

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

KAMALA D. HARRIS  
Attorney General of California  
SUSAN S. FIERING  
Supervising Deputy Attorney General  
DENNIS A. RAGEN  
Deputy Attorney General  
State Bar No. 106468  
600 West Broadway, Suite 1800  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 645-2016  
Fax: (619) 645-2271  
E-mail: Dennis.Ragen@doj.ca.gov  
*Attorneys for People of the State of California ex rel.  
Kamala D. Harris, Attorney General*

**FILED**  
San Francisco County Superior Court  
OCT 25 2016  
CLERK OF THE COURT  
BY: *[Signature]* Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

<p><b>PEOPLE OF THE STATE OF CALIFORNIA EX REL. KAMALA D. HARRIS, ATTORNEY GENERAL,</b></p> <p style="text-align: right;"><b>PLAINTIFF,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>DAKOTA BROTHERS, ET AL.,</b></p> <p style="text-align: right;"><b>DEFENDANTS</b></p>	<p>Case No. CGC-13-531045</p> <p><b>CONSENT JUDGMENT AS TO FOOD MARKET MANAGEMENT, INC. AND REED'S, INC.</b></p>
<p><b>CENTER FOR ENVIRONMENTAL HEALTH</b></p> <p style="text-align: right;"><b>PLAINTIFF</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>FAYEON DISTRIBUTORS, INC., ET AL.,</b></p> <p style="text-align: right;"><b>DEFENDANTS</b></p>	<p>Case No. CGC-12-526396</p>
<p><b>CENTER FOR ENVIRONMENTAL HEALTH</b></p> <p style="text-align: right;"><b>PLAINTIFF</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>FOOD MARKET MANAGEMENT, INC. ET AL.,</b></p> <p style="text-align: right;"><b>DEFENDANTS</b></p>	<p>Case No. CGC-12-526395</p>

1 **1. INTRODUCTION**

2 1.1. This stipulation and proposed consent judgment (“Consent Judgment”) is entered into  
3 between Plaintiffs, the People of the State of California (“People”), by and through Kamala D.  
4 Harris, Attorney General (“Attorney General”) and the Center for Environmental Health (“CEH”)  
5 (collectively, “Plaintiffs”), and the following Defendants (“Settling Defendants”):

6 Food Market Management, Inc.

7 Reed’s, Inc.

8 These settling parties are referred to collectively as the “Parties.”

9 1.2. The Parties enter into this Consent Judgment without a trial. Nothing in this Consent  
10 Judgment constitutes an admission by any Party regarding any issue of law or fact. This Consent  
11 Judgment sets forth the agreement and obligations of Settling Defendants, CEH and the People  
12 and, except as specifically provided below, it constitutes the complete, final and exclusive  
13 agreement among the Parties and supersedes any prior agreements among the Parties concerning  
14 the subject matter herein.

15 **2. BACKGROUND, JURISDICTION AND PURPOSE**

16 2.1. On April 30, 2013, the People, by and through the Attorney General, filed a  
17 complaint for civil penalties and injunctive relief for alleged violations of Proposition 65 and  
18 unlawful business practices in the Superior Court for the County of San Francisco (the “People’s  
19 Complaint”). The People’s Complaint alleges that the named defendants failed to provide clear  
20 and reasonable warnings that certain California ginger products that they manufactured,  
21 distributed and/or sold contain lead or lead compounds, and that ingestion of these products  
22 results in exposure to lead, a chemical known to the State of California to cause cancer and  
23 reproductive harm. The People’s Complaint further alleges that, under the Safe Drinking Water  
24 and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as  
25 “Proposition 65,” businesses must provide persons with a “clear and reasonable warning” before  
26 exposing individuals to this chemical, and that the Settling Defendants failed to do so. The  
27 Complaint also alleges that these acts constitute unlawful acts in violation of the Unfair  
28 Competition Law, pursuant to Business and Professions Code sections 17200 *et seq.* and 17500

1 *et seq.*

2 2.2. CEH issued 60-Day Notices of Violation dated August 6, 2012 and November 7,  
3 2012 under Health and Safety Code section 25249.7 to each of the Settling Defendants (the “CEH  
4 Notices”). Pursuant to these notices, on November 27, 2012, CEH filed two complaints (the  
5 “CEH Complaints”) in this Court against the Settling Defendants and other persons (*Center for*  
6 *Environmental Health v. Fayeon Distributors, Inc., et al.*, Case No. CGC-12-526396; and *Center*  
7 *for Environmental Health v. Food Market Management, Inc., et al.*, Case No. CGC-12-526395).

8 2.3. Settling Defendants are named as defendants in both the People’s and at least one of  
9 the CEH Complaints. The People’s Complaint and the CEH Complaints shall be jointly referred  
10 to as the “Complaints.”

11 2.4. Each Settling Defendant is a business entity that: (1) has employed ten or more  
12 persons at times relevant to the allegations of the Complaints; and (2) sells California Ginger  
13 Products (as defined below) in the State of California and/or has done so in the past four years.

14 2.5. For purposes of this Consent Judgment only, the People, CEH and the Settling  
15 Defendants stipulate that: (a) this Court has jurisdiction over the allegations of violations  
16 contained in the Complaints; (b) this Court has personal jurisdiction over Settling Defendants as  
17 to the acts alleged in those Complaints; (c) venue is proper in San Francisco County; and (d) this  
18 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims  
19 which were or could have been raised in the Complaints based on the facts alleged therein.

20 2.6. Settling Defendants and CEH agree not to challenge or object to entry of this Consent  
21 Judgment by the Court unless the People have notified them in writing that the People no longer  
22 support entry of the Judgment or that the People seek to modify the Judgment. The Parties agree  
23 not to challenge this Court’s jurisdiction to enforce the terms of this Judgment once it has been  
24 entered, and this Court maintains jurisdiction over this Judgment for that purpose.

25 2.7. The Parties enter into this Consent Judgment as a full and final settlement of all  
26 claims relating to California Ginger Products (as that term is defined below) arising from the  
27 alleged failure to warn under Proposition 65 regarding the alleged presence of lead in such  
28 products. By execution of this Consent Judgment and agreeing to provide the relief and remedies

1 specified herein, Settling Defendants do not admit any violations of Proposition 65 or Business  
2 and Professions Code sections 17200 *et seq.* or 17500 *et seq.*, or any other law or legal duty.

3 Each Settling Defendant expressly denies any liability whatsoever, and maintains that the  
4 products it sells were and are completely safe for their intended use and were and are in  
5 compliance with all applicable statutes and regulations.

6 2.8. Prior to reaching this settlement, the Attorney General retained two technical experts  
7 (the "Technical Experts") to determine the source of alleged lead in the California Ginger  
8 Products and the means for reducing it. The Technical Experts requested detailed information  
9 from each of the Settling Defendants regarding: the composition of the California Ginger  
10 Products; the major ingredients, minor ingredients, and processing aids (materials or substances  
11 used to dry, preserve or otherwise process the Products); the range of lead content in the  
12 ingredients and processing aids; the countries of origin of the ingredients; and the manufacturing  
13 procedures and processes. After the Court entered the Protective Order re Settlement  
14 Negotiations on November 15, 2013, Settling Defendants supplied the requested information, and  
15 responded to the Technical Experts' follow-up inquiries and requests for additional information.  
16 Based on their analysis of this information, the Technical Experts recommended certain actions in  
17 addition to those already taken by Settling Defendants, some of which are incorporated here.

18 2.9. In order to resolve these cases and reduce the alleged levels of lead in their products,  
19 Settling Defendants have agreed to implement these additional recommendations, as more  
20 particularly described in Section 4 below. The Parties have also agreed on the penalty and other  
21 monetary payments set forth in Section 6 below and Exhibit A hereto, which take into account  
22 Settling Defendants' cooperation in resolving these cases.

### 23 3. DEFINITIONS

24 3.1. "California Ginger Products" shall mean food products made by or for a Settling  
25 Defendant primarily with ginger that are processed with sugar or a sugar substitute and that are  
26 sold or offered for sale in California by a Settling Defendant or others. Specific non-exclusive  
27 examples of California Ginger Products sold in the past by each Settling Defendant are listed on  
28 the Exhibit A attachment for each Settling Defendant.

1           3.2. "Compliance Documentation" shall mean: (i) the certifications from the Independent  
2 Food Processing Auditor or Internal Auditor received pursuant to Section 4.2; (ii) a resume or  
3 summary of the qualifications of the Independent Food Processing Auditor who has provided the  
4 Auditor's Certification(s) required under section 4.2 that establishes that the Auditor has the  
5 qualifications specified in Section 3.4 below; and (iii) the results of the laboratory testing required  
6 by section 4.5.

