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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO, UNLIMITED JURISDICTION

12 IN RE VINEGAR LITIGATION

13 CASE NO. CGC-03-421108
14 (consolidated with Nos. CGC-04-428945
15 and CGC-04-435440)

16 CONSENT JUDGMENT AS TO
17 DEFENDANTS ALBECO, INC. (dba
18 MOLLIE STONE'S MARKETS); and
19 DEHOFF ENTERPRISES, INC. (dba KEY
20 MARKETS); ORDER

1 1 INTRODUCTION

2 1.1 On October 13, 2004, the Environmental Law Foundation, individually and on
3 behalf of the general public (“ELF”) filed a Complaint for civil penalties, restitution and
4 injunctive relief (“Complaint”) in San Francisco County Superior Court (“Action”). Albeco,
5 Inc., dba Mollie Stone’s Markets and Dehoff Enterprises, Inc., dba Key Markets, two of the
6 defendants in the Action, shall hereinafter be referred to as “Settling Defendants.”

7 1.2 Settling Defendants are corporations that employ more than ten persons and sell
8 Wine Vinegars to persons in the State of California. For purposes of this Consent Judgment,
9 the term “Wine Vinegar” shall have the meaning set forth in section 6.2.

10 1.3 ELF’s Complaint alleges that the Settling Defendants manufactured, distributed
11 and/or sold Wine Vinegar containing lead in an amount that resulted in exposures to
12 consumers in violation of the provisions of the Safe Drinking Water and Toxic Enforcement
13 Act of 1986 and Health & Safety Code §§ 25249.5, *et seq.* (Proposition 65), and Business &
14 Professions Code §§ 17200, *et seq.* (“Unfair Competition Law”), by knowingly and
15 intentionally exposing persons to a chemical known to the State of California to cause
16 reproductive toxicity, namely lead, without first providing a clear and reasonable warning to
17 such individuals.

18 1.4 For purposes of this Consent Judgment only, the parties stipulate that this Court
19 has jurisdiction over allegations of violations contained in the Complaints and personal
20 jurisdiction over the Settling Defendants as to the acts alleged in the Complaints, that venue is
21 proper in the County of San Francisco and that this Court has jurisdiction to enter this
22 Consent Judgment as a resolution of all claims which could have been raised in the
23 Complaints based on the facts alleged therein.

24 1.5 For the purpose of avoiding prolonged litigation, the parties enter into this
25 Consent Judgment as a full settlement of all claims that were raised in the Complaints based
26 on the facts alleged therein, or which could have been raised in the Complaints arising out of
27 the facts alleged therein. By execution of this Consent Judgment, Settling Defendants do not
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1 admit any violations of Proposition 65 or the Unfair Competition Law or any other law and
2 specifically deny that they have committed any such violations and maintain that all Wine
3 Vinegar products they have sold and distributed in California have been and are in
4 compliance with all laws. Nothing in this Consent Judgment shall be construed as an
5 admission by any Settling Defendant of any fact, finding, conclusion, issue of law, or
6 violation of law. Settling Defendants do not admit that 34 parts per billion (“ppb”) limit set
7 forth in paragraph 2.1 of this Consent Judgment is the appropriate limit for requiring a
8 warning based on consumption of wine vinegar, and adopt this limit for purposes of this
9 settlement only. This paragraph shall not diminish or affect the responsibilities and duties of
10 the parties under this Consent Judgment.

11 1.6 For the purposes of this Consent Judgment, the term “Effective Date” shall
12 mean the date upon which this Consent Judgment has been approved and entered as a
13 Judgment by the Court and has become final and not further appealable.

14 2. CLEAR AND REASONABLE WARNINGS

15 2.1 Warning Standard. Settling Defendants shall not sell or offer for sale in
16 California Wine Vinegars that contain lead at levels that exceed 34 ppb unless warnings are
17 given in accordance with one or more of the provisions set forth below. Settling Defendants
18 shall have the warnings placed no later than sixty (60) days after the Effective Date.

