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LLC and TARGET CORPORATION
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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SAN DIEGO
10

11 VICTORIA JAMISON, an individual) Case No.: 37-2021-00039269-CU-MC-CTL
12)
Plaintiff,) [PROPOSED] JUDGMENT PURSUANT
13) TO TERMS OF PROPOSITION 65
vs.) SETTLEMENT AND CONSENT
14) JUDGMENT AS TO DEFENDANT UTZ
TARGET CORPORATION, a Delaware) QUALITY FOODS, LLC
15)
corporation; UTZ QUALITY FOODS, LLC, a)
16)
Delaware limited liability company; DOES 1)
17)
through 9,)
18)
Defendants.)

19 **1. DEFINITIONS**

20 **1.1 "Compliance Date"** means the date that is six (6) months after the Effective Date.

21 **1.2 "Covered Products"** means Bachman brand Pretzel Stix that are manufactured,
22 distributed, imported, shipped, offered for sale or sold in California by Settling Defendant or its
23 subsidiaries and affiliates (together, "Subsidiaries").

24 **1.3 "Effective Date"** means the date on which the Court grants the motion for approval
25 of this Consent Judgment, as discussed in Section 11, below.

26 **2. INTRODUCTION**

27 **2.1** The Parties to this Consent Judgment are Victoria Jamison ("Jamison") and Utz
28 Quality Foods, LLC ("Settling Defendant" or "Utz"). Jamison and Settling Defendant (collectively,

1 the "Parties") enter into this Consent Judgment to settle certain claims asserted by Jamison against
2 Settling Defendant as set forth in the Complaint filed in this action. Except as otherwise provided
3 herein, this Consent Judgment is intended to apply to all Covered Products manufactured, imported,
4 distributed, sold and/or offered for sale in California by Defendant Releasees (as the term is defined
5 in Section 6.1).

6 **2.2** On February 16, 2021, Jamison provided a 60-day Notice of Violation of Proposition
7 65 to the California Attorney General, the District Attorneys of every county in California, the City
8 Attorneys of every California city with a population greater than 750,000, and to Utz, alleging that
9 Utz violated Proposition 65 by exposing persons to furan in Covered Products without first
10 providing a clear and reasonable Proposition 65 warning. On or about June 18, 2021, Jamison
11 provided a 60-day Amended Notice of Violation of Proposition 65 to Utz and the same set of public
12 enforcers alleging that Utz violated Proposition 65 by exposing persons to furan contained in
13 Covered Products without first providing a clear and reasonable Proposition 65 warning. The
14 foregoing 60-day Notice of Violation and Amended Notice of Violation are collectively referred to
15 herein as the "Notice."

16 **2.3** Jamison alleges that Settling Defendant is a corporation or other business entity that
17 manufactures, distributes, sells, or offers for sale Covered Products that are sold in the State of
18 California or has done so at times relevant to the Complaint.

19 **2.4** On September 15, 2021, Jamison filed the Complaint in the above-captioned matter
20 for the alleged violations of Health and Safety Code section 25249.6 that are the subject of the
21 Notice ("Complaint").

22 **2.5** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
24 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County
25 of San Diego, and that this Court has jurisdiction to enter and enforce this Consent Judgment as a
26 full and final resolution of all claims which were or could have been raised in the Complaint based
27 on the facts alleged therein and in the Notice with respect to Covered Products manufactured,
28 distributed, imported, shipped, offered for sale and/or sold by Defendant Releasees pursuant to

1 Proposition 65 and Code of Civil Procedure section 664.6.

2 **2.6** 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. Except as otherwise provided for herein, nothing
6 in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense
7 the Parties may have in any other pending or future legal proceedings. This Consent Judgment is
8 the product of negotiation and compromise and is accepted by the Parties solely for purposes of
9 settling, compromising, and resolving issues disputed in this action in an efficient and economic
10 manner.