7           3.3. The "Effective Date" of this Consent Judgment shall be the date on which the  
8 Consent Judgment is entered as a judgment by the trial Court.

9           3.4. "Independent Food Processing Auditor" shall mean an independent auditing company  
10 or person, foreign or domestic, that: (i) has extensive knowledge of good manufacturing practices  
11 in the food processing industry; (ii) has sufficient experience in inspecting food processing  
12 facilities to ensure compliance with good manufacturing practices and with the Hazard Analysis  
13 and Critical Control Points ("HACCP") food safety management system; (iii) who is (1) certified  
14 as an International HACCP Alliance lead Instructor; or (2) certified as a SQF (Safe Quality Food)  
15 HACCP Lead Auditor or SQF Consultant; or (3) holds an NEHA (National Environmental Health  
16 Association) Certified Professional - Food Safety (CP-FS) Credential; or (4) is certified as a Food  
17 Scientist by Institute of Food Technology; or (5) has equivalent qualifications; and (iv) has  
18 submitted a satisfactory resume of qualifications. Upon request, the Attorney General will  
19 provide to the Settling Defendants a list of Independent Food Processing Auditors who have  
20 previously submitted their qualifications to the Attorney General, whose qualifications are up to  
21 date, and who are deemed to meet the criteria set forth in this Paragraph. A Settling Defendant,  
22 however, may select any Independent Food Processing Auditor who meets these criteria.

23           3.5. For analysis of the California Ginger Products, "Qualified Laboratory" shall mean a  
24 laboratory that has demonstrated proficiency to conduct lead analysis on the California Ginger  
25 Products using Inductively Coupled Plasma Mass Spectrometry ("ICP-MS"). For analysis of the  
26 Packaging Materials, a "Qualified Laboratory" shall mean a laboratory that has demonstrated  
27 proficiency to conduct lead analysis on packaging materials using ICP-MS. A Qualified  
28

1 Laboratory must meet the specifications set forth in Title 27 California Code of Regulations  
2 section 25900(b) or in Attachment 2 to Exhibit B.

3 3.6. "Laboratory Standards" shall mean the standards set forth in Attachment 2 to Exhibit  
4 B.

5 3.7. The "Maximum Lead Level" is 40 parts per billion by weight. A California Ginger  
6 Product satisfies the Maximum Lead Level if testing conducted by a Qualified Laboratory shows  
7 either: (a) none of the Representative Product Samples, as that term is defined in Exhibit B, taken  
8 from the Production Lot of the California Ginger Product exceeds forty (40) parts per billion lead  
9 concentration by weight; or (b) (1) the arithmetic mean of the results from laboratory analysis of  
10 six to ten samples of California Ginger Product randomly drawn from that lot does not exceed  
11 forty (40) parts per billion lead concentration by weight and (2) none of the samples has a lead  
12 concentration of more than sixty (60) parts per billion by weight.

13 3.8. "Packaging Materials" shall mean the containers or wrappers for Settling Defendants'  
14 individual California Ginger Products which come in direct contact with food or which could  
15 result in exposure to lead from reasonably foreseeable hand to mouth contact or mouthing by the  
16 consumer.

17 3.9. "Representative Number of Lots" means: the square root, rounded to the nearest  
18 whole number, of the number of lots of that California Ginger Product sold in the preceding  
19 calendar year in California. For newly introduced California Ginger Products, testing shall be  
20 based on the reasonably projected number of lots to be sold in California for the first year of  
21 production.

22 **4. INJUNCTIVE RELIEF: Lead Reduction Measures**

23 4.1. Commencing ninety (90) days after the Effective Date, Settling Defendants shall not  
24 sell any California Ginger Product unless Settling Defendants have complied with the terms set  
25 forth below with respect to that product.

26 4.2. Commencing ninety (90) days after the Effective Date, each Settling Defendant shall  
27 do the following prior to manufacturing or processing any California Ginger Product or obtaining  
28 any California Ginger Product from any third party manufacturer or supplier:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- 4.2.1. If obtained from a third party manufacturer or supplier, provide that manufacturer or supplier with a copy of the Summary of Compliance Information for Suppliers/Manufacturers set forth in Exhibit B.
- 4.2.2. Obtain an initial annual certification from an Independent Food Processing Auditor who has been retained by the Settling Defendant or the manufacturer or supplier of the California Ginger Product that certifies that the good manufacturing practices and lead reduction practices set forth in Exhibit B have been fully satisfied and that the product does not exceed the Maximum Lead Level. The certification shall be in the form set forth in Exhibit B, Attachment 1. If different manufacturers or processors are responsible for different stages of the production of a California Ginger Product, Settling Defendant shall obtain certification(s) from Independent Food Processing Auditor(s) showing that the good manufacturing practices and lead reduction practices set forth in Exhibit B have been satisfied during each stage of production during which, as indicated by the Lead Contribution Exercise described in Exhibit B, lead may be contributed to the finished product. If the Settling Defendant, after making good faith efforts, finds it impossible to obtain such certifications with respect to a California Ginger Product and that Product contains more than 40 parts per billion of lead, as determined by the testing procedure set out in Exhibit B and section 3.7, above, then the Settling Defendant may sell the California Ginger Product only if it provides a warning for that product as required in Section 5 below.
- 4.2.3. After the Independent Food Processing Auditor has provided the initial annual certification required by Paragraph 4.2.2 and in Exhibit B, Attachment 1, then an employee or other agent of Settling Defendant or that manufacturer or supplier who has received training adequate to conduct and document the audits (“Internal Auditor”) may assume the Independent Food Processing Auditor’s responsibility for subsequent annual audits and certifications. When an Internal

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Auditor assumes responsibility for providing certifications pursuant to this section, the first such annual certification must be reviewed and approved by the Independent Food Processing Auditor before being submitted to the People and CEH. In order to obtain such approval, the Internal Auditor who prepared the certification shall provide the Independent Food Processing Auditor with such documents, photographic evidence, information regarding laboratory standards and practices, and other information or data as may be reasonably necessary for the Independent Food Processing Auditor to evaluate and approve the certification. The Internal Auditor may be replaced from time to time by another employee of the manufacturer or supplier, who must receive prior training adequate to conduct and document the audits, but such new Internal Auditors are not required to obtain the approval of the Independent Food Processing Auditor prior to submitting subsequent certifications required by this Consent Judgment.

4.3. Certifications. Each Settling Defendant shall provide annual certifications, from the Independent Food Processing Auditor or the Internal Auditor, as applicable, as required by Paragraph 4.2.2 and in Exhibit B, Attachment 1, pursuant to the following Schedule:

Audit	Due Date	Audit Conducted by
Initial Audit	Six months after the Effective Date	Independent Food Processing Auditor
First Annual Audit	Eighteen Months After The Effective Date	Independent Food Processing Auditor or Internal Auditor
Second Annual Audit	Thirty Months After the Effective Date	Independent Food Processing Auditor or Internal Auditor
Third Annual Audit	Forty-two Months After the Effective Date.	Independent Food Processing Auditor or Internal Auditor

After the completion of the Third Annual Audit, Settling Defendant will provide certification with respect to subsequent annual audits (if any are required) on the request of the Attorney General.



1           4.4. After the Effective Date, all Packaging Materials for California Ginger Products that  
2 are offered for sale in California, must meet the requirements of Health and Safety Code section  
3 25214.13.

4           4.5. Commencing ninety (90) days after the Effective Date, for any California Ginger  
5 Product that will be offered for sale in California without the warning required pursuant to  
6 Section 5 below, and annually thereafter, each Settling Defendant will submit Representative  
7 Product Samples (as that term is defined in Exhibit B) of California Ginger Products that it offers  
8 for sale in California to a Qualified Laboratory for lead analysis to ensure that they satisfy the  
9 Maximum Lead Level.

10          4.6. The testing requirements of Section 4.5 and the auditing requirements of Section  
11 4.2.2 and 4.2.3 may be terminated for any California Ginger Product if all the following  
12 conditions are met:

13           4.6.1. The results of four consecutive years of testing of that product pursuant to  
14 Section 4.5 demonstrate no exceedance of the Maximum Lead Level;

15           4.6.2. The auditing requirements for that product set forth in sections 4.2.2 and 4.2.3  
16 have been satisfied during that four year period;

17           4.6.3. Testing of that product (if any) conducted during that four year period by the  
18 People or CEH pursuant to Section 8.4 of this Consent Judgment has not  
19 demonstrated an exceedance of the Maximum Lead Level; and

20           4.6.4. The manufacturer of that product has established internal testing and quality  
21 control measures that are: (i) approved by the Independent Auditor or the  
22 Internal Auditor; (ii) implemented by properly trained personnel and (iii)  
23 sufficient to ensure that that product will continue to satisfy Maximum Lead  
24 Level.