19 a. Shelf Warning. Settling Defendants may provide warning by placing a
20 notice on the top shelf of or at eye level on any rack of shelves in Settling Defendants’ stores
21 where Wine Vinegars are sold. The notice may be either parallel or perpendicular to shelf
22 line. The warning shall state as follows: “CALIFORNIA PROPOSITION 65 WARNING:
23 The Red Wine Vinegars and Balsamic Vinegars on these shelves contain lead, a chemical
24 known to the State of California to cause birth defects and other reproductive harm.” Each
25 sign shall be no smaller than 2.25 inches x 5.5 inches, and the form and type shall be
26 substantially similar to that which is attached hereto as Exhibit A.

1 b. Product Labeling. Settling Defendants may provide warning by placing
2 the following language on the packing, labeling or directly onto each bottle of a Red or
3 Balsamic Wine Vinegar product: "WARNING: This product contains lead, a chemical known
4 to the State of California to cause birth defects and other reproductive harm." Product label
5 warnings shall be placed with such conspicuousness as compared with other words,
6 statements, designs and/or devices as to render it likely to be read and understood by an
7 ordinary individual under customary conditions of use or purchase.

8 2.2 Any Wine Vinegar sold by a Settling Defendant may be sold on a shelf that
9 utilizes warnings with the language as described in paragraph 2.1(a) of this Consent
10 Judgment, unless (1) that Settling Defendant has conducted testing in accordance with the
11 testing requirements referenced in paragraph 2.4 demonstrating that a particular Wine
12 Vinegar contains lead in an amount less than 34 ppb, or (2) has received test data from the
13 supplier from testing conducted in accordance with the testing requirements referenced in
14 paragraph 2.4 demonstrating that a particular Wine Vinegar contains lead in an amount less
15 than 34 ppb.

16 a. In the event that a Settling Defendant has received test data complying with the
17 first sentence of this section and with the testing requirements referenced in paragraph 2.4
18 demonstrating that a particular Wine Vinegar contains lead in an amount less than 34 ppb,
19 and a Settling Defendant intends to offer such vinegar for sale, the Settling Defendant shall
20 utilize the procedures set forth in paragraph 2.4a.

21 b. Within 60 days of the Effective Date, each Settling Defendant shall provide in
22 writing substantially the following notice to each of its suppliers of Wine Vinegar:

23 "[Settling Defendant] is a party to a Consent Judgment in the Superior
24 Court of the State of California that requires [Settling Defendant] to provide the
25 following warning (the "Proposition 65 Warning") to purchasers of red wine and
balsamic vinegars:

26 **CALIFORNIA PROPOSITION 65 WARNING:**
27 The Red Wine Vinegars and Balsamic Vinegars on these shelves contain
28 lead, a chemical known to the State of California to cause birth defects and
 other reproductive harm.

1 The Proposition 65 Warning is not required for any vinegar that contains
2 less than 34 parts per billion of lead, as demonstrated by a required test protocol. If
3 you believe any red wine or balsamic vinegar supplied by you contains less than
4 34 parts per billion of lead and does not require a warning for this reason, and you
5 wish to exempt any such vinegar from the warning requirement, please contact
6 [Contact person at Settling Defendant] to obtain a description of the test
7 requirements and procedures that you must follow.”

8 2.3 Any changes to the language or format of the Warning required by this section
9 shall be made only after obtaining ELF’s approval, unless such changes are allowed under
10 paragraphs 2.6, 4.1, 10.1, or 10.2 of this Consent Judgment.

11 2.4 Testing shall be conducted by a testing laboratory with Environmental
12 Laboratory Certification from the State of California, Department of Health Services,
13 Environmental Laboratory Accreditation Program. Any such test must be conducted using
14 inductively coupled plasma mass spectrometry or graphite furnace atomic absorption
15 spectrometry and employ sample preparation and evaluation techniques generally accepted in
16 the scientific community. As used in this Consent Judgment “less than 34 ppb” means that 10
17 samples of each individual product have been tested in accordance with the requirements set
18 forth in this Consent Judgment and that the raw results from the ten (10) samples tested have
19 a lead concentration with an arithmetic mean of less than 34 parts per billion lead and no
20 more than one sample exceeding 50 parts per billion lead, regardless of the source of the lead.

