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16
17 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES**

19
20 PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. **BILL LOCKYER**, Attorney General, and
21 **ROCKARD J. DELGADILLO**, Los Angeles City
Attorney,

22 Plaintiffs,

23 v.

24 **PEPSICO, INC.**, and Does 1 through 150,
inclusive,

25 Defendants.
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27
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CASE NO. **BC351120**
CONSENT JUDGMENT

1 Plaintiffs, the People of the State of California, ex rel. Bill Lockyer, Attorney General,
2 and Rockard J. Delgadillo, Los Angeles City Attorney; and defendant, PepsiCo, Inc.
3 (“PepsiCo”), enter into this Consent Judgment as follows:

4 **1. Introduction.**

5 1.1 On April 21, 2006, the People filed their complaint (the “Complaint”), captioned
6 as *People of the State of California v. PepsiCo, Inc.*, et al., in the Los Angeles County Superior
7 Court. Plaintiffs allege that PepsiCo violated the California Safe Drinking Water and Toxic
8 Enforcement Act, California Health and Safety Code sections 25249.5 *et seq.* (“Proposition 65”) and
9 and Business and Professions Code section 17200 *et seq.* (“Unfair Competition Law”) by
10 exposing California consumers to lead and cadmium, without first providing clear and
11 reasonable warnings, through the following practices:

- 12 (a) the authorization of the manufacture, distribution and sale of beverages
13 bottled in Mexico in refillable, returnable glass bottles with decorations
14 that contain lead and cadmium, some of which are ultimately purchased by
15 consumers in California; and
16 (b) the sale of soft drink concentrate for the manufacture, distribution and sale
17 of Mountain Dew beverages bottled at the independently owned Dr.
18 Pepper Bottling Company of West Jefferson, North Carolina (“West
19 Jefferson Mountain Dew”), in glass bottles with decorations that contain
20 lead and cadmium.

21 Both Mexico Pepsi and West Jefferson Mountain Dew have been offered for sale and sold within
22 the State of California by individuals and entities other than PepsiCo. Plaintiffs further allege
23 that Mexico Pepsi and West Jefferson Mountain Dew contain detectable amounts of lead and
24 cadmium. Lead and cadmium are listed under Proposition 65 as “chemical[s] known to the State
25 of California to cause cancer and birth defects or other reproductive harm.”

26 1.2 The People filed their Complaint after commencing their own investigation,
27 examining the “Sixty-Day Notice of Violation” (the “Notice”) that Dr. Whitney R. Leeman
28 served on public enforcement agencies and PepsiCo, and engaging in discussions with

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1 Dr. Leeman, who had undertaken significant efforts to investigate and document exposures to
2 lead and cadmium in Mexico Pepsi and West Jefferson Mountain Dew.

3 1.3 PepsiCo employs ten or more persons and is a person in the course of doing
4 business for purposes of Proposition 65.

5 1.4 Plaintiffs and PepsiCo have negotiated settlement of this matter based on the
6 following understanding: PepsiCo asserts that, for the past sixteen years, it has made a
7 considerable effort and incurred significant expense to prevent Mexico Pepsi from being sold to
8 consumers in California, including bringing lawsuits against distributors and retailers in
9 California which resulted in the issuance of 24 permanent injunctions against the importation and
10 sale of Mexico Pepsi in California, *see, e.g., PepsiCo, Inc. v. Reyes*, 70 F. Supp. 2d 1057 (C.D.
11 Cal. 1999); *PepsiCo, Inc. v. Torres*, 1993 U.S. Dist. Lexis 17588 (C.D. Cal. 1993); and *PepsiCo,
12 Inc. v. Triunfo-Mex, Inc.*, 189 F.R.D. 431 (C.D. Cal. 1999); PepsiCo asserts that it does not
13 intend Mexico Pepsi to be sold in California; that if such bottles are sold in California it is in
14 violation of Federal and California trademark and Federal unfair competition laws, *see* 15 U.S.C.
15 §§ 1114, and 1125(a), as well as the Unfair Competition Law, and PepsiCo's trademark rights,
16 and that such products are imported into the United States and distributed and sold in California
17 without PepsiCo's consent or authorization and despite PepsiCo's extensive and long-standing
18 efforts to stop unauthorized Mexico Pepsi from entering or being sold in the United States; and
19 PepsiCo further asserts that any lead associated with West Jefferson Mountain Dew resulted
20 from the independent acts of others, about which PepsiCo had no knowledge.

21 1.5 For purposes of this Consent Judgment only, PepsiCo and Plaintiffs stipulate that:
22 (a) this Court has jurisdiction over the allegations of violations contained in the Complaint on
23 file herein ("Complaint") and the Notice; (b) this Court has personal jurisdiction over PepsiCo
24 for the purposes of enforcing the terms of this Consent Judgment; (c) venue is proper in the
25 County of Los Angeles; and (d) this Court has jurisdiction to enter this Consent Judgment as a
26 full settlement and resolution of the allegations contained in the Notice and Complaint. PepsiCo
27 agrees not to challenge or object to entry of this Judgment by the Court unless Plaintiffs have
28 notified PepsiCo in writing that Plaintiffs no longer support entry of this Consent Judgment or

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1 that Plaintiffs seek to modify this Judgment, in which case PepsiCo may, at its option, withdraw
2 from this Consent Judgment. PepsiCo agrees not to challenge this Court's jurisdiction to enforce
3 the terms of this Consent Judgment once it has been entered.

4 1.6 PepsiCo disputes the allegations of the Complaint and the Notice, and contends
5 that all Mexico Pepsi and West Jefferson Mountain Dew sold in California comply with all
6 applicable laws (the violations of which are alleged in the Complaint and Notice) including
7 Proposition 65 and the Unfair Competition Law. However, the Parties enter into this Consent
8 Judgment pursuant to a settlement of certain disputed claims between the Parties as alleged in the
9 Complaint and Notice, for the purpose of avoiding prolonged and costly litigation, and to resolve
10 all claims arising from the facts alleged in the Complaint and Notice. By execution of this
11 Consent Judgment, PepsiCo does not admit any fact, conclusion of law, or violation of law,
12 including, but not limited to, any violations of Proposition 65, the Unfair Competition Law or
13 any other statutory, common law or equitable requirements. Neither this Consent Judgment, nor
14 the Parties' compliance with this Judgment, shall be construed as an admission by PepsiCo of
15 any fact, conclusion of law, issue of law or violation of law. Except as explicitly set forth herein,
16 nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument
17 or defense the Parties may have in this or any other pending or future legal proceedings; nor shall
18 anything in this Consent Judgment preclude the Parties from opposing any such defense or
19 argument. Nevertheless, PepsiCo's obligations, responsibilities and duties shall remain as set
20 forth in this Consent Judgment unless (a) a modification has been entered by a court of law as set
21 forth in Section 14, below (Modification); or (b) the Court has terminated this Consent Judgment
22 pursuant to Section 7, below (Termination of Judgment for Repeated or Severe Violations).

23 **2. Definitions.**

24 For the purposes of this Consent Judgment, the following terms shall have the indicated
25 meanings:

26 2.1 "Beverage Bottle" refers to all Refillable Bottles and Non-Refillable Bottles, as
27 those terms are defined herein.

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1 2.2 “Cadmium Free” shall mean Decoration (as defined below) that contains forty-
2 eight one-hundredths percent (0.48%) cadmium by weight or less, as measured either before or
3 after the Decoration is fired onto (or otherwise affixed to) the Beverage Bottle, using a sample
4 size of the materials in question measuring approximately 50-100 mg in weight and a test
5 method of sufficient sensitivity to establish a limit of quantitation of less than 600 parts per
6 million (“ppm”).

7 2.3 “Compliance Documentation” shall mean the certifications and reports which
8 PepsiCo and the Mexico Bottlers are required to submit pursuant to the provisions of Section 3,
9 below (“Injunctive Relief”).

10 2.4 “Covered Mexico Products” shall mean all carbonated beverages bottled in
11 Mexico in Refillable Bottles (as defined below) under the authority of, and marketed under
12 trademarks owned or licensed by, PepsiCo and its majority-owned subsidiaries and affiliates
13 including, but not limited to, Mexico Pepsi. “Covered Mexico Products” includes the beverage
14 contained within the Refillable Bottle, as well as the Refillable Bottle itself.

15 2.5 “Covered U.S. Products” shall mean all carbonated beverages bottled under the
16 authority of PepsiCo within the United States in glass bottles and marketed under trademarks
17 owned or licensed by PepsiCo and its majority-owned subsidiaries and affiliates, including, but
18 not limited to, West Jefferson Mountain Dew. “Covered U.S. Products” includes the beverage
19 contained within the glass bottle, as well as the glass bottle itself.