25          4.7. Each Settling Defendant who sells California Ginger Products that may be offered for  
26 sale to consumers in California without the warning required pursuant to Section 5 below shall  
27 provide CEH and the Attorney General with Compliance Documentation pursuant to the  
28 following schedule:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Six months after the Effective Date	Compliance Documentation and the Initial certifications from the Independent Food Processing Auditor shall be submitted six months after the Effective Date.
For the first forty-two months after the Effective Date	Compliance Documentation and the Annual certifications from the Independent Food Processing Auditor or the Internal Auditor, as applicable, shall be submitted: (a) eighteen months after the Effective Date; (b) thirty months after the Effective Date; and (c) forty-two months after the Effective Date.
More than forty-two months after the Effective Date	Compliance Documentation and the Annual certifications from the Independent Food Processing Auditor or the Internal Auditor, as applicable, shall be provided on the request of the CEH or the Attorney General (if any are required).
New Manufacturers used within sixty months after the Effective Date	To the extent a Settling Defendant uses a new manufacturer, all compliance documentation required by Section 3.2 shall be submitted at the end of the first year that new manufacturer is used and annually thereafter for a period of three years.
New Manufacturers used more than sixty months after the Effective Date	To the extent a Settling Defendant uses a new manufacturer, all compliance documentation required by Section 3.2 shall be provided on the request of the Attorney General.

**5. INJUNCTIVE RELIEF: Warnings**

5.1. Settling Defendant may sell, or offer for sale a California Ginger Product with lead levels exceeding the Maximum Lead Level only if:

- 5.1.1. It has made diligent efforts to obtain the certifications required by Section 4 and to reduce the lead concentration in its California Ginger Product to levels that do not exceed the Maximum Lead Level, and these efforts have been unsuccessful; and
- 5.1.2. It provides warnings in accordance with Sections 5.2 through 5.7, below.

5.2. The warning shall state: **“WARNING: This product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm.”** The warnings set forth in this Consent Judgment are the exclusive warnings to be used on California Ginger Products.

1           5.3. If the California Ginger Product is sold in a package, the warning must appear in at  
2 least 12 point font size, with the word "WARNING" in bold, clearly visible on the package.  
3 Alternatively, any retailer of a California Ginger Product may elect to provide the warning  
4 through shelf labeling or signage. Any warning given pursuant to this Section shall be displayed  
5 with such conspicuousness, as compared with other words, statements, designs, or devices,  
6 sufficient to (1) render it likely to be read and understood by an ordinary individual prior to  
7 purchase and (2) clearly identify it with the California Ginger Product for which the warning is  
8 given, so that a reasonable consumer can readily differentiate those products on the shelf to which  
9 the warning applies from those to which it does not.

10           5.4. If the Settling Defendant sells the California Ginger Product in bulk, the warning  
11 shall appear on a clearly visible 4" by 6" or larger sign, posted immediately adjacent to the  
12 product, in 36 point type, that clearly identify it with the California Ginger Product for which the  
13 warning is given.

14           5.5. For internet purchases through the Settling Defendant, the warning message must be  
15 provided on the internet by a conspicuous and clearly-marked warning message on the product  
16 display page, or otherwise prominently displayed to the purchaser before the purchaser completes  
17 his or her purchase of the product. The warning is not prominently displayed if the purchaser  
18 must search for it in the general content of the website, or if the consumer must click on a  
19 hyperlink to view the warning, unless opening the hyperlink is necessary to complete the  
20 purchase. The website need not provide the warning for sales to customers outside the State of  
21 California, but the warning must be prominently displayed before any sale to a customer within  
22 the State of California is completed. If the Office of Health Hazard Assessment adopts a final  
23 regulation governing the manner of providing Proposition 65 warnings for products sold online to  
24 individuals in California that differs from the provisions of this Section, then a Settling Defendant  
25 may, at its option, comply with either this Section or the final regulation with respect to the  
26 manner of providing Proposition 65 warnings for California Ginger Products sold online to  
27 individuals in California.

28

1           5.6. For catalog or other non-internet sales by the Settling Defendant where the consumer  
2 is not physically present and cannot see a warning displayed on the California Ginger Product or  
3 the packaging of the California Ginger Product prior to purchase or payment, the warning  
4 statement shall be displayed in such a manner that it is likely to be read and understood prior to  
5 the authorization of or actual payment.

6           5.7. If the Settling Defendant sells the California Ginger Product wholesale directly to  
7 customers that repackage and resell the product either in specific packages or in bulk, Settling  
8 Defendant shall: (i) include a letter instructing the customer that the California Ginger Product  
9 may only be offered for sale to California consumers with a warning that is compliant with  
10 Sections 5.2 through 5.6 hereof; and (ii) obtain the customer's written agreement to provide such  
11 a warning.

12           5.8. A Settling Defendant who provides warnings pursuant to this Section 5, must, prior to  
13 offering those products for sale, provide the Attorney General (with a copy to CEH) with (1) a  
14 summary of the attempts it made to comply with Section 4, above, and (2) a sample of the  
15 packaging, labeling, signs and/or internet or published messages displaying the warnings to be  
16 given pursuant to sections 5.2 to 5.7.

## 17 **6. PAYMENTS**

18           6.1. Civil Penalties. Each Settling Defendant shall pay the civil penalty amounts set forth  
19 on Exhibit A for such Settling Defendant according to the schedule set forth on such Exhibit A,  
20 pursuant to California Health & Safety Code §§ 25249.7(b) and 25249.12, in complete settlement  
21 of any claim for civil penalties by the People and CEH in the cases referenced above.

22           6.2. As specified on each Exhibit A, and pursuant to California Health & Safety Code  
23 section 25249.12, 75% of these funds shall be remitted to the California Office of Environmental  
24 Health Hazard Assessment ("OEHHA"), and the remaining 25% to be divided evenly between  
25 the Attorney General and CEH.

26           6.3. Fees and Costs. Each Settling Defendant shall also make the fee and cost payments  
27 set forth on Exhibit A for such Settling Defendant according to the schedule set forth on such  
28 Exhibit as follows:

1           6.3.1. Attorney General. Fees and costs payable to the Attorney General shall be paid  
2 in complete settlement of any claim for fees and costs her office has expended in this matter with  
3 respect to each Settling Defendant. Funds paid pursuant to this paragraph shall be placed in an  
4 interest-bearing Special Deposit Fund established by the Attorney General. The money paid to the  
5 Attorney General's Office pursuant to this paragraph shall be administered by the California  
6 Department of Justice and shall be used by the Environment Section of the Public Rights Division  
7 of the Attorney General's Office, until all funds are exhausted, for any of the following purposes:  
8 (1) implementation of the Attorney General's authority to protect the environment and natural  
9 resources of the State pursuant to Government Code section 12600 et seq. and as Chief Law  
10 Officer of the State of California pursuant to Article V, section 13 of the California Constitution;  
11 (2) enforcement of laws related to environmental protection, including, but not limited to,  
12 Chapters 6.5 and 6.95, Division 20, of the California Health & Safety Code; (3) enforcement of  
13 the Unfair Competition Law, Business & Professions Code section 17200 et seq., as it relates to  
14 protection of the environment and natural resources of the State of California; and (4) other  
15 environmental actions that benefit the State and its citizens as determined by the Attorney  
16 General. Such funding may be used for the costs of the Attorney General's investigation, filing  
17 fees and other court costs, payment to expert witnesses and technical consultants, purchase of  
18 equipment, laboratory analyses, personnel costs, travel costs, and other costs necessary to pursue  
19 environmental actions investigated or initiated by the Attorney General for the benefit of the State  
20 of California and its citizens. The payment, and any interest derived therefrom, shall solely and  
21 exclusively augment the budget of the Attorney General's Office as it pertains to the Environment  
22 Section of the Public Rights Division and in no manner shall supplant or cause any reduction of  
23 any portion of the Attorney General's budget.

24           6.3.2. Center for Environmental Health. Fees and costs payable to CEH shall be paid  
25 in complete settlement of any claim for fees and costs CEH has expended in this matter with  
26 respect to each Settling Defendant. These payments represent full compensation from each  
27 Settling Defendant for the fees and costs that CEH has incurred with respect to each Settling  
28

1 Defendant in connection with the CEH Notices, the CEH Complaints, and all efforts related to  
2 obtaining the Court's entry of this Consent Judgment.

