Defendant Releasees with respect to any alleged failure to warn about lead in  
6 Covered Products manufactured, distributed, or sold by Settling Defendant after the Effective  
7 Date.

8 **8. PROVISION OF NOTICE**

9 8.1 When EDP is entitled to receive any notice under this Consent Judgment, the  
10 notice shall be sent by first class and electronic mail to:

11 Lucas Williams  
12 Williams Environmental Law  
13 356 49<sup>th</sup> Street  
14 Oakland, CA 94609  
15 lucas@williams-envirolaw.com

16 8.2 When Settling Defendant is entitled to receive any notice under this Consent  
17 Judgment, the notice shall be sent by first class and electronic mail to:

18 David Schneider  
19 Fennimore Dowling Aaron  
20 8080 N. Palm Avenue, Third Floor  
21 Fresno, CA 93711  
22 DSCHNEIDER@fennimorelaw.com

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

25 **9. COURT APPROVAL**

26 9.1 This Consent Judgment shall become effective upon the date signed by EDP and  
27 Settling Defendant, whichever is later, provided however, that EDP shall prepare and file a  
28 Motion for Approval of this Consent Judgment and Settling Defendant shall support entry of this  
Consent Judgment by the Court.

9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or

1 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
2 purpose other than to allow the Court to determine if there was a material breach of Section 9.1.

3 **10. GOVERNING LAW AND CONSTRUCTION**

4 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
5 California.

6 **11. ATTORNEYS' FEES**

7 11.1 A Party who unsuccessfully brings or contests an action, motion, or application  
8 arising out of this Consent Judgment shall be required to pay the prevailing Party's reasonable  
9 attorneys' fees and costs.

10 11.2 Nothing in this Section 11 shall preclude a Party from seeking an award of  
11 sanctions pursuant to law.

12 **12. ENTIRE AGREEMENT**

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



1 **13. RETENTION OF JURISDICTION**

2 13.1 This Court shall retain jurisdiction of this matter to implement or modify the  
3 Consent Judgment.

4 **14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

5 14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
6 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
7 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

8 **15. NO EFFECT ON OTHER SETTLEMENTS**

9 15.1 Nothing in this Consent Judgment shall preclude EDP from resolving any claim  
10 against an entity that is not Settling Defendant on terms that are different from those contained in  
11 this Consent Judgment.

12 **16. EXECUTION IN COUNTERPARTS**

13 16.1 The stipulations to this Consent Judgment may be executed electronically and in  
14 counterparts by means of portable document format (pdf), which taken together shall be deemed  
15 to constitute one document.

16  
17 **IT IS SO ORDERED, ADJUDGED,**  
18 **AND DECREED.**

19  
20 Dated: \_\_\_\_\_  
21 \_\_\_\_\_  
22 Judge of the Superior Court

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Dated: April 14, 2022

**ENVIRONMENTAL DEMOCRACY  
PROJECT**

Tanya M. Boyce  
Signature

Tanya M. Boyce  
Printed Name

Executive Director  
Title

Dated: \_\_\_\_\_, 2022

**CANDIES TOLTECA**


\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

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**IT IS SO STIPULATED:**

Dated: _____, 2022	<b>ENVIRONMENTAL DEMOCRACY PROJECT</b>  _____ Signature  _____ Printed Name  _____ Title
Dated: <i>April 13</i> , 2022	<b>CANDIES TOLTECA</b>   _____ Signature  <i>MARIA ORDAZ</i> _____ Printed Name  <i>Officer / Secretary</i> _____ Title