20 2.6 “Decoration” shall mean the label and any other material that is painted on or
21 affixed to a Beverage Bottle.

22 2.7 The “Effective Date” of this Consent Judgment shall be 30 days after this Consent
23 Judgment is approved and entered by the Court.

24 2.8 “Independent Food Processing Auditor” shall mean an auditing company that
25 (a) has extensive knowledge of good manufacturing practices in the food processing industry and
26 significant experience in inspecting food processing facilities to insure compliance with good
27 manufacturing practices; (b) has provided a resume of its qualifications to the Attorney General;
28 and (c) has received the Attorney General’s approval to conduct the Lead GMP Audits required

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1 by Subsections 3.1.11, 3.1.12 and 3.1.13, below. For purposes of this Consent Judgment, the
2 following auditors are deemed approved by the Attorney General as Independent Food
3 Processing Auditors: Lloyd's Register Quality Assurance, Sumner Analytical Services, the
4 American Institute of Baking International, NSF International, and Silliker Laboratories.
5 PepsiCo retains the right to seek the Attorney General's approval of an Independent Food
6 Processing Auditor other than those listed above. If the Attorney General approves another
7 Independent Food Processing Auditor, PepsiCo shall not be required to retain one of the
8 Independent Food Processing Auditors named above in this Subsection 2.8.

9 2.9 "Independent Compliance Auditor" shall mean the Independent Food Processing
10 Auditor or such other auditing firm that (a) has experience in auditing and verifying industrial
11 practices in the food processing industry; (b) has provided a resume of its qualifications to the
12 Attorney General; and (c) has received the Attorney General's approval to conduct the Interim
13 Compliance Audit and the Final Compliance Audit required by Subsections 3.1.5(a) and (b),
14 below. For purposes of this Consent Judgment, and in addition to the auditors deemed approved
15 in Subsection 2.8, the following auditors are deemed approved by the Attorney General as
16 Independent Compliance Auditors: KPMG, PriceWaterhouseCoopers, Deloitte, and Ernst &
17 Young. PepsiCo retains the right to seek the Attorney General's approval of an Independent
18 Compliance Auditor other than those identified in this Subsection. If the Attorney General
19 approves another Independent Compliance Auditor, PepsiCo shall not be required to retain one
20 of the Independent Compliance Auditors identified in this Subsection 2.9.

21 2.10 "Lead Free" shall mean Decoration that contains six one-hundredths percent
22 (0.06%) lead by weight or less, as measured either before or after the Decoration is fired onto (or
23 otherwise affixed to) the Beverage Bottle, using a sample size of the materials in question
24 measuring approximately 50-100 mg in weight and a test method of sufficient sensitivity to
25 establish a limit of quantitation of less than 600 ppm.

26 2.11 "Mexico Bottler" shall mean any bottler located in Mexico authorized by PepsiCo
27 or its subsidiaries or affiliates to manufacture, distribute or sell Covered Mexico Products. As of
28 the date this Agreement was executed, the complete list of all Mexico Bottlers is Bebida

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1 Purificadas S.A. de C.V., Grupo Embotelladoras del Sureste S.A. de C.V., Grupo
2 Embotelladoras Unidas S.A. de C.V., and The Pepsi Bottling Group, Inc., and their respective
3 subsidiaries and affiliates. If PepsiCo should authorize any other bottler located in Mexico to
4 manufacture, distribute or sell Covered Mexico Products, such bottler shall be deemed a
5 “Mexico Bottler” pursuant to this Consent Judgment. PepsiCo shall provide an updated list of all
6 Mexico Bottlers to the Attorney General upon request and within 30 days of any change in the
7 list of Mexico Bottlers.

8 2.12 “Mexico Pepsi” shall mean any Pepsi-Cola products that are bottled by a Mexico
9 Bottler. The definition of Mexico Pepsi is limited to this brand of carbonated soda based upon
10 PepsiCo’s representation that it is unaware of any appreciable quantity of any other brands of
11 Covered Mexico Products that have been sold to consumers in California within the last two
12 years preceding the Effective Date of this Consent Judgment.

13 2.13 “Non-Refillable Bottles” shall mean the glass bottles that are explicitly marked
14 “No Retornable,” “Reciclable,” “Recyclable” or “No Refill” or are otherwise intended,
15 designated or marked to indicate that the bottles are designed to be recycled or otherwise
16 disposed of after one use.

17 2.14 “Old Decorated Bottles” shall mean Refillable Bottles of Mexico Pepsi that bear
18 Decoration that is not “Lead Free.”

19 2.15 The “Parties” are Plaintiffs, the People of the State of California, ex rel. Bill
20 Lockyer, Attorney General, and Rockard J. Delgadillo, Los Angeles City Attorney; and
21 Defendant PepsiCo.

22 2.16 “Refillable Bottle” shall mean the glass bottles that are explicitly marked
23 “Retornable” or “Refillable,” or are otherwise intended, designated or marked to indicate that the
24 bottles are designed to be returned to be refilled.

25 2.17 “U.S. Pepsi Bottles” shall mean glass bottles with applied ceramic labels (also
26 known as decorated bottles) containing Covered U.S. Products.

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1 **3. Injunctive Relief.**

2 3.1 Lead and Cadmium Reduction Measures. The Parties agree that, once the
3 injunctive relief requirements set forth below are implemented, the lead and cadmium content in
4 Covered Mexico Products and Covered U.S. Products will be reduced to levels sufficiently low
5 that no warnings are required. The Parties agree that the Covered Mexico Products and the
6 Covered U.S. Products shall be deemed to comply with Proposition 65 with respect to lead and
7 cadmium beginning immediately and continuing so long as PepsiCo complies and remains in
8 compliance with the requirements of Subsections 3.1.1 through 3.1.13, below.

9 3.1.1 Lead Free Decorations on U.S. Pepsi Bottles. Within 60 days after the
10 Effective Date, PepsiCo will formally remind all of its bottlers within the
11 United States in writing, substantially in the form attached as Exhibit A,
12 that (i) any Covered U.S. Products sold by those bottlers must be Lead
13 Free, and (ii) representative samples of any applied ceramic label bottle
14 for Covered U.S. Products proposed to be sold to consumers in the United
15 States must first be tested by PepsiCo to ensure that such bottle type meets
16 this requirement before it may be used by the bottler.

17 3.1.2 Lead Free Decorations on non-Refillable Bottles. All Decoration on
18 Non-Refillable Bottles of Covered Mexico Products purchased by PepsiCo
19 or the Mexico Bottlers after the Effective Date will be Lead Free.

20 3.1.3 Lead Free Decorations on Newly-made Refillable Bottles. All Decoration
21 on Refillable Bottles of Covered Mexico Products purchased by PepsiCo
22 or the Mexico Bottlers after the Effective Date will be Lead Free.

23 3.1.4 Cadmium Free Decorations on Newly-made Refillable Bottles. All
24 Decoration on Beverage Bottles of Covered Mexico Products purchased
25 by PepsiCo or the Mexico Bottlers on or after the third anniversary of the
26 Effective Date will be Cadmium Free.

27 3.1.5 Phase out of Old Decorated Bottles of Mexico Pepsi. PepsiCo shall
28 implement the phase out of Old Decorated Bottles of Mexico Pepsi

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1 pursuant to the terms set out below. For purposes of demonstrating
2 compliance with this Subsection 3.1.5 and Subsections 4.1.4 and 4.1.5,
3 PepsiCo shall conduct Compliance Audits to confirm the phase out of Old
4 Decorated Bottles. The Compliance Audits shall be conducted in
5 accordance with the protocol in Exhibit B. Before each Compliance Audit
6 is conducted, the Independent Compliance Auditor and/or PepsiCo shall
7 consult with the Attorney General, or as directed by the Attorney General,
8 the City Attorney and/or Dr. Whitney Leeman, regarding the application
9 of the sampling protocol and related analysis.

10 (a) Interim Compliance Audit. The Interim Compliance Audit shall be
11 conducted no later than 42 months following the Effective Date, pursuant
12 to the protocol attached as Exhibit B, for the purpose of confirming that
13 Decoration on at least 30% of Refillable Bottles of Mexico Pepsi is Lead
14 Free. Within 60 days after the Interim Compliance Audit, PepsiCo shall
15 provide the Plaintiffs with a report from the Independent Compliance
16 Auditor of its findings (the “Interim Compliance Audit Report”) in
17 accordance with the protocol in Exhibit B.

18 (b) Final Compliance Audit. The Final Compliance Audit shall be conducted
19 no later than 122 months following the Effective Date, pursuant to the
20 protocol in Exhibit B, for the purpose of confirming that Decoration on at
21 least 95% of Refillable Bottles of Mexico Pepsi is Lead Free.