3 6.4. Each payment required by this Consent Judgment shall be made through the delivery  
4 of separate checks payable to the applicable person, as follows:

5 6.4.1. Attorney General. Payments due to the Attorney General shall be made payable  
6 to the "California Department of Justice," and sent to the attention of Robert  
7 Thomas, Legal Analyst, Department of Justice, 1515 Clay Street, 20th Floor,  
8 Oakland, CA 94612.

9 6.4.2. Office of Environmental Health Hazard Assessment. Payments due to OEHHA  
10 shall be made payable to the Office of Environmental Health Hazard  
11 Assessment and sent to: Mike Gyurics, Senior Accounting Officer, Office of  
12 Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA  
13 95812-0410.

14 6.4.3. Center for Environmental Health. The payment due to the Center for  
15 Environmental Health for its share of the civil penalties shall be made payable  
16 to the Center For Environmental Health and sent to: Eric Somers, Lexington  
17 Law Group, 503 Divisadero Street, San Francisco, CA 94117.

18 6.4.4. Lexington Law Group. The payment due to the Center for Environmental  
19 Health for fees and costs shall be made payable to the Lexington Law Group  
20 and sent to: Eric Somers, Lexington Law Group, 503 Divisadero Street, San  
21 Francisco, CA 94117.

22 6.5. Copies of checks. Settling Defendants will cause copies of each and every check  
23 issued pursuant to this Judgment to be sent to: Dennis A. Ragen, Deputy Attorney General, 110  
24 West A. Street, Suite 1100, San Diego, California 92101.

## 25 7. MODIFICATION OF CONSENT JUDGMENT

26 7.1. After the Effective Date, this Consent Judgment may be modified from time to time  
27 by express written agreement of the Parties with the approval of the Court; by an order of this  
28 Court on noticed motion from Plaintiff, CEH or a Settling Defendant in accordance with law, for

1 good cause shown; or by the Court in accordance with its inherent authority to modify its own  
2 judgments.

3 7.2. Before filing an application with the Court for a modification to this Consent  
4 Judgment, the Party seeking modification shall meet and confer with the other Parties to  
5 determine whether the modification may be achieved by consent. If a proposed modification is  
6 agreed upon, then Settling Defendants, CEH and the Attorney General will present the  
7 modification to the Court by means of a stipulated modification to the Consent Judgment.

## 8 **8. ENFORCEMENT**

9 8.1. The Attorney General, CEH and Settling Defendants may, by motion or application  
10 for an order to show cause before this Court, enforce the terms and conditions contained in this  
11 Consent Judgment. CEH may only enforce the terms of this Consent Judgment provided that it  
12 has given prior notice to Settling Defendants and the Attorney General, and the Attorney  
13 General's Office, after completion of the meet and confer process set forth in Section 8.5 below,  
14 either (a) joins in such action, or (b) provides written notice that it does not object to CEH's  
15 enforcement of any specific alleged violation. The fact that the Attorney General provides such a  
16 written non-objection shall not be construed as endorsement of or concurrence in the enforcement  
17 action and shall not be admissible in Court except to show that CEH has complied with this  
18 Section.

19 8.2. In any enforcement proceeding filed pursuant to Section 8.1, the Attorney General  
20 and/or CEH, as applicable, may seek whatever fines, costs, penalties, or remedies are provided by  
21 law for failure to comply with the Consent Judgment. Where said violations of this Consent  
22 Judgment constitute subsequent violations of Proposition 65 or other laws independent of the  
23 Consent Judgment and/or those alleged in the Complaint, the Attorney General is not limited to  
24 enforcement of the Consent Judgment, but may seek in another action whatever fines, costs,  
25 penalties, or remedies are provided for by law for failure to comply with Proposition 65 or other  
26 laws. In any new action brought by the Attorney General, Plaintiffs or another enforcer alleging  
27 subsequent violations of Proposition 65 or other laws, Settling Defendants may assert any and all  
28 defenses that are available.

1           8.3. Any further enforcement by CEH concerning California Ginger Products, and any  
2 action by Settling Defendants to enforce the terms of this Consent Judgment, is limited to  
3 enforcement pursuant to the terms of this Consent Judgment. This Consent Judgment provides no  
4 right of enforcement to any non-party.

5           8.4. The People and CEH may conduct random testing (Enforcement Testing) of  
6 California Ginger Products. (The Party who conducts such testing is the "Enforcing Party.")  
7 Notwithstanding the provisions of Section 3.4, if, based on that testing, the Enforcing Party  
8 alleges that a Settling Defendant has violated this Consent Judgment by selling California Ginger  
9 Products with lead in excess of 40 parts per billion and without the warning described in Section  
10 5, the Parties shall proceed as follows:

11           8.4.1. Levels over 40 but no more than 45 parts per billion. If the Enforcing Party  
12 alleges that a Settling Defendant has sold a California Ginger Product with lead  
13 levels over 40 but no more than 45 parts per billion, the People and CEH will  
14 provide notice of the exceedance ("Exceedance") to the Settling Defendant.  
15 The Settling Defendant must then refer the notice to the appropriate  
16 Independent or Internal Auditor for review, and the auditor must take the  
17 Exceedance into account in ensuring continuing compliance with the Maximum  
18 Lead Level and other provisions of this Judgment. If the Settling Defendant is  
19 in compliance with all of the requirements of section 4.2 of the Consent  
20 Judgment, an Exceedance in the 40-45 parts per billion range will not be  
21 considered a violation of this Consent Judgment and will not require the  
22 payment of penalties or the reimbursement of costs.

23           8.4.2. Levels in excess of 45 parts per billion. If the Enforcing Party alleges that a  
24 Settling Defendant has violated this Consent Judgment by selling California  
25 Ginger Products with a lead concentration of in excess of 45 parts per billion,  
26 and the Settling Defendant elects not to contest the allegation, then the Settling  
27 Defendant shall (1) cease further distribution to its California customers of the  
28 product lot that is the subject of the violation; (2) if the lead level alleged by the



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

People or CEH exceeds 55 parts per billion, remove the product lot that is the subject of the violation from retail sale in California; (3) inform the supplier of the product lot and obtain a report from the supplier of the actions taken to prevent future violations; and (4) pay penalties and costs as set forth in the following table:

Stipulated Payments of Penalties and Costs	
Number of prior violations alleged by the People or CEH against the Settling Defendant (not including violations that the People or CEH withdrew after consulting with the Settling Defendant):	Penalty and reimbursement of laboratory costs per violation
Zero	Laboratory costs
Two through five	\$ 2,500 penalty plus laboratory costs
Six through nine	\$ 5,000 penalty plus laboratory costs.
Ten or more	\$15,000 penalty plus laboratory costs
Surcharge for violations involving lead levels exceeding 60 parts per billion based on the average of six to ten randomly drawn samples from the same lot or bulk sample purchased from the same location at the same time.	If the test data provided by the People or CEH in support of the alleged violation exceeded sixty (60) parts per billion, then the applicable penalty set forth above for that violation shall be doubled.

8.4.3. Lead Levels less than 50 parts per billion. If the People or CEH allege that a Settling Defendant has violated this Consent Judgment by selling a California Ginger Product that has a lead concentration of more than 45 and no more than 50 parts per billion, and neither the People nor CEH has alleged a violation with respect to that California Ginger Product within the twelve month period preceding that alleged violation, then no penalties or costs shall be payable for that alleged violation, and the violation shall not count as a "prior violation" when computing penalties pursuant to the table above, but the Settling Defendant will refer the matter to its Independent or Internal Auditor for review.

8.4.4. Procedures for Enforcement Testing. Testing by the Enforcing Party pursuant to this Section 8.4 shall proceed as follows: The Enforcing Party shall obtain

<sup>1</sup> The costs of such testing shall be apportioned as set forth in Section 8.4.4.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

laboratory results for two samples of the California Ginger Product taken from the same package or bulk container.

(A) If the laboratory result for either sample shows a lead level of over 40 but no more than 45 parts per billion, the Enforcing Party shall inform Settling Defendant of the Exceedance pursuant to Section 8.4.1.

(B) If the arithmetic mean of the laboratory results shows a lead level of over 45 parts per billion but no more than 60 parts per billion, then at the Settling Defendant's request, the Enforcing Party shall, at Settling Defendant's cost, test between four and eight more samples taken from either:

1. For retail products sold in a package: (i) an aggregate of the product in a single package; or (ii) different pieces of product from a single package; or
2. For retail products sold in bulk, California Ginger Product randomly drawn from a bulk sample of the California Ginger Product purchased from the same location at the same time.