21 a. At least 60 days before any proposed discontinuance of any warnings pursuant
22 to this paragraph, Settling Defendant proposing such discontinuance shall provide to ELF the
23 results, the underlying raw data, and a description of the test methodology used. Should ELF
24 dispute for any reason the discontinuance of any warning, the dispute may be submitted by
25 either party to the Court for resolution on motion. Unless and until such motion is resolved
26 favorably to Settling Defendant, the warning in question may not be discontinued. If there is
27 no objection or the objection is resolved favorably to the Settling Defendant, the subject
28 product that tests less than 34 ppb shall not bear a warning label under paragraph 2.1(b) nor
placed on shelf referenced by a shelf sign under paragraph 2.1(a).

1 b. Nothing in this Consent Judgment shall require any Settling Defendant or
2 supplier of Wine Vinegar to conduct any testing of any such vinegar.

3 2.5 Provisions of the Warning in paragraphs 2.1 or 2.2 of this Consent Judgment
4 shall fully and completely satisfy Settling Defendants' obligations to provide a warning for
5 all Wine Vinegars with respect to the presence of lead under Proposition 65, the California
6 Business and Professions Code, and all federal, state or local laws, regulations, or ordinances.

7 2.6 If ELF settles this, or any lawsuit regarding the same allegations as in the
8 Complaints, wherein any retailer is permitted to provide a warning regarding lead in Wine
9 Vinegar that is different in content, method or appearance, any Settling Defendant shall, at its
10 sole discretion, have the option to warn in the manner described in section 2.1, or in the
11 manner set forth in the subsequent settlement.

12 3. MONETARY RELIEF

13 3.1 There will be no monetary payment as a result of this settlement. Plaintiff, and
14 each Settling Defendant, agrees to bear its own costs and attorneys fees, and any other costs
15 associated with this litigation.

16 4. MODIFICATION OF CONSENT JUDGMENT

17 4.1 This Consent Judgment may be modified by written agreement between ELF
18 and any Settling Defendant, after noticed motion, and upon entry of a modified Consent
19 Judgment by the Court thereon, or upon motion of ELF or the Settling Defendant as provided
20 by law or upon entry of a modified Consent Judgment by the Court.

21 5. APPLICATION OF CONSENT JUDGMENT

22 5.1 This Consent Judgment shall apply to and be binding upon ELF and the Settling
23 Defendants, their divisions, subdivisions, parent entities or subsidiaries, and successors or
24 assigns of either of them. officers, directors, and shareholders.

25 5.2 Each signatory to this Consent Judgment certifies that he or she is fully
26 authorized by the party that he or she represents to enter into and execute the Consent
27 Judgment on behalf of the party represented and legally bind that party.

1 6. CLAIMS COVERED

2 6.1 This Consent Judgment is a final and binding resolution between ELF and the
3 Settling Defendants, of any violation of Proposition 65 and Business and Professions Code
4 section 17200, *et seq.*, or any other statutory or common law claim that could have been
5 asserted against the Settling Defendants for failure to provide clear, reasonable and lawful
6 warnings of exposures to lead that result from the ingestion of Wine Vinegar.

7 6.2 For purposes of this Consent Judgment, the term "Wine Vinegar" shall mean
8 any vinegar, including but not limited to balsamic vinegar, that contains wine as a constituent.
9 Nothing in this section shall be construed to affect the liability of any defendant in these
10 Actions other than the Settling Defendants.