22 (c) Report. Within 120 days of the Final Compliance Audit, PepsiCo shall
23 provide the Plaintiffs with a report from the Independent Compliance
24 Auditor of its findings (the “Compliance Audit Report”) in accordance
25 with the protocol in Exhibit B. If the Compliance Audit Report confirms
26 that Decoration on 95% of Refillable Bottles of Mexico Pepsi is Lead Free
27 as defined in Subsection 2.10, PepsiCo shall be in compliance with this
28 Subsection 3.1.5. The Parties agree that the use of the 95% compliance

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1 threshold does not dilute PepsiCo's commitment to use its best efforts to
2 employ all available means to phase out the use of Old Decorated Bottles,
3 completely, by the tenth anniversary of the Effective Date. In the event
4 that the Compliance Audit Report demonstrates PepsiCo is not in
5 compliance with this Subsection by the tenth anniversary of the Effective
6 Date, PepsiCo will: (i) be subject to the stipulated penalty set forth at
7 Subsection 4.1.5(d), below; (ii) submit with its Compliance Audit Report a
8 plan for achieving compliance within six months after the tenth
9 anniversary of the Effective Date; and (iii) file within twelve months after
10 such tenth anniversary of the Effective Date a Supplemental Compliance
11 Audit Report demonstrating compliance. Failure to satisfy the
12 requirements in (ii) and (iii) of this subparagraph and to pay any stipulated
13 penalty imposed pursuant to Subsection 4.1.5(d) may be grounds for a
14 motion seeking termination of the Consent Judgment pursuant to Section 7
15 with respect to PepsiCo.

16 3.1.6 Polymer Coating. PepsiCo is investigating the feasibility of a polymer
17 coating process to encapsulate lead and cadmium in Decorations of
18 Refillable Bottles of Mexico Pepsi. Should PepsiCo determine that a
19 polymer coating process is feasible, then before implementing such
20 process for all Refillable Bottles of Mexico Pepsi, PepsiCo will provide
21 the Attorney General, for his review and approval, technical information
22 concerning, among other things, the composition, durability, safety,
23 efficacy and effectiveness of the polymer coating, and such other
24 information with respect to the polymer coating and its foreseeable use as
25 the Attorney General may require.

26 (a) In analyzing whether the polymer coating process effectively encapsulates
27 lead and cadmium on Old Decorated Bottles in a manner sufficient that the
28 bottles may be considered Lead Free and Cadmium Free, the parties shall

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1 use a modified version of the NIOSH Method No. 9100 test, which shall
2 detail the test method to be used and the result (in micrograms of cadmium
3 and lead) to be achieved. PepsiCo shall submit for the Attorney General's
4 review and approval a draft of such modified NIOSH Method No. 9100
5 test in the context of carbonated beverage bottles, and the Parties shall
6 negotiate in a good faith effort to resolve any differences. Should the
7 parties be unable to resolve any remaining differences on this issue within
8 90 days or such other period as they shall mutually agree, they will
9 proceed to mediation before a mutually acceptable mediator, lasting a
10 maximum of two full days, with PepsiCo bearing such mediator's fees. In
11 the event that the mediation fails to resolve any differences between the
12 Parties on this issue, PepsiCo shall present such differences to the Court
13 for resolution on noticed motion, upon which PepsiCo would bear the
14 burden of proof.

15 (b) In the event that the Attorney General approves the use of a polymer
16 coating process pursuant to this section, such approval shall not relieve
17 PepsiCo of any of its obligations under Section 3 of this Consent
18 Judgment, but it shall entitle PepsiCo to the penalty reductions set forth in
19 Sections 4.1.4 and 4.1.5 below, provided that the implementation of the
20 approved polymer application process occurs before the deadlines
21 referenced in those sections.

22 3.1.7 No increase in cadmium levels. Existing cadmium levels in the Decoration
23 on Refillable Bottles of Covered Mexico Products will not increase as a
24 result of the transition from the current Decoration to Lead Free
25 Decoration.

26 3.1.8 No Decorations in lip/rim area. Effective immediately upon the date that
27 this Consent Judgment is entered as a final judgment by the Court, no
28 Beverage Bottles of Covered Mexico Products will have Decoration or

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1 Lead Free Decoration in the top 20 millimeters of the bottle (“Lip and Rim
2 Area”). PepsiCo hereby certifies that it has complied with this
3 requirement.

4 3.1.9 Lead Reduction Processes. On or before the Effective Date, PepsiCo will
5 implement the following lead reduction practices at each Mexico Bottler:

6 (a) An ethylenediaminetetraacetic acid (“EDTA”) process for Refillable
7 Bottles of Covered Mexico Product, which will not leave any detectable
8 residue of EDTA at a 500 ppb limit of detection. The Attorney General
9 may, after meeting and conferring with PepsiCo and its technical
10 consultants, request a lower detection limit than 500 ppb based on
11 scientific evidence of its feasibility. If the Attorney General and PepsiCo
12 are unable to resolve any differences on this issue within 90 days or such
13 other period as they shall mutually agree, they will proceed to mediation
14 before a mutually acceptable mediator, lasting a maximum of one full day,
15 with PepsiCo bearing such mediator’s fees. In the event that the
16 mediation fails to resolve any differences on this issue, the Parties may
17 present such differences to the court for resolution on noticed motion. Use
18 of the EDTA process will continue until PepsiCo and the Attorney
19 General mutually agree that its use is no longer necessary or that a
20 superior alternative should be substituted.

21 (b) Use of a maximum level of 10 ppb lead (after treatment) for ingredient
22 water, as well as water used to rinse the Refillable Bottles.

23 3.1.10 Required Measures to Keep Old Decorated Bottles out of the California
24 Market: Supply Chain Inspection and Communication Programs.

25 PepsiCo agrees to conduct the following retail inspection and
26 communication activities in California:

27 (a) Surveillance by PepsiCo. PepsiCo shall conduct three enforcement
28 surveys for the purpose of reducing the number of Old Decorated Bottles

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1 of Covered Mexico Products sold in California. Prior to conducting these
2 surveys, Pepsi shall consult with the Attorney General and the City
3 Attorney for the purpose of selecting the optimal demographic areas to be
4 surveyed. As a part of the enforcement survey, PepsiCo, or its agents,
5 will use best efforts to stop the illegal importation, distribution and/or sale
6 of Old Decorated Bottles of Covered Mexico Products, except those for
7 which PepsiCo does not have such ability under applicable trademark and
8 unfair competition laws. Should PepsiCo discover such sales as a result of
9 these enforcement surveys, as part of its aforesaid best efforts, it will,
10 within two months after such survey, first send a cease and desist letter in
11 English and Spanish substantially in the form attached as Exhibit C to the
12 retailer making such sales. PepsiCo will conduct follow up investigations
13 to ascertain whether the sales have, in fact, stopped. Should the retailer not
14 stop such sales after receiving this letter, PepsiCo shall file suit seeking to
15 obtain, inter alia, a permanent injunction to stop such sales and an order
16 requiring the retailer to destroy such Old Decorated Bottles or turn them
17 over to PepsiCo for destruction.

18 A. First Survey. The first enforcement survey shall be completed
19 within 120 days of the Effective Date. PepsiCo will inspect no
20 fewer than 200 retail outlets.

21 B. Subsequent Surveys. Two subsequent enforcement surveys must
22 each be completed no later than 14 months after the completion
23 date of the prior survey. In each such survey, PepsiCo
24 must inspect no fewer than 200 retail outlets.

25 (b) Communication to Retailers and Distributors at which PepsiCo Has
26 Previously Discovered Old Decorated Bottles. Within 120 days of the
27 Effective Date, PepsiCo will provide written information substantially in
28 the form attached hereto as Exhibit D, in English and Spanish, to all

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1 retailers and distributors at which PepsiCo has found Old Decorated
2 Bottles of Covered Mexico Products in the two years preceding the
3 Effective Date. The information will inform the recipient that the
4 communication is required by the Attorney General. As described above,
5 PepsiCo will also provide this information in writing, within two months
6 of each survey completion to all retailers identified by PepsiCo during one
7 of the enforcement surveys as sellers of Old Decorated Bottles of Covered
8 Mexico Products. The sample communication attached to the Consent
9 Judgment as Exhibits C and D are deemed to satisfy the information
10 requirements of this Subsection when communicated as described herein.
11 PepsiCo may, however, provide different communication so long as it
12 meets the criteria of Section 3.1.10 and is submitted to the Attorney
13 General 15 days before it is sent in satisfaction of Section 3.1.10.

14 (c) Report to the Attorney General and City Attorney. PepsiCo will report the
15 results of each enforcement survey to the Attorney General and the City
16 Attorney within 30 days of the completion of the enforcement survey.