11 **3. INJUNCTIVE RELIEF**

12 **3.1 Agreement Not to Sell in California.** As of the Compliance Date, and continuing
13 thereafter, Settling Defendant shall take any and all commercially reasonable measures to ensure
14 that the Covered Products are not sold to consumers in the State of California.

15 **3.2 Grace Period for Existing Inventory of Products.** Notwithstanding anything else
16 in this Consent Judgment, Covered Products that are manufactured on or prior to the Compliance
17 Date shall be subject to release of liability pursuant to this Consent Judgment, without regard to
18 when such Covered Products were, or are in the future, distributed or sold to customers and
19 consumers. As a result, the obligation of Settling Defendant, or any Releasees (if applicable), do not
20 apply to those Covered Products manufactured on or prior to the Compliance Date.

21 **4. ENFORCEMENT**

22 **4.1 Notice of Violation.** In the event that Jamison purchases a Covered Product in
23 California with a best-by or sell-by (or equivalent) date indicating that the Covered Product was
24 sold or offered for sale by Settling Defendant or a Subsidiary after the applicable Compliance Date,
25 Jamison may issue a Notice of Violation pursuant to this Section. Jamison shall withdraw the Notice
26 of Violation if Settling Defendant demonstrates that the Covered Product at issue was manufactured,
27 distributed, imported, shipped, sold or purchased before the applicable Compliance Date.
28 Notwithstanding the foregoing, Jamison may not issue a Notice of Violation with respect to a

1 Covered Product if its packaging is marked or labeled with the statement “Not for Sale in California”
2 or equivalent language so long as such statement is prominently placed upon such Covered
3 Product’s label or other labeling, as compared with other words or statements on the label or
4 labeling, as to render it likely to be read and understood by an ordinary individual under customer
5 conditions of purchase or use. If Settling Defendant or its Subsidiaries mark or label a Covered
6 Product with such a statement, Settling Defendant or its Subsidiaries shall include a letter to each of
7 its retailer or distributor customers receiving that Covered Product notifying the customer that the
8 Covered Product may not be sold in California. The terms of this Consent Judgment shall be
9 enforced exclusively by the Parties hereto.

10 **5. MONETARY SETTLEMENT TERMS**

11 **5.1 Settlement Amount.** Settling Defendant shall pay Twenty Five Thousand Dollars
12 (\$25,000) in settlement and total satisfaction of all the claims referred to in the Notice, the
13 Complaint, and this Consent Judgment. This includes civil penalties in the amount of Two Thousand
14 Dollars (\$2,000.00) pursuant to Health and Safety Code section 25249.7(b) and attorney's fees and
15 costs in the amount of Twenty Three Thousand Dollars (\$23,000.00) pursuant to Code of Civil
16 Procedure section 1021.5.

17 **5.2 Civil Penalty.** The portion of the settlement attributable to civil penalties shall be
18 allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five
19 percent (75%) or One Thousand Five Hundred Dollars (\$1,500.00) of the penalty paid to the
20 California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
21 twenty-five percent (25%) or Five Hundred Dollars (\$500.00) (hereinafter, the “Jamison Settlement
22 Sum”) of the penalty paid to Jamison individually.

23 All payments owed to Jamison shall be delivered to the following address via overnight mail:

24 The Law Offices of George Rikos
25 555 West Beech Street, Suite 500
San Diego, CA 92101

26 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
27 (Memo Line "Prop 65 Penalties") at the following addresses:

28 For United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 P.O. Box 4010
5 Sacramento, CA 95812-4010

6 For Non-United States Postal Service Delivery:

7 Mike Gyurics
8 Fiscal Operations Branch Chief
9 Office of Environmental Health Hazard Assessment
10 1001 I Street
11 Sacramento, CA 95814

12 Jamison and her counsel will provide completed IRS 1099, W-9, or other tax forms as
13 required. Relevant information is set out below:

14 "Law Offices of George Rikos" (EIN: 26-2043001) at the address provided in Section 4.2;
15 and,