If the arithmetic mean of all the samples of the California Ginger Product tested pursuant to this subparagraph 8.4.4.(B) shows a lead level in excess of 45 parts per billion, then the Enforcing Party may proceed to address the violation pursuant to Section 8.4.2 and, if applicable, 8.4.3.

(C) If laboratory analysis of any sample of a Covered Product obtained by the Enforcing Party shows a lead level in excess of 60 parts per billion, the Enforcing Party may proceed to address the violation pursuant to Section 8.4.2

8.5. A Party seeking to enforce this Consent Judgment shall provide the alleged violating Party thirty (30) days advance written notice of the alleged violation or dispute, as well as supporting documentation including, but not limited to, for an alleged violating product, the date and place of purchase, all test results, and images or a clear description of the product at issue.

1 The Parties shall meet and confer during such thirty (30) day period in a good faith effort to try to  
2 reach agreement on an appropriate cure for the alleged violation or dispute. After such thirty (30)  
3 day period, the Party seeking to enforce may proceed as to the alleged violation of this Consent  
4 Judgment as specified in Sections 8.1, 8.2, and 8.3.

5 **9. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

6 9.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized by  
7 the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute  
8 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

9 **10. CLAIMS COVERED**

10 10.1. Full and Binding Resolution.

11 10.1.1. This Consent Judgment is a full, final, and binding resolution between the  
12 People, CEH, and Settling Defendants, their parents, shareholders, divisions, subdivisions,  
13 subsidiaries, sister companies, and cooperative members (collectively, the "Covered Entities"),  
14 and the officers, directors, employees, attorneys, consultants, agents, representatives,  
15 predecessors, successors, and assigns of any of the above, of any violation of Proposition 65 or its  
16 implementing regulations, and any acts of unfair competition, as defined by Business and  
17 Professions Code sections 17200 et seq., for alleged failure to provide clear and reasonable  
18 warnings required by Proposition 65 concerning exposure to lead from use of the California  
19 Ginger Products manufactured or sold by a Settling Defendant prior to ninety (90) days after the  
20 Effective Date.

21 10.1.2. This Consent Judgment also resolves the liability of any entity who has  
22 purchased or received California Ginger Products sold or distributed by Settling Defendants  
23 ("Downstream Entities") for violations of Proposition 65 or Business and Professions Code  
24 sections 17200 et seq. and 17500 et seq. for failure to provide clear and reasonable Proposition 65  
25 warnings concerning alleged exposure to lead from use of the California Ginger Products  
26 manufactured by or for a Settling Defendant prior to ninety (90) days after the Effective Date or  
27 that was purchased or received by a Downstream Entity prior to 90 days after the Effective Date  
28 but sold thereafter, provided, however, that this Section 10.1.2 shall not apply to or resolve any

1 liability of any entity identified on Exhibit C for the California Ginger Products identified for  
2 such entity or entities on Exhibit C.2

3 10.1.3. Compliance by a Settling Defendant with all of the requirements of this Consent  
4 Judgment constitutes compliance with Proposition 65 and Business and Professions Code  
5 sections 17200 et seq. with respect to: (1) any obligation of the Covered Entities to provide a  
6 warning under Proposition 65 as to the lead content of any California Ginger Product sold by that  
7 Settling Defendant; and (2) any obligation of Downstream Entities to provide a warning under  
8 Proposition 65 as to the lead content of any California Ginger Product that they obtain from that  
9 Settling Defendant, provided that: (i) Covered Entities and Downstream Entities must provide any  
10 reasonably necessary cooperation in the implementation of this Judgment; and (ii) Downstream  
11 Entities who offer the California Ginger Product for sale to the public must provide any warnings  
12 to the extent required by Section 5.7; and (iii) Downstream Entities and Covered Entities may not  
13 frustrate or interfere with the implementation of any provision of this Judgment.

#### 14 11. PROVISION OF NOTICE

15 11.1. When any Party is entitled to receive any notice under this Consent Judgment, the  
16 notice shall be sent to the person and address set forth in this Section

17 11.2. Notices shall be sent by e-mail and by First Class Mail or overnight delivery to the  
18 following when required:

19 For the Attorney General:

20 Dennis A. Ragen, Deputy Attorney General  
21 California Department of Justice  
22 110 West A. Street, Suite 1100  
23 San Diego, CA 92101  
24 [Dennis.Ragen@doj.ca.gov](mailto:Dennis.Ragen@doj.ca.gov)

25 and simultaneously to:

26 \_\_\_\_\_  
27 <sup>2</sup> The downstream release in this Section is based on an understanding between the Parties  
28 that prior to the Effective Date, Settling Defendants did not sell California Ginger Products  
imported from Thailand.

1 Susan S. Fiering, Supervising Deputy Attorney General  
2 Department of Justice,  
3 1515 Clay Street, 20th Floor,  
4 Oakland, CA 94612  
5 [Susan.Fiering@doj.ca.gov](mailto:Susan.Fiering@doj.ca.gov)

6 For the Center for Environmental Health:

7 Eric S. Somers  
8 Lexington Law Group  
9 503 Divisadero Street  
10 San Francisco, CA 94117-2212  
11 [esomers@lexlawgroup.com](mailto:esomers@lexlawgroup.com)

12 For Food Market Management, Inc.:

13 Bruce Leeson  
14 President  
15 The Ginger People®  
16 215 Reindollar Avenue  
17 Marina, CA 93933 USA

18 With copy to:

19 Lauren M. Michals  
20 Nixon Peabody LLP  
21 One Embarcadero Center, 18th Floor  
22 San Francisco, CA 94111  
23 [lmichals@nixonpeabody.com](mailto:lmichals@nixonpeabody.com)

24 For Reed's, Inc.:

25 Chris Reed  
26 President  
27 Reed's, Inc.  
28 13000 South Spring Street  
Los Angeles, CA 90061

With copy to:

J. Robert Maxwell  
Rogers Joseph O'Donnell  
311 California Street, 10th Floor  
San Francisco, CA 94104  
[bmaxwell@rjo.com](mailto:bmaxwell@rjo.com)

Any Party may change its contact information by sending notice by e-mail and by First Class Mail or overnight delivery to the other Parties. Said change shall take effect for any notice mailed at least five days after the date sent.

1           11.3. Written Certification. Within 15 court days of the Attorney General's written  
2 request, Settling Defendants will provide the Attorney General and CEH with written certification  
3 that any required action under this Consent Judgment has been completed.

4           **12. REVALUATION OF MAXIMUM LEAD LEVEL**

5           12.1. California Ginger Products. The Maximum Lead Level set forth in subparagraph  
6 3.7 above shall be subject to reevaluation if the Attorney General determines: (i) that it is feasible,  
7 through good manufacturing or good agricultural practices to achieve lower levels of lead; or (ii)  
8 that it is otherwise necessary to comply with the requirements of Proposition 65 or Business and  
9 Professions Code sections 17200 et seq. If the Attorney General, after consulting with CEH,  
10 determines that the Maximum Lead Level should be lowered, she shall notify CEH of that  
11 determination and meet and confer with Settling Defendants in order to agree by stipulation on a  
12 revised level. If that process is not successful, the Attorney General may seek to revise the  
13 Maximum Lead Level by making a noticed motion in this Court to re-open litigation for this  
14 limited purpose, pursuant to the procedures set out in section 7.2, above. In any such proceeding,  
15 the Settling Defendants shall be entitled to present evidence and argument as to why the  
16 Maximum Lead Level should not be lowered.

17           12.2. In connection with any reevaluation of the Maximum Lead Level, Settling  
18 Defendants will, upon granting of a noticed motion by the Court, and upon a showing by the  
19 Attorney General that such a reevaluation is warranted and supported by evidence, respond to  
20 limited discovery served by the People pursuant to the California Code of Civil Procedure that is  
21 relevant to such reevaluation of the Maximum Lead Level, except to the extent that such  
22 information is subject to any proper objection that may be asserted pursuant to the Code of Civil  
23 Procedure, is a trade secret or confidential and thus addressed below, or obtained through  
24 informal agreement. If a Settling Defendant is called upon to submit any non-privileged  
25 information that may reasonably be considered as trade secret or confidential, then, on the request  
26 of the Settling Defendant, such information will be deemed to be "Confidential Settlement  
27 Information" or "Confidential Plaintiffs Only Settlement Information" subject to the Protective  
28 Order re Settlement Negotiations previously entered in Case No. CGC-13-531045 and any other

1 related Protective Order in these cases and will only be produced pursuant to the terms of these  
2 Protective Orders.