17 (d) Surveillance Activities. If surveillance by the Attorney General, the City
18 Attorney or their designees reveals the presence of Old Decorated Bottles
19 for sale in California, the party conducting the surveillance may provide
20 the name and address of the retailer to PepsiCo at the address identified in
21 Section 18. If PepsiCo is informed, pursuant to this Subsection, that a
22 retailer is selling Old Decorated Bottles of Covered Mexico Products,
23 except those for which PepsiCo does not have the ability to stop the illegal
24 importation under applicable trademark and unfair competition laws,
25 PepsiCo shall provide the retailer with a copy of the letter attached hereto
26 as Exhibit C within 10 business days of such notification. Within thirty
27 days of the Effective Date, or later, as directed by the Attorney General,
28 PepsiCo shall make a one time payment of \$15,000 to the Attorney

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1 General, the City Attorney, or their designees for the anticipated
2 surveillance activities performed pursuant to this subsection.

3 3.1.11 Independent Food Processing Auditor - Mexico. Within 120 days of the
4 Effective Date, PepsiCo will retain one or more Independent Food
5 Processing Auditors to conduct audits of the Mexico Bottlers in
6 partnership with PepsiCo International Quality Assurance to ensure that
7 the Mexico Bottlers are employing good manufacturing practices so that
8 lead is not added to the Covered Mexico Products in the manufacturing
9 process ("Lead GMPs"). This audit ("Lead GMP Audit") shall be
10 conducted according to the standards and procedures set forth in Exhibit
11 E. Before the initial Lead GMP Audits are commenced, the Independent
12 Food Processing Auditor shall consult with the Los Angeles City Attorney
13 and the Attorney General and the Attorney General's designees regarding
14 the application of the Lead GMPs in the audit process. Within thirty days
15 of the Effective Date, PepsiCo shall make a one-time payment to the
16 Attorney General, the City Attorney, or his designees in the amount of
17 \$10,000 as compensation for consultation with the auditing team.

18 3.1.12 First Lead GMP Audit. The first Lead GMP Audit of all Mexico Bottlers
19 shall be completed by December 31, 2006. Within 30 days of completion
20 of the first Lead GMP Audit, PepsiCo shall provide the Attorney General
21 with a written report from the Independent Food Processing Auditor that
22 the first audits of all Mexico Bottlers have been completed and that each
23 Mexico Bottler is complying with this Consent Judgment and has achieved
24 Lead GMPs or each Mexico Bottler who has not complied has an
25 acceptable and effective corrective action plan in place.

26 3.1.13 Subsequent Lead GMP Audits. If the Independent Food Processing
27 Auditor has found, during the first Lead GMP Audit, that a Mexico Bottler
28 requires a corrective action plan for achieving Lead GMPs, the Attorney

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1 General may require the presence of the Independent Food Processing
2 Auditor during the subsequent audits of such bottler until Lead GMPs
3 have been demonstrated through the audit process.

4 (a) Second Audit. No later than December 31, 2007, PepsiCo International
5 Quality Assurance shall audit each of the Mexico Bottlers to confirm that
6 each bottler has implemented the Lead GMPs as set forth in Exhibit E. No
7 later than January 31, 2008, PepsiCo shall provide the Attorney General
8 with a report from PepsiCo International Quality Assurance and, if
9 applicable, Independent Food Processing Auditor, that the second audits
10 for each Mexico Bottler have been completed and that each Mexico
11 Bottler is complying with this Consent Judgment and has achieved Lead
12 GMPs, or that each Mexico Bottler who has not complied has an
13 acceptable and effective corrective action plan in place.

14 (b) Third Audit. The third Lead GMP Audit shall be completed no later than
15 December 31, 2008. The audit shall be conducted by PepsiCo
16 International Quality Assurance, except that if either the Independent Food
17 Processing Auditor or PepsiCo International Quality Assurance has found,
18 during the second Lead GMP Audit, that a Mexico Bottler requires a
19 corrective action plan for achieving compliance with Lead GMPs, the
20 Attorney General may require the presence of the Independent Food
21 Processing Auditor during the third audit of such bottler. No later than
22 March 1, 2009, PepsiCo shall provide the Attorney General with a report
23 from PepsiCo International Quality Assurance, and if applicable, the
24 Independent Food Processing Auditor, that (a) the third audits for each
25 Mexico Bottler have been completed and that the Mexico Bottlers are in
26 compliance with all Lead GMPs and all injunctive relief terms set forth in
27 this Consent Judgment and (b) that the applicable requirements of this
28 Consent Judgment and the lead reduction factors identified through the

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1 auditing process have been integrated into PepsiCo International Quality
2 Assurance's ongoing internal auditing practices for Mexico Bottlers and
3 will be implemented as a module of each subsequent periodic audit (which
4 shall be conducted at least once every eighteen months) of the Mexico
5 Bottlers.

6 (c) Additional Audits. In the event that the Attorney General determines that a
7 Mexico Bottler was not in substantial compliance with Lead GMPs after
8 implementation of any corrective action plan, the Attorney General may
9 require that an Independent Food Processing Auditor conduct one or more
10 additional audits of such Mexico Bottler and report its findings to the
11 Attorney General until such time as the Attorney General determines that
12 the Mexico bottler is in substantial compliance with the lead GMPs.

13 3.1.14 Certifications. On the schedule below, PepsiCo will supply Plaintiffs with
14 written certification, in a form satisfactory to the Attorney General, that it
15 has complied with the following requirements:

16 Subsections 3.1.1, 3.1.2, 3.1.3, 3.1.7: 60 days after the Effective Date

17 Subsection 3.1.4: 60 days after third anniversary of the Effective Date

18 Subsection 3.1.9: 90 days after the Effective Date.

19 3.1.15 Ongoing Investigation. In connection with Plaintiffs' ongoing
20 investigation of lead and cadmium in Mexican soft drinks which are sold
21 in California ("Ongoing Investigation"), PepsiCo will, upon reasonable
22 notice:

23 (a) voluntarily and timely produce to Plaintiffs documents, records, reports,
24 memoranda, data and any other tangible evidence, as well as any other
25 information stored in a computer or other electronic form, that are in
26 PepsiCo's possession, custody or control, as requested by the Plaintiffs
27 and relating to the Ongoing Investigation, except to the extent that such
28 items and information are recognized as legally privileged or otherwise

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1 protected from disclosure and with respect to which the privilege or
2 protection has not been waived and no exception to the privilege or
3 protection applies.

4 (b) provide a detailed log for those items of evidence requested by the
5 Plaintiffs but withheld under a claim of privilege or protection from
6 disclosure, which log shall, for each item of evidence withheld, provide a
7 brief description of the item and the specific basis for the assertion of the
8 privilege or protection.

9 (c) respond completely, truthfully, candidly and promptly to any written
10 questions or requests for information submitted by the Plaintiffs and
11 relating to the Ongoing Investigation, except to the extent that the answers
12 to such questions or responses to such requests would be recognized as
13 legally privileged or protected from disclosure and with respect to which
14 the privilege or protection has not been waived and no exception to the
15 privilege or protection applies.

16 (d) to the extent any item of evidence or information requested by the
17 Plaintiffs from PepsiCo pursuant to this Consent Judgment is trade secret
18 or proprietary information protected from disclosure, such evidence or
19 information shall only be disclosed subject to an appropriate protective
20 order.

21 (e) to the extent any item of evidence or information requested by the
22 Plaintiffs from PepsiCo pursuant to this Consent Judgment is subject to a
23 confidentiality agreement between PepsiCo and a third party, use its "best
24 efforts" to obtain the third party's consent to produce such items or to
25 provide such information to the Plaintiffs.

26 (f) use its "best efforts" to make available for interviews or depositions, as
27 requested by Plaintiffs and in conjunction with the Investigation, present
28 and former PepsiCo officials, employees, consultants and other

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1 representatives, with the understanding that any privileges or protections
2 from disclosure not waived by this Consent Judgment are retained.

3 (g) cooperate with any subsequent settlor that has trademark rights within the
4 United States over Covered Mexico Products, in that settlor's obligations
5 to implement Supply Chain Inspection and Communications Programs
6 similar to those required in Section 3.1.10 of this Consent Judgment.

7 **4. Settlement Amount.**

8 The total settlement amount shall be \$9,750,000, ("Settlement Amount"), which shall be
9 paid by or credited to PepsiCo subject to the following, terms and conditions:

10 4.1.1 Credit for Cooperation. PepsiCo shall receive a credit of \$4,000,000
11 against the Penalty Amount in light of (i) PepsiCo's prompt cooperation
12 with the Attorney General and the City Attorney in resolving this matter:
13 (ii) PepsiCo's efforts and costs incurred to date toward resolving this
14 matter; and (iii) PepsiCo's agreement, and its unconditional guarantee of
15 the Mexico Bottlers' performance, to implement the items of injunctive
16 relief set forth in the following paragraphs of this Consent Judgment:
17 3.1.2 (Lead-Free Decorations on non-Refillable Bottles); 3.1.3 (Lead Free
18 Decorations on Newly-made Refillable Bottles); 3.1.4 (Cadmium Free
19 Decorations on Newly-made Refillable Bottles); 3.1.7 (No Increase in
20 Cadmium Levels); 3.1.9 (Lead Reduction Processes).