16 "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

17 **5.3 Attorney's Fees and Costs.** The portion of the settlement attributable to attorneys'
18 fees and costs, *to wit*, Twenty Three Thousand Dollars (\$23,000.00)(hereinafter, the "Fee Settlement
19 Sum") shall be paid to Jamison's counsel, who are entitled to attorneys' fees and costs incurred by
20 it in this action, including but not limited to investigating potential violations, bringing this matter
21 to Settling Defendant's attention, as well as litigating and negotiating a settlement in the public
22 interest. Settling Defendant shall provide its payment to Jamison's counsel in a single check payable
23 to the Law Offices of George Rikos at the address provided in Section 5.2.

24 **5.4 Timing.** The above-mentioned checks will be issued within ten (10) calendar days
25 after the Effective Date, or the date upon which Plaintiff's counsel provides Settling Defendant with
26 its IRS 1099, W-9 , or other required tax forms, whichever is later.

27 **6. CLAIMS COVERED AND RELEASED**

28 **6.1 Jamison's Public Release of Proposition 65 Claims.** For any claim or violation
arising under Proposition 65 alleging a failure to warn about exposures to furan from Covered
Products or related products manufactured, imported, shipped, sold, or distributed by Defendants
and Settling Defendant or its Subsidiaries prior to the Compliance Date, Jamison, acting for the

1 general public and in the public interest, releases Settling Defendant, of any and all liability. This
2 includes Settling Defendant's owners, parents, partners, joint ventures, Subsidiaries, licensors,
3 licensees, affiliated entities under common ownerships, its directors, officers, members, agents, co-
4 manufacturers, employees, attorneys, and each entity to whom Settling Defendant and its
5 Subsidiaries directly or indirectly distribute, sell or offer for sale Covered Products, including but
6 not limited to downstream distributors, wholesales, customers, retailers (including but not limited
7 to Target Corporation), franchisees, cooperative members and licensees, (collectively, the
8 "Defendant Releasees"). In addition to the foregoing, Defendant Releasees include Settling
9 Defendant, its parent, and all Subsidiaries and affiliates thereof and their respective owners,
10 members, parents, partners, joint ventures, licensors, licensees, employees, agents, and assigns.
11 Compliance with the terms of this Consent Judgment constitutes compliances with Proposition 65
12 with respect to the alleged or actual failure to warn about exposures to furan from Covered Products
13 manufactured, distributed, shipped, imported, offered for sale, sold, or distributed by Defendant
14 Releasees after the Effective Date. This Consent Judgment is a full, final and binding resolution of
15 the claims under Proposition 65 that were or could have been asserted against Settling Defendant,
16 its Subsidiaries and Defendant Releasees for failure to warn about the exposure to furan in Covered
17 Products sold prior to the Compliance Date.

18 **6.2 Jamison's Individual Release of Claims.** Jamison, in her individual capacity, also
19 provides a release to Settling Defendant and Defendant Releasees, which shall be a full and final
20 accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations, costs,
21 expenses, attorneys' fees, damages, penalties, losses, claims, liabilities, and demands of every
22 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
23 alleged or actual exposures to furan in Defendant Releasees' products manufactured, imported,
24 shipped, offered for sale, sold, or distributed by Defendant Releasees before the Compliance Date.

25 **6.2.1. Civil Code §1542—Changed Facts:** It is the intention of the Parties that
26 this Consent Judgment shall constitute a full and final accord and satisfaction as to the matters
27 encompassed in the release set forth in Section 6.2 hereof, as well as a bar to any and all other
28 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,