11 6.3. Release of Settling Defendant. In further consideration of the promises and
12 agreements herein contained, ELF, on behalf of itself, its past and current agents,
13 representatives, attorneys, successors and/or assignees, and in the interest of the general
14 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
15 legal action and releases all claims, including, without limitation, all actions, causes of action,
16 in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines penalties,
17 losses or expenses, including, but not limited to, investigation fees, expert fees and attorneys'
18 fees of any nature whatsoever, whether known or unknown, fixed or contingent against the
19 Settling Defendant and each of its customers, owners, parent companies, corporate affiliates,
20 subsidiaries and its respective officers, directors, attorneys, representatives, shareholders,
21 agents, and employees arising under Proposition 65, Business and & Professions Code §
22 17200, *et seq.* and Business & Professions Code § 17500, *et seq.*, related to the Settling
23 Defendants' alleged failure to warn about exposures to or identification of lead contained in
24 Wine Vinegars.

25 ELF and the Settling Defendants further agree and acknowledge that this Consent
26 Judgment is a full, final, and binding, resolution of any violations of Proposition 65, Business
27 & Professions Code § 17200, *et seq.* and Business & Professions Code § 17500, *et seq.*, that
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1 have been or could have been asserted in the Complaints against the Settling Defendants for
2 their alleged failure to provide clear and reasonable warnings of exposure to or identification
3 of lead contained in Wine Vinegars.

4 In addition, ELF, on behalf of its, itself, attorneys and its agents, waives all rights to
5 institute or participate in, directly or indirectly, any form of legal action and releases all
6 claims against the Settling Defendants arising under Proposition 65, Business & Professions
7 Code § 17200, *et seq.* and Business & Professions Code § 17500, *et seq.*, related to the
8 Settling Defendants' alleged failures to warn about exposures to or identification of lead
9 contained in the Wine Vinegars and for all actions or statements regarding the alleged failures
10 to warn about exposures to or identification of lead contained in the Wine Vinegars made by
11 Settling Defendants or their attorneys or representatives, in the course of responding to those
12 alleged violations of Proposition 65, Business & Professions Code § 17200, or Business &
13 Professions Code § 17500, as alleged in the Complaint.

14 It is specifically understood and agreed that ELF and the Settling Defendants intend
15 that Settling Defendants' compliance with the terms of this Consent Judgment will resolve all
16 issues and liability, now and in the future, concerning the Settling Defendants' alleged
17 violation of the requirements of Proposition 65, Business & Professions Code § 17200, *et seq.*
18 and Business & Professions Code § 17500, *et seq.*, as to lead in Wine Vinegars.

19 6.4 Release of ELF. Settling Defendants waive all rights to institute any form of
20 legal action against ELF or its attorneys or representatives, for all actions taken or statements
21 made by ELF and its attorneys or representatives, in the course of seeking enforcement of
22 Proposition 65, Business & Professions Code § 17200, *et seq.* or Business & Professions
23 Code § 17500, *et seq.*, in this Action.

24
25 7. RETENTION OF JURISDICTION

26 7.1 This Court shall retain jurisdiction of this matter to implement this Consent
27 Judgment.

1 8. COURT APPROVAL

2 8.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
3 effect and cannot be used in any proceeding for any purpose.

4 9. ENFORCEMENT OF CONSENT JUDGMENT WITH REGARD TO RETAIL
5 STORES IN CALIFORNIA

6 9.1 Before moving to enforce the terms and conditions of this Consent Judgment
7 against any Settling Defendant with respect to an alleged violation occurring at a retail store
8 located in California, ELF must follow the procedures set forth in subsections 9.2 through
9 9.4.

10 9.2 In the event that ELF and/or its attorneys, agents or assigns, identify one or
11 more retail stores in California owned and operated by any Settling Defendant at which Wine
12 Vinegars are sold (hereinafter "retail outlet") for which the warnings required under
13 paragraph 2 of this Consent Judgment are not being given, ELF shall notify, in writing, any
14 Settling Defendant of such alleged failure to warn (the "Notice of Breach"). The Notice of
15 Breach shall be sent in a manner authorized in paragraph 12.1 of this Consent Judgment ,
16 with proof of service within sixty (60) days of the date the alleged violation was observed.
17 The Notice of Breach shall identify the date the alleged violation was observed and the retail
18 outlet in question, and reasonably describe the nature of the alleged violation with sufficient
19 detail to allow such Settling Defendant to determine the basis of the claim being asserted and
20 the identities of the Wine Vinegars to which those assertions apply.