21 4.1.2 Civil Penalty. Within thirty (30) days of the Effective Date, PepsiCo shall
22 make a civil penalty payment in the amount of \$1,000,000.

23 4.1.3 Cy pres Payments. PepsiCo shall make payments totaling \$500,000 in
24 lieu of additional civil penalties, as set forth below:

25 (a) Within thirty (30) days of the Effective Date, PepsiCo shall make a
26 payment of \$250,000 in lieu of additional civil penalties in order to
27 provide a grant to the California Public Health Institute ("CPHI") to

28 ///

1 provide grants, at its discretion, and subject to such selection and funding
2 procedures as it may establish, for the following purposes:

3 (i) To provide funding to appropriate and qualified organizations for
4 expenses and staff time incurred in performing surveillance activities
5 similar in kind, but in addition to, those provided for in section 3.1.10(d)
6 of this Consent Judgment.

7 (ii) To provide up to 50% matching fund credits to enable small
8 companies (having fewer than approximately 75 employees) that are
9 domiciled in Mexico and that export food products to the United States to
10 retain a qualified Independent Food Processing Auditor to conduct
11 inspections of food production and processing activities.

12 (iii) Any remaining funds shall be used by CPHI in its discretion for the
13 following purposes: to fund projects dedicated to the reduction of lead in
14 Mexican food products and/or to the program established by California
15 Health & Safety Code §§ 110552 *et seq.*

16 (b) Within thirty (30) days of the Effective Date, PepsiCo shall make
17 payments totaling \$250,000 in lieu of additional civil penalties, as follows:

18 (i) \$200,000 as a grant to Physicians for Social Responsibility for the
19 Healthy Homes Collaborative, which has identified areas in the City of
20 Los Angeles such as East Los Angeles and South Los Angeles, among
21 others, as having the greatest need for lead outreach and education. The
22 grant money shall also be used for public health outreach and education
23 regarding lead in the Wilmington area.

24 (ii) \$50,000 as a grant to Pacoima Beautiful for lead outreach and
25 education.

26 4.1.4 Penalty Subject to Credit for Successful Interim Compliance Audit.

27 PepsiCo shall provide the Interim Compliance Audit Report required by
28 Section 3.1.5(a) within 120 days of the 42-month anniversary of the

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1 Effective Date. If the Interim Compliance Audit Report does not confirm
2 that the Decoration on at least 30% of the Refillable Bottles of Mexico
3 Pepsi is Lead Free no later than 42 months after the Effective Date, then
4 PepsiCo will pay the sum of \$250,000 as a civil penalty; otherwise, such
5 amount shall not be paid and shall be credited against the Settlement
6 Amount.

7 4.1.5 Penalty Subject to Credit for Successful Phase-out of Old Decorated
8 Bottles of Mexico Pepsi.

9 (a) Within 120 days after the seventh anniversary of the Effective Date, if
10 PepsiCo does not provide the Compliance Audit Report confirming that
11 the Decoration on at least 95% of the Refillable Bottles of Mexico Pepsi is
12 Lead Free no later than seven years after the Effective Date, then PepsiCo
13 shall pay the sum of \$667,000, as a civil penalty; otherwise, such amount
14 shall not be paid and shall be credited against the Settlement Amount. The
15 Attorney General, in his discretion, may waive all or part of this penalty
16 for good cause, based on a showing by PepsiCo that (i) it has taken good
17 faith and reasonable measures to accelerate the retirement of Old
18 Decorated Bottles in a timely fashion; (ii) these measures have
19 substantially succeeded in the phase out of these bottles; and (iii) the
20 failure to meet the 95% goal was beyond the control of PepsiCo.

21 (b) Within 120 days after the eighth anniversary of the Effective Date, if
22 PepsiCo does not provide the Compliance Audit Report confirming that
23 the Decoration on at least 95% of the Refillable Bottles of Mexico Pepsi is
24 Lead Free no later than eight years after the Effective Date, then PepsiCo
25 shall pay the sum of \$667,000, as a civil penalty; otherwise, such amount
26 shall not be paid and shall be credited against the Settlement Amount. The
27 Attorney General, in his discretion, may waive all or part of this penalty
28 for good cause, based on a showing by PepsiCo that (i) it has taken good

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1 faith and reasonable measures to accelerate the retirement of Old
2 Decorated Bottles in a timely fashion; (ii) these measures have
3 substantially succeeded in the phase out of these bottles; and (iii) the
4 failure to meet the 95% goal was beyond the control of PepsiCo.

5 (c) Within 120 days after the ninth anniversary of the Effective Date, if
6 PepsiCo does not provide the Compliance Audit Report confirming that
7 the Decoration on at least 95% of the Refillable Bottles of Mexico Pepsi is
8 Lead Free no later than nine years after the Effective Date, then PepsiCo
9 shall pay the sum of \$666,000, as a civil penalty; otherwise, such amount
10 shall not be paid and shall be credited against the Settlement Amount.

11 (d) PepsiCo shall provide the Compliance Audit Report within 120 days after
12 the tenth anniversary of the Effective Date. If the Compliance Audit
13 Report does not confirm that the Decoration on at least 95% of Refillable
14 Bottles of Mexico Pepsi is Lead-Free no later than ten years after the
15 Effective Date, then PepsiCo shall pay the sum of \$2,000,000; otherwise,
16 such amount shall not be paid and shall be credited against the Settlement
17 Amount.

18 4.1.6 Means of Payment. Penalty payments required by Subsections 4.1.2, 4.1.4
19 and 4.1.5 shall be made payable to the "Office of the California Attorney
20 General," and shall be sent to:

21
22 Robert Thomas
23 Legal Analyst
24 Office of the Attorney General
1515 Clay St., 20th Floor
Oakland, California 94612

25 A copy of the check(s) and transmittal letter(s) shall be sent to Dennis A.
26 Ragen, Deputy Attorney General, 110 West A Street, Suite 1100, San
27 Diego, CA 92101. Penalty monies shall be apportioned by the State in
28 accordance with Health & Safety Code section 25249.12(b), with 75% of

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1 **5. Reimbursement of Fees and Costs.**

2 5.1 Within thirty (30) days of the Effective Date, PepsiCo shall pay the following
3 amounts to reimburse Plaintiffs for the attorneys’ fees and costs of investigating, bringing and
4 resolving this action.

5	Office of the Attorney General:	\$40,000
6	Los Angeles City Attorney:	\$40,000
7	Dr. Whitney Leeman:	
8	Laboratory Costs	\$105,000
9	Investigative Fees	\$330,000
9	Attorneys’ Fees	\$210,000

10 5.2 Payment to the Attorney General. Payment of the Attorney General’s fees and
11 costs shall be by check payable to the Office of the California Attorney General, and shall be
12 sent to:

13 Robert Thomas
14 Legal Analyst
15 Office of the Attorney General
 1515 Clay St., 20th Floor,
 Oakland, California 94612

16 A copy of the check(s) and transmittal letter(s) shall be sent to Dennis A. Ragen, Deputy
17 Attorney General, 110 West A Street, Suite 1100, San Diego, CA 92101. Funds retained by the
18 Attorney General pursuant to this Subsection 5.2 shall be placed in an interest-bearing Special
19 Deposit Fund established by the Attorney General. Those funds, including any interest derived
20 therefrom, shall be used by the Attorney General, until all funds are exhausted, for the costs and
21 expenses associated with the enforcement and implementation of the Safe Drinking Water and
22 Toxic Enforcement Act of 1986 (“Proposition 65”), including investigations, enforcement
23 actions, other litigation or activities as determined by the Attorney General to be reasonably
24 necessary to carry out his duties and authority under Proposition 65. Such funding may be used
25 for the costs of the Attorney General’s investigation, filing fees and other court costs, payment to
26 expert witnesses and technical consultants, purchase of equipment, travel, purchase of written
27 materials, laboratory testing, sample collection, or any other cost associated with the Attorney
28 General’s duties or authority under Proposition 65. Funding placed in the Special Deposit Fund

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1 pursuant to this Subsection 5.2, and any interest derived therefrom, shall solely and exclusively
2 augment the budget of the Attorney General's Office and in no manner shall supplant or cause
3 any reduction of any portion of the Attorney General's budget.