1 liabilities and demands of whatever nature, character or kind, known or unknown, suspected or
2 unsuspected, between Jamison and Defendant Releasees, arising out of, directly or indirectly, or
3 connected with the claims raised in this matter, including, generally, without limitation, furan in
4 Bachman brand Pretzel Stix. Jamison acknowledges that she is fully familiar with the facts and
5 assumptions giving rise to this Consent Judgment and, more specifically, the release contained in
6 this Section 6.2.1, but agrees that this Consent Judgment shall remain fully effective and binding
7 her even if the facts or assumptions turn out to be different from what she now believes them to be.
8 In addition, the Parties acknowledge that she is familiar with and understands and expressly waives
9 Section 1542 of the Civil Code of the State of California, which provides as follows:

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

17 Nothing in this Civil Code waiver will prevent Jamison from asserting her rights to enforce
18 this Consent Judgment.

19 **7. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved by the Court and shall be null
21 and void if it is not approved by the Court within one year after it has been fully executed by the
22 Parties, or by such additional time as the Parties may agree to in writing.

23 **8. SEVERABILITY**

24 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision of
25 this Consent Judgment is held by a court to be unenforceable, the validity of the remaining
26 provisions shall not be adversely affected.

27 **9. GOVERNING LAW**

28 The terms of this Consent Judgment shall be governed by the laws of the state of California
as applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
rendered inapplicable for reasons to the claims made by Jamison, including but not limited to
changes in the law, then Settling Defendant may provide written notice to Jamison of any asserted

1 change, and shall have no further injunctive obligations pursuant to this Consent Judgment with
2 respect to, and to the extent that, the Covered Products are so affected.

3 **10. NOTICE**

4 Unless otherwise specified herein, all correspondence and notice required by this Consent
5 Judgment shall be in writing and sent by: (1) personal delivery; (ii) first-class, registered, or certified
6 mail, return receipt requested; or (iii) a recognized overnight courier to the following addresses:

7 If to Settling Defendant:

8 Richard Fama
9 Cozen O'Connor
10 3 WTC
11 175 Greenwich Street, 55th Floor
12 New York, NY 10007

13 If to Jamison:

14 George Rikos
15 The Law Offices of George Rikos
16 555 West Beech Street, Suite 500
17 San Diego, CA 92101

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

20 **11. COUNTERPARTS; DIGITAL SIGNATURES**

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

24 **12. POST EXECUTION ACTIVITIES**

25 Jamison agrees to comply with the reporting form requirements referenced in Health and
26 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
27 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
28 which motion Jamison shall draft and file. In furtherance of obtaining such approval, the Parties
agree to mutually employ their best efforts, including those of their counsel, to support the entry of
this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner.

1 For purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for
2 approval, responding to any objection that any third-party may make, and appearing at the hearing
3 before the Court if so requested.

4 **13. MODIFICATION**

5 **13.1 Modification.** This Consent Judgment may be modified by: (i) a written agreement of
6 the Parties and entry of a modified consent judgment thereon by the Court; or (ii) a successful motion
7 or application of any Party, and the entry of a modified consent judgment thereon by the Court.

8 **13.2 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
9 attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the
10 Consent Judgment.

11 **13.3 Change in Proposition 65.** If Proposition 65 or its implementing regulations are
12 changed from their terms as they exist on the date of entry of this Consent Judgment, or if OEHHA
13 takes some other final regulatory action that determines that warnings for furan are not required,
14 modifies the standard for warnings for furan, or establishes a No Significant Risk Level or Safe
15 Harbor Level for furan, then Settling Defendant may seek to modify this Consent Judgment.

16 **13.4 Other Court Decisions.**

17 **13.4.1 Preemption, Unconstitutionality, Unlawful.** If a final decision of a court
18 determines that warnings for furan exposures or that enforcement of Proposition 65 claims for furan
19 exposures are preempted or otherwise unlawful or unconstitutional, then Settling Defendant may
20 move to modify this Consent Judgment to conform to such ruling in order to avoid unfair,
21 inconsistent, or anti-competitive results.

22 **13.4.2 Approved Consent Judgments.** If a final decision of a court approves of a
23 consent judgment that establishes a No Significant Risk Level, Alternative Risk Level, or Safe
24 Harbor level for furan applicable to the Covered Products that exceeds zero (0) micrograms per day,
25 then Settling Defendant may move to modify this Consent Judgment to conform to such ruling in
26 order to avoid unfair, inconsistent, or anti-competitive results.