3 12.3. By responding to the Attorney General in any reevaluation of the Maximum Lead  
4 Level, Settling Defendants do not waive any defenses or objections which they may have to any  
5 attempt by the Attorney General, CEH or any other enforcer to revise the Maximum Lead Level.

### 6 **13. NO EFFECT ON OTHER PRODUCTS**

7 13.1. The requirements for product labeling, signage and internet warnings set forth in this  
8 Consent Judgment are imposed pursuant to the terms of this Consent Judgment, and they are not  
9 intended to be the exclusive method of providing a warning under Proposition 65 and its  
10 implementing regulations for products that are not subject to this Consent Judgment.

11 13.2. The Maximum Lead Level set forth in this Judgment is based on, and would not  
12 have been approved without Settling Defendants' commitment to continuously implement good  
13 manufacturing practices, ingredient sourcing standards, and lead reduction measures, as set forth  
14 in Sections 4 and Exhibit B hereof.

15 13.3. The Maximum Lead Level is not applicable to products that are not subject to this  
16 Consent Judgment and it is not intended to establish applicable or unacceptable lead levels for  
17 any such products.

### 18 **14. COURT APPROVAL**

19 14.1. This Consent Judgment shall be submitted to the Court for entry by noticed motion  
20 or as otherwise may be required or permitted by the Court. If this Consent Judgment is not  
21 approved by the Court, it shall be of no force or effect and may not be used by the Plaintiffs or  
22 Settling Defendants for any purpose.

### 23 **15. ENTIRE AGREEMENT**

24 15.1. This Consent Judgment contains the sole and entire agreement and understanding of  
25 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
26 negotiations, commitments and understandings related hereto. No representations, oral or  
27 otherwise, express or implied, other than those contained herein have been made by any Party  
28

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
2 deemed to exist or to bind any of the Parties with respect to the subject matter hereof.

3 **16. RETENTION OF JURISDICTION**

4 16.1. This Court shall retain jurisdiction of this matter to implement and enforce the  
5 Consent Judgment, and to resolve any disputes that may arise as to the implementation of this  
6 Judgment.

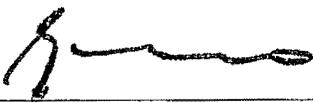
7 16.2. Should a dispute arise as to the implementation of this Consent Judgment, the  
8 Parties shall meet and confer in an attempt to resolve the dispute. If the meet and confer process  
9 proves unsuccessful, any Party may, by noticed motion, request that the Court resolve the dispute.  
10 If the dispute involves a determination made by the Attorney General regarding the terms of this  
11 Consent Judgment, the Party objecting to that determination will, if it so chooses, have the  
12 responsibility to bring a motion challenging it.

13 **17. EXECUTION IN COUNTERPARTS**

14 17.1. The stipulations to this Consent Judgment may be executed in counterparts and by  
15 means of facsimile, which taken together shall be deemed to constitute one document.

16  
17 IT IS SO ORDERED and ADJUDGED:

18  
19 DATED: October 25, 2016

20   
21 \_\_\_\_\_  
22 JUDGE OF THE SUPERIOR COURT  
23 **CURTIS E.A. KARNOW**

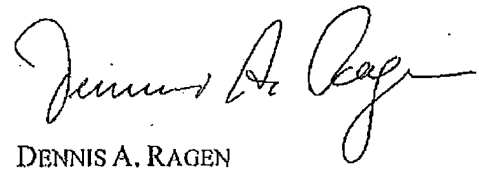


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

THE UNDERSIGNED PARTIES AGREE TO THE ENTRY OF THIS CONSENT  
JUDGMENT;

Dated: Sept. 9, 2016

KAMALA D. HARRIS  
Attorney General of California  
SUSAN S. FIERING  
Supervising Deputy Attorney General



DENNIS A. RAGEN  
Deputy Attorney General  
*Attorneys for People*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: July, 2016

CENTER FOR ENVIRONMENTAL  
HEALTH

*Charlie Pizarro*

*CHARLIE PIZARRO*

Printed Name

*ASSOCIATE DIRECTOR*

Title

DATED: \_\_\_\_\_, 2016

FOOD MARKET MANAGEMENT, INC.

Printed Name

Title

DATED: \_\_\_\_\_, 2016

REED'S, INC.

Printed Name

Title

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: \_\_\_\_\_, 2016

CENTER FOR ENVIRONMENTAL  
HEALTH

\_\_\_\_\_

Printed Name

Title

DATED: \_\_\_\_\_, 2016

FOOD MARKET MANAGEMENT, INC.

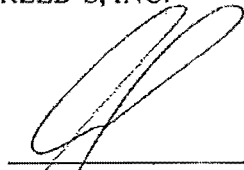
\_\_\_\_\_

Printed Name

Title

DATED: July 11, 2016

REED'S, INC.



CHRIS REED

Printed Name

CEO

Title

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DATED: \_\_\_\_\_, 2016

CENTER FOR ENVIRONMENTAL  
HEALTH

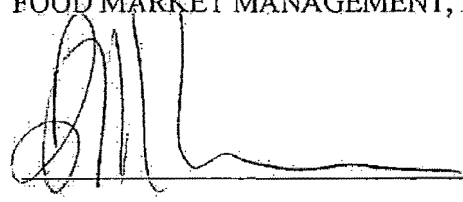
\_\_\_\_\_

Printed Name

Title

DATED: 21 June, 2016

FOOD MARKET MANAGEMENT, INC.



Bruce Leeson

Printed Name

President

Title

DATED: \_\_\_\_\_, 2016

REED'S, INC.

\_\_\_\_\_

Printed Name

Title



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

SETTLING DEFENDANT

**Name of Settling Defendant:**

Food Market Management, Inc.

**Non-Exclusive Examples of California Ginger Products Sold by Settling Defendant:**

- The Ginger People® Crystallized Ginger Baking Chips
- The Ginger People® crystallized ginger
- The Ginger People® Ginger Spread
- The Ginger People® Organic Crystallized Ginger
- The Ginger People® candied ginger
- The Ginger People® organic candied ginger

**Settlement Payments:**

Payments are to be made in the amounts set forth below on the later of the dates set forth below or the date fifteen days after entry of the Consent Judgment, provided, however, that if the Consent Judgment is entered after August 31, 2016, the second through fourth payments are each due one month later, with the last payment due no later than June 15, 2017.

Date	Total	AG Fees and costs	Total Civil Penalty	OEHHA Portion of Penalty	AG Portion of Penalty	CEH Portion of Penalty	CEH Fees and cost
8/15/2016	\$ 62,000.00	\$ 9,906.00	\$ 18,750.00	\$ 14,062.50	\$ 2,343.75	\$ 2,343.75	\$ 33,344.00
11/15/2016	\$ 62,000.00	\$ 9,906.00	\$ 18,750.00	\$ 14,062.50	\$ 2,343.75	\$ 2,343.75	\$ 33,344.00
2/15/2017	\$ 62,000.00	\$ 9,906.00	\$ 18,750.00	\$ 14,062.50	\$ 2,343.75	\$ 2,343.75	\$ 33,344.00
5/15/2017	\$ 62,000.00	\$ 9,906.00	\$ 18,750.00	\$ 14,062.50	\$ 2,343.75	\$ 2,343.75	\$ 33,344.00
Total	\$ 248,000.00	\$ 39,624.00	\$ 75,000.00	\$ 56,250.00	\$ 9,375.00	\$ 9,375.00	\$ 133,376.00

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

SETTLING DEFENDANT

**Name of Settling Defendant:**

Reeds, Inc.

**Non-Exclusive Examples of California Ginger Products Sold by Settling Defendant:**

Reed's Packaged Crystallized Ginger

Reed's Bulk Crystallized Ginger

**Settlement Payments:**

Payments are to be made in the amounts set forth below on the later of the dates set forth below or the date fifteen days after entry of the Consent Judgment:

Date	Total	AG Fees and costs	Civil Penalty	OEHHA Portion of Penalty	AG Portion of Penalty	CEH Portion of Penalty	CEH Fees
7/15/2016	\$ 33,000.00	\$ 6,138.93	\$ 6,971.83	\$ 5,228.87	\$ 871.48	\$ 871.48	\$ 19,889.24
8/15/2016	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
9/15/2016	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
10/15/2016	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
11/15/2016	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
12/15/2016	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
1/15/2017	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
2/15/2017	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
3/15/2017	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
4/15/2017	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
5/15/2017	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
6/15/2017	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
7/15/2017	\$ 15,000.00	\$ 2,790.42	\$ 3,169.01	\$ 2,376.76	\$ 396.13	\$ 396.13	\$ 9,040.56
Total	\$ 213,000.00	\$ 39,624.00	\$ 45,000.00	\$ 33,750.00	\$ 5,625.00	\$ 5,625.00	\$ 128,376.00





1 EXHIBIT B

2 SUMMARY OF COMPLIANCE INFORMATION FOR THE  
3 SUPPLIER/MANUFACTURER OF CALIFORNIA GINGER PRODUCTS

4 Dear [Insert Name of Supplier/Manufacturer]:

5 We plan to offer the following products for sale in California:

6 [Insert Names of Specific California Ginger Products]

7 Prior to doing so, we will need certification from an Independent Food Quality Auditor  
8 that important steps have been taken to minimize the lead levels in each of these products  
9 during the manufacturing process.