4 5.3 Payment to the Los Angeles City Attorney. Payment of the Los Angeles City
5 Attorney's fees and costs shall be by check payable to the Los Angeles City Attorney, and shall
6 be sent to:

7 Patty Bilgin
8 Los Angeles City Attorney
9 500 City Hall East, 200 N. Main Street
Los Angeles, CA 90012

10 5.4 Payment to the Noticing Party. Payment of Dr. Whitney R. Leeman's fees and
11 costs shall be made as follows:

12 Hirst & Chanler LLP
13 The Whitney Building
14 71 Elm Street, Suite 8
New Canaan, CT 06840

15 **6. Stipulated Penalties.**

16 PepsiCo shall be liable for stipulated penalties, in an amount determined by the Attorney
17 General as set forth below, if the Attorney General notifies PepsiCo that he has determined that
18 any of the violations referenced in Sections 6.1 through 6.3, below, have occurred. PepsiCo shall
19 make stipulated penalty payments, as set forth in Subsection 6.5, within thirty days of receiving
20 such notification from the Attorney General.

21 6.1 Compliance Documentation reflects that a Mexico Bottler has failed to timely
22 conduct or participate in a Lead GMP Audit required by Subsections 3.1.11 through 3.1.13:

23 First Occurrence by a bottler:	up to \$10,000
24 Second Occurrence by that same bottler:	up to \$25,000
25 Third Occurrence and thereafter by that 26 same bottler:	up to \$50,000

1 **7. Termination of Judgment for Repeated or Severe Violations.**

2 The Attorney General by motion or order to show cause may seek to terminate this
3 Consent Judgment if there is substantial evidence that any of the following conditions exists:
4 (a) PepsiCo has repeatedly, consistently or continuously failed to comply with the audit,
5 certification or Compliance Documentation requirements of this Consent Judgment; or
6 (b) PepsiCo has repeatedly, consistently or continuously failed, despite receipt of written demand
7 from any Plaintiff, to comply with the lead and cadmium reduction requirements set forth in
8 Subsections 3.1.1 through 3.1.9 of this Consent Judgment. In the event that the Court allows the
9 Attorney General to terminate this Judgment, then: (a) Plaintiffs shall retain all their rights,
10 including, without limitation: (1) the right to seek an injunction from this Court, or any other
11 competent Court, requiring PepsiCo to provide clear and reasonable warnings on their Products
12 as required by Health and Safety Code section 25249.6, and (2) the right to seek civil penalties
13 from PepsiCo for violations of Proposition 65, the Unfair Competition Law and/or any other
14 applicable law or regulation that occur after the entry of this Consent Judgment; (b) PepsiCo will
15 retain all of its defenses to any such action; and (c) PepsiCo shall not be entitled to
16 reimbursement of the amounts paid pursuant to Sections 4 (Settlement Amount), 5
17 (Reimbursement of Fees and Costs), and 6 (Stipulated Penalties) of this Consent Judgment.
18 Except as otherwise provided in this Consent Judgment, PepsiCo shall have no further obligation
19 to make payments required by Sections 4 through 6 that fall due after the date that this Judgment
20 is terminated.

21 **8. Additional Enforcement Actions; Continuing Obligations.**

22 By entering into this Consent Judgment, the Plaintiffs do not waive any right to take
23 further enforcement actions regarding any violations by PepsiCo that are not covered by the
24 Complaint or this Consent Judgment. Except as expressly set forth herein, nothing in this
25 Consent Judgment shall be construed as diminishing PepsiCo's continuing obligation to comply
26 with Proposition 65 or the Unfair Competition Law in its future activities. Without in any way
27 limiting the foregoing, Plaintiffs may, after giving sixty days' notice to PepsiCo, move the Court

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1 to obtain additional injunctive relief under this Consent Judgment to the extent that any of the
2 following occur:

3 (a) At least 2,000 bottles of an individual brand of a Covered Mexico Product,
4 *other than Mexico Pepsi*, is located for sale in California in Old Decorated
5 Bottles and the presence of these bottles for sale in California constitutes a
6 violation of Proposition 65 or the Unfair Competition Law, unless the
7 Mexico Bottlers of such brand have, prior to receipt of the notice required
8 by this Section, adopted the lead reduction measures described in
9 Subsections 3.1.2, 3.1.3, 3.1.4, 3.1.7, 3.1.8, and 3.1.9.

10 (b) The U.S. Consumer Product Safety Commission lowers its standard for
11 lead in paint to be applied to consumer products to below the current
12 levels of 0.06% lead by weight (*see* 16 CFR Part 1303 *et seq.*), and similar
13 reductions in the levels of lead in Decoration on the Covered Mexico
14 Products or Covered U.S. Products are necessary in order to protect public
15 health in California.

16 (c) Facts currently unknown to the Plaintiffs arise, and these facts, either by
17 themselves or in combination with other facts, prove to the Court that the
18 injunctive relief terms of this Judgment, once they have been fully
19 implemented, will be insufficient to reduce the lead or cadmium in
20 Covered Products to below the levels set forth herein at Section 3.

21 The forgoing does not in any way limit defendants' right to oppose such modifications or the
22 court's discretion to deny Plaintiffs' motion to modify the Consent Judgment.

23 **9. Enforcement of Consent Judgment.**

24 Plaintiffs may, by motion or order to show cause before the Superior Court of
25 Los Angeles, enforce the terms and conditions contained in this Consent Judgment. In any
26 action brought by Plaintiffs to enforce this Consent Judgment, Plaintiffs may seek whatever
27 fines, costs, attorneys' fees, penalties or remedies are provided by law for failure to comply with
28 the Consent Judgment. Where said failure to comply constitutes future violations of

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1 Proposition 65 or other laws, independent of the Consent Judgment and/or the allegations in the
2 Complaint, Plaintiffs are not limited to enforcement of this Consent Judgment, but may seek in
3 another action, subject to satisfaction of any procedural requirements, including notice
4 requirements, whatever fines, costs, attorneys' fees, penalties or remedies are provided by law
5 for failure to comply with Proposition 65 or other laws. However, the rights of PepsiCo to
6 defend itself and its actions in law or equity shall not be abrogated or reduced in any fashion by
7 the terms of this Section and PepsiCo shall be entitled to raise any and all applicable defenses,
8 arising in law or equity, against Plaintiffs, except that PepsiCo shall not contest its obligation to
9 comply with the terms of this Consent Judgment as set forth herein.

10 Without in any way limiting the Plaintiffs' rights as set forth in the preceding paragraph,
11 Plaintiffs reserve the right to bring an action against PepsiCo for any violations of Proposition 65
12 or the Unfair Competition Law that may result from PepsiCo's substantial and continuing failure
13 to comply with the requirements of Section 3.

14 **10. Application of Consent Judgment.**

15 This Consent Judgment shall apply to, be binding upon, and inure to the benefit of, the
16 Parties, their divisions, subdivisions and subsidiaries and the successors or assignees of each of
17 them. Any change in ownership, partnership status or corporate status of PepsiCo, including, but
18 not limited to, any transfer of assets or real or personal property, shall in no way alter PepsiCo's
19 responsibilities under this Consent Judgment. PepsiCo shall be responsible and shall remain
20 responsible for carrying out all activities required of it under this Consent Judgment. PepsiCo
21 unconditionally guarantees to Plaintiffs the complete and timely performance by the Mexico
22 Bottlers of the terms and obligations set forth in Section 3 of this Consent Judgment to the extent
23 they are to be performed by the Mexico Bottlers.

24 **11. Claims Covered.**

25 Except as provided herein, this Consent Judgment is a final and binding resolution
26 between Plaintiffs and PepsiCo, satisfying and releasing PepsiCo and its subsidiaries, affiliates,
27 divisions, predecessors, successors, officers, directors, employees, and the distributors, licensees,
28 retailers, bottlers and customers of the products, with the explicit exception of the Dr. Pepper

1 Bottling Company of West Jefferson, North Carolina (“Defendant’s Releasees”), from any and
2 all claims, causes of action, damages, costs, penalties or attorneys’ fees arising in or from the
3 Notice and Complaint, based upon alleged violations of Proposition 65, the Unfair Competition
4 Law (whether premised on unlawful, unfair, or fraudulent conduct), the Sherman Act (e.g., Cal.
5 Health & Safety Code §§ 110398, 110620, 110625, 110630, 110760, 110765), public nuisance
6 (e.g., Cal. Civ. Code §§ 3479, 3480), defective product, breach of express warranties and the
7 implied warranties of merchantability and/or fitness for a particular purpose, and/or false
8 advertising (e.g., Cal. Business & Professions Code § 17500) (collectively, the “Covered Laws”)
9 that arise from the absence of clear and reasonable warnings, pursuant to Proposition 65, and/or
10 the presence of lead, lead compounds, and cadmium in or on the Covered Mexico Products and
11 the Covered U.S. Products. The Parties further agree and acknowledge that this Consent
12 Judgment is a full, final, and binding resolution of any direct or derivative violations of
13 Proposition 65 that have been or could have been asserted in the Complaint against PepsiCo
14 arising out of the acts alleged in the Complaint for their alleged failure to provide clear and
15 reasonable warnings of exposure to or identification of lead, lead compounds, and cadmium in
16 the Covered Mexico Products and Covered U.S. Products. It is specifically understood and
17 agreed that the Parties intend that PepsiCo’s compliance with the terms of this Consent Judgment
18 resolves all issues and liability, now and in the future (so long as PepsiCo complies with the
19 terms of the Consent Judgment) concerning PepsiCo and Defendant’s Releasees’ compliance
20 with the requirements of the Covered Laws as to lead and cadmium in the Covered Mexico
21 Products and Covered U.S. Products. Furthermore, Plaintiffs are not aware of, and have no
22 present intention of pursuing, any similar violation of the Covered Laws, arising from the
23 presence of or exposures to lead, lead compounds and cadmium with respect to PepsiCo or
24 Defendant’s Releasees.