27 **13.5 Federal Agency Action and Preemption.** If a court of competent jurisdiction or an
28 agency of the federal government, including, but not limited to, the U.S. Food and Drug

1 Administration, states through any guidance, regulation or legally binding act that federal law has
2 preemptive effect on any of the requirements of this Consent Judgment, then this Consent Judgment
3 may be modified in accordance with the procedure for noticed motions set forth herein to bring it
4 into compliance with or avoid conflict with federal law.

5 **13.6 Scientific Studies.** If an agency of the federal government, including, but not limited
6 to the U.S. Food and Drug Administration, states through any guidance, regulation, or other legally
7 binding act, following a review of scientific studies and following public notice and comment, a
8 cancer potency estimate for furan that equates to a no significant risk level higher than zero (0)
9 micrograms per day, then Settling Defendant and its Subsidiaries shall be entitled to seek a
10 modification of this Consent Judgment.

11 **13.7** Before filing any motion to modify the Consent Judgment, Settling Defendant shall
12 provide written notice to Jamison to initiate the meet and confer procedure in Section 13.2. If the
13 Parties do not agree on the proposed modification during informal meet and confer efforts, Settling
14 Defendant may file a motion to modify the Consent Judgment within sixty (60) days of the date of
15 the written notice that Settling Defendant provides to Jamison under this Section 13.2.

16 **13.8** Any modification to this Consent Judgment pursuant to this Section 13 shall have no
17 effect on Settling Defendant's financial obligations under this Agreement.

18 14. **RETENTION OF JURISDICTION**

19 This Court shall retain jurisdiction of this matter to implement or modify the Consent
20 Judgment. Notwithstanding the provisions of Section 13, nothing in this Consent Judgment limits
21 or affects the Court's authority to modify this Consent Judgment as provided by law.

22 15. **AUTHORIZATION**

23 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
24 have read, understand, and agree to all of the terms and conditions contained herein.

25 16. **GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

26 If a dispute arises with respect to either Party's compliance with the terms of this Consent Judgment
27 entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in writing
28 and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the

1 absence of such a good faith attempt to resolve the dispute beforehand.

2 17. **ENTIRE AGREEMENT**

3 This Consent Judgment contains the sole and entire agreement and understanding of the
4 Parties with respect to the entire subject matter herein, and any and all prior discussions,
5 negotiations, commitments, and understandings related hereto. No representations, oral or
6 otherwise, express or implied, other than those contained herein have been made by any Party. No
7 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
8 or to bind any Party.

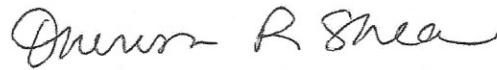
9 18. **STIPULATION OF DISMISSAL OF TARGET**

10 Jamison and her counsel agree to take all necessary actions and file all necessary papers with
11 the Court to effectuate the dismissal of this action as to Defendant Target Corporation within five
12 (5) business day after receipt by Jamison's counsel of the Fee Settlement Sum and Jamison
13 Settlement Sum. Such dismissal shall be with prejudice. In exchange for such dismissal, Target
14 agrees to waive any and all costs that it may have against Jamison related to this action.

15
16 **AGREED TO:**

17
18 Date: May , 2022

Signature:



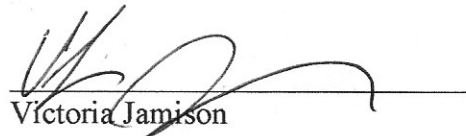
Print Name:

Theresa R. Shea
Authorized Representative of
UTZ Quality Foods, LLC

20
21 **AGREED TO:**

22
23 Date: May , 2022

Signature:


Victoria Jamison

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

DATED:

JUDGE OF THE SUPERIOR COURT