10 The Independent Food Processing Auditor must:

- 11 1. Have extensive knowledge of good manufacturing practices in the food processing  
12 industry;
- 13 2. Have sufficient experience in inspecting food processing facilities to ensure  
14 compliance with good manufacturing practices and with the Hazard Analysis and  
15 Critical Control Points ("HACCP") food safety management system;
- 16 3. Be (i) certified as an International HACCP Alliance lead Instructor; or (ii) be  
17 certified as a SQF (Safe Quality Food) HACCP Lead Auditor or SQF Consultant;  
18 or (iii) hold an NEHA (National Environmental Health Association) Certified  
19 Professional - Food Safety (CP-FS) Credential; or (iv) be certified as Food Scientist  
20 by Institute of Food Technology; or (v) have an equivalent qualification;
- 21 4. Supply us with a resume demonstrating the qualifications listed above.

22 The Independent Food Processing Auditor must provide the initial signed Certification  
23 attached as Attachment 1 for each California Ginger Product. Thereafter, the Independent  
24 Food Processing Auditor or a qualified Internal Auditor may provide the Certification.

25 For the purposes of that Certification, the following definitions are applicable:

- 26 • The "Maximum Lead Level" for the finished California Ginger Product is 40 parts  
27 per billion (ppb).
- 28 • A "Qualified Laboratory" is a laboratory that meets the requirements set forth in  
Title 27 California Code of Regulations section 25900(b) or in Attachment 2, and  
that follows the procedures set forth in Attachment 2.
- A "Lead Contribution Exercise" is a mass balance exercise that evaluates the  
contribution of lead from each ingredient used in the manufacture of a product.  
The objective of the lead contribution exercise is: (1) to determine if an ingredient  
or process is contributing measurable lead in concentrations of 2 ppb or more to the  
finished product; (2) to calculate the potential total amount of lead that will result

1 from the formulation of the product; and (3) to then compare this total with the  
2 maximum amount of lead allowed. If the formulation of the product results in a  
3 lead concentration that exceeds the Maximum Lead Level, then the formulation  
4 and/or the lead content of the ingredients must be changed to meet the Maximum  
5 Lead Level.

6 The Auditor will verify that a Lead Contribution Exercise for each California  
7 Ginger Product has been conducted. Based on this Exercise, the Auditor will  
8 establish maximum lead concentrations for major ingredients and ingredients and  
9 processing aids materials or substances used to dry, preserve or otherwise process  
10 the ingredients that are used to manufacture each California Ginger Product and  
11 that can contribute 5 ppb or more lead to the final product. The lead  
12 concentrations that the Auditor establishes as part of this Exercise must be designed  
13 to result in a finished California Ginger Product that has a lead concentration of no  
14 more than 40 ppb.

- 15 • “Periodic Testing” means annual testing of Representative Product Samples of the  
16 California Ginger Product at a Qualified Laboratory, unless a product fails to  
17 satisfy the Maximum Lead Level in which case the testing frequency will be  
18 increased to reflect the severity of the failure.
- 19 • “Representative Product Samples” of a California Ginger Product shall mean six to  
20 ten samples randomly drawn from the following lots (“Representative Lots”) of  
21 that Product which are intended for sale or distribution in California. :
  - 22 – For purposes of the initial certification of the Maximum Lead Level: (a) the  
23 first six consecutive lots of the product that were produced after the  
24 implementation of the Lead Contribution Exercise and (b) the square root,  
25 rounded to the nearest whole number, of the additional number of lots sold in  
26 the preceding calendar year.<sup>1</sup> For new products for which no prior sales  
27 information is available, the number of lots used to calculate the number of  
28 tests for subpart (b) is to be based upon sales of similar products in the prior  
calendar year.
  - For subsequent certifications of the Maximum Lead Level: the square root,  
rounded to the nearest whole number, of the number of lots sold or distributed  
for sale in California in the preceding calendar year, unless a lot fails to satisfy  
the Maximum Lead Level. In the event of such a failure, the company that  
manufactures the California Ginger Product must re-evaluate its controls, and  
then show that six consecutive lots satisfy the applicable Maximum Lead  
Levels before reverting to testing the square root of the number of lots sold.
  - If the Independent or Internal Auditor concludes that two or more of a Settling  
Defendant’s California Ginger Products are substantially the same except that

---

<sup>1</sup> If there are fewer than six production lots or fewer than the additional lots required  
produced by the date of the initial certification, samples shall be taken from each lot.

1 they are sliced, cut or diced differently, and that these Products are produced at  
2 the same facility, at or about the same time (or if appropriate, during the same  
3 production season), using the same sources for the ingredients, and that  
4 combining these Products into a single "product" group will result in  
5 appropriate analysis of the lead content of the Products in the combined group,  
6 then the Auditor may combine these Products into a single group for purposes  
7 of the Certifications required by Attachment 1.

- 8 • "Representative Ingredient Samples" of ingredients for California Ginger Products  
9 shall mean: the average of six or more samples taken from:
  - 10 – the square root, rounded to the nearest whole number, of the number of lots  
11 of the ingredient used in the California Ginger Product in the preceding  
12 calendar year; or
  - 13 – a statistically representative number of the lots of that ingredient, as  
14 determined by the supplier of that ingredient; or
  - 15 – each lot of the ingredient.
- 16 • If a lot fails to satisfy the applicable maximum lead level for the ingredient, then:
  - 17 ○ If all lots of that ingredient are routinely tested before use, the lot may be  
18 rejected without additional action;
  - 19 ○ Otherwise, the lot must be rejected and the company that supplies the ingredient  
20 or the Defendant must re-evaluate its controls, and then show that up to six  
21 consecutive lots of the ingredient satisfy the applicable maximum lead levels  
22 before the ingredient can be used in a California Ginger Product.

1  
2 ATTACHMENT 1

3 REQUIRED CERTIFICATION FROM INDEPENDENT FOOD QUALITY AUDITOR RETAINED BY  
4 THE MANUFACTURER OR SUPPLIER OF THE CALIFORNIA GINGER PRODUCT

5 [Letterhead of Independent Food Processing Auditor.]

6 I, \_\_\_\_\_ [Name] \_\_\_\_\_, certify as follows with respect to the following California Ginger  
7 Products:

8 [Insert Names of specific California Ginger Products]

9 1. [Name of Company] (the "Company") has implemented a Hazard Analysis and  
10 Critical Control Points ("HACCP") program that identifies lead as a hazard and  
11 implements the prevention steps to minimize the presence of lead in the California  
12 Ginger Products.

13 2. Ginger. The Company has received adequate certification pursuant to paragraph 9  
14 below that the raw ginger used as an ingredient in the California Ginger Products  
15 does not contain lead in excess of the higher of (a) 35 ppb or (b) the maximum  
16 concentration established in the Lead Contribution Exercise conducted pursuant to  
17 section 8 below.

18 During the first calendar year following the Effective Date, if the ingredient ginger  
19 for a California Ginger Product has already been brined, the Company may obtain  
20 this certification for this brined ginger rather than separately for the raw ginger and  
21 brining salt with the lead concentration in the brined ginger not in excess of 35 ppb.

22 3. Sugar. The sugar used as an ingredient in the California Ginger Products is food  
23 grade, and the Company has received adequate certification pursuant to paragraph 9  
24 below that it does not contain lead in excess of the maximum concentration  
25 established in the Lead Contribution Exercise conducted pursuant to section 8  
26 below.

27 4. Salt. If salt is more than 2 % of the finished product, the salt used as an ingredient  
28 in the California Ginger Products is food grade, and the Company has received  
adequate certification pursuant to paragraph 9 below that that it does not contain  
lead in excess of the concentration established in the Lead Contribution Exercise  
conducted pursuant to section 8 below.