25 **12. Entire Agreement.**

26 This Consent Judgment contains the sole and entire agreement and understanding of the
27 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
28 negotiations, commitments and understandings related hereto. No representations, oral or

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1 otherwise, express or implied, other than those contained herein have been made by any party
2 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
3 deemed to exist or to bind any of the Parties.

4 **13. Authorization.**

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

8 **14. Modification.**

9 This Consent Judgment may be modified from time to time by express written agreement
10 of the Parties with the approval of the Court, or by an order of this Court on noticed motion from
11 Plaintiffs or PepsiCo in accordance with law.

12 **15. Entry of Judgment Required.**

13 This Consent Judgment shall be null and void, and be without any force or effect, unless
14 entered by the Court in this matter. If the Consent Judgment is not entered by the Court, the
15 execution of this Consent Judgment by PepsiCo or the People shall not be construed as an
16 admission by PepsiCo or the People of any fact, conclusion of law, issue of law, or violation of
17 law.

18 **16. Retention of Jurisdiction – Dispute Resolution.**

19 This Court shall retain jurisdiction over this matter and the Parties to this Consent
20 Judgment, in order to implement all of the terms of this Consent Judgment, and to resolve
21 disputes that may arise between Plaintiffs and PepsiCo regarding the implementation of the
22 terms of this Consent Judgment. If PepsiCo disagrees with a decision that the Attorney General
23 has made pursuant this Consent Judgment, the parties shall engage in good faith, informal
24 negotiations to resolve that dispute. Should the parties be unable to resolve the issue within 90
25 days or such other period as they shall mutually agree, they will proceed to mediation before a
26 mutually acceptable mediator, with PepsiCo bearing such mediator's fees. In the event that the
27 mediation fails to resolve the differences between the Parties, PepsiCo may challenge the
28 Attorney General's decision by noticed motion to this Court, upon which PepsiCo shall bear the

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1 burden of proof. PepsiCo's motion shall provide the Court with a summary of the dispute and of
2 the position taken by the parties, and shall reference the documents relevant to the dispute.
3 PepsiCo shall serve its motion on the Parties and Dr. Leeman. The Attorney General, the City
4 Attorney and Dr. Leeman may file responses to PepsiCo's motion, and they shall be allotted
5 sufficient time to prepare an adequate response.

6 **17. Governing Law.**

7 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and, except as otherwise provided herein, apply within the State of California.

9 **18. Notices.**

10 18.1 Plaintiffs. All correspondence to the Plaintiffs shall be mailed simultaneously to:

11 Dennis A. Ragen
12 Deputy Attorney General
13 110 West A Street, Suite 1100
14 San Diego, CA 92101

15 Patty Bilgin
16 Office of the Los Angeles City Attorney
17 500 City Hall East,
18 200 N. Main Street
19 Los Angeles, California 90012

20 Robert Thomas
21 Legal Analyst
22 Office of the Attorney General
23 1515 Clay St., 20th Floor,
24 Oakland, California 94612

25 18.2 Dr. Leeman. All correspondence to Dr. Leeman shall be sent to:

26 Whitney R. Leeman, Ph.D.
27 c/o Clifford A. Chanler
28 Hirst & Chanler
The Whitney Building
71 Elm Street, Suite 8
New Canaan, CT 06840

1 18.3 PepsiCo. All correspondence to PepsiCo shall be simultaneously sent to:

2 Robert K. Biggart, Esq.
3 General Counsel
4 Pepsi Cola North America
700 Anderson Hill Road
Purchase, NY 10577-1444

Trenton H. Norris
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, California 94111

5 Jonathan S. Jennings
6 Pattishall McAuliffe Newbury Hilliard
& Geraldson LLP
7 311 South Wacker Drive, Suite 5000
Chicago, IL 60606


8 **19. Compliance Documentation.**


9 PepsiCo shall assemble all Compliance Documentation that this Consent Judgment
10 requires from PepsiCo and the Mexico Bottlers, and PepsiCo shall provide this documentation to
11 Plaintiffs in an organized and accessible format. All Compliance Documentation relating to the
12 surveys conducted pursuant to Subsection 3.1.10 or the findings of the Independent Food
13 Processing Auditor, Independent Compliance Auditor or PepsiCo International Quality
14 Assurance, shall be clearly and conspicuously designated by PepsiCo as confidential trade
15 secret/business information, and its confidentiality shall be maintained by all parties who have
16 access to such information to the extent allowed by law, except that Plaintiffs may provide such
17 information to the Court as part of any motion to enforce or terminate this Consent Judgment.

18 **20. Counterparts and Facsimile.**

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

22
23 **IT IS SO ORDERED, ADJUDGED AND DECREED**

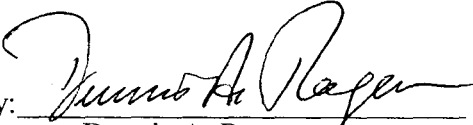
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25 
26 Dated: 7/18/06


27 **Mal. Red Recana**
28 Judge of the Superior Court

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AGREED TO:

BILL LOCKYER,
Attorney General
THOMAS GREENE
Chief Assistant Attorney General
THEODORA BERGER
Assistant Attorney General
EDWARD G. WEIL
Supervising Deputy Attorney General
DENNIS A. RAGEN
Deputy Attorney General

By: 
Dennis A. Ragen
Deputy Attorney General

Date: April 17, 2006

AGREED TO:

PEPSICO, INC.

By: _____
Robert K. Biggart
Vice President and Deputy General Counsel

Date: _____

ROCKARD J. DELGADILLO,
Los Angeles City Attorney
JEFFREY B. ISAACS
Chief, Criminal and Special Litigation Branch
PATTY BILGIN
Supervising Attorney, Environmental Justice Unit
ELISE RUDEN
Deputy City Attorney
JAMES COLBERT III
Supervising Attorney, Special Litigation Branch

By: _____
Rockard J. Delgadillo
Los Angeles City Attorney

Date: _____

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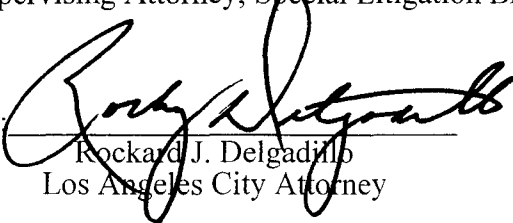
By: _____
Robert K. Biggart
Vice President and Deputy General Counsel

Date: _____

By: _____
Deputy Attorney General

Date: _____

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Los Angeles City Attorney
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Supervising Attorney, Environmental Justice Unit
ELISE RUDEN
Deputy City Attorney
JAMES COLBERT III
Supervising Attorney, Special Litigation Branch

By: 
Rockard J. Delgadillo
Los Angeles City Attorney

Date: 4-17-06

1 **AGREED TO:**

2 BILL LOCKYER,
3 Attorney General
4 THOMAS GREENE
5 Chief Assistant Attorney General
6 THEODORA BERGER
7 Assistant Attorney General
8 EDWARD G. WEIL
9 Supervising Deputy Attorney General
10 DENNIS A. RAGEN
11 Deputy Attorney General

12
13 By: _____
14 Deputy Attorney General

15 Date: _____

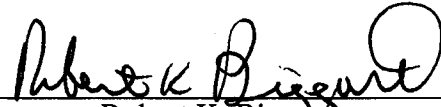
16 ROCKARD J. DELGADILLO,
17 Los Angeles City Attorney
18 JEFFREY B. ISAACS
19 Chief, Criminal and Special Litigation Branch
20 PATTY BILGIN
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22 ELISE RUDEN
23 Deputy City Attorney
24 JAMES COLBERT III
25 Supervising Attorney, Special Litigation Branch

26
27 By: _____
28 Rockard J. Delgadillo
Los Angeles City Attorney

Date: _____

AGREED TO:

PEPSICO, INC.