21 9.3 In the event that ELF identifies a specific retail outlet, other than the specific one
22 identified in subsection 9.2 of this Consent Judgment, not giving warnings for Wine Vinegars
23 as required under paragraph 2, ELF shall serve the Settling Defendant with another Notice of
24 Breach in the manner described in subsection 9.2 and provide the same information as
25 required in subsection 9.2.

26 9.4 ELF shall take no further action against the Settling Defendant unless ELF
27 discovers, at least thirty (30) days after service of the Notices of Breach served pursuant to
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1 subsections 9.2 and 9.3, that the violation described in the Notice of Breach has not been
2 corrected.

3 10. GOVERNING LAW

4 10.1 The terms of this Consent Judgment shall be governed by the laws of the State
5 of California. In the event that Proposition 65 is repealed or is otherwise rendered
6 inapplicable by reason of law generally, or as to Wine Vinegars specifically, then the Settling
7 Defendants shall have no further obligations pursuant to this Consent Judgment with respect
8 to, and to the extent those Wine Vinegars are so affected.

9 10.2 In the event that either Proposition 65 or the regulations promulgated pursuant
10 to Proposition 65 ("Proposition 65 Regulations") are revised or modified in a way that affects
11 the Settling Defendants' obligations set forth in this Consent Judgment, then the Settling
12 Defendants shall have an option of complying with the revised or modified Proposition 65 or
13 Proposition 65 Regulations in lieu of the terms of this Consent Judgment.

14 11. EXCHANGE IN COUNTERPARTS

15 11.1 Stipulations to this Consent Judgment may be executed in counterparts by and/or
16 facsimile which taken together shall be deemed to constitute one document.

17 12. NOTICES

18 12.1 All correspondence and notices required to be provided pursuant to this Consent
19 Judgment shall be in writing and personally delivered or sent by: (1) first-class, registered,
20 certified mail, return receipt requested, or (2) overnight courier on ELF or Settling

21
22 Defendants by the others at the addresses listed in Exhibit B. Either ELF or Settling
23 Defendants may specify a change of address to which all notices and other communications
24 shall be sent.

25 IT SO STIPULATED:

26 DATED: 7/25/06

ENVIRONMENTAL LAW FOUNDATION

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By: _____



JAMES WHEATON

DATED: _____

**ALBECO, INC. dba MOLLIE STONE'S
MARKETS**

By: _____

DATED: _____

**DEHOFF ENTERPRISES, INC. dba KEY
MARKETS**

By: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

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By: _____
JAMES WHEATON

DATED: 7/18/06

ALBECO, INC. dba MOLLIE STONE'S
MARKETS

By: [Signature]
V.P./Sec. ALBECO INC.

DATED: _____

DEHOFF ENTERPRISES, INC. dba KEY
MARKETS

By: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

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By: _____
JAMES WHEATON

DATED: _____

ALBECO, INC. dba MOLLIE STONE'S
MARKETS

By: _____

DATED: 8/2/06

DEHOFF ENTERPRISES, INC. dba KEY
MARKETS

By: Christopher J. Dehoff, GM
Dehoff's Key Markets, GM

IT IS SO ORDERED, ADJUDGED AND DECREED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

**CALIFORNIA
PROPOSITION 65
WARNING:**

! The Red Wine Vinegars and
Balsamic Vinegars on these
shelves contain lead, a chemical
known to the State of California
to cause birth defects and other
reproductive harm.

EXHIBIT B

ENVIRONMENTAL LAW FOUNDATION

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221 Pine St.
San Francisco, CA 94104**

**ALBECO, INC. (dba MOLLIE STONE'S MARKETS) and DEHOFF ENTERPRISES, INC.
(dba KEY MARKETS)**

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