5. Brining Salt. If the California Ginger Products are subject to a brining process:  
The salt used in the brining of the ginger ingredients is food grade and the  
Company has received adequate certification pursuant to paragraph 9 below that it  
does not contain lead in excess of either (i) 50 ppb, or (ii) the maximum  
concentration established in the Lead Contribution Exercise conducted pursuant to  
section 8 below.

6. Other Ingredients/Aids. All other ingredients and processing aids are food grade  
and the Company has received adequate certification pursuant to paragraph 9 below  
that any ingredients that may contribute lead in excess of 5 ppb to the finished

1 product do not contain lead in excess of the maximum concentration established in  
2 the Lead Contribution Exercise conducted pursuant to section 8 below.

3 7. Annual Audit. The Company undergoes an annual audit by an approved third party  
4 auditor to verify that their GMP and HACCP programs adequately prevent or  
5 minimize the presence of lead in their finished products.

6 8. Lead Contribution Exercise. I have reviewed the Company's Lead Contribution  
7 Exercise for the California Ginger Product. Based on this Exercise, the Company  
8 has established maximum lead concentrations for the major ingredients, and has  
9 evaluated the potential lead contribution from minor ingredients and processing  
10 aids that are used to manufacture each California Ginger Product. The lead  
11 concentrations that the Company has established as part of this Exercise are  
12 designed to result in a finished California Ginger Product that has a lead  
13 concentration of no more than 40 ppb.

14 9. Certification from Suppliers.

15 a. The Company has either:

16 (1) Requested from its suppliers and maintained a certificate of analysis  
17 specific to lead for each raw ingredient and for each manufacturing aid that  
18 may, based on the Lead Contribution Exercise, contribute more than 5 ppb  
19 of lead to the finished product. These certificates of analysis indicate that  
20 the lead levels in Representative Ingredient Samples of each such major  
21 ingredient and manufacturing aid do not exceed the maximum lead  
22 concentrations set forth in paragraphs 2 through 6, above. These certificates  
23 show that the ingredient or processing aid has been analyzed by a Qualified  
24 Laboratory.

25 or

26 (2) Has implemented a system to pre-approve each supplier. Such a pre-  
27 approved supplier must show that it has process controls and lead  
28 prevention programs in place to ensure that the lead levels in its products do  
not exceed the maximum lead concentrations that are set in paragraphs 2  
through 6, above. The supplier must also show that it has a program in place  
to test Representative Ingredient Samples and that this testing shows that  
the maximum lead concentrations have not been exceeded. This testing  
must be conducted at a Qualified Laboratory.

b. If the final product has failed to satisfy the Maximum Lead Level, any  
ingredients responsible for any failure to satisfy the Maximum Lead Level have  
undergone independent testing.

10. Potable Water Supply. The potable water supply is monitored for lead levels. The  
internal distribution system is not a source of lead contamination as verified by

1 point of use testing versus influent lead level. The lead levels in potable water used  
2 in processing contains no more than 0.010 ppb.

- 3 11. Food Contact Surfaces. All food contact equipment, utensils, and containers are  
4 constructed from lead-free materials. No brass or bronze components may come in  
5 contact with ingredients or the final product.
- 6 12. Lubricants/Sealants, Etc. Lubricants, sealants and similar materials used in direct  
7 food contact areas, as well as in areas that have the potential to contaminate  
8 product, are food grade. This includes storage areas in addition to processing and  
9 packing areas.
- 10 13. Packaging materials. Packaging materials, inks, and pigments with any contact to  
11 the product meet the requirements of California Health and Safety Code section  
12 25214.13. Other packing materials do not result in lead migration into the final  
13 product.
- 14 14. Process control. Process control is validated through an audit program whereby  
15 processes and finished product is subjected to Periodic Testing for total lead  
16 content. The Limit of Quantification (LOQ) for the finished products and major  
17 ingredients must be equal to or less than 0.01 mg/kg.
- 18 15. Lot identification/Traceability. Lot identification and traceability is maintained for  
19 major and minor ingredients and processing aids. The manufacturer is able to  
20 document the major and minor ingredients lots used to produce specific finished  
21 product lots and to trace finished product shipments one level forward to the  
22 customer.
- 23 16. Testing Program for Final Product The company has a program in place to test  
24 Representative Samples of the product annually, unless a product fails to satisfy the  
25 Maximum Lead Level in which case the Company has in place a program whereby  
26 sampling frequency will be increased to reflect the lead level found in excess of  
27 what is permitted under the Consent Judgment.
- 28 17. Standard GMPs. The Company has in place Good Manufacturing Practices for the  
California Ginger Product, that include the following, which are continuously in  
place:
- a. Specifications are established for controlled manufacturing steps.
  - b. Master manufacturing records and batch production records are prepared and maintained
  - c. Standard Operating Procedures (SOPs) are prepared to cover the quality control operations, including the calibration and control of equipment and instruments used in manufacturing.
18. Certification of Maximum Lead Level. I have reviewed testing of Representative Samples of the California Ginger Products listed above. This testing was conducted at a Qualified Laboratory that met the standards set forth in Title 27

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

California Code of Regulations section 25900(b) or set forth in Attachment 2. This testing showed that none of the Representative Lots of California Ginger Products contained an average (arithmetic mean) lead level that exceeded 40 ppb, and that none of the samples had a lead concentration of more than 60 ppb by weight.

SIGNATURE OF INDEPENDENT FOOD QUALITY AUDITOR.

1 EXHIBIT B - ATTACHMENT 2

2 QUALIFIED LABORATORIES

3 Analytical guidance for Laboratories:

4 Analyses must utilize a method that employs ICP-MS. Laboratories must have the  
5 capability of controlling lead contamination throughout the analytical process, including  
6 sample compositing, sample digestion, and the lead determination steps. In order to meet  
7 the analytical objectives, the use of high purity acids will be required as well the use of  
8 closed-vessel type sample digestion procedures. The conditions and procedures needed to  
9 successfully meet the analyses are described in the FDA Elemental Analysis Manual.

10 <http://www.fda.gov/Food/FoodScienceResearch/LaboratoryMethods/ucm2006954.htm>  
11 See method EAM 4.7.

12 [http://www.fda.gov/downloads/Food/FoodScienceResearch/LaboratoryMethods/UCM377  
13 005.pdf](http://www.fda.gov/downloads/Food/FoodScienceResearch/LaboratoryMethods/UCM377005.pdf)

14 Particular attention must be given to recovery information offered to attribute accuracy to  
15 these analyses. The levels of lead used to fortify products and ingredients for analyte  
16 recovery must be in the range of 50-200% of the lead level found in the product, if the  
17 level of lead in the product is in a quantifiable range. As a measure of accuracy,  
18 laboratories are also encouraged to provide recovery information on certified reference  
19 materials with lead levels similar to these products or ingredients.

20 Participating laboratories must be accredited, preferably under ISO 17025 to conduct low  
21 level lead analyses in foods by ICP-MS.

22 The analytical objective for lead analysis, i.e., the Limit of Quantification (LOQ), for  
23 finished products and for the major ingredients is 0.010 mg/kg.  
24  
25  
26  
27  
28





**EXHIBIT C**

**List of Entities and California Ginger Products**

**Sold By Such Entities That Are Excluded From Downstream**

**Release in Section 10.1.2**

<b>Entity</b>	<b>California Ginger Products Excluded From Downstream Release</b>
All Entities	Crystallized Ginger Imported from Thailand
Albertson's, LLC	McCormick Crystallized Ginger
Amazon.com	Sincerely Nuts Brand Crystallized Ginger
B&V Enterprises	Nutty & Fruity Dried Ginger
Cost Plus, Inc.	World Market Ginger Root Crystallized Ginger
Draeger's Super Markets	Draeger's Ginger Crystallized Organic
Gelson's Markets	McCormick Crystallized Ginger, Spice Island Crystallized Ginger and The Spice Hunter Crystallized Ginger
McCormick & Company, Incorporated	All California Ginger Products
Spice Hunter, Inc.	All California Ginger Products
Sunflower Farmers Markets, LLC	Crystallized Ginger SKU 2-06318-80448-8
Vanns Spices Ltd.	Draeger's Ginger Crystallized Organic
Vons Companies, Inc.	McCormick Crystallized Ginger
Wal-Mart Stores, Inc.	McCormick Crystallized Ginger and Spice Island Crystallized Ginger
Buderim Ginger Limited	All California Ginger Products
Euromarket Designs, Inc.	All California Ginger Products
Frontier Distribution LLC	All California Ginger Products
Nature's World LLC	All California Ginger Products
Zion Market Irvine, Inc.	All California Ginger Products