By: 
Robert K. Biggart
Vice President and Deputy General Counsel

Date: April 14, 2006

SCHEDULE OF EXHIBITS

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- A LETTER TO U.S. BOTTLERS
- B SAMPLING PROTOCOL FOR COMPLIANCE AUDIT
- C CEASE AND DESIST LETTER
- D LETTER TO PAST SELLERS
- E LEAD GMP AUDIT GUIDELINES

A

C B C

1 Upon completion of the audit at each plant, the Independent Compliance Auditor shall calculate
2 the proportion of Lead Free Refillable Bottles in the sample drawn from the plant by dividing the
number of Lead Free Refillable Bottles observed by the sample size.

3 At the time of the compliance audit, the Independent Compliance Auditor shall obtain from
4 PepsiCo a current breakdown of production volumes by line. The Independent Compliance
Auditor shall then (i) aggregate the proportion of Lead Free Refillable Bottles calculated for each
5 plant to determine the weighted average proportion of Lead Free Refillable Bottles in the float
and (ii) determine the 95% confidence interval, using the method described in Section 3, below.
6

7 If P falls within a value captured in the 95% confidence interval or is less than the lowest value
of the confidence interval, as calculated in Section 3, below, then P shall be deemed to have been
8 achieved.

9 The Independent Compliance Auditor may, at its discretion, repeat the sampling process should
10 any sampling result appear abnormal.

11 **3. Confidence Interval Calculation.**

12 After completion of the sampling process, the Independent Compliance Auditor will aggregate
13 the proportion of Lead Free Refillable Bottles of Mexico Pepsi calculated for each plant in order
to calculate a 95% confidence interval. This 95% confidence interval has a 95% probability of
14 including the actual proportion of Lead Free Refillable Bottles of Mexico Pepsi in the entire
Refillable Bottle population of Mexico Pepsi.
15

16 The 95% confidence interval will be calculated as follows: the Independent Compliance Auditor
will compute a weighted average of the proportions of Lead Free Refillable Bottles of Mexico
17 Pepsi obtained for each bottling plant. The weighting factor will be each plant's percentage of
total output for Mexico by volume during the sampling period of each compliance audit. The
18 Independent Compliance Auditor will multiply the proportion of Lead Free Refillable Bottles of
Mexico Pepsi calculated for each plant by that plant's percentage of total output in Mexico. The
19 Independent Compliance Auditor will sum the products of the above multiplications and obtain
the weighted mean of Lead Free Refillable Bottle proportions of Mexico Pepsi.
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21 Next, the Independent Compliance Auditor will calculate the weighted standard of deviation of
the weighted mean of Lead Free Refillable Bottle proportions for Mexico Pepsi. The formula
22 used to calculate this weighted standard of deviation is:

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$$\sigma = \sqrt{\frac{\sum_{i=1}^{N'} w_i (x_i - \bar{x}_w)^2}{(N'-1) \sum_{i=1}^{N'} w_i}} \cdot \frac{1}{N'}$$

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Where:

- σ is the weighted standard of deviation of the weighted mean of Lead Free Refillable Bottle proportions for Mexico Pepsi.
- w_i is the weight of each i^{th} plant, calculated as each plant's percentage of total output in Mexico.
- x_i is the Lead Free Refillable Bottle proportions for the i^{th} plant.
- N' is the number of non-zero weights, i.e. the number of bottling plants.
- \bar{x}_w is the weighted mean of Lead Free Refillable Bottle proportions.

Thus, the Independent Compliance Auditor shall compute the difference between each observed Lead Free Refillable Bottle proportion of Mexico Pepsi and the weighted mean of Lead Free Refillable Bottle proportions of Mexico Pepsi, square the result, and multiply by the weighting factor. This yields a weighted squared difference, which is then summed, and multiplied by $(n-1)/n$, where n is the number of plants, multiplied by the sum of weights (which is equal to 1). The square root of the resulting value is the weighted standard of deviation.

The 95% confidence interval is then defined as the weighted mean of Lead Free Refillable Bottle proportions of Mexico Pepsi plus or minus the standard normal multiplied by the weighted standard deviation divided by the square root of the number of bottling plants. The formula used to calculate this 95% confidence interval is:

$$\bar{x}_w \pm z_{\alpha/2} \times \left(\frac{\sigma}{\sqrt{N'}} \right)$$

Where:

- \bar{x}_w is the weighted mean of Lead Free Refillable Bottle proportions of Mexico Pepsi.
- $z_{\alpha/2}$ is the z-value (standard normal) corresponding to $\alpha/2$ tail probability. $\alpha = 5\%$. The level of confidence $(1 - \alpha)$ is thus 95%. The z-value $z_{\alpha/2}$ for a 95% confidence interval is 1.96.
- σ is the weighted standard deviation of weighted mean of Lead Free Refillable Bottle proportions of Mexico Pepsi.
- N' is the number of non-zero weights, i.e., the number of bottling plants in Mexico.

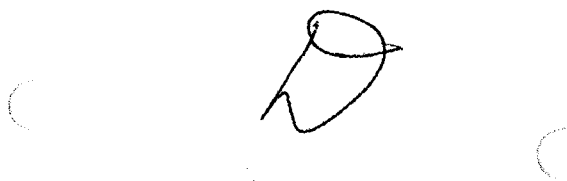
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- 1 • send any Mexico PEPSI you have in your possession to the address identified above; and
2 • identify from whom you purchased the Mexico PEPSI and provide us with copies of all
3 the purchase orders and invoices relating to the importation and purchase of this Mexico
4 PEPSI.

5
6 In order to resolve this matter amicably, we must receive a response to our requests
7 within ten (10) business days of your receipt of this letter. Please send your response to me at
8 the address noted above. If you have any questions, please do not hesitate to contact me by
9 telephone or e-mail.

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Very truly yours,



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EXHIBIT E: LEAD GMP AUDIT GUIDELINES

This audit checklist serves as a guide to the auditor in completing a general assessment of the practices utilized to reduce the risk of lead integration.

Plant Name:	Plant Location:	Audit Company / Auditor Name:
Audit Date:	Management Plant Personnel:	

<i>Question</i>	<i>Guidelines</i>	<i>Yes</i>	<i>No</i>	<i>Comments</i>
1. <i>Are the operational requirements for refillable glass bottle washing that impact lead reduction met?</i>	<ul style="list-style-type: none"> • Recommended EDTA concentration met. • Recommended pH of the prefinal rinse is met. • Piping for water used in the final rinse is constructed of materials that do not contribute to lead integration in the refillable glass bottles. 			
2. <i>Have monitoring frequencies been established for checking the effectiveness of refillable glass bottle cleaning?</i>	<ul style="list-style-type: none"> • Frequencies established and monitoring occurring for key parameters: <ul style="list-style-type: none"> — EDTA concentration of the prefinal rinse — Water used for the final rinse of refillable glass bottles is less than 10 ppb lead and is sampled and tested every 12 months. — pH of prefinal rinse 			
3. <i>Are empty, cleaned refillable glass bottles protected from lead integration prior to filling?</i>	<ul style="list-style-type: none"> • The path between the bottle washer and filler is designed to avoid contamination of the bottles with lead-containing materials (e.g. broken glass) 			
4. <i>Is the design of the filling area adequate to prevent lead integration into the bottles?</i>	<ul style="list-style-type: none"> • Filling area separated from non-processing areas • Minimal gaps between walls and roofs or floors • Food contact surfaces are constructed of suitable materials that do not contribute to lead integration • Protective shield around the filler and capper to keep glass fragments, oil, grease, dust or debris from scattering. 			

DOCUMENT PREPARED ON RECYCLED PAPER

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5.	<i>Is the filling area for glass bottles free of any obvious sources of potential lead integration to the glass bottles?</i>	<ul style="list-style-type: none"> • Treated water used for beverage preparation for final refillable glass bottles is less than 10 ppb lead and is sampled and tested every 12 months. • No possible contamination from fuel emission (e.g. conveyor motors) • Lubricants, sealants that come in contact with the beverage are suitable for food contact and do not contribute to lead integration 			
6.	<i>Is equipment maintenance conducted in a manner to prevent lead integration to the glass bottles?</i>	<ul style="list-style-type: none"> • Repairs to food contact surfaces are made with materials suitable for food contact and do not contribute to lead integration. 			
7.	<i>Is the final product monitored for lead?</i>	<ul style="list-style-type: none"> • Final product is sampled on a quarterly basis and tested for lead. • Materials specifications prohibit added lead or cadmium 			